

Possession of controlled drugs, contrary to Section 4(1) of The Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. (Cannabis resin, Morphine and MDMA). Being concerned in supplying Class A, MDMA and offering to supply Class B Cannabis to another, contrary to Section 3(1)(b) of The Misuse of Drugs (Bailiwick of Guernsey) Law, 1974.

[2024]GRC055

**ROYAL COURT
FULL COURT**

14th June 2024 & 26th June 2024

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats: Stephen Murray Jones OBE, Steven John Morris,
Marilyn Jasmine King, Felicity Jane Quevâtre, Heather Reed,
Simon Ernest Bodkin and Jillian Clark.**

THE LAW OFFICERS OF THE CROWN

- v -

WESLEY GUILBERT

**Advocate L C Roffey appeared for the Crown
Advocate S E Steel appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Guilbert you pleaded guilty to six counts of various drug offences, all said to have occurred on or around 30th June 2023. Three counts are of possession of controlled drugs, contrary to Section 4(1) of The Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. Count 1 concerns Class B, cannabis resin. Count 4 concerns Class A, morphine and Count 6 concerns Class A, MDMA. The maximum penalty for the possession of Class A drugs is 14 years' imprisonment and for Class B drugs 10 years' imprisonment.

Counts 2 and 3 are in being concerned in supplying Class A, MDMA, contrary to Section 3(1)(b) of The Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, the maximum penalty being life imprisonment. Count 5 is of offering to supply a Class B Cannabis to another, contrary to section 3(1)(b) of The Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. The maximum sentence is 21 years.

The facts are that, on 30th June 2023, police officers came to your house with a search warrant. You were fully cooperative and indicated to them where the drugs were. You said that the cannabis and broken ecstasy tablets were for personal use. Officers found a white pot containing a number of broken MDMA tablets (Count 6) which the States Analyst quantified as 21.11g of MDMA powder, as he felt unable to give a quantity for the tablets as they were so badly broken and 0.05g of cannabis resin. 8.5g of cannabis resin (not medicinal) (Count 1), a bottle marked Morphine Oral Solution, in which there

was a residue of 1.44g together with three metal spoons with liquid residue (Count 4). They also found your medicinal herbal cannabis. They found £850.96 and digital scales. You were compliant with your arrest and you tried to provide the passcode to your phone. Analysis of your phone revealed messages in which you arranged the supply of three MDMA tablets for the total of £60 (Count 2) and four MDMA tablets for a total of £80 (Count 3) and the offer to supply an unquantified amount of cannabis (Count 5).

At interview you answered some questions but otherwise exercised your right to silence. You maintained that the MDMA tablets were for your personal use. You declined to make any comment in relation to the morphine. You claimed that the cash was your earnings from bar work.

The estimated street value for the cannabis resin was between £40 and £50 per gram, making your quantity 8.55g worth between £344 and £430. The value of the MDMA depends on whether it is valued in powder or in tablet form. The street value for powder at the time was £80 to £100 per gram or £20 to £25 per tablet. 21 grams in powder form would have a street value of between £1,689 and £2,111. The value for 84 tablets, which is how your Advocate urges us to value the contents on the pot based on 1g is equivalent to 4 tablets would be similar, between £1,680 and £2,105 and £2,100. The value of the liquid morphine would be minimal. The value of the 7 MDMA tablets (Counts 2 and 3) would be £140 to £175.

You are a local man of 44 years of age. You were working in a bar at the time of offending and you had been working in car valeting prior to that. You are signed off work awaiting a joint surgery. You have a long list of previous convictions and are no stranger to the Royal Court, having been sentenced to substantial terms of imprisonment for burglary and GBH and robbery, associated with drugs, and most notably having been sentenced to 9 years' imprisonment in 2014 for drugs offences, including the particularly serious offence of the production of Class A drug methylamphetamine. You were released in October 2019. Your parole licence expired on 1st April 2020 but your ACSO did not end until July 2022.

You have been on unconditional bail and you have not come to the attention of the police whilst on bail.

Sentencing Considerations

The most serious of the offences committed by you is the supplying of 7 tablets of Class A (Counts 2 and 3) and this is the lead offence and the Court will pass concurrent sentences on the other offences.

The sentencing guidelines applicable to offences involving the supplying 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 Law Officers, 2021 GCA 045 and re-affirmed as current and appropriate. The Court will set its starting points in accordance with those guidelines.

The initial starting point for the supplied 7 MDMA tablets (both Counts 2 and 3) are set at the lowest possible which is 7 years. The amount may be small but it is a supplying offence and the guidelines apply. The Court does note that the tablets were sold for the lower value.

The next most serious offence is the offering to supply a quantified amount of Class B cannabis, for which the Court would take a standalone starting point of 3 years, again based on the lowest band of Richards.

Richards does not apply to possession offences. The Court treats the MDMA as being in tablet form and adopts Advocate Steel's calculations, so 84 tablets. Although the Court must accept that the MDMA is for personal use and Advocate Steel said that it is for use over a six week period, it is a sizable quantity of drugs. This Court would take a standalone possession starting point of 2 years. The 1.44g of morphine is a minimal amount and would not of itself have reached this Court and does not justify an increase in the starting point and will be subject of a concurrent sentence.

Similarly, the Class B possession 8.55g in total would not ordinarily have reached this Court and will be the subject of a concurrent sentence. It would justify only a small increase in the 2 year starting point.

Looking at the total quantity and applying totality the Court takes an initial starting point of 7 years' before aggravating and mitigating factors. Your previous record, and specifically your 2014 conviction and the number of different drugs must be treated as aggravating factors and the Court increases the starting point to 8 years before consideration of plea and personal mitigation.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence. In the circumstances as explained by both Advocates, this Court is able to afford you full credit for your guilty pleas to all offences.

The Court has considered carefully the informative Social Enquiry Report prepared in respect of you and has considered carefully what the writer has said in response to questions from the Court on 14th June 2024. The Court has also listened to the compelling submissions of your Advocate. The Court has carefully read the letters from your mother, daughter and referee and, as they ask, it has looked beyond your offending and your record. Of course, the Court takes into account your difficult early years.

You do have a good work ethic and it is to your credit that you had managed to establish a business after your last release from prison using a new skill you had learnt. You had also secured accommodation and you have been enjoying positive relationships with your family. Your daughter speaks warmly and highly of you as a father and grandfather. She and your mother expressed their sadness that a prison sentence would lead to the loss of what you have achieved over the last year and deprive the family of a much loved family member. It is clear that they are also willing to support you.

Your Advocate raised the Article 8 Rights of your family, especially your daughter and grandchildren, who would be affected by your imprisonment. The Court has considered the applicability of the principles contained in the case of Bourgaize v The Law Officers of the Crown 2014 (Judgment 49). A sentence of imprisonment almost by definition interferes with family life. The imposition of a sentence of imprisonment for a serious criminal offence is in accordance with law and in pursuit of a legitimate aim within Article 8.2. 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. The Court has to balance that impact against the legitimate aims of sentencing in a serious drugs case. In your case, the Court considers that the impact on your daughter and grandchildren falls outside of the range of dependency and impact envisaged in Bourgaize and, in any event, the Court views the offending as so serious as to outweigh even stronger family ties than those you have in any balancing exercise.

The Court notes your claim to be drug free and that you are willing, not only to undergo drug testing, but to engage with the one-to-one work part of the SMART programme recommended by the Probation Officer. The Court takes all that has been said into account and particularly the efforts you have made to turn your life around.

You are assessed as having a very high likelihood of reoffending. The Court notes that there is no request for a drug trafficking investigation in respect of you and you have voluntarily forfeited the cash.

Sentence

Even applying the most generous discount for your personal mitigation to add to the full one third discount for your plea you could have no complaint were you to leave today to start a prison sentence of 4 years or longer, which would ordinarily rule out any consideration of alternatives to immediate custody.

Nevertheless, the Court was struck by the letters from your family and referee and the evidence from the writer of the Social Enquiry Report that you have turned your life around. You have accommodation, you are playing a full role in family life, you have family support and you are willing to be free from illegal drugs. The Court considers that there is a prospect of rehabilitating you and that doing so in the community represents a better chance of long-term rehabilitation than sending you to prison. Wholly exceptionally (and I cannot emphasise that enough), the Court is going to impose an alternative to immediate custody.

The Court is concerned to pass sentences which will enable the Court to sentence you for these offences if you do not adhere to the terms of the Orders or if you re-offend, so there will be a Probation Order for the supplying of Class A offences and suspended sentences which will give any future court the ability to re-sentence you to an appropriate term of immediate imprisonment, plus there will be suspended sentences which can be activated.

You will not have to serve any 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, make no mistake about that.

The Court is imposing a Probation Order for 3 years, which is intended to ensure that you stay drug free. It was said that, in view of the extensive work done with you, you have all the skills not to re-offend but you were assessed to lack motivation. The writer of the Social Enquiry Report initially expressed the view that, in the absence of your willingness to attend the SMART programme (which can be arranged on a one-to-one basis), they could do no more for you and so there was no sound basis for a Probation Order to be made. What could be offered by the Criminal Justice Substance Service was a mixture of testing and engagement in a one-to-one SMART programme. You heard the writer of the Social Enquiry Report explain to the Court that, having heard you say that you would engage with the SMART programme, she was willing to make a recommendation for a Probation Order with the one condition below. Your engagement is in your hands. She was also concerned that you might breach by failing to keep appointments. Your Advocate said that you had failed to keep appointments through illness. Keeping appointments is entirely in your hands. If you cannot attend through illness or when you have your operation, you will have to go to the doctor promptly and get a note. It is a key part of the Court's rationale for giving you a chance that you are supervised and supported. You must engage fully.

You will have the terms of the Probation Order explained to you fully but they include that you must keep in contact with your Supervisor in accordance with the instructions you will be given from time to time, notify your Supervisor of any change of address or working arrangement, not do anything to undermine the purposes already mentioned for which the Order is made and you must comply with the additional requirement, which the Court is satisfied should be attached to the Order, namely:

1. To attend the Criminal Justice Substance Service as directed and comply with drug testing and treatment, as required.

The report writer has confirmed that this includes any direction to attend the SMART programme. If you were to fail to comply with any requirement, you would be liable to be returned to Court, which has the powers to continue the Order, with or without variation, to fine you or (and this is the most likely and please hear that) revoke the Order and re-sentence you.

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

You have said that you would agree to any conditions or terms of any order were the Court willing to give you a chance. Your Advocate said that you would grasp the chance with both hands. That is easy to say but harder to do. Here is your chance. It will be the one and only chance. You can choose to turn your back on a 30 year past blighted by illegal drugs and continue to enjoy your freedom and your fishing trips, your own accommodation and the company of your family and dog but be in no doubt that if you do not make that choice and you come back before this Court or the Magistrate's Court, you can expect to spend a long time in prison. The Court urges you to take this exceptional chance for yourself and for the sake of your family and for the sake of your community, which needs to see an end to your offending. Do not let them down or yourself down.

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

- Count 1** – Possession of cannabis - 1 month suspended for 3 years concurrent with Count 5.
- Count 2** – Supply of MDMA – Probation Order 3 years.
- Count 3** – Supply of MDMA – Probation Order of 3 years' concurrent with Count 2.
- Count 4** – Possession of morphine – 2 months' imprisonment suspended for 3 years' concurrent with Count 5.
- Count 5** – Offer to supply cannabis – 2 years' imprisonment suspended for 3 years.
- Count 6** – Possession of MDMA – 1 year imprisonment suspended for 3 years concurrent with Count 5.

In total the sentence is as follows:

- Total term of **imprisonment of 2 years'** from today suspended for 3 years.
- Probation Order of 3 years.
- Forfeiture and Destruction of the drugs and exhibits.

Catherine Maureen Fooks
Judge of the Royal Court

26th June 2024