

[2024]GCA031

**IN THE COURT OF APPEAL OF GUERNSEY
CRIMINAL DIVISION**

Between: **CRAIG ALAN DODD** **Applicant**

-v-

LAW OFFICERS OF THE CROWN **Respondent**

APPLICATION FOR LEAVE TO APPEAL

Decision on the Papers

Decision of Sir Richard McMahon, Bailiff

Date of Decision: 25 March 2024

Applicant's representative: Advocate S E Steel

1. On 22 February 2024, the Applicant was sentenced to a total of 2 years' imprisonment, principally for failing to comply with a notice issued under the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, as amended ("the RIPL offence"), but also in respect of a Count of failing to comply with the terms of his Adult Custody Supervision Order, which had taken effect from 16 July 2022. In respect of the RIPL offence, the sentence was 2 years' imprisonment and, for the other offence, 4 months' imprisonment to run concurrently was imposed by the Royal Court.
2. By a Notice of Appeal dated 22 February 2024, the Applicant seeks leave to appeal on the basis that the total sentence of 2 years was manifestly excessive. This Notice, settled by Advocate Steel, refers to the discount of 20% given in respect of acknowledged timely guilty pleas, along with the failure to have sufficient regard to the impact of imprisonment on the Applicant's young children, both of which are said to support his case that the sentence was manifestly excessive.
3. As explained in the Royal Court, the maximum sentence for a RIPL offence has been increased from 2 years to 5 years, with effect from 21 December 2022. The changes were made by the Criminal Justice (Miscellaneous Amendments) (Bailiwick of Guernsey Ordinance, 2022). The policy letter leading to those changes explained that "*many suspects choose not to comply with*

the notice and to serve the resulting prison sentence, rather than reveal information that could expose them to prosecution for the suspected criminality.”

4. This development was referred to in the Royal Court’s sentencing remarks. It is apparent that the increased headroom following the increase in the maximum sentence means that there is scope to impose longer sentences than would have been applicable when the maximum sentence was 2 years’ imprisonment. I have, however, taken into account that this is a situation in which the criminality being investigated needs to be taken into account. Even where the assumption can properly be made that there is something to hide (and reference could have been made to this Court’s decision in *Barras, Watt and Orchard* [2021] GCA 045, rather than to an English case, *Padella* (2012), for this principle), I consider that what might or might not have come to light as a result of frustrating the ongoing investigation is a relevant factor for the sentencing court to be aware of. It is unclear how much consideration was given to what the outcome might have been in those circumstances because this was not spelt out in the sentencing remarks. Whilst the Applicant has a poor record of previous drug-related offending, which in itself might have been said to aggravate this refusal to comply with the notice under the 2003 Law, it appears to me to be arguable that insufficient account was taken of the matters being investigated.
5. The second aspect raised in the application is that the discount for plea and mitigation was on the low side. Bearing in mind that para. 15 in *Richards* 2000-02 GLR 247 highlights the importance of an appropriate discount “*even where the accused appears to have had very little choice but to admit guilt*”, which has some relevance here because the investigation was in relation to drug-trafficking, affording the Applicant a discount of only 20%, especially when coupled with the other mitigation available, is arguably inappropriately low.
6. In these circumstances, particularly because this is one of the first occasions where the increased maximum sentence for a RIPL offence has been engaged, the combination of these considerations is, in my judgment, sufficient to grant the leave to appeal sought. Doing so will enable this Court, if it so wishes, to give some guidance to the Royal Court about the appropriate approach to take to what is an offence frequently featuring before that Court.
7. Further, having granted leave to appeal, the Applicant will also be granted legal aid in respect of this appeal against sentence.