

Possession of and supplying Cannabis and Cannabis Resin, drugs of Class B. Failing to disclose information contrary to the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003, as amended.

[2022]GRC080

**ROYAL COURT
FULL COURT**

22nd September 2022

Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:

**Jonathan Grenfell Hooley, Steven John Morris, David James Mortimer,
Marilyn Jasmine King, Tina Jane Le Poidevin, Paul Martin Burnard,
Heather Reed, Simon Ernest Bodkin, James Robert Toynton.**

THE LAW OFFICERS OF THE CROWN

- v -

ZAK ELLIOT DRAGUN

**Advocate M Davies appeared for the Crown
Advocate S E Steel appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Dragun you have pleaded guilty to an indictment containing 5 counts. The first 4 concern offences against the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended. Counts 1 and 2 are that between the 1st June 2021 and the 6th November 2021 you were concerned in the supplying of Cannabis and Cannabis Resin, respectively, both drugs of Class B. Counts 3 and 4 are that on the 5th November 2021 you had in your possession Cannabis and Cannabis Resin respectively. The 5th count is what we call a RIPL offence, failing to disclose information, contrary to the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003, as amended, which offence you committed between the 3rd February and the 12th February 2022.

The maximum sentence for the supplying offences is 21 years' imprisonment, for the possession offences is 10 years' imprisonment and for RIPL 2 years' imprisonment.

The facts are that, within a matter of weeks of the completion by you in May 2021 (not without problems) of your period of Youth Detention supervision following your sentence in October 2020. On the 1st June 2021 you started to be concerned in the supply of Cannabis in Counts 1 and 2 which continued until the 6th November 2021. On the 2nd June 2021 you were found in possession of a small amount of Cannabis for which you were sentenced in the Magistrate's Court on the 19th July 2021. On the 8th September 2021 your home was searched and 2.56 grams of Cannabis was found, together with cash, in the sum of £1,420. You were personally searched on the 9th September 2021 and further cash in the sum of £183.91 was found, together with an iPhone. On the 1st November 2021 you pleaded guilty in the Magistrate's Court to the possession of the 2.56 grams of Cannabis on the 8th September, which will be dealt with separately after this hearing.

On the 5th November 2021, noting that the supplying was ongoing, a warrant was issued for the search of your home during the course of which search you threw 27.4 grams of Cannabis out of the window (Count 3) and 5.92 grams of Cannabis Resin (Count 4) was found in the house. The prosecution has agreed to treat those two amounts as possession only and they are sentenced on that basis. Additionally, on the 5th November, a second phone, a Nokia, was seized. Although the high-tech crime unit could not access this phone it was able to access the iPhone from the 9th September and was able to gain evidence of dealing in Cannabis and Cannabis Resin between June and September 2021. As it was clear that some of that dealing was related to the £1,604 found on the 8th and 9th September, it was agreed that, for the purposes of working out the scale of dealing, the cash would be equated to Cannabis in the range of 22.9 to 32 grams. The supplying continued.

During the search on the 5th November, the sum of £1,502.85 in cash was found. You have conceded that, like the other sums found, there is no legitimate explanation for this cash. This cash equates to supplying Cannabis in the range of 21.5 to 30 grams. Thus for Counts 1 and 2, supplying of Cannabis, between the 1st June and the 6th November 2021, the total range is 44.4 to 62 grams of Cannabis, based on the cash. The phone evidence was of low-level dealing, 1 to 2 grams, maximum of 5 grams in any one deal, with about 17 different people. Items associated with drugs were found in both searches.

You were served with the usual Notice requiring disclosure of the passcode to the Nokia phone with which you failed to comply and that constitutes Count 5.

You were interviewed three times in the course of which you largely exercised your right to silence.

You are a local man of 23 years of age. You are working in the building industry; you are living at home. You have a poor record for one so young and you have breached both the CSO and Probation Orders made separately in respect of you in the past. Your previous convictions include convictions for drugs offences, specifically possession of Cannabis for which you received an 18 month Probation Order on the 9th April 2020 but you then received a total of 7 months' imprisonment on the 1st October 2020 for 5 counts of possession of controlled drugs, including Class A drugs, at which time the Probation Order was revoked. You have a subsequent conviction also for possession for which you were sentenced on the 19th July 2021 by the imposition of a fine which has not been paid in full.

You were on bail from the police or from the court from the 2nd June to the 19th July and from the 9th September to beyond the 6th November which means that most of your offending, notably the supplying, has occurred whilst you were on bail.

The sentencing guidelines applicable to offences involving the supply of drugs are contained in the case of *'Richards'*. Those guidelines were recently considered by the Guernsey Court of Appeal in *'Barras, Watt and Orchard v The Law Officers'* 2021 CGA045 and reaffirmed as current and appropriate and the court will continue to follow those guidelines. The lowest band for sentencing Class B offences is 3 to 6 years covering amounts up to 2 kilograms. The starting point before aggravating and mitigating factors of the supplying offences will be 3 years.

There are no sentencing guidelines for the possession of drugs. The *'Richards'* guidelines do not apply. The first question is whether the custody threshold has been passed, which we consider it has, looking at the total amount of drugs in your possession. We propose to treat the possession offences as aggravating Counts 1 and 2 and to make all drug sentences concurrent.

There are aggravating factors in your case. For all counts you have previous convictions for the same drugs. For Counts 1 and 2 you were on bail, as I have said, you were awaiting sentencing in the Magistrate's Court from the 1st November, so for a short period, prior to the 6th November, you were awaiting sentence and generally you have been within the court criminal justice system. For Counts 3 and 4, you tried to evade detection. In those circumstances we revise the starting points for Counts 1 and 2, to include Counts 3 and 4 and all aggravating factors, to 4 years.

The Court of Appeal in *'Barras, Watt and Orchard'* considered the sentencing in respect of RIPL offences and made four observations, with which everyone is now familiar.

1. Failing to make the disclosure required by a Notice, under section 46, is a serious matter which will almost invariably call for an immediate custodial sentence.
2. The sentencing court is entitled to proceed on the basis that the failure to provide access is motivated by a desire to hide something, either to protect others, involved in criminal activity, or to conceal the accused's own more extensive criminality. In your case there is no difficulty in inferring that the other phone would have revealed evidence of drug dealing.
3. Deterrence is an important aspect of sentencing in this context.
4. The appropriate sentence will, of course, depend on the particular circumstances of the case.

We set the starting point at 12 months; there are no particular aggravating or mitigating factors.

We have not forgotten the principle of totality and this will be reflected in the discounts afforded.

Plea

The court must first consider the impact of your guilty pleas on sentence. We afford you full credit for your guilty pleas to all offences.

Personal Mitigation

The Court has considered carefully two probation reports prepared in respect of you. The first is dated the 25th November 2021 and relates to the 2.5 grams of Cannabis for which you will be sentenced in the Magistrate's Court today. We take no account of that amount of Cannabis per se but the report is referenced in the report for today so we must take account of its contents. It is not an encouraging report, with its reference to continued illegal drug use and non-engagement with suggested services. To your credit, though, by then, you were engaging with Action for Children and the Children and Family Community Services regarding the impending birth of your first child. There were early signs of your maturing. You were, at that time, signed off work.

You became a parent in December 2021. The second report, prepared for this hearing, refers to your now having a prescription for medicinal Cannabis, but the writer is concerned that this alone would not be sufficient to reduce the high likelihood of reoffending, given your entrenched drug offending and that you could not countenance a gap in supply.

To your credit, the probation officer reports the social worker's view that your attitude to parenting has been "impeccable" and to your attendance at parenting classes. The probation officer considers that parenthood has triggered a positive change in you. You have been consistent in saying that you want to be a good parent to your children.

It is also to your credit that you are now working and you have told us that your job will remain open to you at the end of any custodial sentence.

We have listened to the realistic submissions of your advocate, realistic in terms of the sentence you face. He urged the court to be confident that you will be able to lead a prosocial life and contribute positively to the community in future. Of course we note your age and we take that into account. We have carefully read your letter which expresses remorse and explains your various difficulties. We note that you have the benefit of good family support. You have one young child aged 9 months and your current partner is expecting a child due in December. The circumstances and arrangements for the care of the older child are different from those set out in the probation report. We have nonetheless, of

course, considered the case of '*Bourgaize v The Law Officers of the Crown*' 2014 Judgment 49, as the Court is required, specifically, to consider the Article 8 rights of minor children, by your being imprisoned, as well as your own rights.

The proposed arrangements for the care of both children are that they will reside with their respective mothers. The older child currently resides with her mother and you have twice weekly contact. Should you receive an immediate custodial sentence, the arrangements will be that your twice weekly contact will be reduced to whatever is available by way of prison visits. In respect of the unborn child, again, you will have such contact as is available in prison; there is, of course, no established contact as of yet.

It is to your credit that there are no concerns expressed by the authorities that there is any supervision requirement in respect of your contact with your children and this supports the contention that you are making progress, particularly in terms of your parenting.

The Court has acknowledged that there will be an impact on the relationships with your children if you are imprisoned and has taken this into account when fixing the sentence.

You were assessed in November 2021 as having a high risk of reoffending and this has not changed. We note that there is a request for a drug trafficking investigation in respect of you.

The Court is satisfied that the custody threshold has been passed. In view of the seriousness of the offences, your step up into supplying, rather than simple possession, especially your continuing offending and, in addition, offending whilst on bail or in the criminal justice system, alternatives to immediate custody cannot be considered.

In sentencing you we have taken into account the totality principle so that the total sentence is just and proportionate to the offending behaviour. We have done this, primarily, by giving an increased discount to the drugs sentences.

Sentence

You have continued to use and deal in Cannabis, through much of 2021, despite having been in prison for drugs in the past and being on bail and within the Court system. You have shown no respect for that Court system. As you acknowledged, you have no one to blame but yourself for the sentence you face today. We hope that you will make good your intention to make the best use of the education and other opportunities open to you in prison and to come out a person who can make a positive contribution to the community and to your family.

Taking into account all of the above the sentences will be as follows:-

<u>Count 1</u>	-	2 years' imprisonment
<u>Count 2</u>	-	2 years' imprisonment concurrent
<u>Count 3</u>	-	3 months' imprisonment concurrent
<u>Count 4</u>	-	1 month imprisonment concurrent
<u>Count 5 the RIPL</u>	-	9 months' imprisonment consecutive

making a total of 2 years 9 months' imprisonment from today.

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.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006, which was not opposed, for the forfeiture of the lawfully seized iPhone and Nokia mobile phones, valued at £35 each, which relate to the offences, is also granted.

The Crown's application pursuant to section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, which was also not opposed, for the forfeiture and destruction of the drugs and exhibits, as listed by Advocate Davies, which were lawfully seized and relate to the offences, is also granted.

In summary therefore, Mr Dragun, the total term of imprisonment is 2 years and 9 months from today and the Court orders the forfeiture of the phones and the drugs and exhibits.

Catherine Maureen Fooks
Judge of the Royal Court

Date: 22nd September 2022