

Possession a controlled drug of Class B, namely cannabis resin and failure to disclose the pin number of your phone within 7 days as required by a Notice issued to you under section 46 of the Regulation of Investigatory Powers Law, 2003

[2022]GRC047

**ROYAL COURT
FULL COURT**

11 July 2022

**Before: Graeme Dewar McKerrell, Lieutenant Bailiff and Jurats:
Stephen Murray Jones OBE, Claire Helen Le Pelley,
Terry John Ferbrache, Jonathan Grenfell Hooley,
Steven John Morris, Stuart Michael Crisp, Tina Jane Le Poidevin,
Felicity Jane Quevâtre-Malcic, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

CONNOR BRIAN PINCHEMAIN

**Crown Advocate F M Russell appeared for the Prosecution
Advocate O C Fattorini appeared for the Defendant**

LIEUTENANT BAILIFF:

Background

Connor Brian Pinchemain, you are a 21 year old local man, it being noted by the Court that your 22nd birthday is in fact tomorrow.

You face an Indictment that contains two Counts. The first is that on 8th October 2021, you had in your possession a controlled drug of Class B, namely cannabis resin. The maximum penalty for that offence is 10 years' imprisonment.

The Second Count is an offence contrary to the Regulation of Investigatory Powers Law, 2003 which states that between the 6th and 15th January 2022, being a person to whom a Notice under section 46 of that Law had been served, you knowingly failed within 7 days to disclose information required by the Notice, which was the PIN for your phone. The maximum penalty for that offence in this Court is 2 years' imprisonment, with the maximum limit in the Magistrate's Court being only 6 months. Your case having been sent here by the Magistrate's Court due to the limited penalties that Court can impose. This caused you to first appear in the Royal Court on 9th June, when you entered guilty pleas to both offences and you have been on unconditional bail throughout.

You have a number of previous convictions but none are drug related.

The brief facts are that on the 8th October 2021, officers saw you in the vicinity of the Halfway and spoke with you. The officers were concerned and informed you that you were being detained under section 22 of the Misuse of Drugs Law. A search of the pockets in your joggers revealed a ball of resinous substance that was wrapped in clingfilm. An iPhone was located in your jacket pocket. A search of your backpack revealed a set of scales and a wallet that contained £2,856 in cash. A further

search led to another wallet being found, which revealed yet more cash in the sum of £375. The weight of the cannabis resin seized was 15.13 grams.

Following your arrest you were interviewed by the police and claimed the seized cash came from wages and savings. You said you smoked cannabis as a way of dealing with anxiety, having bought a 50 gram bar for £2,000 approximately 2 weeks previously.

With regards to your phone, when requested to provide the code, the consequences of not doing so were explained to you. When you did not provide it, a formal Notice was subsequently served upon you on 7th January 2022, in respect of which you again did not comply.

The Court therefore has two matters before it.

Sentencing Considerations

In respect of the RIPL offence, which is an offence that is coming before this Court and the Magistrate's Court with increasing regularity, the English Court of Appeal in the case of Padallec [2012] EWCA Crim 1956 said: *"What not handing the encryption key does is to enable the defendant in question to identify to his advantage what was or was not on the computer (in this case a phone) and so get the benefit of a lesser sentence than might otherwise be appropriate. That is to enable him to dictate wrongly what the situation is. The whole point of requiring access is so that it can be seen what was in fact there. We express the hope that in a situation such as arose in this case, and in the context of an offence under the Regulation of Investigatory Powers Act (section 53), there will never again be a basis of plea accepted which is based upon keeping the contents secret and the defendant saying, to his advantage, what was or was not contained."*

Following this English guidance, what this Court said in the case of Barras, Watt and Orchard [2021] GCA045 was as follows: *"The Court is entitled to assume that a refusal to provide a code is designed to conceal evidence connected to the offence under investigation or some other form of serious criminality. In this case, the Court is entitled to assume that you may have been lying to conceal evidence of actual or intended distribution of illegal drugs. Accordingly, the sentence that must be passed for this offence has to reflect, so far as possible within the statutory limits, the seriousness of a refusal to comply with a lawful request which may have the consequence of adversely affecting the proper administration of justice. It must also act as a deterrent to others from doing the same thing in future."* The Guernsey Court of Appeal described the words I have just read above as *"impeccable"* and in that case, a sentence of 8 months' imprisonment was determined not to be manifestly excessive, or even arguably so.

Whilst it is noted in the Probation report that you claim you did not provide the code due to there being communications between you and an ex-partner that you did not want seen, that does not amount to an excuse or mitigation. Such a story is easy to provide and almost impossible to disprove unless the device can be accessed. Law Enforcement Officers can be trusted to treat such information sensitively, if it indeed exists.

The tension in sentencing this case, if there is one, is that you are charged with not only the RIPL offence, but also a count of possession of cannabis resin. We can and do, only sentence you in respect of the offences with which you have been charged and therefore we wish to make clear that is what we have done. In other words, you will be sentenced for possession of the cannabis and no inference will be drawn that the amount found in your possession was for other than personal use. That does not mean, however, that the Court cannot infer from the RIPL offence that you may have dealt other drugs in the past or were planning to do so in the future and that is what you were seeking to conceal by refusing to hand over the PIN code. If not dealing drugs, the Court is equally entitled to infer you were seeking to conceal some other form of serious criminality.

Mitigation

We do take into account your age but although you are young you are an adult and unlike when you offended previously, you no longer have the protection of the Youth Detention Law. We have noted and take into account your early guilty pleas, although they were in the circumstances inevitable and therefore credit must be limited accordingly.

Sentence

We take into account also the principle of totality. We are dealing with two separate offences and the practice of this Court (which has been approved by the Court of Appeal in situations similar to this) is that sentences for RIPL offences run consecutively, and not concurrently to a sentence for other offences. But as I say, we do keep the principles of totality firmly in mind.

We of course have also listened very carefully to the mitigation that has been put forward on your behalf and we have considered the very helpful Probation report and take note also and seek to reflect the references and other materials provided to us. We have taken into account the effect on others that a sentence of immediate imprisonment might have but the seriousness of the RIPL offence outweighs those considerations.

So, on a totality basis, the headline figure that the Court had been considering was a sentence in the region of 12 to 14 months. The sentences after mitigation, taking into account everything that I have said, are as follows:

- For the possession of the drugs – 1 month imprisonment.
- For the RIPL offence – 9 months' imprisonment, to run consecutively.
- **Total Sentence – 10 months' imprisonment which will run from today.**
- Forfeiture and Destruction Orders are made in respect of the drugs, the iPhone and the scales.

**G D McKerrell,
Lieutenant Bailiff**

11 July 2022