Leave to appeal application regarding being concerned in the supplying of ketamine, a Class B drug, to another, contrary to section 3(3)(b) of The Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended and three counts of failing to disclose certain information within seven days as required by a notice served under section 46 of The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003.

[2025]GCA052

IN THE COURT OF APPEAL OF GUERNSEY

(CRIMINAL DIVISION)

Between:

RORY SETTLE JOHNSON **Applicant**

-v-

THE LAW OFFICERS OF THE CROWN **Respondent**

APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE

Decision on the Papers

Decision of Jessica E Roland, Deputy Bailiff

Date of Decision: 20 June 2025

Counsel for the Applicant: Advocate S E Steel

Introduction

1. On 16 May 2025, the Royal Court sentenced the Applicant, Rory Settle Johnson in respect of an Indictment containing one count of being concerned in the supplying of ketamine, a Class B drug, to another, contrary to section 3(3)(b) of The Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended ("the MDL") and three counts of failing to disclose certain information between 21 October and 24 October 2024 within seven days as required by a notice served under section 46 of The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003 ("RIPL"). He appeared with three co-defendants who had been involved with importation of ketamine to the Island.

2. The maximum penalty for the supply of ketamine is 21 years' imprisonment. The maximum sentence for the RIPL offences is 5 years' imprisonment.

3. The sentences imposed were 3 years 3 months' imprisonment in respect of the first count of supplying ketamine and 2 years on each of the RIPL offences running concurrently with each

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other but consecutive to the drugs offence. Mr Johnson's total sentence of imprisonment was 5 years and 3 months which ran from the date of sentence.

4. The supply offence to which Mr Johnson pleaded guilty relates to three importations of ketamine into the Island in April, May and July. As the importations were only discovered in August when two of Mr Johnson's co-defendants were stopped at the airport on arrival from England, the quantity of the drugs that were imported in April, May and July had to be set by the Court.

5. In his application dated 13 June 2025, the Applicant seeks leave to appeal against the custodial sentences. The Applicant contends that the combined sentence of 2 years for the RIPL offences was manifestly excessive. In his application he says (a) that one of the reasons that this sentence was manifestly excessive was that the Appellant had no previous convictions and entered timely guilty pleas, whereas co-defendant with a previous conviction for a RIPL offence was given a sentence 25% lower for his second RIPL offence. He says (b) that the Court placed too much weight on there being three devices; it does not follow that more devices equate to more hidden criminality. The devices are connected via the same cloud account so share the same information and have similar/or the same passwords. Further, (c) that the Court did not fairly apply the totality principle when sentencing for these three RIPL offences.

6. His second ground of appeal is that the sentence of 3 years and 3 months' imprisonment for the supply offence under the MDL was manifestly excessive. He says (a) that the Court erred in basing the sentence on a total weight of 180g for this Appellant's involvement. This was the entire quantity of ketamine deemed to have been imported. By attributing the full assumed quantity to the Appellant, the Appellant was effectively sentenced as if he were charged with being concerned in the importations himself. He says (b) that the prosecution could not attribute a quantity of drugs supplied by the Appellant and the Appellant should have been afforded the benefit of the doubt, rather than the Court assuming the worst (particularly given text message evidence before the Court which showed that the importer supplied directly to others without involving the Appellant). He also says (c) that the Court erred in calculating that 180g of ketamine had been imported. The Court assumed that 50g of ketamine was imported in May, as this number falls between 30g (April) and 100g (July). The Court instead could have treated the May importation as an aggravating feature when considering the totality of the importation offences rather than assign a quantity in the absence of evidence. He also says (d) that the Court erred in finding the Appellant's claim that he would risk a harsh sentence for the receipt of drugs 'incredible'. He submits that it is entirely credible that the Appellant performed his role in order to satisfy his own supply of the drug and this is recognised as a mitigating factor in respect of culpability for this offence in Sentencing Council Guidelines from England and Wales. The evidence before the Court did not justify rejecting this claim and the Court ought to have accepted this as a significant mitigating factor. Finally, at (e) the Court placed insufficient weight on the Appellant unilaterally withdrawing from his role (prior to the August importation).

Discussion

7. With regard to the RIPL offences, the sentencing remarks set out that the three offences were committed at the same time "*and we do note some overlap of devices. We will make the three sentences for those offences concurrent. It is no mitigation that officers were able to gain access to one of Mr Johnson limited, so it cannot be said that nothing was found. It was clear that Mr Johnson had considered and decided not to comply*." Mr Johnson's starting point was then set at 4 years whereas Mr Guilbert, who had a previous conviction for a RIPL offence, had a starting point of 3 years.

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8. I do think it is arguable that the Court put too much weight on there being three devices (it appears that there was one RIPL notice served) to come to a starting point of 4 years combined with the other factors put forward by Advocate Steel which may mean that the final sentence for Mr Johnson (who had no previous convictions and had entered a timely guilty plea) could be regarded as manifestly excessive. This of course does not necessarily mean that it was, but presenting an arguable case is all that is required to grant the leave sought and that is what I will do.

9. With regard to the supply offence under the MDL, dealing first with (d), that the Court erred in finding the Applicant's claim that he would risk a harsh sentence for the receipt of drugs '*incredible'.* It is evident from the sentencing remarks that this comment was in the context of the Court's conclusions on Mr Johnson's role in the offending in particular "*Mr Johnson's role as middle man is clear in terms of his involvement in the operation but we did not consider that identifying any financial gain in terms of any additional specific amount would materially affect sentence.*" It is also clear from the remarks that, the Court took into account Mr Johnson's own drug taking in its mitigation. Therefore, there is no proper basis for this to be a reason that the sentence was manifestly excessive. In relation to (e), that the Court placed insufficient weight on Mr Johnson unilaterally withdrawing from his role before the August importation, there may to be a whole host of reasons why Mr Johnson withdrew from his middleman role, however, none are put forward in his application for leave. In fact, the Court did take into account, as a mitigating factor, that he had pulled out of the operation voluntarily and it is clear that Mr Johnson was sentenced on the basis that he played no role in the August importation. This again does not provide a basis for an arguable case that the sentence was manifestly excessive.

10. The first three reasons that Advocate Steel relies on in relation to the supply under the MDL offence are all focused on the amount of ketamine that the Court calculated had been imported and then supplied by Mr Johnson. The sentencing remarks note that rightly Counsel agreed that there is no difference in the sentencing principles to be applied to the offences of importation or supplying. In sentencing Mr Johnson, the Court said: *"The Prosecution cannot give an amount for Mr Johnson's supplying but we see no reason not to treat him as involved with the same amounts as the importers, based on the content of the messages."* It is evident from the remarks that despite Advocate Steel's efforts to persuade the Royal Court that Mr Johnson's role was a limited one, Mr Johnson was treated by the court as the importers "*man on the ground*" and "*the middle man between the importers and customers in Guernsey*". The Court considered that he was fully involved in the distribution of the drugs imported in April, May and July. Also, as I have set out above, they carefully considered the arguments put forward about the extent of his financial gain but concluded that they did not consider that identifying any financial gain in terms of any additional specific amount would materially affect sentence. I would not give leave to appeal if it was being sought only on reasons (a) and (b) as to the quantity of drugs that should have been taken into account in the sentencing exercise by the Royal Court. However, I take the view that it is arguable that the Court erred in its assumption that 50g of ketamine was the amount imported in May. The amount of drugs that were imported in May is unknown. Whilst the defence advocates were unrealistic to argue, at first instance, that no value should be placed on the May importation and subsequent supply, it is arguable that the Court should have treated the May importation as an aggravating feature rather than assign a quantity based on a point between what were, in any event, calculations based on the interpretation of telephone records for the April and July importations or should have used another methodology and thus it is arguable that the sentence was manifestly excessive. Having come to this conclusion I will grant leave to appeal.

Conclusion

11. I grant leave to appeal on both grounds of appeal.

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Jessica E Roland
Deputy Bailiff

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