

Jointly concerned in the supplying of a controlled drug of Class B namely cannabis or cannabis resin to another in contravention of Section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974

[2021]GRC084

**ROYAL COURT
FULL COURT**

26 August 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Jonathan Grenfell Hooley,
David James Mortimer, David John Robilliard, Stuart Michael Crisp,
Marilyn Jasmine King, Tina Jane Le Poidevin, Paul Martin Burnard, Heather Reed,
Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

**Corey Christian LE POIDEVIN (First Defendant)
&
Donna Michelle ENTICOTT (Second Defendant)**

**Advocate J D McVeigh appeared for the Crown
Advocate L C Roffey appeared for the First Defendant
Advocate C J Green appeared for the Second Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Le Poidevin and Miss Enticott, you have pleaded guilty to a single count on one Indictment, namely that you together between 6th February 2020 and the 26th June 2020 were concerned in the supplying of a controlled drug of Class B namely cannabis or cannabis resin to another in contravention of Section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended.

The maximum penalty for this offence is 21 years' imprisonment.

The facts are that on 26th June 2020, police officers attended at Miss Enticott's home address to effect a search warrant issued under the Misuse of Drugs Law. You were both present, as well your 3 young children. During the search a quantity of Class A drugs and a large sum of cash were found and you were arrested, but it is accepted that these items are not connected with either of you. You both provided your respective passwords to your devices. Analysis of Mr Le Poidevin's mobile telephone yielded no relevant evidence. Analysis of Miss Enticott's mobile telephone yielded a number of messages evidencing the supply of drugs. It is accepted by the Prosecution that Miss Enticott personally sent only two text messages in the relevant period relating to the supply of drugs, namely on the 8th of April 2020 and the 14th of June 2020. The text of those messages is contained in the Prosecution Outline. It was accepted by Mr Le Poidevin at interview, that he had used Miss Enticott's mobile telephone to send a number of messages concerning the supply of cannabis and cannabis resin for financial gain and the swapping of cannabis for other medication.

There is no evidence of a specific quantity of cannabis or cannabis resin which was supplied in the relevant period. The investigating officer comments that his analysis showed that you both had a small network of contacts that you knew could supply you with the controlled drugs you required and in turn you could supply them back.

You are both local. Mr Le Poidevin you are 27 years old and unemployed and Miss Enticott you are 39 years old and the primary carer of 3 young children.

Miss Enticott, you have one relevant previous conviction for possession of a controlled drug (cannabis) in 2000. Mr Le Poidevin, you have a number of previous convictions. Most relevant to today's hearing are the convictions for possession with intent to supply in 2014 for which you were sentenced to two years youth detention and for possession in 2016 for which you received a suspended sentence. You were given a community service order in 2015 for assault but failed to comply with it and the suspended sentence was subsequently activated in 2018 because you had committed further offences.

You have been on unconditional bail throughout the proceedings.

Sentencing Considerations

The sentencing guidelines applicable to offences involving the importation of drugs of Class B are contained in the case of Richards and this Court follows those guidelines.

There is no quantifiable amount of drugs in this case. The Court has to try to determine the level of dealing from the messages which cover a period of 4 months. It is said that the pool of those involved with you was small (10 people) and contained, but this is still a chain of supply which damages this Island and the effects of it will have reached beyond that allegedly contained group.

The lowest sentencing band for Cannabis and Cannabis Resin is 3-6 years for quantities up to 2 kilograms and the Court considers your offending to fall within that band.

Mr Le Poidevin and Miss Enticott, the Court is satisfied that the custody threshold in respect of your offending has been passed.

In the circumstances, the Court will take a starting point of 3 years before considering aggravating and mitigating factors.

Mr Le Poidevin, your previous convictions represent an aggravating factor which must be taken into account. You have served two terms of imprisonment for drug offences, the second being in 2018. Miss Enticott, we note the previous conviction, which is not recent, so we do not treat that as an aggravating factor.

Your respective roles are different, with Mr Le Poidevin having accepted responsibility for the dealing and Miss Enticott's involvement being limited to two messages. This difference in role is reflected in the starting points.

Taking into account the above, we revise the starting points to 3½ years for Mr Le Poidevin and 3 years for Miss Enticott.

Mitigation

The Court must first consider the impact of your guilty pleas on sentence. We afford you both full credit for your guilty pleas.

The Court has considered carefully the detailed and helpful Probation Reports prepared in respect of you.

We have also listened to the submissions of your Advocates and read the letter from Miss Enticott's mother. I will return to the medical reports later.

The evidence of this offence came to light because you gave your passcodes to the Investigators, which is to your credit, and we acknowledge the cooperation of Mr Le Poidevin from the outset.

We have already factored in your different roles. We deal with the impact on your children of any immediate custodial sentence separately below.

Mr Le Poidevin

Mr Le Poidevin, you have had an unenviable childhood which has not provided you with the necessary guidance and protection from substance misuse. As an adult you have been in and out of prison and have not managed to make any significant changes in your lifestyle and attitude to drugs and so find yourself back before the Court again. You have worked sporadically and may be able to resume work if you are not imprisoned.

Mr Le Poidevin, whilst you told the Probation Service that you regretted your actions, you have demonstrated no insight into the harm caused by the use of and dealing in cannabis. You have instead looked for what you view as a way to continue your cannabis use by legal means. You appear fixed on the idea that your prescription for medicinal cannabis is the answer so that you do not have any "problem" with cannabis. You have demonstrated no inclination to engage in any treatment to stop using cannabis. The Probation officer cannot make any recommendations for any supervision or orders which would help you.

We have read the two medical reports in respect of Mr Le Poidevin and note the contents. Dr Bodani advocates a community-based sentence so that you can continue your community-based treatment with medicinal cannabis which he assesses is keeping you stable.

Dr Bodani expresses concerns at the impact of an immediate custodial sentence on your mental health and wellbeing, though the Probation Officer has no concerns about you managing a sentence of imprisonment.

You are assessed as having a high likelihood of re-offending, which we can and do take into account.

Miss Enticott

We note that you only have one previous conviction which is more than 20 years old.

The Court notes that you are raising 3 young children with another on the way. It seems that you got involved in the dealing to avoid conflict with your partner and to have a quiet life. The Probation Officer assesses you as naïve and that you would not ordinarily have got involved, though we note your conviction from 2000. You were wrong to turn a blind eye to the use of drugs by your partner. You do seem to acknowledge, not just that you have broken the law but that your actions were wrong. You need to maintain this change to your attitude to drugs if your children are to be properly protected from the effects of them.

We note that your focus is your children and that you understand that you are at risk of being separated from them if you are imprisoned.

We have considered the impact on your children of an immediate custodial sentence separately below. We note that you would lose your accommodation were you to receive such a sentence.

You are assessed as having a very low likelihood of re-offending which we can and do take into account. You are not assessed as needing any supervision or work with Probation.

Impact of any term of imprisonment on children

You have three young children aged 4, 3 and 2.

The Court is required specifically to consider the Article 8 rights of the minor children (and we also consider the unborn child), as set out in the case of Bourgaize v the Law Officers of the Crown 2014 (Judgment 49). There are three questions to be considered:

1. Is there an interference with family life?
2. Is it in accordance with law and in pursuit of a legitimate aim within Article 8.2?
3. Is the interference proportionate, given the balance between the various factors?

A sentence of imprisonment almost by definition interferes with family life. The imposition of a sentence of imprisonment for a serious criminal offence is in accordance with law and in pursuit of a legitimate aim within Article 8.2. Parents who commit serious offences face prison like everyone else. The issue for this Court is always whether the imposition of an immediate custodial sentence would be a proportionate interference with family life, given the balance between the various factors.

The case of Bourgaize makes it clear that the Court should be informed about the domestic circumstances of a parent facing an immediate custodial sentence. The amount of information will be dependent upon the defendant's circumstances and will usually be contained in the Probation report which should indicate if any further inquiries or reports might be needed. The current arrangements for the care of your children are that they live with Miss Enticott and Mr Le Poidevin spends considerable time at the property. The proposed arrangements for the care of the children should Miss Enticott receive an immediate custodial sentence are that they would reside with their paternal grandmother and we were given some additional information in the course of this hearing.

The Court has to balance that impact on the children against the legitimate aims of sentencing in a serious drugs case. This is not a case which stands on the cusp of custody, as it falls squarely within the Richards guidelines. In a case such as this, where the custody threshold is clearly passed, the balancing exercise entitles the Court to consider reducing the length of the sentence or suspending it. Impact on others has long been recognised as a proper justification for suspending a sentence of imprisonment. The Court has considered the balancing exercise very carefully, noting not only the impact on the three young children, but also the impact on the unborn child.

The Court's consideration of the impact on the children of a sentence of immediate custody is not confined to any sentence imposed on their mother but also on their father. It is clear that he is a significant presence in their lives and we have therefore considered the balancing exercise in respect of any such sentence also on him.

Sentence

The custody threshold has been passed in respect of both of you. Being concerned in the supply of drugs is a serious offence.

Miss Enticott, the Court has concluded that a sentence of immediate custody would be disproportionate in your case, taking into account the impact on your children of your being imprisoned and there are also mitigating factors and your lesser role. It is appropriate to suspend your sentence. You will not have to serve the suspended sentence of imprisonment unless, during the period which we set at 3 years, you are convicted of an offence punishable with imprisonment. If you are convicted of such an offence you will be liable to serve all or part of the sentence. A suspended sentence is not a let-off, it will hang over your head for that period of time and those will be the consequences so please do not forget that.

The Order is being made because of the seriousness of the offence. Miss Enticott, you have come dangerously close today to being sent to prison and separated from your children. They need you to care for them, but they also need you to stay away completely from drugs and to educate them so that they do not slip into the casual acceptance that drug use is 'alright' and from there, into being involved in supply and more serious offences.

Mr Le Poidevin, in view of your record and role, the Court cannot consider a non-custodial alternative, but the sentence has been reduced as far as possible taking into account your plea, mitigation and with a view to returning you to your family as quickly as possible to minimise the impact on them.

The sentences will be:

- Mr Le Poidevin – 21 months' immediate custody from today.
- Miss Enticott – 9 months' custody, suspended for 3 years from today.

Catherine Maureen Fooks
Judge of the Royal Court

26 August 2021