

Supplying a controlled drug of Class B, namely cannabis or cannabis resin to another contrary to section 3(3)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974

[2021]GRC082

**ROYAL COURT
FULL COURT**

24th November, 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Stephen Murray Jones OBE, Claire Helen Le Pelley, Terry John Ferbrache,
Steven John Morris, Stuart Michael Crisp, Tina Jane Le Poidevin,
Paul Martin Burnard, Heather Reed, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

RACHAEL LYNDA SMITH

Advocate J D McVeigh appeared for the Crown

Advocate S E Steel appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Miss Smith you have pleaded guilty to two Counts on one Indictment. Both Counts are of being concerned in the supplying of a controlled drug of Class B, namely cannabis or cannabis resin to another. Firstly, on 27th April 2021 (Count 1) and secondly, between 16th January 2021 and 18th March 2021 (Count 2) respectively. Both contrary to section 3(3)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, and the maximum penalty for which is 21 years' imprisonment.

The evidence relating to Count 1, the offence in 2020, comes from an Apple iPhone with an exhibit reference starting HK ("HK phone") which was seized when you and three others were stopped in a car on the 20th of March 2021. Drugs were found in the car but were not attributable to you. You gave the pass code for your iPhone and on it there was a message to CLP offering 1 gram of herbal cannabis.

The evidence relating to Count 2 matters, comes from three sources :

- 1) Another iPhone belonging to you, with an exhibit reference beginning AP which was seized during a search of your home on the 23rd of January 2021, prompted by a call by you to the police, during which you made reference to a 'bong'. You did not provide the pass code for that phone but it turned out to be the same as the pass code you gave to the police in March, so they were able to access it. On that phone (AP) were two messages concerning the supply of cannabis /cannabis resin, one of which referenced 3 grams and the other of which was more general.
- 2) The second source of evidence was another iPhone belonging to you with an exhibit reference beginning GA which was seized during a search under warrant on 19th of February 2021. You provided the pass code to this iPhone and two messages were taken from it, concerning the supply of cannabis.

- 3) The third source is your HK iPhone, from which evidence was taken in various forms (including messages, videos and audio clips, all concerning the supply of cannabis).

You are a local woman of 29 years of age. You are not currently working.

You have a number of previous convictions including:

- 1) A conviction for a drug offence in February 2017, for which you originally received a 2-year Probation Order, but which was later replaced by a sentence of 6 months' immediate custody in July 2017, following the commission by you of further offences.
- 2) You also received a sentence of 6 months' immediate custody in December 2018, for offences of assault on police officers and public order offences.
- 3) Your most recent sentence was on the 8th of April 2021, when you received a 12-month Probation Order for offences of disorderly behaviour. That sentence is still active. It must be noted that the offences for which you appear to be sentenced today were committed prior to the imposition of that Probation Order. But your convictions place you in breach of it.

You have been on conditional bail since 19th July 2021.

Sentencing Considerations

The sentencing guidelines applicable to offences involving the supply of drugs are contained in the case of Richards. Those guidelines were recently considered by the Guernsey Court of Appeal in Barras, Watt and Orchard v Law Officers 2021 GCA045 and re-affirmed as current and appropriate. This Court will continue to follow those guidelines.

Although the offence in Count 1 was committed in 2020 and the offences in Count 2 span 3 months in 2021, the Court will treat both Counts together.

There is no overall quantifiable amount of drugs in the two Counts, but such amounts as there are, are small.

The lowest sentencing band for the supply of cannabis and cannabis resin is 3-6 years for quantities up to 2 kilograms, and the Court considers your offending to fall within the lower end of that band.

The Court is satisfied that the custody threshold in respect of your offending has been passed. Supplying drugs is a serious offence.

The starting points before aggravating and mitigating factors will be of 3 years.

There are no significant aggravating factors in your case. The Court accepts Advocate Steel's submission that the breach of the Probation Order is more technical than actual and will not treat it as an aggravating factor. The starting point remains at 3 years.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence. They were entered in a timely fashion and we afford you full credit for those pleas.

Mitigation

The Court has considered carefully the cautiously optimistic Probation Report prepared in respect of you. It is very encouraging that you have been able to trust those who are trying to assist you. Your history is unenviable and you have struggled with alcohol and substance misuse. Previous non-custodial sentences have not been successful, but the Officer considers that progress is finally being made by you under the terms of the 12-month Probation Order which started in April 2021.

We have also listened to the powerful and compelling submissions of your Advocate and considered your letter very carefully. We are impressed with your willingness to seek help to make changes. Your self-referral to Caring for Ex-Offenders and attendance at their workshops, shows that you are actively looking for help to change your lifestyle. You have also recognised that you need to change your circle of friends and associates and you have demonstrated your remorse.

You were exceptionally open and candid with the Probation Officer about your involvement in the supply of cannabis. We give you significant credit for this openness and for the fact that the evidence of the supplying came from your iPhones, the pass codes to two of which you gave voluntarily, and the pass code for the third of which was easily available to the police.

You have acknowledged to the Probation Officer that your offending was for financial gain and you have not tried to say that you were desperate for the money, rather accepting that it was an easy way of obtaining additional funds. The Probation Officer is impressed at the mature way you have gone about planning for an immediate custodial sentence. The Court notes that you had secured social housing and that this had been of great benefit to you. It is a concern that your offending has lost you that home.

You have persevered with the current Probation Order which is a break from past failures to complete such Orders. The Probation Officer and the representative of the criminal justice substance service and you, are all positive about the Order. The only order you had managed to complete previously was the Community Service Order in 2018.

The Court notes with that you have not been sentenced for any matter except a public order matter in November 2020 for which you were fined, between December 2018 and April 2021. You have indicated that you would like to work which is seen as a great positive.

You are assessed as having a high likelihood of re-offending, which we can and do take into account. But it is considered by the Probation Officer that you are genuinely motivated to be offence-free, but you need significant professional input which is said to be a lengthy process and might well be fraught with difficulty and setbacks. You do pose a risk of harm to the community through your drug dealing and to the police, based on your previous record, but you are assessed as posing a greater risk of harm to yourself.

We note that there is no request for a Drug Trafficking investigation in respect of you.

This Court has to decide what to do about the current Probation Order imposed by the Magistrates Court. As set out in the Prosecution Outline, this Court can:

- Leave the Order running with or without fining you;
- revoke the Order and replace it with a different sentence for the original offence, or;
- revoke it in its entirety, which is the recommendation of the Probation Officer.

Sentence

As I have said, the Court is satisfied that the custody threshold has been passed.

In view of your pleas, the significant mitigation, the Court is able to consider alternatives to immediate custody. The Court has decided to follow the recommendation in the Probation Report with its

combination of a Probation Order to enable you to be rehabilitated, and the Community Service Order, as a direct alternative to immediate custody, which will serve as a punishment, as a deterrent and give reparation to the community.

Taking into account all of the above, the sentences will be as follows:

- In respect of Count 1 - a Community Service Order of 90 hours, as a direct alternative to 3 months' immediate custody. This is a reduced sentence on the basis of totality and it will be served concurrently with Count 2.
- In respect of Count 2 - 240 hours Community Service as a direct alternative to 18 months' immediate custody, and a Probation Order of 18 months, and I will go through the details of that in a moment.

The Court is giving you the opportunity you have asked for, so that you can prove yourself, as you put in your letter. You have done well so far in your work with Probation and the Criminal Justice Substance Service. We urge you to keep up that good work and we hope not to see you again.

I should make it clear that the Probation Order dated 8th April 2021 will simply be revoked, because of the other longer Probation Order being put in place.

Community Service Order

In relation to the Community Service Order, which you will recall has 90 hours in relation to Count 1 and 240 hours in relation to Count 2, but they are concurrent, so the total is 240 hours. We note that you have signed a form stating that you understand the nature and effect of a Community Service Order, the power of the Court to review the Order and the consequences that may follow if you fail to comply with any of the requirements of the Order, or if you are convicted of a further offence while the Order is in force. You have heard that there are custodial alternatives, so 3 months for the 90 hours Community Service Order and 18 months for the 240 hours Community Service Order, and that is concurrent, so it is a total of 18 months.

The Court is satisfied that provision can be made for you to perform work and that you are a suitable person to perform that work. Please note, that if you fail to complete even one hour without a medical certificate, or if you commit any other offence, you will be brought back before this Court and you will face going to prison. Please take that on-board.

Probation

In relation to the Probation Order, the Court is satisfied that it is appropriate to add that Probation Order and will do so for the period recommended in the Report, which is 18 months. Over this period of time there will be an opportunity to get a fuller understanding of your offending behaviour and to continue the work which has been started under the previous Order and to add to that work, addressing your drug offending. Such an Order is imposed for the purpose of your rehabilitation, to prevent you offending further, and to protect the public. We are satisfied that you have had explained to you the purpose and the effect of the Order and the powers that follow if it is breached, including the consequences thereof. But in brief summary, it means that:

- you must keep in contact with your supervisor, in accordance with the instructions you will be given from time to time;
- notify your supervisor of any change of address or working arrangement;
- not to do anything to undermine the purposes already mentioned for which the Order is made; and
- comply with the additional requirements, which we are satisfied should be attached to the Order.

The additional condition to be added is: to attend the Criminal Justice Substance Service, as directed and comply with drug and alcohol testing and treatment as required.

If you were to fail to comply with any requirement, you would be liable to be returned to the Court, which has powers to continue the Order, with or without variation, to fine you, or even to revoke it and re-sentence you.

Forfeiture s3 Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006, as Amended

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the three iPhones is also granted. We note that this has not been resisted. We are satisfied that those items were lawfully seized and that the analysis of them shows they have been used for the purpose of committing or facilitating the commission of offences. We have, as required by subsection (5), had regard to the value of the property (£100-200 each) and the likely financial and other effects on you of making the Order before deciding to grant the Crown's application.

So, in summary, I repeat that the total sentences are:

- 1 A total of 240 hours Community Service Order with 18 months as a direct alternative.
- 2 An 18 month Probation Order.
- 3 Forfeiture of the three phones and the revocation of the Probation Order.

You may now leave once the Court has closed.

Catherine Maureen Fooks
Judge of the Royal Court

24th November 2021