

Production and possession of Class B drug cannabis. Criminal damage.

[2023]GRC045

**ROYAL COURT
FULL COURT**

14th June 2023

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats: Stephen Murray Jones OBE, Terry John Ferbrache
Steven John Morris, Joanne Marie Wyatt, Marilyn Jasmine King, Tina Jane Le Poidevin, Paul
Martin Burnard, Heather Reed, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

BRUCE GEORGE MROCH

**Advocate M C Davies appeared for the Crown
Advocate A M Merrian appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Mroch you have pleaded guilty to three Counts on one Indictment that (1) between the 1st March 2021 and 1st July 2022 and 17th July 2022 you produced Cannabis, a Class B drug, the maximum penalty for which is 21 years' imprisonment (2) that on 16th September 2022, you had Cannabis in your possession and the maximum penalty for which is 10 years' imprisonment (3) that, on a date unknown, without lawful excuse, you damaged property belonging to the Guernsey Housing Association, the maximum penalty for which is 10 years.

The facts are that on 16th September 2022 officers attended at your house. The 16 year old daughter of your partner and your young baby were in the house. There was a strong smell of Cannabis. The officers discovered a growing tent in a wardrobe, together with growing equipment, feed etc and there were eight plants mostly in full bud, ranging from 31 to 62 cms tall, which is the subject of the production count. The Prosecution estimate the yield from each plant at 22 to 40 grams, giving a total yield of 176 to 320 grams. A hole had been cut in the ceiling for ventilation and to filter out the smell; that is the subject of the criminal damage count. You live in a Guernsey Housing Association property and did not have permission to cut a hole in the ceiling. The quoted cost of repair is £284. Officers also found 67.46 grams of herbal Cannabis in two glass jars and a plastic tray, which constitutes the possession count. The estimated street value of that Cannabis is between £2,698 and £3,373.

Your laptop was seized. You were interviewed and candidly admitted your guilt to all three offences. You said that you purchased the seeds and equipment online using your laptop and purchased the pots and soil locally. You explained how you cared diligently for the plants. The plants were almost ready for harvest. Your plan was to harvest the oil to take as a treatment for a painful lump on your chest,

for which you have not sought any medical attention. The herbal Cannabis was offcuts which you intended to smoke. You said it was all for your personal use.

You are a local man of 45 years of age. You are signed off work. You have a long list of previous convictions before this Court and the English Court stretching back to your youth. Your convictions include offences of serious violence, dishonesty and public disorder. You have an old conviction for possession of a controlled drug, but the most relevant conviction is for supplying Class A drugs for which this Court sentenced you to a total of 6½ years on 6th December 2017. You were released on parole between 11th September 2019 and 11th November 2021 and you were subject to an Adult Custody Supervision Order which expires on 27th June 2023, so you have committed the offences for which you will be sentenced today during that Supervision Order.

You have been on unconditional bail throughout the proceedings.

Sentencing Considerations

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. Advocate Merrian made the point that Marsh is a commercial cultivation case and that your case is a domestic production for personal use. This Court considers that Marsh is equally applicable to production cases and that the Richards guidelines apply to all cultivations; the estimated yield of which fall within those guidelines with all the caveats mentioned as to estimated yield.

The Richards guidelines do not cover offences of possession. The quantity of the herbal Cannabis in your case is noted. It must be said that the Richards guidelines are guidelines and the Court always has a discretion when setting a starting point, which will depend on the circumstances of the case. There is no question that the custody threshold has been passed in respect of the production offence alone. Based on the lower prosecution figure for yield of 176 grams, allowing for variation in size and cultivation of the plants we set the initial starting point, before aggravating and mitigating factors at 3 years. We will treat the possession and criminal damage as part of the same course of conduct and increase the starting point for the production offence accordingly. We would have taken a separate starting point for the criminal damage of 6 months.

There are considerable aggravating factors in your case. The offences were committed whilst you were subject to an Adult Custody Supervision Order. You have a previous conviction for a Class A drugs offence. The set up for the production of the Cannabis was sophisticated and most importantly, there were children living in the house notably a teenager and a two year old. In the photographs there is a cot visible in the room where the plants were being grown in the unsecure wardrobe and it was confirmed that the room was in use.

Taking all this into account we set the revised total starting point, taking into account the aggravating factors and the other offences before consideration of plea and personal mitigation at 4½ years.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence. Perhaps generously we afford you full credit for your guilty pleas to all offences, as you had little choice in reality other than to plead guilty.

Personal Mitigation

The Court has considered carefully the informative and helpful Social Enquiry Report prepared in respect of you and taken note of the paragraphs particularly drawn to our attention by your Advocate.

We have also listened to the submissions of your experienced Advocate and read the materials provided. Your openness with the Probation Officer about your offending, that you knew that what you were doing was illegal, that you hoped that you could get away with it and that it was a risk worth taking is to your credit. You have recognised that the risk was not worth taking because of the impact on your family from the point of your arrest and subsequently - a lesson well learned but an unnecessary one as you had managed to comply with your parole and could easily have reached the end of your Adult Custody Supervision Order without troubling the Court again had you sought medical attention for the lump on your chest and/or help from the relevant Services in respect of drug use.

The Court notes your remorse. The Court is particularly concerned that you were growing Cannabis in the middle of the family home and setting a poor example to your partner's older children. This shows very poor decision making and complete irresponsibility on your part. We consider that the children were placed at risk by the obvious growing of Cannabis in the house. The officers could smell the Cannabis when they entered the house.

You are not assessed as needing any help with drug and alcohol abuse. As you have had help so many times over the years, you know what to do. The Probation Officer has been your supervising officer since 2021 and does consider that, although you have committed the offences for which you will be sentenced today, there has been a marked shift in your attitude and your risk of reoffending has reduced because you have settled down with your family and moved away from old associates. It has to be noted, however, that your risk of reoffending remains at moderate to high, which the Court has to take into account. Your Advocate also highlighted your motivation to make changes.

You have a poor record and you committed these offences whilst on the Adult Custody Supervision Order following a conviction for an even more serious drugs offence. We note that there is a request for a drug trafficking investigation in respect of you.

In accordance with Bourgaize v The Law Officers of the Crown 2014, Judgment 49, this Court is required specifically to consider the Article 8 rights of the minor children and others affected by your being imprisoned, as well as yourself. You have one child of two years and another older child, a teenager, not yours but in your household. Your partner is expecting your twins in August. We note that they were conceived after your arrest.

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 legitimate aim with Article 8.2. Parents who commit serious offences face prison like everyone else. The issue for this Court is always whether the imposition of an immediate custodial sentence would be a proportionate interference with family life, give the balance between the various factors.

The Court is required to consider the arrangements for the care of the children mentioned in the event of an immediate custodial sentence. It is said that there is limited family support available to your partner. It is said in the Probation report that she will cope, but there are concerns as, after the twins' birth, she will have three children under three years old and the teenager. We have received a report on your partner's child and letters from your partner's obstetrician and Guernsey Housing Association and heard submissions from your Advocate. Your Advocate has told us that Children's Services intend to await the outcome of today's hearing.

Your partner is on the waiting list for bigger accommodation. The outcome of today will not affect that application.

Sentence

The Court has to balance the impact on your family against the legitimate aims of sentencing in a serious drugs case. This is not a case which stands on the cusp of custody, as it falls squarely within the Richards guidelines. The Court has undertaken the balancing exercise very carefully noting not only the impact on the children, but also on your partner.

In sentencing you the Court has also taken into account the totality principle. The Court has concluded that the only appropriate sentence in your case in view of the seriousness of the offending, the aggravating factors and your record and risk of reoffending is one of immediate custody and that this is a proportionate sentence in the circumstances. The Court has reduced the sentence to reflect the impact on your family, including the twins your partner is expecting.

Mr Mroch, you knew and know full well that your decision to grow Cannabis and to take the risk that you would not be caught was wrong and has already caused your family pain. Sadly that pain does not end here and you must serve your sentence and come out with that motivation not to come back here again.

Taking into account all that has been said above and applying the appropriate discounts the sentence will be as follows:

- Count 1 – the production – 2 years and 8 months’ immediate custody.
- Count 2 – the possession - 2½ months immediate custody concurrent.
- Count 3 – the criminal damage – 3½ months immediate custody concurrent

All these sentences are to run concurrently, meaning that in total the sentence will be one of **2 years and 8 months’ imprisonment**.

As you well know Mr Mroch, in accordance with section 1 of the Criminal Justice Supervision of Offenders (Bailiwick of Guernsey Law), 2004 upon release or completion of any parole period, if applicable, you will be subject to supervision by the Probation Service for a period equal to one quarter of the total sentence, or the sentence you would have served had you not received remission, whichever is the shorter. If you fail to comply with the conditions of the supervision you will liable to further imprisonment, a fine or both.

The Crown’s application pursuant to Section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006, which was not opposed, for forfeiture of the lawfully seized laptop valued at £250, which relates to the offences is also granted as is the Crown’s application pursuant to Section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 as amended which, again, was not opposed, for the forfeiture and destruction of the Cannabis plants, herbal Cannabis and the jars and tray, which were lawfully seized and relate to the offences.

We have also considered whether it is appropriate to make an Order for Compensation in favour of the Guernsey Housing Association but have concluded that it is less appropriate to make such an Order when you are going into custody and we will leave that matter for the Civil Court.

Mr Mroch, in summary the total term of imprisonment is **2 years and 8 months** from today and the forfeiture/destruction orders are made on the basis set out above.

Catherine Maureen Fooks
Judge of the Royal Court

14th June, 2023