

Theft by a carer working in a residential home of a fentanyl patch belonging to a resident and medication, namely 6 tramadol tablets and 5 gabapentin tablets belonging to another resident and the attempted theft of medication (gabapentin) belonging to the second resident.

[2021]GRC087

**ROYAL COURT
FULL COURT**

21 October 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Claire Helen Le Pelley,
Steven John Morris, Joanne Marie Wyatt, David John Robilliard,
Stuart Michael Crisp, Marilyn Jasmine King, Tina Jane Le Poidevin,
Paul Martin Burnard, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

DANIELLE SARAHS

**Advocate J D McVeigh appeared for the Crown
Advocate L Roffey appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Ms Sarahs you have pleaded guilty to four counts on one Indictment.

The first count is that on the 9th of January 2021 at St John's residential home ("the Home") where you were working as a carer you stole a fentanyl patch belonging to one resident. The second and third counts are that between certain dates, the earliest of which being the 10th July 2020, and the latest of which is the 7th January 2021, you stole medication, namely 6 tramadol tablets and 5 gabapentin tablets belonging to another resident. The fourth count is that on the 16th of January 2021, you attempted to steal further medication (gabapentin) belonging to the second resident.

The maximum penalty for each of these offences is 10 years' imprisonment.

The facts are that until your arrest for the commission of the above offences you were employed as a carer at the Home. It was not part of your role to administer medication.

Both the residents were, at the time of the offences, residents at the Home. The first resident was a bedridden 80 year old lady with various medical conditions, coming to the end of her life. She died in February 2021 of natural causes. The second resident was 88 years old and was mobile and was able to manage her own medication.

The facts in relation to the first count are that on 9th January 2021 at 11.15 am a fentanyl patch was applied to the shoulder of the first resident. It was checked at 4.00 pm and found to be in good order, but during the next check at 10.15 pm, it was noted that the dressing used to cover the patch had been disturbed and that the patch was missing so a new patch was applied.

The second and third counts relate to a different resident, the second resident, and cover a period of about 6 months. On the 11th of July 2020, she had a box of 30, 50 milligram tramadol tablets. When nursing staff checked the box on the 13th July they found several tablets missing above the dosage prescribed.

At lunchtime on the 4th January 2021 that resident reported that tablets were missing, namely gabapentin tablets, as a result of which staff increased the monitoring of her medication cassettes. On 6th January she placed a piece of paper on top of her medication cassette as a way of knowing if it had been disturbed while she went to dinner. On returning a little later, further gabapentin tablets were missing.

Plans were made to hide in the bathroom to see if the person responsible for the thefts (which they believed was you) could be caught in the act. On 16th January you were caught, holding a white rectangular box of gabapentin in one hand and a strip of the blister pack in the other hand. This constitutes the fourth count. After initially denying any wrongdoing, you broke down and admitted that you were addicted to the medication. You were then arrested. A Police search of your home revealed a number of empty blister packs and part of a fentanyl patch.

At interview you were candid with officers about your addiction to painkillers and that you had been purchasing them from a street dealer but, when unable to do so, that you had resorted to stealing them from the Home. You did admit stealing the fentanyl patch, but it was not until your second interview that you admitted that you had removed it directly from the body of the resident to cut it up into small strips for oral consumption. You admitted that you had been taking tramadol and then gabapentin from the other resident for 5 to 6 months.

You are a local woman of 33 years of age. You are cohabiting with two small children aged nearly 9 and nearly 6 years. You are not currently working through incapacity. You have no previous convictions. You have been on bail throughout the proceedings.

Sentencing Considerations

We consider that the offence committed against the first resident and the three offences committed against the second resident, should be treated separately, subject to the consideration of totality.

Your offending represents a serious breach of trust and there can be no doubt at all that the custody threshold has been passed.

It is hard to identify a more serious breach of trust than the theft of vital pain killing medication from the body of a vulnerable bedridden 80 year old who was in no position to raise the alarm. It is unclear how long she was without her medication but the period spans 4.00 pm to 10.15 pm. You admitted to Probation that you did not consider her welfare.

Fortunately, the second resident was less vulnerable and worked out that someone was taking her medication. You were caught as a consequence of her excellent detective skills and a plan cleverly hatched and executed by the matron and the estate manager. We commend them for their efforts in bringing you to justice. You admitted that you were taking 1 or 2 tablets from that resident for around 5-6 months.

Your theft of a resident's medication was a very serious breach of trust. You have breached the trust of so many: the individuals who were reliant on you as their carer, your employer who trusted you to have their welfare as your first priority and not to use your employment as a means to steal, your former colleagues, and indeed, there is an inevitable impact on the other residents.

Whilst the value of the medication stolen was not in itself huge, we cannot consider the damage to be limited to that value. Your actions deprived residents of their medication, one who was particularly

vulnerable. You thought that you would get away with taking the patch and decided that the second resident would not be significantly affected. You thought only of yourself. Your offending continued over a period of approximately 6 months.

We take as our starting point for Count 1 before mitigation, a period of 2½ years' custody and for Counts 2, 3 and 4, a period of 12 months' custody. We see no reason particularly to distinguish Count 4 from Counts 2 and 3.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence. You indicated your guilty pleas prior to committal and we therefore afford you full credit for those pleas. We note your full co-operation with the investigation.

Mitigation

The Court has considered carefully the very helpful Probation Report prepared in respect of you. We have also listened to the measured submissions of your Advocate. We thank him and the Probation Officer for their assistance in gathering the information about your family circumstances.

We have also read the letters provided, which collectively are of weight, especially the letter from Dr Sue Fleming MBE. Your letter to the Court expresses your regret and remorse. You are so clearly very ashamed of your actions. You are a person of previous good character and that is an important point in your favour.

While there has been no undue delay in the hearing of your case, we note that you have had nine months to reflect on your actions and their potential impact on your children.

Your offending is as a consequence of your addiction. Once caught you have sought help from every available source with that addiction and you are said to be engaging very well with the various services available to you. It is to your credit that you are assessed as not needing statutory intervention.

You have thrown away what was potentially a good career as a caring professional. You were described as having cared for the residents to a high standard doing all that you could to meet their needs, especially the little things that make a difference.

Those who love you are shocked by your offending. The person they describe is very different from the person who has committed such shocking offences.

You have had more than your fair share of difficulties during your life, but nothing can explain or justify what you have done. Your addiction started by taking painkillers to treat headaches and spiralled from there. We note that you were stealing medication not only for yourself.

You are assessed as having a moderate likelihood of reoffending which should reduce over time. The Court process is said to have had an effect on you.

Impact of imprisonment on Family Life

You have two young children as stated above. 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 you and your minor children. 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 should be informed about the domestic circumstances of a defendant facing an immediate custodial sentence. The current arrangements for the care of your children are as set out in the Probation Report and a document filed by your Advocate. The proposed arrangements for the care of your children, should you have been sentenced to a period of immediate custody, are that their care would have been shared between various family members. The children would not have been living mostly together, as they do at the moment with you and your partner. You are lucky that your family was prepared to rally round and some of them even to change their working hours to care for your children. Nonetheless, the lives of the children, and indeed their carers, would have been significantly disrupted. An assessment has highlighted concerns about the detrimental impact on your children were you to go to prison.

Those who know you described the very strong bond between you and your two young children. Until now there were no concerns about your parenting. They expressed their concern for the children and one described the impact as a “terrible impact” were you to be imprisoned.

The Court has to balance the impact against the legitimate aims of sentencing in a serious case. This is not a case which stands on the cusp of custody as the breach of trust is so serious. 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 sentence or suspending it.

Sentence

Ms Sarahs, the offences which you have committed are shocking and disgraceful. The thought of a vulnerable bedridden lady being deprived of her painkilling medication by someone charged with her care is chilling. The targeting of the other resident over a period of many months is still shocking. Your actions were selfish and callous. You are right to be disgusted at your own actions.

You are rightly distraught and terrified at the thought of going into prison and leaving your children. You could not have complained if the answer to that question were that you should have been thinking about them when you decided to start stealing medication from those in your care.

Your plea, previous good character, references and the significant efforts you have made to beat your addiction were sufficient to enable the Court to consider a non-custodial alternative.

The Court has considered carefully the arrangements for your children and has conducted the balancing exercise. It concluded that the impact on them of an immediate custodial sentence would have been disproportionate. The Court also notes the Probation Officer’s view that you will have better access to the services you need if not in prison and the concern expressed about your own vulnerability if imprisoned. It will be up to you to take such steps as are necessary to distance yourself from any illegal drug use.

Taking into account all of the above and applying the appropriate discounts, the sentences will be as follows:

- Count 1 - the sentence is one of 18 months, suspended for 3 years.

- Counts 2, 3 & 4 - Community Service Order of 120 hours on each, with 6 months as a direct alternative. In each case that 6 months is concurrent with each of the other periods of alternative custody for the Community Service Order.
- We also order the forfeiture and destruction of the drugs which I will mention in a moment.

In relation to Count 1, 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 18 months. A suspended sentence is not a 'let off' and I am sure that your Advocate has explained that to you. It will hang over your head for that period of time and those will be the consequences so please do not forget that.

In relation to Counts 2, 3 and 4, because of the seriousness of the offences, there will be a sentence of 120 hours of unpaid work for each of those counts, concurrent with each other. This means that the total number of hours is 120.

We note 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.

Each Order is imposed as a direct alternative to a sentence of imprisonment and, as I have said, they are to run concurrently with each other.

The Court is satisfied that provision can be made for you to perform work and that you are a suitable person to perform work. Reparation to the community in this case is an important principle. 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.

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 relation to the fentanyl patch is also granted. This was not resisted. The Court is satisfied that this item was lawfully seized and that it was used for the purpose of committing or facilitating the commission of an offence. The Court has had regard to the value of the property which we do not have a figure for, but which will be minimal and the likely financial and other effects on you of making the Order before deciding to grant it.

So, in summary Ms Sarahs, I repeat that the total sentence is:

- Count 1 - 18 months' custody, suspended for 3 years.
- Counts 2, 3 & 4 - 120 hours Community Service with 6 months on each of them as a direct alternative and that is concurrent with each, but not concurrent with Count 1.
- Forfeiture and Destruction of the fentanyl patch.

You may now leave the Court.

Catherine Maureen Fooks
Judge of the Royal Court

21 October 2021