

Possession of a controlled drug of class B namely MDMA-4en-PINACA with intent to supply it to another in contravention of section 4(3) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974

[2021]GRC085

**ROYAL COURT
FULL COURT**

6 September 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Jonathan Grenfell Hooley,
David James Mortimer, Joanne Marie Wyatt, Stuart Michael Crisp,
Marilyn Jasmine King, Paul Martin Burnard, Felicity Jane Quevâtre-Malcic,
Heather Reed, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

Jacob Josh TRAVERS

**Crown Advocate F M Russell appeared for the Crown
Advocate A J Ayres appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Travers, you have pleaded guilty to a single count on one Indictment of possession of a controlled drug of class B namely MDMA-4en-PINACA with intent to supply it to another in contravention of section 4(3) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended. This offence carries a maximum penalty of 21 years' imprisonment.

The facts are that on the 23rd of November 2020, Law Enforcement Officers searched your house in your presence and found a number of black plastic dropper bottles containing a liquid which was later analysed and found to be MDMA-4en-PINACA. The bottles were in various locations: 4 in a flowerpot on top of a cupboard in the kitchen, 1 on the windowsill in the living room and 60 in a bin bag in the garden. In total the bottles contained 731 grams. The officers further found cash in another flowerpot on top of a cupboard in the kitchen totalling £680.

You were arrested. When you were searched your mobile telephone, an iPhone, was seized together with £140 in cash in your wallet.

You were interviewed three times. You chose to answer some of the questions and, in the end, admitted that the bottles were yours and that you knew that they contained a controlled drug but you denied any dealing.

Analysis of your mobile phone disclosed evidence of dealing.

We are told that you were selling the bottles for £100 to £120 per bottle and would have made £800 had you sold them all. We are told that you paid £700 for them.

You are a local man of 25 years of age (24 at the time of the offence). You left school with qualifications and have been working consistently, latterly in the family business. You have a partner and 22-month old child who are dependent on you.

You have no relevant previous convictions. You have been on conditional bail throughout the proceedings.

Sentencing Considerations

This case falls within the Richards guidelines set down by the Court of Appeal and followed by this Court. The weight of the drugs seized is 731 grams and we sentence you on that weight. The Court is therefore satisfied that the custody threshold in respect of your offending has been passed.

The appropriate starting point is 4 years and we add nothing to that for the fact that there was evidence of supplying on your phone.

In terms of mitigating factors, you were co-operative with officers at your home and you gave the passcode which revealed the evidence of dealing. You did make some admissions.

Plea

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

Personal Mitigation

The Court has considered very carefully the very helpful Probation Report prepared in respect of you and also listened very carefully to the submissions of your Advocate. We have read the letters provided which speak highly of you as a devoted father, son and friend, attest to your remorse and rightly, do not condone your behaviour. That behaviour is described as “irrational”, which you acknowledge.

We treat you as a person of previous good character for which you are entitled to substantial credit.

You expressed remorse at Police interview and you have quickly grasped the seriousness of your offending and the impact it is having on those dear to you.

You are a family man and have been working to house and provide for your family. You are greatly valued in the family business and we have considered the impact on that business of any sentence of immediate custody.

Your response to offending has been positive in that you have voluntarily engaged with In-Dependence and are deemed not to need further intervention. Both the worker at In-Dependence and the experienced Probation Officer assess you as having the skills you need to stay drug free. You are assessed as having a low likelihood of re-offending which we can and do take into account.

You have a young child aged 22 months.

In accordance with the Bourgaize v the Law Officers of the Crown 2014 (Jmt 49), the Court is required specifically to consider the Article 8 rights of the minor child. There are three questions to be considered:

- Is there an interference with family life?
- Is it in accordance with law and in pursuit of a legitimate aim within Article 8.2?
- 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 ought to be informed about the domestic circumstances of a defendant facing an immediate custodial sentence. The current arrangements for the care of your child are that the child lives with you and your partner, in privately rented accommodation. She is the primary carer for the child. Your sympathetic landlady will keep the accommodation available until October this year, but then the position is uncertain. There is an offer of accommodation from your partner's aunt, which is kind but not entirely satisfactory. Your partner has no other family locally and the dynamics with your family is complicated. There is the possibility of States accommodation but no application has been made yet and there is no evidence of specific enquiry.

Your incarceration would undoubtedly have an impact on your child and partner but the Court has to balance that impact 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 and/or suspending it. The Court has considered this balancing exercise very carefully, noting not only the impact on the young child and your partner, but also the impact on the family business and your parents were you to be imprisoned.

In view of the early plea, extensive personal mitigation and impact on your family, the Court is prepared to suspend the sentence.

Sentence

The custody threshold has been passed and the sentence will be one of 2 years' imprisonment, suspended for 3 years. You will not have to serve this suspended sentence of imprisonment unless during the next 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.

Your Advocate has rightly said that your offending has had a "crushing" effect on your family. You have acknowledged this and you have taken steps voluntarily to seek help and make the necessary lifestyle choices to prevent future offending. You have the skills to lead a substance free life. There will be no second chance in this Court.

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

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the iPhone is also granted. This was not resisted. The Court is satisfied that this item was lawfully seized and that the analysis of it shows that it has been used for the purpose of committing or facilitating the commission of an offence. The Court has, as required by subsection (5), had regard to the value of the property £200 and the likely financial and other effects on you of making the order before deciding to grant the Crown's application.

Forfeiture under the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended

Further, the Crown's application pursuant to section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, for forfeiture and destruction in respect of the drugs and other items listed by

the Prosecution is also granted. This application has not been resisted. The Court is satisfied that these items were lawfully seized and relate to the offences.

I repeat that the total sentence is:

- Total term of imprisonment – 2 years from today, suspended for 3 years.
- Forfeiture and Destruction of the drugs and related items.
- Forfeiture of the iPhone.

Catherine Maureen Fooks
Judge of the Royal Court

6 September 2021