Appeal sentence in relation to Failure to comply with a Notice issued under the Regulation of Investigatory Powers Law, 2003.

[2024]GCA068

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

(CRIMINAL DIVISION)

ON APPEAL FROM THE ROYAL COURT OF GUERNSEY
SITTING AS AN ORDINARY COURT

Criminal Appeal No: 523

17th September 2024

Before: **David Perry KC, JA**
Paul Matthews, JA
Sir Adrian Fulford, PC, JA

Between:

CRAIG ALAN DODD **Appellant**

-and-

LAW OFFICERS OF THE CROWN **Respondent**

Advocate Samuel Steel for the Appellant
Crown Advocate Chris Dunford for the Respondent

JUDGMENT

Perry JA

1. This is the judgment of the Court.

Introduction

2. This is an appeal against sentence. The Appellant, Craig Alan Dodd, is a local man, aged 40 (date of birth 10 February 1984). On 5 January 2024, he pleaded guilty to an indictment containing

two counts: failing to disclose information contrary to section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law ("RIPL") 2003 (Count 1), and breach of an Adult Custody Supervision Order ("ACSO") contrary to section 2(3) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law 2004 (Count 2). The offending in Count 1 concerned a failure by the Appellant to disclose the passcode for his iPhone, following service of a Notice requiring him to do so, in the context of an investigation into suspected drug trafficking. This offending amounted to a breach of the Appellant's ACSO, imposed in relation to an earlier conviction for drug trafficking, thus resulting in Count 2. The maximum penalty for the RIPL offence is 5 years' imprisonment, and the maximum penalty for the ACSO breach offence is 2 years' imprisonment.

3. On 22 February 2024, the Appellant was sentenced by the Royal Court (John Russell Finch, Esq., OBE, Lieutenant Bailiff; and seven jurats) to 2 years' imprisonment on Count 1 and 4 months' concurrent imprisonment on Count 2. There were ancillary orders for the forfeiture of the iPhone and compulsory supervision after release in respect of Count 1, for a period of one quarter of the total sentence (6 months).

4. The Appellant's Notice of Appeal against sentence, dated 22 February 2024, advanced two grounds: first, that the sentence of two years was manifestly excessive, in particular having regard to the weight given by the Royal Court to the criminality underlying Count 1, and second, that the discount given in recognition of his guilty plea and personal mitigation was insufficient. The Bailiff granted leave to appeal, in a fully reasoned decision on the papers, dated 25 March 2024. We were assisted at the hearing of the appeal by extremely helpful submissions from Advocate Steel and Crown Advocate Dunford.

5. Before addressing the substance of the arguments in support of the appeal, it is necessary to explain, the relevant background.

Factual background

6. In the early hours of 21 August 2023, police officers responded to a report of an incident of shouting, swearing and loud music involving a vehicle in a private car park in Les Amballes, St Peter Port. On arrival at the scene, officers saw a silver Nissan vehicle, containing three people. The engine was running, music was playing and as officers approached the vehicle, the Appellant exited from the driver's seat and held up the keys.

7. The officers noticed an obvious smell of cannabis coming from the vehicle, and when questioned the Appellant produced from the car a medicinal cannabis pot. It was apparent that the Appellant had been drinking. A roadside breath test was conducted. This showed that the Appellant was over the legal limit for driving. He was arrested and cautioned on suspicion of being drunk in charge of a motor vehicle. On arrest, he stated that he was getting his "Rizzlers". The Appellant was not proceeded against in relation to this drunk in charge offence, as it was concluded that the private car park was not a "road" for the purposes of the road traffic legislation.

8. Following his arrest, the Appellant was searched and among his possessions was an Apple iPhone. When the vehicle was searched, the officers noted not only the medicinal cannabis pot but also loose herbal cannabis near the gear lever. They also found a small jar containing a number of white pills, later identified as 39 stanozolol tablets, a class C controlled drug. Given the Appellant's proximity to the tablets, and his responsibility for the vehicle, he was further arrested on suspicion of possession of a controlled drug with intent to supply.

9. Later that same day, the Appellant was interviewed under caution. When questioned, he said that he had gone to the vehicle with two friends to get cigarette papers, so they could smoke some roll-ups. He had no intention of driving, and the car was in fact incapable of being driven. The Appellant claimed to have bought the car a day or two earlier from a third party, whose identity he could not recall. He declined to give any information concerning the tablets found in the car and he declined to give the police permission to access his bank account. He was interviewed on a second occasion and remained silent.

10. On 4 September 2023, the Bailiff granted permission to the police to serve on the Appellant a Notice requiring disclosure under sections 46 and 47(3) of the RIPL 2003. The notice was served on the Appellant on 4 September 2023 and required him to disclose the passcode to his iPhone within seven days, that is by 12 September 2023. The stated purpose of the notice was to obtain information which "*may relate to the investigation of matters necessary for the purpose of preventing or detecting crime, in particular possession of a controlled drug with intent to supply*".

11. By 28 September 2023, it was confirmed that he had failed to comply with the Notice. Subsequently, he was charged with failing to comply with the Notice between 3 and 12 September 2023.

12. At the time of the conduct giving rise to Count 1, the Appellant was subject to an ACSO which was due to expire on 18 October 2025. This arose from a 13-year sentence of imprisonment imposed following the Appellant's conviction of being knowingly involved in the unlawful importation of controlled drugs. It was a condition of the ACSO that the Appellant "*be well-*

behaved" and "*not commit any offence*". By reason of the offending in Count 1, the Appellant was in breach of these specific requirements.

Procedural background

13. The Appellant was charged with the RIPL offence on 28 September 2023, and first appeared in the Magistrate's Court on 9 October 2023. The Prosecution elected trial before the Royal Court and the matter was adjourned for committal. The Appellant was admitted to conditional bail.

14. On 22 November 2023, the RIPL offence was committed to the Royal Court. No plea was indicated. On 5 January 2024, at a plea and directions hearing, the Prosecution applied to add the second count to the indictment. This application was granted. The Appellant formally entered guilty pleas to both counts and the matter was adjourned for sentence. As noted, the Appellant was sentenced several weeks later on 22 February 2024.

15. Prior to his sentencing, the Appellant had breached his bail conditions on three occasions. These breaches, which it is unnecessary to detail, led to further appearances before the Magistrate's Court and the Royal Court, and his remand into custody on the day prior to the sentencing hearing.

Previous convictions

16. The Appellant has previous convictions dating back to 1997 for a range of offences including burglary, theft and driving offences. He first appeared before the Royal Court for drug related offending on 4 September 2006, when he received a total of 4 years and 2 months' imprisonment for offences including possession of a controlled drug and possession of a controlled drug with intent to supply. On 26 January 2015, he appeared again before the Royal Court and was sentenced to 13 years' imprisonment for two offences of being knowingly concerned in the importation of a controlled drug.

17. The Appellant was released on Parole Licence on 20 May 2019, but recalled to prison in January 2020 for five further offences of being knowingly concerned in the importation of controlled drugs. He was sentenced for those offences on 4 March 2022, receiving a total sentence of 3 years and 9 months' imprisonment. He was released on 20 July 2022. At this time he was the subject

of two ACSOs, in relation to the 2015 and 2022 sentences. The 2022 ACSO expired on 27 June 2023, whereas the 2015 ACSO was not due to expire until 18 October 2025.

Probation report

18. At the time the Appellant came to be sentenced, the Royal Court had the benefit of a probation report prepared by the States of Guernsey Probation Service, dated 22 February 2024. The report provides details of the Appellant's background, including his challenging upbringing, and notes that he currently has three young children; a three-year-old son whom he sees approximately four times per week, and two baby daughters, whom he sees separately on a weekly basis.

19. The report assessed the Appellant as posing a very high likelihood of re-offending, but noted there is no evidence that he presents risk of serious harm to the public. In relation to the offending under consideration, the report stated:

> *"The index offences indicates that either the content of Mr Dodd's phone would incriminate him further and he has therefore taken a calculated risk with his actions. Alternatively, at a minimum he is very much enmeshed with others who are involved in criminal activities, and he has made an informed decision to place his loyalty there. Therefore, I concur with the assessment that he presents as a very high likelihood of re-offending. The most likely offending scenario is around the possession and supply of illicit substances, and general antisocial behaviour."*

20. The probation report therefore concluded that the custody threshold had been crossed and said that there were "*no significant mitigations […] that warrant consideration of any alternative sentences*". The author of the report continued: "*An immediate custodial sentence will prevent further re-offending, and it is my opinion that this is necessary given that Mr Dodd was being supervised by the Probation Service at the time of the current offence and has committed further serious offences previously when subject to parole licence.*"

Sentencing decision

21. In its sentencing remarks the Royal Court noted the Appellant's "*long list of significant previous convictions*". The Royal Court also made reference to decision of the English Court of Appeal in

R v Padellec [2012] EWCA Crim 1956, where in the context of a failure to provide a passcode to a computer seized in an indecent images investigation, Collins J stated (at paragraph 8), that: "*[…] the assumption will inevitably be that there is a need to hide something because there is material which is clearly such as would produce a serious penalty. […] In that sort of situation the Court would be bound to assume the worst"*.

22. Proceeding on this basis, and rejecting the Appellant's explanation that he was acting to protect his privacy, the Royal Court explained its reasoning in these terms:

"We propose to select a combined total reflecting the totality of your offending, and pass concurrent sentences.

Aggravating factors undoubtedly, are your very bad record, and the failure to respond to post-release supervision in place after serious repeated offending. We note your unhelpful explanation to the Police in interview. You would, for example, we are told, not give authority for the Police to look at your bank account information.

We also note, that the maximum penalty for the RIPL offence has been increased from 2 to 5 years. We consider, taking all the circumstances fairly into account, and as in the English case just mentioned, we can assume the worst. You had something to hide, we are entitled to conclude, and this cannot be dealt with leniently.

We start at a combined figure of 30 months. It is repeated that we sentence on this Indictment only.

Mitigation

It is not for a Court to fish around for mitigation when, on the facts, there is not a convincing amount. We do accept there were timely guilty pleas. Your family circumstances are noted. We have carefully considered the Probation Report. You fall within a population of people that has a very high likelihood of re-offending. The Report also states you have taken a calculated risk, and alternatively, at a minimum, the Report also states you are very much enmeshed with others involved in crime and made an "informed decision" to place your loyalty there.

The impact of the sentence on your family is down to you re-offending. On the facts we apply a discount of 20%, there was no real alternative to admitting these offences, but we are still

encouraged to apply discounts - to knock something off, even in the face of clear evidence and we do so."

23. As a result, the sentence was 2 years' imprisonment for Count 1, and 4 months' concurrent for Count 2, making a total of 2 years' imprisonment.

Powers on appeal

24. The right of appeal against sentence is contained in section 24(c) of The Court of Appeal (Guernsey) Law 1961 and the Court's powers on such an appeal are set out in section 25(3) of the 1961 Law which provides: "*The Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal."*

25. It is a well-recognized principle that the Court of Appeal will not interfere with the sentencing discretion of the Royal Court merely on the ground that it might have passed a somewhat different sentence: the Court of Appeal will intervene to quash a sentence only where the sentence is manifestly excessive or wrong in principle.

Ground 1 – The significance of the underlying criminality

The parties' submissions

26. The Appellant submits that he was sentenced on the basis that he was concerned in drug trafficking and the Royal Court unjustifiably "*assumed the worst*" or even "*worse than the worst*". While the Appellant acknowledges that the Royal Court was entitled to reject his explanation for his refusal to provide his passcode (a desire to protect his privacy), he submits that it does not follow that his motivation must have been to conceal drug trafficking, rather than a less serious criminal offence, such as simple possession. He submits that he should have been sentenced against the background of the drugs which were found in the vehicle, namely 39 tablets of a Class C steroid (a drug commonly used by bodybuilders), a small quantity consistent with personal use and costing around £8.

27. By way of response, the Respondent noted that the Royal Court's conclusion that the Appellant had something to hide was a fair and reasonable one to draw, given the inability to gain access to the Appellant's phone, his previous convictions and the contents of the Probation Report.

28. The Respondent noted that the Appellant was an "*experienced criminal*", had previously been involved in serious drug trafficking where evidence had been obtained from his personal electronic devices, and submitted that it is safe to proceed on the assumption that whatever criminality is being concealed, it is likely to attract a more serious penalty than the RIPL offence. Moreover, it is significant that the Notice had been granted to obtain information which "*may relate to the investigation of matters necessary for the purpose of preventing or detecting crime, in particular possession of a controlled drug with intent to supply*".

The Law

29. In support of their respective arguments, the parties have cited three decided cases, two decisions of this Court, *Barras, Watt and Orchard* [2021] GCA 045 and *Falla v Law Officers* [2022] GCA 070, and the decision of the English Court of Appeal in *R v Padellec*, supra. There are no sentencing guidelines in relation to the section 46 RIPL offence, which comes with a maximum penalty of 5 years' imprisonment (increased from 2 years', with effect from 21 December 2022, by the Criminal Justice (Miscellaneous Amendments) (Bailiwick of Guernsey) Ordinance 2022, section 8).

30. In *Barras, Watt and Orchard*, the second appellant, Watt, appealed against his total sentence of six years and two months' imprisonment, comprising five and a half years' imprisonment for one count of being knowingly concerned in the importation of a controlled drug (Class A), and eight months' imprisonment (to run consecutively) for one count of failing to comply with a notice under section 46 RIPL. The first and second Appellants had been arrested in possession of a quantity of cocaine when arriving into Alderney on a Rib boat, piloted by Mr Watt. Mr Watt's mobile phone was seized. He refused to provide the password, on the basis that his phone contained sensitive images of a former partner. Mr Watt pleaded guilty to both offences. He appealed against his sentence for the RIPL offence on the ground that it was manifestly excessive.

31. This Court refused his application for leave and stated (at paragraph 79):

> *"While we decline the invitation to give guidelines as to the sentencing ranges for the RIPL offences, as cases are likely to turn on their own facts, we would make the following observations. First, failing to make the disclosure required by a notice issued under section 46*

of RIPL is a serious matter; it will almost invariably call for an immediate custodial sentence. Second, 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. We note that for those who are genuinely unable to provide their passcodes, statutory defences are available (see section 49 of RIPL). Third, deterrence is an important aspect of sentencing in this context. Fourth, the appropriate sentence will, of course, depend on the particular circumstances of the case. The circumstances are likely to vary across a very wide range and only limited assistance will be derived from considering the facts of other cases. One material factor is likely to be the seriousness of the alleged offence which is subject to the underlying investigation. When considering the length of any custodial sentence it will of course be necessary to consider with care the offender's background and personal mitigation."

32. The Court (at paragraph 80) went on to approve the reasoning of the Royal Court in its particular sentencing remarks:

"*... the court is entitled to assume that a refusal to* [provide an encryption key] *is designed to conceal evidence connected to the offences 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 for doing the same thing in future."*

33. In *Falla*, supra, the appellant appealed against his sentence of 6 and a half years' imprisonment. The facts of the offending concerned an importation of cannabis through the postal system, resulting in the seizure of the appellant's phone, and a later search of his home in which Class A and B drugs were found. For one count of importation of cannabis, he received 2 years and 8 months' imprisonment, and for one count of failing to disclose information after service of a notice under RIPL, he received 18 months' imprisonment to run consecutively. The Royal Court noted that the circumstances of the RIPL offence demonstrated that the appellant was "*avoiding detection as a drug dealer*". He was also sentenced for possession of Class A and Class B drugs, for which he received a total of 2 years and 4 months' imprisonment to run consecutively to the other sentences. The appellant had pleaded guilty to the drug offences but was convicted of the RIPL offence after a trial in which he called no evidence.

34. This Court allowed the appeal and quashed the sentences on the importation and RIPL offences. In relation to the RIPL offence, the Court explained its reasons as follows (paragraphs 34 and 35):

> *"We are concerned with the statements to the effect that the offender was a drugs dealer or a supplier of drugs, which on one interpretation suggests that this was in the mind of the court when assessing sentence. He had not been charged with any dealing offence. Whilst the RIPL Offence could justify an inference that the Appellant wished to avoid detection in respect of criminality, this was not the only possible inference, and it would not follow that the criminality in question was drug dealing. And whilst the Court was entitled to take into account, as it did, that the packaging of some of the Class A drugs was such as to be attractive to young people, the Court was required to sentence the Appellant on the basis that he had been convicted only of offences of simple possession.*
>
> *Whilst we think that, as a matter of principle, a RIPL Offence may, in appropriate cases, attract a deterrent sentence and it is also appropriate that that sentence run consecutively with the other offence with which it is connected, we have in mind that we are dealing here with an offender who has not previously been convicted of a RIPL Offence, or indeed of a drugs offence, and in our view the starting point adopted by the Royal Court for this offence was too high. We think that a starting point of 50% of the maximum possible sentence would be appropriate in this case."*

35. It was also noted that no reduction appeared to have been made to the RIPL offence by way of mitigation. Adopting a starting point of 12 months' imprisonment and after making appropriate allowance for mitigation, this Court imposed a sentence of 8 months' imprisonment to be served consecutively to the modified importation and possession sentences. The overall result was a total sentence of 5 years' imprisonment (a reduction of 18 months from the original sentence).

36. In *Padellac*, supra, to which the Royal Court made reference in its sentencing decision, the English Court of Appeal considered an appeal against sentence for the equivalent English offence of failing to disclose a key to protected information contrary to section 53 of the Regulation of Investigatory Powers Act 2000 (RIPA). This was in the context of an investigation into indecent images on the appellant's hard drive. The essential issue on the appeal was whether the sentencing judge had gone behind an agreed factual basis of plea.

37. The Court of Appeal made the following observations which have been cited before us by both parties to the appeal (paragraphs 8 and 9):

"The offence in question, as the learned judge indicated in the course of his sentencing remarks, had some analogy to the offence of failing to provide a specimen in relation to a breathalyser. In that sort of situation the court would be bound to assume the worst because otherwise, unless of course there was some excuse put forward which was honestly held, even if unreasonable, the failure to give access was because there was a need to hide something which was there, in the knowledge that what was there might well produce a substantial penalty.

It follows from that that it is appropriate to impose a higher sentence than would be according to the guidelines in relation to the indecent material. As we say, the assumption will inevitably be that there is a need to hide because there is material which is clearly such as would produce a serious penalty. It is to be borne in mind that the maximum penalty for this offence is one of 5 years' imprisonment."

38. In that case, the Court of Appeal was highly critical of the accepted basis of plea and ultimately concluded that the sentencing judge had applied too high a starting point. A sentence of 30 months' imprisonment was quashed and a sentence of 15 months' imprisonment was imposed in its place.

Discussion

39. The essential issue on Ground 1 of the appeal is whether the Royal Court passed a sentence which was manifestly excessive, on the basis of its failure sufficiently to consider the nature of the alleged criminality underlying the RIPL offence.

40. As noted in *Barras* (at paragraph 79), there are likely to be a number of factors which go to the determination of sentence for the RIPL offence, and "*[o]ne material factor is likely to be the seriousness of the alleged offence which is subject to the underlying investigation*". This is uncontroversial and neither party sought to persuade us that the suspected underlying criminality was irrelevant. In fact, some underlying criminality will often be connected to a RIPL offence, as the purpose of detecting or preventing crime is one of the grounds on which a Notice may be deemed necessary (the other available grounds being in the interests of national security and in the interests of the economic security of the Bailiwick) (section 46(3) RIPL).

41. In any given case, the inference to be drawn as to the nature and extent of the underlying criminality will be a question of fact and degree. In this case, the Royal Court was in possession of the full facts and the Appellant's criminal history. It was well-equipped to determine the

strength of the inference and evaluate the seriousness of the offence. It will usually be safe to assume that the criminality sought to be concealed by failing to disclose a passcode is more serious than any offending disclosed by the evidence already available to the investigating officers, otherwise there would be little benefit to concealing a passcode and running the risk of a lengthy period of imprisonment.

42. In *Falla*, this Court concluded that there was no secure basis from which to draw the conclusion that the Appellant was involved in drugs supply, when the surrounding charges concerned importation and possession, and the Appellant had no previous convictions for drug trafficking.

43. In the present case, we consider that the Royal Court was entirely justified in concluding that the Appellant had "*something to hide*". It would have made little sense for him to fail to disclose his passcode if his intention was to conceal his possession of a quantity of Class C drugs, for which the penalty was less than for the RIPL offence. In light of the Appellant's criminal history, including in relation to drug importation and supply; the circumstances in which his phone was seized; the Appellant's response in police interview; his additional refusal to provide banking information; and the observations in the Probation Report, the Royal Court was entitled to conclude that the Appellant had something to hide in connection with his dealing in drugs, and that the offence of failing to provide his passcode was serious. As indeed it was. It frustrated an investigation into suspected drug trafficking.

44. In the decision to grant leave to appeal, the Bailiff noted (at paragraph 4): "*It is unclear how much consideration was given to what the outcome [of the criminal investigation] might have been in those circumstances because this was not spelt out in the sentencing remarks.*" We agree that the Royal Court should ordinarily explain its sentence by reference to the nature of the suspected underlying criminality. The Court did, however, make reference to the "*curious circumstances*" in which the Appellant's phone was seized; that he had "*something to hide*"; and, by reference to the Probation Report, that he took "*a calculated risk, and alternatively, at a minimum, the Report also states that you are very much enmeshed with others involved in crime and made an* 'informed decision' *to place your loyalty there.*" It is apparent that the concealment related to drug trafficking.

45. The Royal Court was also correct to note that the maximum penalty for the RIPL offence has been increased from 2 to 5 years' imprisonment and for this reason the sentences in *Barras* and *Falla* do not serve as helpful comparisons; both were decided at a time when the maximum penalty was only 2 years' imprisonment.

46. In these circumstances, a starting point of 30 months was not manifestly excessive.

47. For these reasons, we have concluded that Ground 1 discloses no basis for concluding that the sentence imposed by the Royal Court was manifestly excessive.

Ground 2 – Sentencing discount and mitigation

The parties' submissions

48. In support of his argument on Ground 2, the Appellant contends that an insufficient discount was awarded for his guilty pleas and personal mitigation. While the Appellant conceded that he had little choice but to plead guilty, he nevertheless entered timely guilty pleas and otherwise cooperated with the court process. In this connection, he relies on the decision of this Court in *Richards* 2000-02 GLR 247 where it was stated that an appropriate discount for a plea of guilty should be given "*even where the accused appears to have had very little choice but to admit guilt*" (at paragraph 15).

49. The Appellant also submits that the Royal Court did not specify how much of the 20% discount, if any, was attributed to personal mitigation, and contends that it "*appears that little to no discount was awarded for personal mitigation*".

50. In responding to this ground, the Respondent acknowledged that *Richards* was the correct authority, while noting that the RIPL Notice was lawfully served and the Appellant had little option other than to plead guilty to the offences. Accordingly, the Royal Court was right to reduce the credit available to him.

Discussion

51. In his decision granting the Appellant leave to appeal, the Bailiff noted that the discount of only 20% was arguably inappropriately low.

52. When it came to sentence the Appellant, the Royal Court said: "*We do accept there were timely guilty pleas*", but made a reduction to the sentencing discount that would otherwise be available on account of the fact that "*there was no real alternative to admitting these offences, but we are still encouraged to apply discounts – to knock something off, even in the face of clear evidence and we do so.*"

53. We consider that the discount of 20% is at the lower end of the appropriate range. However, in our view, it is not so low as to render the sentence manifestly excessive. A discount of 20% is arguably justifiable on the basis that a guilty plea for the RIPL offence was not indicated on the first available occasion (albeit that it was an early guilty plea) and on the basis that, following the guidance in *Richards*, the discount may properly be limited where there is no sensible option but to plead guilty.

54. We also note that the same sentencing discount was applied in relation to Counts 1 and 2. It would have been helpful if the Royal Court had articulated more precisely the discount applicable in relation to each count, especially where, as here, the different counts had discrete procedural histories. With regards to the ACSO breach offence, the Appellant entered his plea on the earliest opportunity. However, as with Count 1, the Appellant had no option but to plead guilty to Count 2. Therefore, it was within the Royal Court's discretion to reduce the sentencing discount to 20%.

55. With regards to the Appellant's personal mitigation, the Royal Court made no specific reference to the discount for personal mitigation and the Appellant's family circumstances. That said, as a matter of principle, the Royal Court is not required to add up different discounts for different factors: "*discounts for [assistance to the prosecution] and other varieties of mitigation cannot simply be added to one another. The court has to consider the totality of the sentence in the light of all the circumstances*" (*Richards*, paragraph 18). In the Appellant's case, the Royal Court made clear it was selecting a combined total sentence that reflected the seriousness of the offending and the mitigating circumstances.

56. The weight to be given to personal mitigation was a matter for the Royal Court to determine, according to the submissions made before it. It is clear from the Royal Court's decision that there was little, if any, convincing mitigation and its overall conclusion was one it was entitled to reach, particularly in light of the probation report and the Appellant's offending history. In our view, the sentence is not manifestly excessive.

57. The result is that Ground 2 of this appeal is refused.

Guidance to the Royal Court

58. In the course of his helpful judgment granting leave to appeal, the Bailiff noted that this is one of the first occasions where the increased maximum sentence for a RIPL offence has been engaged. He observed that this appeal would enable the Court, if it wished, to give some guidance to the Royal Court on the appropriate approach to an offence that is frequently before the Royal Court.

In response to that invitation, we would wish to affirm the factors identified in *Barras* (paragraph 79) (set out at paragraph 31 above) and emphasise that the increase in penalty (from 2 to 5 years') serves to illustrate the seriousness of the offence and the mischief at which it is aimed. The culpability lies in the wilful defiance of a lawfully issued notice and the harm lies in the frustration of an otherwise legitimate investigation into (possibly serious) criminal offending, or where the interests of national security or the economic security of the Bailiwick are at stake.

59. In this connection we note the terms of the policy letter which was published in advance of the increase in the sentencing powers (also noted by the Bailiff in his decision giving leave to appeal). This made clear that it was increasingly common for suspects to choose not to comply with a Notice and serve the resulting prison sentence rather than to reveal information that could expose them to prosecution for the suspected criminality. It was further noted that this has the potential seriously to hamper investigations, particularly in cases of suspected drug trafficking. These observations are particularly apt in the circumstances of the Appellant's case. We were informed at the hearing that he was not prosecuted with any drug trafficking offence because the circumstances of his arrest did not give rise to a realistic prospect of conviction. The Royal Court was entitled to conclude that his choice was a considered decision to impede an investigation for fear of what would be revealed. The sentence was entirely appropriate.

60. In future cases we would invite the Royal Court to provide a brief explanation of the basis on which it has proceeded in relation to the criminality under investigation (or the other interests that have been jeopardised), and to identify with greater clarity the aggravating and mitigating features that it has taken into account in reaching its sentence.

Conclusion

61. For these reasons, the appeal against sentence is refused.