

Jointly concerned in the supply of cannabis, a controlled drug of Class Bs contrary to section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. Further individual charges of producing a controlled drug of Class B, namely cannabis, an offence under section 57(1)(b) of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 and unlawful possession of cannabis.

[2022]GRC054

**ROYAL COURT
FULL COURT**

20th June 2022

**Before: Jessica E Roland, Deputy Bailiff and Jurats:
Stephen Murray Jones OBE, Claire Helen Le Pelley, Jonathan Grenfell Hooley,
David Percy Langley Hodgetts L.V.O., David James Mortimer, Stuart Michael Crisp,
Marilyn Jasmine King, Heather Reed.**

THE LAW OFFICERS OF THE CROWN

- v -

MICHAEL CLARKE **1st Defendant**

And

LUCIA FAITH PAGLIARONE **2nd Defendant**

And

CHRISTOPHER JOHN BURNET **3rd Defendant**

Counsel for the Prosecution:	Crown Advocate F. M. Russell
Counsel for Mr Clarke:	Advocate S. E. Steel
Counsel for Ms Pagliarone:	Advocate A. J. Ayres
Counsel for Mr Burnet:	Advocate D. R. F. Domaille

DEPUTY BAILIFF:

Background

Mr Clarke, Ms Pagliarone and Mr Burnet you have pleaded guilty to a joint count that between 1st December 2019 and 4th June 2020 you were together concerned in the supply of cannabis, which is a controlled drug of Class B. The offence is contrary to section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 and carries a maximum penalty of 21 years' imprisonment.

The second count relates to Michael Clarke alone. You have pleaded guilty that between 1st January 2018 and 3rd June 2020 he produced a controlled drug of Class B, namely cannabis, also contrary to the Misuse of Drugs Law 1974. The maximum penalty for that offence is also 21 years' imprisonment.

The third count concerns Ms Pagliarone and alleges that on 20th July 2020, she transferred £2,200 from her Lloyds bank account to Mr Burnet, in contravention of section 57(1)(b) of the Drug Trafficking

(Bailiwick of Guernsey) Law, 2000, to which Ms Pagliarone has pleaded guilty. That is a charge of money laundering, and carries a maximum penalty of 14 years' imprisonment or a fine or both.

Finally, the fourth count is a charge against Mr Burnet alone, of the unlawful possession of cannabis on 4th June 2020. Under the same Misuse of Drugs Law, that offence carries a maximum penalty of 10 years upon conviction on Indictment. Again, Mr Burnet has pleaded guilty.

Mr Clarke is now 68 years of age. Ms Pagliarone is 35 years of age and Mr Burnet is 31 years old. Ms Pagliarone was born in Guernsey, Mr Clarke moved to Guernsey when he was 5 and Mr Burnet was born in the UK but has lived on Guernsey also for a long time.

Mr Clarke and Ms Pagliarone we treat you both as being of good character. Mr Burnet, you are not entitled to the same amount of credit as your co-defendants, but nevertheless you have never appeared before the Royal Court before and your offending was quite some time ago.

All three of you have been on bail throughout these proceedings.

On Wednesday 3rd June 2020, the Guernsey police received a report of a strong smell of cannabis in the vicinity of La Coupee Lane. Two police officers attended the area, and they identified a window on a property nearby that appeared to have vents and ducting tube, from where the smell appeared to be coming. The officers knocked on the door of the property, and Mr Clarke opened the door. They explained that they suspected cannabis was being grown on the premises because of the smell and asked to see inside. Mr Clarke hesitated and initially refused but looked increasingly uncomfortable, prompting the officer to ask him if he had anything he wanted to say and at this point, Mr Clarke said 'Yes, OK, I have a few plants'.

After a search a total of 141 cannabis plants were found in various stages of growth. In addition, drying cannabis plants were found and smaller amounts of cannabis were also located. Two shoeboxes of cash were also found and seized amounting to £43,370.

As a result of the search and seizure of cannabis at Mr Clarke's address, the police attended the home address of the second and third Defendants with a search warrant. The house was searched, during which police officers came across herbal cannabis, plus two pre-rolled joints and £8,990.

On Mr Clarke's computer, a folder entitled 'Cellar' was found. The contents of the folder comprised various resources for cannabis growing, including a 'Grow bible', together with guides to drying and curing the plants, and information about the average yields and strengths. Also within the folder was a spreadsheet with accounting records of the first Defendant's cannabis production and supply figures over a period from January 2018 to June 2020. The spreadsheet included records of the growth of each plant, including the variety used, the yield achieved, and projected production targets. It also included the dates that Mr Clarke supplied cannabis to other people, the price he sold it for, the amount in grams that was sold, and the date when he was paid.

In 2018, the Cellar spreadsheet showed that the first Defendant had made £47,279 from selling cannabis, with sales of £75,966 in 2019 and £69,255 for the first 6 months of 2020. Since 2018, his records showed that the first Defendant had produced and sold over **11 kilos of cannabis**.

Mr Clarke's mobile phone revealed messages indicating the supply of cannabis. One of his principal buyers of cannabis on a regular basis was the second Defendant, Ms Pagliarone. Deliveries of cannabis would take place around every 7-10 days and she would source cannabis seeds for him to grow. Over the period between December 2019 and the date of their arrest in June 2020, Mr Clarke's spreadsheets show that the first Defendant supplied Ms Pagliarone **with 2.139kg** of herbal cannabis at **£20 per gram**.

Examination of Ms Pagliarone's business accounts against the invoices for her business, which was providing alternative health services and products showed a significant disparity between the income and expenses declared

Mr Burnet stated in a police interview that the cannabis found at his house all belonged to him, and that the money found related to his business.

A restraint order was made by the Royal Court on 20th July 2020 in relation to Ms Pagliarone's assets in Guernsey and elsewhere. It prohibited her from disposing of or from dealing with her assets. At around 5pm on 20th July 2020, Ms Pagliarone transferred the sum of £2,200 to the personal bank account of her partner Mr Burnet.

Sentencing Considerations

The decision in Richards is the leading authority within this Bailiwick in relation to the appropriate starting points for sentencing involving the importation and supply of drugs. Richards does not specifically deal with cultivation however the case of Marsh Hardy & Fallaize clarified that this Court should look to the guidelines involving importation in Richards to obtain the appropriate starting points for cases involving cannabis and that herbal cannabis should not be treated any differently from cannabis resin.

In terms of quantity to be assessed, the Court of Appeal said in Marsh: *“where an offender chooses to grow cannabis on a continuing basis and where, (as was the situation in both the instant cases), the evidence consisted of seeds and seedlings and seedling pots as well as all the paraphernalia necessary to produce regular supplies of cannabis, the offender cannot complain if the Court makes a sensible estimate of the quantity of cannabis which could be produced by the material found at the time of the raid, based on evidence given by someone with knowledge of cannabis cultivations...”*

However, the amount of cannabis which might potentially become available once the crop has been harvested is only one of the matters to which the sentencing Court should have regard in deciding the starting point, again from Marsh: *“Another aspect is the sophistication of the cultivation process and the scope of the offender's involvement in the drug scene. The way this Court will treat the cultivation of a few plants with no evidence of more than the possibility of one harvest as necessarily very different from a case whereas in this case there is evidence of plants at various stages of growth, evidence of seedlings waiting to be potted on, and of packaged seed waiting to be planted.”*

Likewise the starting point for supply has to be determined primarily by considering two factors, namely the quantity of the drugs and the involvement or role of the defendant in the commission of the offence. In that way the court assesses the extent of the criminal conduct. Where the quantity of a drug is being considered, in assessing the starting point, this should be primarily based on weight, and only to a lesser extent based on street price.

Again, the greater the sophistication of the methods used, the more seriously will the offence be regarded as will the greater the level of criminality of the offender.

As all the advocates have emphasised, sentencing is always a matter for the court's discretion. It is an art and not a science and although all three of you are appearing together you will all be treated separately.

Before I deal with your individual sentencing, because of your circumstances, for each of you, the Court has spent some time considering all of the principles set out in Petherick [2013] EWCA Crim 2214 which are applicable to your individual case.

This requires us to answer three questions:

- (1) whether there is an interference with family life;
- (2) whether such interference is in accordance with law, in pursuit of a legitimate aim, and;
- (3) whether such interference is a proportionate response.

In each of your cases the answer to the first two questions are straightforward. Given the seriousness of the crimes that you have committed we must take into account whether the imposition of an immediate custodial sentence would be a proportionate interference with family life, given the balance between the various factors.

At paragraph 21 of Petherick Hughes LJ said a court must consider:

“... in a criminal sentencing exercise the legitimate aims of sentencing which has to be balanced against the effect of a sentence often inevitably has on the family life of others, including the need of society to punish serious crime, the interest of victims that punishment should constitute just desserts, the needs of society for appropriate deterrence ... and the requirement that there ought not to be unjustified disparity between different defendants convicted of similar crimes. ... It also needs to be remembered that just as a sentence may affect the family life of the defendant and his/her innocent family, so the crime will very often have involved the infringement of other people’s family life.”

Mr Clarke

We have considered the lead offence to be that which is the second on the indictment, that of the production of a controlled drug. In relation to the second indictment, even on your own low target yield of 24g per plant, the plants seized would have potentially produced 3,384g of herbal cannabis which the Court consider errs on the low side and is any event, inconsistent with your estimated projected annual target for 2020 which was £174,775, with a monthly average of £14,565 assuming £20 per gramme wholesale price. As I set out in the facts, your own records show you produced over 11 kg of cannabis, during the relevant period.

This starting point is aggravated by the sophistication and scale of the operation including your purchase of specialised equipment in order to maximise the production. There was no doubt about your knowledge and understanding of what you were doing and how to do it well.

During the period to which the conviction relates, you were a wholesaler needing a supplier to sell your wares, not just to the co-defendants and you were motivated by financial advantage and profit. The Court considers that’s the first charge on the indictment for supply, further aggravates this lead charge.

We therefore consider that the starting point for Mr Clarke on the second charge is 10 years.

In relation to Count 1 to avoid double-counting, this will be concurrent and we consider the starting point for you is 5 years.

Mitigation

The Court is satisfied that you are entitled to full credit for your guilty plea and for your co-operation from the outset with the police. We have sympathy for the delay in this matter coming to court, particularly as you have indicated throughout and at every opportunity that you were pleading guilty so any such delay was not down to you and we have no doubt about the additional anxiety this must have placed on you and your family.

We also consider important mitigation is given to you for the provision of your mobile phone pin number and laptop which assisted with the investigations by the police. We consider this co-operation is particularly important mitigation.

In relation to your personal mitigation, we have listened very carefully to what has been said on your behalf by Advocate Steele and considered carefully the probation report. As I have said, we will treat you as being of good character.

You are assessed as having a low likelihood of reoffending and being a pro-social member of society.

We have read with care the letters from you and your other referees and noted the contributions that you have made to society through your work with Sand Racing, particularly for young people interested in the sport, as well as your work within the finance industry, including as an unpaid industry representative.

You have shown real and consistent remorse for your actions. We also, in sentencing, take into account your age.

You have been very candid about how you arrived from being a respected member of the finance industry to the cannabis cultivation enterprise which you had, by the time you were arrested in the Summer 2020. However sympathetic we may feel towards the challenges that you and your wife have faced in the last years, this is countered by the decision that you made to turn to cultivation and supply of an illegal drug, with a determined approach to cultivation which we have described under sophisticated conditions with dedicated apparatus and fitting out your home to optimise the return.

We recognise that you are fearful for the impact of custody on your wife, given her deteriorating medical condition and your wife's dependency upon you. The letter from Dr Rebstein sets out starkly the impact of your wife's illness on her ability to look after herself and the significance of your role in her care.

We have now belatedly received the information about how your family and the States will try to help your wife if you should go into custody.

We have taken into account the principles of Petherick (ibid) and Bourgaize v Law Officers of the Crown 40/2014 and in particular the following principles, which we consider are applicable in this case and although it refers to children the principles are equally applicable here:

- “6. *It will be especially where the case stands on the cusp of custody that the balance is likely to be a fine one. In that kind of case the interference with the family life of one or more entirely innocent children can sometimes tip the scales and means that a custodial sentence otherwise proportionate may become disproportionate.*
7. *The likelihood, however, of the interference with family life which is inherent in a sentence of imprisonment being disproportionate is inevitably progressively reduced as the offence is the graver*
8. *In a case where custody cannot proportionately be avoided, the effect on children or other family members might (our emphasis) afford grounds for mitigating the length of sentence, but it may not do so. If it does, it is quite clear that there can be no standard or normative adjustment or conventional reduction by way of percentage or otherwise. It is a factor which is infinitely variable in nature and must be trusted to the judgment of experienced judges.”*

We have been particularly mindful of this 8th principle and this has played a very significant role in the mitigation which we have afforded you when sentencing you in the context of the other significant mitigation I mentioned above.

We have also taken into account the totality principle, that is to say, the total sentence to ensure that it is just and proportionate to the offending behaviour.

Ms Pagliarone

For the period between December 2019 and the date of your arrest in June 2020, Mr Clarke's records in his Cellar Spreadsheet show that he supplied you with **2,139g** of cannabis at the 'wholesale' price of £20 per gram, at a cost of £42,780. According to the messages, you then sold it on for **£30 per gram**, making that quantity worth £64,170 at street level prices and thus providing you with a profit of £21,390 over that time period. Your advocate has argued that this should be significantly deducted to take into account personal use, including that of Mr Burnet and your son. Supply is supply, even if it is to family members and the fact that you were supplying to your son, who at the time was 16 going on 17 years is of concern to the Court.

Further, we consider that the starting point is aggravated by your leading role in finding customers and supplying seeds to Mr Clarke.

We consider that you were involved in the extensive supply of cannabis. Further, as can be seen from the messages, to an extent you have used your legitimate business as a cover for this.

Although you characterise your selling as not in order to make a profit, the Court considers that there is little doubt that you did engage in the supply of cannabis for your financial advantage and for profit. In any event, whatever your motivation might have been, you have by your efforts increased the available stock of cannabis. Further, you appear to have co-opted your partner into this operation.

The Court considers that the proper starting point for you is 5 years 6 months.

You are entitled however to full credit for your guilty plea.

The money laundering offence

In relation to the money laundering offence, you have accepted that by moving the money into Mr Burnet's account that you have committed a money laundering charge.

The Court acknowledges that you emailed the police first thing the next morning to admit that you had moved the money into Mr Burnet's account. The Court also considers however it can take into account that at the time that you moved the money, you knew that action had been taken to freeze the account but that you deliberately moved the money. This was not a sophisticated crime but it was in breach of a court order and any money laundering, of any sort, is taken very seriously in this jurisdiction.

You pleaded guilty but at a relatively late stage. However, by changing your plea you did save Court time. You are not entitled to full credit for your guilty plea but you are entitled to some. We consider the starting point for this charge is 5 months imprisonment.

Mitigation

We have considered and listened very carefully to what has been said on your behalf by Advocate Ayres and considered the probation report in detail. As I have said, we are treating you as being of good character. We also note there have been no issues with regard to access to the data on your mobile phone or laptop. That is important mitigation.

You are assessed as having a low likelihood of reoffending and of being a generally a pro-social member of society. You have shown some remorse, although you still seek to justify your actions. You may have been able to justify the decision to yourself on the basis of the cannabis going to worthy recipients for pain relief, however this has placed you in conflict with the law and also at odds with the profit that you made on the sale of each gram of cannabis.

It is clear from some of the references and your own letter that you have a sad and traumatic background much of which you have kept to yourself but this did lead you originally to opiate based drugs and it is to be commended that you no longer use these. However you replaced these with illegally obtained cannabis. We note that you are now receiving prescribed medicinal cannabis. We have also been assisted in our deliberations by the letter from your G.P.

It is evident from the very large number of references that you have a lot of support from your network of friends, however, the Jurats have been very careful to consider the relevant mitigation rather than taking into account the justification for your offending which is found in many of the references.

Everyone is entitled to have views about cannabis. Views about the benefits of legalising this substance have played a significant role in the choices that you have made, however, we are bound by the law that is in force and this Court must and will continue to follow the guidelines given by the Court of Appeal in this area.

We have seen the letter from your sister which confirms that if you and Mr Burnet are in custody, then they will look after the children who are now 3 years old.

We have also noted that a custodial sentence will affect your elder son who is over 18 years.

We have read the letter from Nigel Humphrey which focuses on the effect of custody upon the children and although it speaks in general terms, the Court does not doubt the effect that your incarceration would have on your children.

The Court also takes into account that this effect will be exacerbated if Mr Burnet was also to receive a custodial sentence.

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. In this case the Court has to balance that impact against the legitimate aim of sentencing in a serious drugs case.

This is not a case which stands on the cusp of custody. In a case such as that, where the custody threshold is clearly passed, the balancing exercise entitles the Court to consider reducing the length of the sentence or, if appropriate, suspending it. The Court has in your case, considered this balancing exercise very carefully and over an extended period of time and noted the impact upon your young children, but having done that, and even taking into account the circumstances of the offence and all the mitigating factors, in view of the seriousness of the offences, the Court is unable to consider a sentence sufficiently low to attract consideration of alternatives to immediate custody.

In calculating the sentence, we have also taken into account the totality principle and have therefore reduced the sentence on the first count to take account the second sentence

The money laundering count will be treated as a consecutive offence.

Mr Burnet

Although you have been charged as a co-defendant on the supply indictment you have had a much more limited role. Nevertheless, you were involved in the supply of drugs for a minimum of four months and

even when you were not directly involved, you knew what Ms Pagliarone was undertaking and you were passively complicit despite the risks it created to your own homelife because of the risk of imprisonment, let alone the risk that lifestyle itself created for the children. We do not consider that your advocate's submissions on calculations of weight tell the full picture, nevertheless, given your lesser role and using the Richards guidelines, we consider that for you, 3 years is the right starting point.

In terms of the fourth charge, you have pleaded guilty to the possession of a total 7.28grams of herbal cannabis. We consider that this is a charge that should be dealt with concurrently with the first indictment.

You are given full credit for your guilty plea which you have on many occasions indicated at the earliest opportunity and we also note again that there have been no issues with access to the data on your mobile phone. We also acknowledge that you did not contribute to any delay in the sentencing, which I am sure has caused you much anguish.

Your childhood was also traumatic but up until this offending you had evidently taken a lot of steps to address the issues that troubled you as a consequence of what you went through and you have been able to live generally a pro-social life in recent years. You have been working as a carpenter but also playing a significant role in the care of your children.

As I said above, you are not entitled to the same amount of credit as your co-defendants but nevertheless you have never appeared in the Royal Court before and your offending was quite some time ago.

We have read with care the probation report and note that you are assessed as posing a medium risk of further offending. We have taken into account all the letters and references that have been provided on your behalf, including the letter from you.

As we did with Ms Pagliarone, we have also taken account all the information we have in relation to the children and the impact that a custodial sentence will have upon them.

Again, this is not one where the case stands on the cusp of custody. The Court is satisfied that the custody threshold in respect of your offending has been passed. Therefore, the Jurats have spent considerable time considering all that has been said and the impact that an immediate custodial sentence may have and in particular the words of the Deputy Bailiff in Bourgaize are particularly apposite where he said:

“Accordingly, the Court takes the view that the approach to sentencing a person in respect of whom article 8 rights are engaged should follow the pattern indicated by adopting the principles set out in Petherick, but subject to the gloss that consideration should be given, in a case where such a sentence is available once the appropriate length of a custodial sentence has been determined, as to whether to suspend that sentence rather than making it take effect immediately. Where truly exceptional circumstances are advanced on behalf of a defendant, as they were in this case, it is open to the sentencer to suspend a sentence which would normally attract an immediate custodial sentence. This is the type of disparity between different defendants that is justified rather than unjustified (see the fifth Petherick principle).”

The Court considers in relation to Mr Burnet that this is one of those truly exceptional cases.

The Court, in your sentencing also takes into account the principles of totality and proportionality.

Sentence

Mr Clarke, taking into account all that I have said above, the sentences will be as follows:

- Count 1- you are sentenced to 2 years imprisonment.
- Count 2 you are sentenced to 4 years imprisonment.
- Count 1 will run concurrently with Count 2.
- Therefore the **total is 4 years' imprisonment** from today's date.

In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any parole period if applicable), you will be subject to supervision by the Probation Service for a period equal to one-quarter of the total sentence, or the period you would have served had you not received remission, whichever is the shorter. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine, or both.

Ms Pagliarone

Taking into account all that I have said above in relation to you, the sentences will be as follows:

- Count 1 - 3 years' imprisonment
- Count 3 - 3 months' imprisonment consecutive to Count 1
- This means a **total of 3 years and 3 months** starting today.

Again, in accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any parole period if applicable), you will be subject to supervision by the Probation Service for a period equal to one-quarter of the total sentence, or the period you would have served had you not received remission, whichever is the shorter. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine, or both.

Mr Burnet

- Count 1 - the sentence is 18 months suspended for 3 years.
- Count 4 - the sentence is 1 month suspended for 3 years to run concurrently.
- **Total of 18 months 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 those sentences.

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.

Those orders are being made because of the seriousness of the offence for which you have been convicted, taking into account the totality principle.

Section 12 applications adjourned to PDHs on 14th July 2022.

Forfeiture and Destruction Orders - Granted subject to the Prosecution providing a copy or image of the contents/data of Ms Pagliarone's laptop to Advocate Ayres.

The other charges against Ms Pagliarone were dismissed.

Jessica E Roland
Deputy Bailiff

20th June 2022