

Sentencing remarks regarding three Counts of being concerned in the supplying of controlled drugs, contrary to Section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. Diazepam and Gabapentin, which are Class C drugs, and Cannabis, a Class B drug.

[2025]GRC022

ROYAL COURT

FULL COURT

13th February 2025

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Steven John Morris, Marilyn Jasmine King, Felicity Jane Quevâtre,
Simon Ernest Bodkin, Ian Michael Brown, Kay Parnwell and Sally-Ann David.**

THE LAW OFFICERS OF THE CROWN

- v -

SHANE TRISTAN TOPLEY

Advocate P F Cobb appeared for the Crown

Advocate S E Steel appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Mr Topley, you have pleaded guilty to three Counts of being concerned in the supplying of controlled drugs, contrary to Section 3(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. The first two Counts concern Diazepam and Gabapentin, which are Class C drugs, the maximum penalty for which is 14 years' imprisonment and the third Count concerns Cannabis, a Class B drug with a maximum penalty of 21 years' imprisonment.

The facts are that, on 8 September 2023, Police observed you acting suspiciously at the White Rock and handing something to another male (Male A). You were stopped and searched then and later found to have two paper pharmacy bags, one containing several boxes of prescription Cannabis bearing your name and the other containing 5 blister packs of Gabapentin in a bag bearing another's name. You were also found to have £296.46 in cash and part of a blister pack of Diazepam (containing 4 Diazepam tablets) in a box bearing your name. Male A had the other part of the blister pack containing 10 Diazepam tablets, which we accept was what you handed to him whilst being observed. Your home was searched and Diazepam and Gabapentin prescribed to you were found.

In addition to the above, your mobile phone was seized and analysed and a number of messages relating to the supplying of all three of the above drugs was found. It is clear from the evidence that you were supplying at least some of your prescribed medication.

The Prosecution has outlined the messages in some detail. We accept the expert's interpretation of them. There is evidence of supplying of Diazepam (Count 1) which is from July to September 2025, but no specific amounts. The only definite amount is the 14 tablets seized on the arrest of you and Male A, to which reference is made above.

The messages show that you were in touch with three individuals, including male A, some on more than one occasion, concerning the supply of Gabapentin (Count 2) with a date range of May to September 2023. There is no specific amount, but at least 60 were seized and there is evidence of the supply of 50.

The messages also show you in touch with 15 contacts plus male A about the supplying of what is clearly medicinal Cannabis (Count 3), and the date range for that is 4 to 9 September 2023. Proof of the amount supplied is limited to 8 grams, but we are satisfied that you were concerned in supplying a larger amount than this.

We were given the street values of the known quantities.

You were interviewed twice and you exercised your right to silence.

You are a local man of 29 years of age (27 at the time of the offending). You have previous convictions, notably three for the same offence of being concerned in the supply of drugs, 179 grams of Cannabis, the facts of which were summarised by the prosecuting advocate, for which, on 13 August 2020, you received a total sentence of 2 years, suspended for 3 years. Some of the offending in relation to the Class C drugs occurred whilst you were still subject to this suspended sentence and which ended on 12 August 2023.

You also appeared in the Magistrate's Court on 10 September 2020 when you received a 2 month sentence, suspended for 2 years, concurrent to the Royal Court sentence for supply. That sentence had expired before the offending with which we are dealing with today.

You have been on conditional bail throughout the proceedings. There has been a delay in your sentencing arising partly from your non-engagement but mostly from issues to do with your health, as set out later in these remarks.

Sentencing Considerations

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) GCA045 and reaffirmed as current and appropriate. The Court will continue to follow those guidelines. There are no specific guidelines in respect of Class C offences within Richards, but we apply general guidance looking at the quantities as far as we can and the role which here we take to be motivated by financial gain. We accept that the evidence discloses offending which falls within the lowest bands of Richards.

We will take the Class B offence as the lead offence with an initial starting point of 3 years, before increasing that to take account of the Class C offences and aggravating and mitigating factors. We will impose concurrent sentences for the Class C offences. Were we dealing with them alone, the combined starting point for the two Class C offences would be 18 months.

There are aggravating factors in your case: (1) your previous convictions include convictions for the same offence, (2) the breach of suspended sentence for the same type of offence and (3) the supplying of prescription medication.

We set the revised starting point for the Class B offence before consideration of the plea and personal mitigation at 4½ years. Obviously there can be no doubt that the custody threshold has been passed.

Mitigation

Plea

We afford you full credit for your guilty pleas to all offences.

Personal Mitigation

The Court has considered carefully the informative and realistic social enquiry report and update prepared in respect of you. We have also listened to the helpful submissions of your Advocate. We have read the heartfelt letters from you and your partner and the letters from your brother, mother and

from the doctor which have been provided. We recognise that you have tried hard to turn your life around, that you have been rebuilding your relationship with your children and that you have faced a number of difficulties in your childhood and since, including illnesses and losses of close family members.

We acknowledge your physical health issues and especially latterly, your mental health difficulties, which have prevented you from working and impacted on your ability to engage with these proceedings. We do not hold the delay in getting to this sentencing hearing against you. We acknowledge that you had time to reflect and to evidence changes in your life.

We are told that you have, in principle, secured employment should you not be imprisoned today. You are demonstrating considerable remorse, but it has to be noted that you did that on the last occasion in which you appeared before this Court and it did not stop you from reoffending. You appear not to be learning from your mistakes and to be in denial. You had been working on reducing your reliance on prescription medication, though you had been 'topping up'.

There is considerable concern for your welfare if imprisoned and it would be vital that the prison authorities are made fully aware of those concerns. We note the period of some 17 months without any further offending.

You are assessed as having a high likelihood of reoffending which must be taken into account. We note that there is a request for a modest Drug Trafficking Order in respect of you and I will sign that Order at the end of the hearing.

Sentence

In accordance with Bourgaize v the Law Officers of the Crown 2014 judgment 49, the Court has specifically considered the Article 8 rights of your minor children and others who would be affected by your being imprisoned. You have three young children aged between 6 and 9 years, who reside with their mother and you are having unsupervised contact, which you have been having for approximately 2 months, twice a week. A custodial sentence would impact that contact and the relationship between the children and yourself.

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). 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, given the balance between the various factors. Although in your case, the children will lose out on their contact with you, their day-to-day care would not be impacted.

The Court has to balance the impact upon the family against the legitimate aims of sentencing in a serious drugs case. This is not a case which stands on the cusp of custody, but falls squarely within the Richards guidelines. In view of the serious offending in your case, including all the aggravating factors, there is no possibility of anything other than immediate custody, even the balancing the interests of your children and others and taking full account of all mitigating factors.

Breach of Suspended Sentence

I turn now to the issue of the breach of the suspended sentence.

The offending in Count 1 and Count 2 breached the suspended sentence imposed by this Court on 13 August 2020. Section 2(1) of the Criminal Justice (Power to Suspend Sentence) (Bailiwick of Guernsey) Law, 1972 gives the Court the following options when dealing with a breach by you:

- activating the suspended sentence in full;
- activating it but reducing its term; or
- making no Order.

The option of extending the sentence is not available as the period of suspension has expired. The Law clearly states that there is a presumption that a suspended sentence will be activated in full, unless the Court is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence. If the sentence is activated in full or in part, the Court has the power to order that any term be served with immediate effect, concurrently or consecutively to the sentence for the subsequent offence.

The maximum suspended sentence was imposed exceptionally by this Court for the longest period, as the Court felt that there was a realistic prospect at that time of your being rehabilitated. It was said to be a "last opportunity". This Court means what it says and there is no injustice in activating the sentence, but we do reduce its length to take account of the fact that the reoffending was towards the end of the period of suspension and taking into account the principles of proportionality and totality.

Mr Topley, you came here today knowing that you would be going to prison. No other outcome is possible and you know why. We have kept the sentence as short as we can. We encourage you to use the time in prison to make sure that you leave prison ready to take your place in society and not come back before this Court again.

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

- Count 3 Cannabis - 2 years and 3 months' imprisonment from today
- Count 1 Class C - 9 months concurrent
- Count 2 Class C - 9 months concurrent

Total for the offences: 2 years and 3 months' imprisonment from today

We activate the suspended sentence and reduce it to 4 months for the reasons which have been explained and order that it is to be served consecutively to the 2 years and 3 months, which makes a total sentence of imprisonment from today of **2 years and 7 months**.

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 period 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 be 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 black Samsung mobile phone, valued at £80, which relates to the offending, is also granted, the Court having considered the likely effects on you of forfeiture.

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, as set out in the Prosecution Outline, which were lawfully seized and relate to the offences, is also granted.

Mr Topley, in summary, there will be a **total term of imprisonment of 2 years and 7 months** which includes the reduced activated suspended sentence from today. There will be **forfeiture of your phone** and **forfeiture and destruction of the drugs**.

Catherine Maureen Fooks
Judge of the Royal Court

13 February 2025