

Being concerned in the supply of the Class A controlled drug MDMA and in the supply of Class C controlled drug, Tramadol, Possession of a Class A controlled drug MDMA and failing to disclose information when a RIPL Notice had been served.

[2022]GRC098

**ROYAL COURT
FULL COURT**

7th November 2022

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and Jurats:
Claire Helen Le Pelley, Steven John Morris, David James Mortimer, Joanne Marie Wyatt,
Stuart Michael Crisp, Marilyn Jasmine King, Tina Jane Le Poidevin, Heather Reed,
Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

LEWIS TOPLEY

And

JOSHUA POWELL

**Advocate C.G. Dunford appeared for the Crown
Advocate C.J. Green appeared for the Defendant Lewis Topley
Advocate P.F. Cobb appeared for the Defendant Joshua Powell**

LIEUTENANT BAILIFF:

Background

You face five counts for sentencing today in total:

Count 1 (Mr Topley only) – Offering to supply the Class A drug MDMA. This was evidenced from your Snapchat account, offering it for sale. An MDMA link to you was later found during the investigation. You accept at least half was to be supplied - around 5 grams. Maximum penalty, life.

Count 2 (Mr Topley only) – Offering to supply the Class C controlled drug, Tramadol. Similar factors for Count 1. Maximum penalty 10 years. Also from Snapchat.

Count 3 – Both defendants being concerned in the supply to a young person of MDMA. Maximum penalty life.

Count 4 (Mr Topley only) – Failing to comply with a RIPL notice with his mobile phone code, maximum penalty 2 years.

Count 5 (Mr Topley only) – Possession of MDMA, the portion being retained for your own use, so linked with Count 1. Maximum penalty 14 years.

Mr Topley is aged 19; 17 at the time of the offences. There are a number of convictions, including theft, burglary, possession of drugs, driving whilst unfit, driving whilst disqualified, taking without consent etc. In 2021, you received Youth Detention for taking without consent and possession of controlled drugs, which the current offences pre-date.

Mr Powell was 19 also; 17 at the relevant time. There are Magistrate's Court matters which I will deal with when this case is concluded. There are no previous convictions. You are of previous good character.

Relevant Facts

We have been helped by a comprehensive explanation of the facts by the Prosecution. Because of the nature of the case it is obvious that a large Police investigation was needed and this time period was not disproportionate in view of the need to properly investigate the very serious facts disclosed. We consider that neither of the defendants contributed noticeably to the delay and on this, both have been on unconditional bail throughout.

The significant event, which understandably led to a major investigation was that a young girl, 16 then, went to a party after taking MDMA, Ecstasy. She was fit and healthy beforehand and not on medication. She suffered an adverse reaction and was placed in an induced coma. Her chances of survival were considered slim. She was named at the time and is now 18. There is no legal impediment to naming her in view of her age. Compressing the details of the Police investigation, about which we have heard full details, Topley was arrested at an address where his partner was. A crystal rock of MDMA, 9.91 grams was found on a table in the living room. Later forensic work found his DNA on the bag. Also found there was (in addition to digital scales):

- i) Mr Topley's wallet with £355 cash and £90 next to it.
- ii) Mr Topley's mobile phone.
- iii) Tramadol tablets under a chair with blister packs and granules as well. 5 capsules, around 4 grams.

These are depicted in the photographs. When interviewed, Mr Topley chose to exercise his right to silence.

When the girl awoke from her coma on the 7th August, she gave some details of the events of the 30th July. She arranged to buy drugs through Topley and this involved Josh Powell, who was, she said, a drug runner for Topley. She had been in contact with Topley in town. On the 30th July she had been in contact with Topley via Snapchat to arrange the purchase of the MDMA and mentioned his user name "I am he". She remembered seeing on the Snapchat account, a post "Banging MD", an abbreviation of Mandy or MDMA, which we will mention in a moment. She further explained that she had agreed with two friends they would all take the MDMA, a three-way split. She described the appearance of the drugs and took hers around 9.00 pm at her friend's house. They acted quickly and deleteriously with alarming physical and mental effects, eventually an ambulance was called as she was in "severe respiratory distress" and had a very high heart rate, and was hyperthermic, 42°. Her urine sample confirmed the presence of MDMA. Other evidence was found including contact with Topley on the 30th July at Snapchat. Later, good work by the Guernsey Police Technical Unit located a post on Topley's account "HMU Decent Beans Bangin MD Trams", i.e. 'Hit me Up' and referring to buying MDMA and Tramadol. She also explained how Topley said that the drugs would cost £80 and arranged to meet by the Ivy Castle. His "mate" Powell attended and she paid for the drugs. Powell was arrested on the 12th August and in interview denied the allegations but Powell was found to have been in the area on the day, both he and the girl were depicted on CCTV.

The Prosecution have also referred to a prison phone call made by Mr Topley when in custody for a breach of bail and another matter on the 13th August, 2020. We repeat it here, "I have admitted man

that the fucking drugs came from me but I didn't sell them to her, like they came from me to someone and yeah, the fucking that's the only thing I've said mate everything else is no comment like, and then they were sat there man, trying to guilt trip me like, oh whoever sold it to her is gonna have to live with this for the rest of their lives if she dies and I was like, no comment". We note that when considering the written material submitted on his behalf.

Mr Topley refused, despite a proper notice signed by the Bailiff of Guernsey, to provide his mobile passcode. No access was therefore obtained and the case was prepared on other evidence, which plainly necessitated work by Law Enforcement. Interviews with both defendants were not productive. We note, as stated, the impact of the case on the victim. The Prosecution have dealt with the approach to this case in helpful detail, which we all heard. In our judgement the points made can be distilled and can be boiled down to the following:

- (i) Topley agreed to supply about half of the MDMA, retaining some for personal use. The half retained is covered by the possession count, Count number 5. This places the offence, Count 1, in the first category of sentences laid down by the Guernsey Court of Appeal in Richards, and which bind this Court, i.e, 7 to 9 years as a starting point.
- (ii) In respect of Count 3, the joint supply of both defendants to the girl, who acted naively. It is known she took the drug and very soon after suffered a very serious adverse reaction. As the Prosecution say, it is obvious that there was causation, a link between taking the drug and a reaction to it. The risks attending MDMA, Ecstasy are why the States of Guernsey have made it a Class A controlled drug. MDMA was found in the toxicology report and there is no evidence of any other controlled or harmful substance in her system. It is considered you should both be sentenced in respect of your actions in knowingly supplying a Class A drug, knowing she would consume a drug and this was a significant contribution to her perilous state. If she did take anything further, this was after taking the MDMA that you supplied. This Count also falls into the first bracket, promulgated by the Court of Appeal, as a starting point of 7 to 9 years for the amount 1 to 20 grams. We stress with the sentencing the binding background of this starting point band.

Sentencing Considerations

These are largely covered by what has been said earlier. We, in relation to Mr Topley, combine the offences relating to drugs and arrived at their total, reflecting all the offending. The RIPL matter, Count 4 is separate. Mr Powell faces one count, Count 3 only.

Taking Counts 1, 2, 3 and 5 together, in relation to Mr Topley, we consider that we are sentencing an active Class A drug dealer to a young person and offering to supply, evidenced by the phone messages "Hit me up" etc. This relates to around half of the MDMA exhibit found, there was also an offer to supply the Class C drug, Tramadol "Trams", Count 5. Count 5, as we have heard, relates to the MDMA you retained.

Mr Topley does not have an impressive record for a young person and has received a number of sentencing disposals.

Each case is different on its facts and requires careful individual consideration. This is a very serious matter and could easily have been an investigation into an unlawful death. The consequences for the young person were very serious and have a lasting impact. MDMA is Class A because of the obvious dangers it poses.

In relation to Mr Topley our combined starting point, intended to reflect our conclusions on his overall criminality, is 7 years on the drugs offences and 12 months on Count 4. We are entitled here, on the facts, to conclude the phone details were indeed not provided in order to escape detection for other drug

offences. We start at 12 months there; total 8 years. The 12 months is based on recent cases laid down by the Court of Appeal, including Orchard and Others.

In relation to Mr Powell, he was described by the purchaser, as we said, as Topley's "drug runner". We start on the authority of the Court of Appeal at 7 years, the bottom of the sentencing band.

Mitigation

We have considered what your experienced Advocates have said, the Probation reports and all the written materials. First of all, it is an accepted fact that your young ages, which render you liable to Youth Detention, are mitigation to a noticeable extent. We note the guilty pleas, which were in the face of strong evidence but still afford some credit, as we are encouraged to do. You were juveniles when you committed these crimes. We also note, Mr Powell's lack of previous convictions, which is an operative element in mitigation in his favour.

It is suggested that Topley has turned his life around since his offences and there is some emphasis on the domestic situation. We have said again and repeat, sentencing is not generally an exercise carried out in the interest of a defendant, but we try to act fairly and proportionately bound by Richards.

The Guernsey Court of Appeal in the case of Shakespeare (2003) firmly laid down that adverse domestic circumstances, home circumstances, are the responsibility of the person who commits the offences. When we consider the persuasive English cases, we conclude that the correct approach in this Court today, subject to any further appellate guidance, is as follows:

- (i) Following the guidance in Petherick (2012) EWCA Crim 2214, we take into account and consider in sentencing for criminal offences the legitimate aims of sentencing which have to be balanced against the effect that sentencing often inevitably has on the family life of others. These include the need of society to punish serious crime, the interests of victims that punishment should constitute just deserts and the needs of society for appropriate deterrents. The facts here and sentencing on the specific facts differ from the case of Bourgaize in the Royal Court. That case was not concerned with Class A drug dealing - where we have Court of Appeal guidance, nor is this an "extremely difficult" case. Nor is there a "unique combination of factors" which led to the merciful decision in Bourgaize.
- (ii) The position with respect, is clearly put in the English case of Mackey (2012) EWCA Crim 2205. Here the defendant was involved in a serious fraud and relied in mitigation on her daughter's special needs. The English Court of Appeal held that a sentencing court is under an obligation to consider the interests of the children of a criminal defendant, however, it is also clear that it would be rare that the children's interests could prevail against society's plain interest in the proper enforcement of the criminal law. Generally, the more serious the offence, the less likely it is they can possibly do so, here, on the facts, there were serious offences involving a Class A drug. Our decision is consistent with all the guidelines.

Taking everything into account we afford a discount of just over 50% for Topley's drug offences and ¼ for the RIPL offence, where any discount is generous.

In relation to Powell, we give a discount to reflect the fact he faces one count only and his previous good character. The mitigation we give effect to has been mentioned and properly taken into account, including taking note of delay.

Sentence

Mr Topley is turning his life around, we are told. The young girl still has marked problems. Hopefully her life will take a better course, after all she was in an induced coma for six days and is now still affected.

Those who sell or supply Class A drugs to young teenagers are particularly culpable. Mr Topley was a Class A and Class C drug offender.

Drug misuse is one of the scourges of Western civilization. In Guernsey, we must do what we can to suppress this type of offence. An element of deterrent is also appropriate. We also note the fact that this case resulted in a complex Police investigation and the resources devoted to it.

In relation to **Topley**, the sentences are as follows:

- Count 3:** 3 years and 3 months' Youth Detention.
- Count 1:** 3 years and 3 months' Youth Detention, concurrent.
- Count 2:** 18 months' Youth Detention, concurrent.
- Count 5:** 18 months' Youth Detention, concurrent.
- Count 4:** The RIPL offence, 9 months' Youth Detention, consecutive.

Total: 4 years Youth Detention from Monday 7th November, 2022.

Statutory grounds: seriousness of the offences, prevention of crime, protection of the public.

As stated, this seeks to represent the total criminality involved. You, **Topley** go down now with the officer.

The Court has considered, **Mr Powell** long and hard what to do with you, after all, what you did hand over was a Class A drug and I will tell you that you are about that much, the gap between my fingers, near going down. You could have gone down for 18 months or a couple of years. In fact that would be a perfectly proper sentence and your capable Advocate would tell you it would be very difficult to appeal against it. So you would go down the steps with him.

What we are going to do is this, taking account of your previous good character, which is important, and the fact that you only have the one offence, you will receive the maximum Community Service Order of 240 hours unpaid work in the next 12 months, as a direct alternative to 18 months Youth Detention. You will also receive a 2 year Probation Order - and it is now possible to combine those orders, under the supervision of a Probation officer - with the plan laid out in the report. If you do not do every single minute of your 240 hours; and your Advocate from her experience will reinforce this if you ask her, and the only good reason is going to be a medical certificate, you will be brought back here and you will get 18 months. If you commit any new offences you will get 18 months, and also be in breach of the Probation Order. If you fail to comply with the Probation Order of 2 years in any way, you can be resentenced. You have used up all your credit and a bit more. If you come back here, and I am here, your Advocate will also tell you that when people re-offend I have an unpleasant disposition and a long memory. You are walking today, but it could have just as easily been down those steps, and if you foul up in anyway in the future, in view of this conviction, that is where you are going to go. Do you understand that?

- 240 hours Community Service Order, unpaid work in the next 12 months, as a direct alternative to 18 months Youth Detention.
- Statutory grounds as before.

- 2 years' Probation Order with treatment plan.
- Confiscation Order agreed.

I am going to deal with the Magistrate's Court matters in a moment and I am not going to be inconsistent with the sentences passed by the Royal Court. I will return and sit as a Magistrate.

J R Finch, O.B.E., Lieutenant Bailiff, 7th November 2022