

Producing cannabis contrary to section 3(1) of the Misuse of Drugs Law, 1974 and possession of Class B (cannabis), Class C (alprazolam) and Class C (gabapentin) contrary to section 4(2) of the Misuse of Drugs Law, 1974

[2024]GRC056

**ROYAL COURT  
FULL COURT**

**30<sup>th</sup> July 2024**

**Before: Catherine Maureen Fooks, Judge of the Royal Court  
and Jurats: Claire Helen Le Pelley, Jonathan Grenfell Hooley,  
Stuart Michael Crisp, Heather Reed, Simon Ernest Bodkin,  
James Robert Toynton and Richard Jeremy Wallen James.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**MATTHEW HART**

**Advocate F M Russell appeared for the Crown  
Advocate S E Steel appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Background**

Mr Hart you have pleaded guilty to four counts, the first of which is producing cannabis contrary to section 3(1) of the Misuse of Drugs Law, 1974 the maximum penalty for which is 21 years and/or an unlimited fine and the remaining three counts of which are for possession of Class B (cannabis), Class C (alprazolam) and Class C (gabapentin) contrary to section 4(2) of the same law, the maximum penalty for which is 10 years for the Class B and 4 years for the Class C and/or an unlimited fine in each case.

The facts are that officers executed a search warrant at your home on 29<sup>th</sup> September, 2023 and discovered two tents containing between them four cannabis plants which were established and set up with lighting and dehumidifying equipment and there was evidence of husbandry, though they were showing some signs of neglect. You had left the island 5 days earlier. In the search of your house officers found various items of drug paraphernalia, notes regarding controlled drugs and various chemicals and dehumidifiers associated with cultivation. They also found 153 Class C gabapentin tablets with a street value of £306 to £459 and 174 Class C alprazolam tablets valued at £696 to £1,740 together with various amounts of herbal cannabis in different places some, noticeably, in jars with humidity meters. The total amount of cannabis was 379.83 grams with a street value of between £15,193.20 and £18,991.50. You were arrested and interviewed and exercised your right to silence. Analysis of your computer revealed evidence of cultivation related searches.

You were born in England and have lived here since 2005. You are 44 years of age. You are a qualified accountant and were working in the finance industry at the time of the offending. You have no relevant previous convictions. You have unrelated matters recorded against you, one when you were a juvenile. You have been on unconditional bail throughout the proceedings.

### **Sentencing Considerations**

The most serious and therefore the lead offence is that of the production. The Court of Appeal in Marsh and Hardy and Fallaize v The Law Officers of the Crown [2007-08] GLR 1 held that the Richards guidelines also apply to cultivation cases, based on potential yield for quantity and factoring in the sophistication and scale of the operation. Marsh was a commercial cultivation case and it is accepted that yours was domestic production. This Court considers that Marsh is equally applicable to domestic production cases and that the Richards guidelines apply to all cultivations. The Court notes the caveats mentioned as to estimated yield within Marsh.

Yours was a small scale cultivation in terms of the number of plants but it was well equipped and resourced. After your arrest you accepted that you had tended the plants at times but that you had abandoned them as you had sufficient cannabis from other sources. There is no evidence to contradict your explanation that you were not the instigator of the cultivation but took it over.

The Prosecution did not provide any evidence as to yield but we will use the scale as provided in other cases of 22-40 grams per plant which is taken from data provided by the United Nations Office on Drugs and Crime. On that basis, the yield for the four plants would be 88-160 grams based on fully mature plants. Whatever the exact amount of estimated yield this places the offending at the lower end of the 3 to 6 year starting point in Richards. There is no evidence of supply to others or to contradict your assertion that you were growing for personal use but the amount of the yield does not fall within the “very small quantity for personal use” and thus outside the guidelines in Richards. We note the state of the plants but also the quantity of herbal cannabis and evidence of other plants around the place.

The Richards guidelines do not cover offences of possession but we take from Richards the principles of quantity and role. The quantity of drugs possessed speaks for itself and there is no evidence of a greater role in terms of any involvement in supplying. There is no question that the custody threshold has been passed. We will treat the possession offences as aggravated factors. Although the counts are possession only, the quantities are at the top end of what this Court has seen in terms of possession. Had we been dealing with the matters separately we would have taken 2 years as a starting point for the cannabis, 1 year as a starting point for the gabapentin and 1 year as a starting point for the alprazolam.

Overall you had significant quantity of controlled drugs in your home and we consider that the starting point for Count 1 should be increased to 4 years 6 months to reflect the overall offending and the overall criminality but we have taken into account in setting that starting point the principle of totality.

### **Mitigation**

The Court must consider the impact of your guilty pleas on sentence and we are able to afford you full credit for those pleas, which were entered at the earliest opportunity. The Court has considered carefully the helpful and informative Social Enquiry Report prepared in respect of you. We have also listened to the well-crafted submissions of your Advocate. We have read your letter and the impressive references provided. You are described by your Advocate and referees as intelligent, resourceful, articulate, ambitious but also as a delicate soul. You are clearly part of an extremely close and loving family.

No one could fail to recognise the impact on you of the fatal road traffic accident in Thailand and the stress of awaiting the outcome of the court case for the driver, your twin brother, perhaps the person closest to you and on whom you depend but you had to remain in Thailand to deal with the consequences of the crash. It was feared that that would be an immediate custodial sentence. You are described as having been overwhelmed and having at that time, initially while in Thailand, turned to illicit substances

to manage the anxiety and the pain from injuries you sustained in that crash and the relived trauma of your own earlier near fatal road accident. You describe yourself as traumatised. On your return to Guernsey, alone, and discovering the plants, which you say your house sitter was growing in your home, instead of following your instinct and initial direction to him to remove them and rather than seeking to report the matter to the Police and seek help from appropriate and legal sources, you succumbed to temptation to use the cannabis previously produced, which was in the house and become the cultivator. You compounded this error of judgement by buying the gabapentin and alprazolam in bulk to help with the sleep and anxiety. By choice, at that time you were isolated, in terms of support, as you wanted to protect others especially your brother from worry about you but also from worry about your father who had a very serious fall. Sadly, that isolation contributed to your serious errors of judgement and has ultimately led you here today. You have said that the positive resolution of your brother's case in Thailand has brought an immediate end to your anxiety and it is said that you have been drug free since your return to Guernsey and arrest. The report writer assesses you as knowing that you were acting illegally and having used distorted reasoning but the Court notes that you have not sought to avoid responsibility for your actions and your remorse is evident.

The impact on you of the offending has been catastrophic in terms of your career. You have been dismissed by your employer and it is said that you are likely to lose your hard won professional qualifications. You are trying to salvage what you can by learning new skills. Added to the ruin of your career, you know that you have let yourself and your family down and you rightly feel ashamed and embarrassed. They are standing by you but, quite rightly, they do not condone your actions. Like your friends and colleagues, they are worried for you should you go to prison and of the consequent impact on the family.

The references provided by your former colleagues attest to a competent and highly skilled professional but one ready to help his colleagues, even if pressed for time himself. They talk warmly of your contribution to charitable causes. Your referees express sadness that your lack of judgement has led to such serious consequences.

We can treat you as a person of previous good character with no relevant previous convictions and take note that the report writer views the offending as an isolated incident, borne out of unique circumstances and not requiring any intervention. You are assessed as having a low likelihood of re-offending which we take into account. We note that there is no request for a drug-trafficking investigation in respect of you.

## **Sentence**

The Court is satisfied that the custody threshold has been passed. Cultivation and possession of such quantities of controlled drugs must attract custodial sentences as punishment and deterrent. In view of your plea, previous good character and significant mitigation the Court is able to consider alternatives to immediate custody in your case. For the cultivation there will be a Community Service Order, as a direct alternative to immediate custody. This is imposed because of the seriousness of the offence for which you have been convicted. You are thereby being offered an opportunity to make a positive contribution to the community through unpaid work. We understand that you are aware that you will be made subject to and understand the nature and effect of a Community Service Order, the power of the Court to review the Order and the consequences which may follow if you fail to comply with any of the requirements of the Order, or if you are convicted of a further offence whilst the Order is enforced. The Court is satisfied that provision can be made for you to perform work and that you are a suitable person to perform that work. You must be aware that if you fail to complete even one hour without a medical certificate, or if you commit any other offence you will be brought back before this Court and you will face going to prison.

For the possession offences there will be a sentence of imprisonment which will be suspended. This means that you will not have to serve the suspended sentence unless, during the period, which the Court has set at 2 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 any part of the 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, so do not forget that please. In addition to those sentences there will be a fine.

You made serious errors of judgement in continuing the production of the plants and in purchasing such a large quantity of illegal drugs. You have brought ruin to your career and shame on yourself and your family. What is done is done. The Court has seen fit to be lenient in not sending you to prison today in what are the unique circumstances which led you, a man described as decent and “one of the good guys”, to become involved with illicit drugs. You may have lost your career but you still have your intelligence and your skills and the support of your family. You will need to draw on them all as you make a new start. You know the consequences if you re-offend.

Taking into account everything that has been said and applying the appropriate discounts the sentences will be as follows:

- In relation to Count 1, (the cultivation) – 240 hours of Community Service as a direct alternative to 2 years’ custody together with a fine of £5,000 payable immediately.
- In relation to Count 2, (possession of cannabis) – 1 year suspended for 2 years and if that is activated it should be consecutive to the alternative to the Community Service.
- In relation to Count 3, (possession of alprazolam) – there will be a sentence of custody of 1 year suspended for 2 years but that will be concurrent to Count 2.
- Count 4 (possession of the gabapentin), again a sentence of 1 year suspended for 2 years which is concurrent with Count 2.

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

Mr Hart the total sentences will be as follows:

- **240 hours’ Community Service as a direct alternative to 2 years’ custody.**
- **1 year suspended for 2 years’ consecutive to the alternative to the Community Service Order.**
- **A fine of £5,000 payable immediately.**
- **Forfeiture and destruction of the drugs.**

Mr Hart, you may leave the Court once the Court has closed.

**Catherine Maureen Fooks**  
**Judge of the Royal Court**

**30 July 2024**