Leave to refer was granted on the basis that the further discount for personal mitigation rendered the overall sentence of 8 years' imprisonment arguably outside the appropriate range for the serious offending, warranting consideration by the plenary Court. Legal aid was also granted to the respondent for the reference hearing.

IN THE COURT OF APPEAL OF GUERNSEY

(CRIMINAL DIVISION)

Case No. 536

[2025]GCA098

Between:	**HIS MAJESTY'S PROCUREUR**	**Applicant**
	-v-	
	STEVEN BEAUSIRE	**Respondent**

APPLICATION FOR LEAVE TO REFER

Decision on the Papers

Decision of Sir Richard McMahon, Bailiff

Date of Decision: 22nd December 2025

HM Procureur is represented by Advocate L Roffey
Respondent is represented by Advocate S Maindonald

Legislation and cases referred to:

The Court of Appeal (Guernsey) Law, 1961
The Sexual Offences (Bailiwick of Guernsey) Law, 2020
Richards v Law Officers 2000-02 GLR 247
R v King 82 Cr App R 120
Law Officers v Trenchard 2024 GLR 146
Law Officers v Guilbert 2024 GLR 554
Wicks v Law Officers 2011-12 GLR 482
Barras, Watt and Orchard v Law Officers 2021 GLR 374

Introduction

1. On 13 October 2025, the Respondent, Steven Beausire, was sentenced by the Royal Court to a total of 8 years' imprisonment running from 7 May 2024. By an application dated 7 November 2025, signed on behalf of the Law Officers of the Crown by Advocate Roffey, leave to refer these sentences as being unduly lenient pursuant to section 43B of the Court of Appeal (Guernsey) Law, 1961, as amended, is now sought.

2. By a Respondent's Notice dated 19 November 2025, Advocate Maindonald indicated that she wished to make representations on behalf of the Respondent, which were subsequently submitted and are dated 10 December 2025.

3. Both parties are content for the application for leave to refer to be determined on the papers, rather than requiring the Registrar, pursuant to section 43J of 1961 Law, as amended, to take the steps necessary to arrange a hearing.

Background

4. The sentence of 8 years' imprisonment related to two sets of offending, as explained in the sentencing remarks delivered by Judge Fooks on behalf of the Royal Court. Pleas of guilty had been entered in respect of four drug trafficking Counts, the most serious of which was being concerned in the supply of a Class A controlled drug, MDMA. The other drug trafficking Counts related to cannabis, buprenorphine and gabapentin, with cannabis being Class B and the other two substances Class C. The final two Counts related to assault by penetration and sexual touching of a child, contrary to sections 12 and 21 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020.

5. In respect of the four drug trafficking Counts, Count 1 attracted a sentence of 3 years and 4 months' imprisonment, with the sentences for Counts 2 to 4 being shorter and running concurrently. In respect of Count 5 (assault by penetration), the Respondent was sentenced to 4 years and 8 months' imprisonment, with the shorter sentence for sexual touching also made to run concurrently to that sentence. In addition, an extended sentence licence of 5 years was imposed, with additional conditions, a notification period of 10 years was made, the devices used in respect of the drug tracking offences were forfeited and there was no opposition to an order for forfeiture and destruction of the controlled drugs that had been seized from the Respondent. None of these ancillary orders are challenged as being unduly lenient; instead, the focus is on the length of the prison sentence.

6. In the sentencing remarks, the starting point for the lead offence (Count 1, relating to the MDMA) was 7 years, as it fell within *Richards v Law Officers* 2000-02 GLR 247. This initial starting point was increased to 8 years, before considering mitigation, because of the number of drugs involved, previous convictions for possession, supplying the victim of the sexual offences and being subject to an adult custody supervision order and expressly "*with an eye on totality at that point*".

7. In respect of Count 5 (assault by penetration), an initial starting point of 4 years was used. Again, aggravating factors were identified, including breach of trust, intoxication of the victim, the element of fear in respect of the sexual touching and that the final Count took place whilst the Respondent was on bail. As a result, the starting point was increased to 7 years, before considering mitigation.

8. In relation to the pleas on the drug trafficking offences, the sentencing remarks indicate that full credit would be given for the pleas, even though three of them (on Counts 1, 3 and 4) had been entered later than the earliest opportunity, principally because of the need to consider a large volume of text messages. Whilst the sentencing remarks refer to "*full credit*", I am treating that as amounting to a one-third discount for plea.

9. In respect of the Counts under the 2020 Law, these pleas were entered "*at very much or pretty much the last available opportunity*", those pleas being entered on the first day of what was listed to be a two-week trial. The sentencing remarks refer to the "*evidence in relation to the*

assault by penetration" being overwhelming. Accordingly, the discount for those guilty pleas was reduced to 10%.

10. I have considered what else is set out in the sentencing remarks by way of personal mitigation, without needing to repeat them in this decision. In doing so, I have looked at the report from the Probation Service that was before the Royal Court.

Contentions

11. At the end of the application for leave to refer, Advocate Roffey suggests that the overall sentence to be imposed on the Respondent should have been 17 years and 3 months' imprisonment. (This appears to be a miscalculation, because this refers to 11 years and 11 months' imprisonment for assault by penetration where, as I will explain shortly, the suggested revised starting point was 11 years' imprisonment to which a 10% discount for the late guilty pleas followed, making a sentence of 9 years and 11 months' imprisonment. So, I will treat the combined sentence being proposed as one of 15 years and 3 months' imprisonment.)

12. It is suggested that for the four Counts of drug trafficking, the correct sentence would have been 5 years and 4 months' imprisonment, on the basis, it seems, that there was no personal mitigation and the sentence should simply have been reduced by the one-third for the guilty pleas. The application suggests that the revised starting point is not in itself to be regarded as unduly lenient, but that the Respondent "*may be considered fortunate it was not higher*". A similar comment is made in respect of the discount for guilty pleas. The reason for suggesting that the sentence is unduly lenient is that the outcome involved affording the Respondent "*a sentencing discount of nearly 60%*".

13. It is suggested that the revised starting point might have been higher because of the Respondent's "*lack of remorse*".

14. Another of the arguments made is by reference to what is said to be para. 17 in ***Richards*** (although the passage appears to me to be that quoted in para. 18, taken from ***R v King*** 82 Cr App R 120), which deals with the discount to be afforded to an informer, and which includes the passage cited in ***Richards*** about the extent of mitigation for such an informer being "*from about one-half to two-thirds reduction according to the circumstances*". The reason for that level of discount in respect of an informer is set out in the passage in para. 18 in ***Richards*** (although I have slightly expanded it):

> "*The reasoning behind this practice is expediency … It is to the advantage of law-abiding citizens that criminals should be encouraged to inform upon their criminal colleagues. They know that if they do, they are likely to be the subject of unwelcome attention, to say the least, for the rest of their lives. Consequently, an expectation of some substantial mitigation of what would otherwise be the proper sentence is required in order to produce the desired result, namely the information.*"

15. In the application, in respect of the two sexual offences Counts, Advocate Roffey refers to the Sentencing Council Guidelines for assault by penetration and sexual activity with a child. These were referenced in the sentencing remarks, with the comment added that this was "*particularly as to the aggravating and mitigating factors*". In respect of assault by penetration, the Crown failed to provide the fuller version to the Royal Court, which now includes the further information contained in dropdown menus. Advocate Roffey now suggests that making use of this Guideline would mean that harm should have been assessed as Category 2 and culpability within the higher A bracket because the victim was particularly vulnerable and there was abuse of trust. As a consequence, the starting point should have been 8 years within the range of 5 to 13 years' imprisonment. Further, the aggravating factors present should have resulted in an

upwards revision of the 8-year starting point to 11 years. As there was "*very little by way of personal mitigation*", the discount could only be 10%.

16. Although the sexual touching Count was a shorter sentence and running concurrently, Advocate Roffey has dealt with them separately in the application for leave to refer. Because the victim's genitalia and breasts were exposed, he suggests by reference to the English Sentencing Council Guideline that this would be Category 3 harm (although I think he means to refer to Category 2 harm), coupled with culpability A for the same reasons as the assault by penetration. As a result, the starting point by reference to this Guideline would be 3 years' imprisonment, within a range of 2 to 6 years. He further suggests that the aggravating factors present should have resulted in a revised starting point of 4 years, to which the only discount would be 10% for plea.

17. In respect of the test to apply, Advocate Roffey has referred to what was stated in by Crow JA in *Law Officers v Trenchard* 2024 GLR 146, which was cited with approval in *Law Officers v Guilbert* 2024 GLR 554. (Where any case has been reported, it is always preferable to cite the report and not just the raw text judgment.) The relevant passage in *Trenchard* starts at para. 19:

> "*19. The starting point must be to identify the correct trigger of this court's powers under s. 43C. It will be seen from the statutory language quoted above that a reference can be made under s. 43B (with leave) if it appears to HM Procureur that a relevant sentence is unduly lenient. Perhaps surprisingly. S. 43C then confers certain powers on this court without expressly providing that they can only be exercised if this court agrees with HM Procureur that the sentence is unduly lenient. Nevertheless, it is in our judgment clear that that is what the statute intended. It would be perverse to limit HM Procurer's power under s. 43B by reference to a test of undue leniency, but then to confer on this court a power to quash any sentence under s. 43C without being satisfied that it is unduly lenient.*
>
> *20. The next step is to identify an appropriate test for determining whether a sentence is 'unduly lenient'. Any such endeavour must tread a careful path between (on the one hand) imposing an unwarranted gloss on the statutory language and (on the other) leaving the jurisdiction so open-textured that its application would risk being arbitrary and unpredictable. In our judgment, a number of guiding principles should be kept in mind.*
>
> *(i) The first is that, in order to remain faithful to the statutory language, it is plainly not sufficient for this court merely to reach the view that the sentence was lenient: the test is 'unduly lenient', and real value must be given to the word 'unduly'.*
>
> *(ii) The second point is to recognise that this is an appellate court, not a sentencing court. Accordingly, the question in any given case is not whether this court would have passed a different sentence if it had been conducting the sentencing exercise.*
>
> *(iii) The third consideration is to recall the unique legal structure in this jurisdiction, particularly the participation of Jurats, as noted above. That again militates in favour of interpreting the scope of ss. 43B and 43C in such a way as to keep the exercise of this court's powers within appropriately principled constraints.*

(iv) The fourth consideration is that any test must be clear and practical, so that it can be applied readily and predictably in individual cases.

(v) Finally, we are acutely conscious that this is a relatively new legislative regime, and the proper scope of its operation will need to be explored and tested in individual cases over time. It would be unwise to be unduly prescriptive at this early stage.

21. Taking all these considerations into account, in our judgment the appropriate test for deciding whether any given sentence is unduly lenient is to ask whether it was outside the range which the trial court, applying its mind to all relevant factors (and only to relevant factors), could reasonably consider appropriate. In applying that test, although this court will plainly have regard to the process by which the sentencing court arrived at its decision, ultimately the judgment under ss. 43B is made by reference to the overall sentence that is passed."

18. In her written submissions, Advocate Maindonald suggests that the sentencing Court properly considered the aggravating factors and the mitigating factors, including the helpful Probation report. The Royal Court also paid proper regard to the totality principle. Advocate Maindonald has also referred to what was first said in *Wicks v Law Officers* 2011-12 GLR 482 (para. 16) and repeated in *Barras, Watt and Orchard v Law Officers* 2021 GLR 374 (para. 58):

> "*Guernsey is a separate jurisdiction and has its own legal system. It is, therefore, free to set its own sentencing levels as the Island's courts think appropriate for Guernsey.*"

That passage also continues: "*Guernsey no more has to follow sentencing practice in England than it has to follow sentencing practice in Scotland, Northern Ireland, Jersey or, for that matter, France; it can, of course, in exercise of its autonomy choose, but for the same reason of autonomy cannot be compelled, to do so.*"

19. Advocate Maindonald's submissions end with agreeing with the test set out in para. 21 of *Trenchard*, suggesting that the sentence on the Respondent was not outside the range when all the circumstances were considered.

Discussion

20. I am prepared to adopt the test that has been agreed by the Advocates, taken from para. 21 of *Trenchard*, and so to ask myself whether I take the view that the sentence of 8 years' imprisonment falls outside the range that the Royal Court, applying its collective mind to all the relevant factors could impose.

21. In the case of the Respondent, I take the view that it is important to remember that the Royal Court was engaged in two separate, but related, sentencing exercises. Although the first Count (relating to MDMA) was said to be the lead Count, it could equally have been the fifth Count (assault by penetration). However, this matters not, because the two sets of offending resulted in consecutive sentences being imposed for each set of offending.

22. In relation to the four drug trafficking Counts, there is no direct challenge to the revised starting point of 8 years' imprisonment. Similarly, although there is some criticism of the Court affording full credit of one-third in respect of pleas, there is similarly no direct challenge to that aspect of the sentencing process. Accordingly, in respect of the pleas, the revised starting point would have resulted in the sentence to be imposed being reduced to 5 years and 4 months'

imprisonment. In effect, therefore, the challenge is to the further reduction in sentence for personal mitigation.

23. The revised starting point would not be increased because of the Respondent's lack of remorse. The absence of remorse means no more than that this was not a matter that could be taken into account in respect of mitigation. I do not regard this as an aggravating factor but rather something that, if applicable, would be a mitigating factor. To that extent, I disagree with Advocate Roffey's approach.

24. In the application I also take the view that Advocate Roffey has potentially misunderstood what had been explained in ***Richards*** citing ***King***. As I read ***King***, this was a standalone discount to be applied in the case where someone informs on other criminals. That has no relevance to the sentencing exercise that took place in the Royal Court. It is not suggested that the Respondent has informed on anyone. To the extent that Advocate Roffey is using this example by way of an analogy, the discount applicable to an informer is separate from other discounts that would apply, whether for plea or as other personal mitigation. I do not consider that this is a good example to use where it is apparent that it is inapplicable in the Respondent's case.

25. Instead, the focus necessarily has to be on the basis on which, after the appropriate discounts for the pleas, the sentence imposed for the four drug trafficking Counts was further reduced for personal mitigation by 2 years.

26. I further disagree with the suggestion made by Advocate Roffey that the Respondent was entitled to no further discount for personal mitigation. The sentencing remarks set out what was taken into account by the Royal Court. I do not need to repeat the matters that were fully set out in the sentencing remarks in this judgment. It is apparent that the Royal Court was able to find personal mitigation in the Respondent's case, which I consider it was entitled to do.

27. In relation to the two Counts of sexual offending, I am more inclined to agree with what Advocate Maindonald submits relating to these being matters that fall to be sentenced on a Guernsey basis. Indeed, in ***Trenchard***, at para. 14 of the Court's judgment delivered by Crow JA, he commented that:

> "*In broad terms, we consider that the sentencing court is entitled to use such materials from England & Wales, whether case-law or published guidelines or other sources, to the extent that it considers appropriate, not because they are biding or correct but rather because they may provide a useful reference point for the development of local practice. That much was common ground in this case.*"

28. In these circumstances, the Royal Court was not obliged to approach the two Counts by reference to the Sentencing Council Guidelines. They may have assisted, but as the sentencing remarks show, they were used more in relation to the aggravating and mitigating factors rather than offering assistance as to any appropriate starting points.

29. As was also set out in ***Trenchard*** (para. 28(i)), any guideline, including in that case referring to ***R v Milberry*** [2003] 1 WLR 546, does not result in "*a binary choice*", where selecting a starting point within the range of 5 to 8 years was not "*indicative of an unduly lenient approach*". Paragraph 39 confirms the conclusion that the starting point in that case of 6½ years was not unreasonable. Accordingly, a lower starting point for assault by penetration would necessarily follow where the range being referred to started at 5 years' custody.

30. As was explained in the sentencing remarks, for assault by penetration, the initial starting point of 4 years arose because the offence "*is treated as only marginally less serious than rape*". In

those circumstances, I am not persuaded that the starting point selected was an unduly lenient one. The revised starting point took into account the aggravating factors present, as well as the final Count of sexual touching. Whilst the revised starting point might have been higher than 7 years (and the assault by penetration might have been regarded as the lead offence), any mechanistic application of the Sentencing Council Guidelines to alight on appropriate starting points would, in my view, have been inappropriate and the combined starting point would not, in any event, have reached 11 years.

31. Given that the final Count (sexual touching of a child) was sentenced to run concurrently with the Count relating to assault by penetration, the relevance becomes whether the extent of aggravation for the two Counts, along with the other matters identified, to which I have already referred, was sufficient. In effect, it is the combination of the two consecutive sentences for the first and the fifth Counts that produces the overall sentence and how the aggravating and mitigating factors were applied.

32. One element that appears to have been overlooked in the application for leave to refer are the various references the Royal Court made in the sentencing remarks to having regard to the totality principle. In my judgment, where there were two distinct sets of offending put into the Indictment, resulting in two sets of consecutive sentences, this necessarily had to be a matter for the Royal Court to take properly into account.

33. I have, therefore, concentrated on the question as to whether the overall sentence of 8 years' imprisonment imposed on the Respondent falls outside the applicable range for the two sets of offending. I have also concentrated in particular on the reduction in respect of personal mitigation, bearing in mind the totality principle.

34. The approach in relation to the two Counts of sexual offending was first to reduce the revised starting point of 7 years by 10% for the pleas. This would mean the discount was approximately 8½ months, resulting in the sentence being, say, 6 years and 4 months (rounding up) before considering personal mitigation. Consequently, the personal mitigation resulted in the sentence being reduced to 4 years and 8 months' imprisonment, therefore a further discount of 20 months.

35. It must, therefore, follow that the smaller reduction for personal mitigation for the sexual offending Counts, rather than what was applied to the drug trafficking Counts, was a consequence of applying the totality principle or for some other reason. One possible reason is that it was acknowledged by the Royal Court that the Respondent had no previous convictions for sexual offences, but equally the absence of remorse would also result in a lower discount for those two Counts. The sentencing remarks confirm that the Respondent has been a user of controlled substances, including as a form of self-medication, but that, to his credit, he was seeking to address matters, but that alone would not account for the different reductions made for personal mitigation.

36. Even allowing for some discount for personal mitigation, which I consider appropriate, and allowing for the application of the totality principle, I have formed the view that the extent of the discount afforded does take the sentence of 8 years' imprisonment outside the range that all this offending might have attracted. Whilst there is the suggestion from Advocate Roffey that sentences totalling 15 years and 3 months' imprisonment might have been imposed, I regard that proposition as fanciful.

37. However, I do consider that the revised starting point in respect of the sexual offending might have been higher, but possibly not significantly higher, and that the additional reduction for personal mitigation that might otherwise have been the case might have been lower. The combined effect is sufficient for me to conclude that the overall sentences imposed on the

Respondent can be argued before the plenary Court as falling outside the permissible range. However, whether the approach is lenient rather than unduly lenient will be one of the issues for the plenary Court to address. Accordingly, I will grant the leave to refer sought on behalf of HM Procureur.

Conclusion

38. Whilst the Royal Court has carefully taken into account the overall sentence to be imposed on the Respondent for these two sets of offending, and has taken into account the totality principle, on balance I have concluded that the further discount for his personal mitigation is what takes the sentence of 8 years' imprisonment outside the range that was appropriate for all this serious offending. Although it may have been a product of applying the totality principle, to afford the Respondent a further discount after plea of 2 years strikes me as being overly generous. As such, I am satisfied that there is an argument to be put before the plenary Court, even allowing for the element of double jeopardy, that the composite sentence might properly have been longer, which is why leave to refer is granted.

39. In these circumstances, one of the consequences is that I am also prepared to grant legal aid to enable Advocate Maindonald to prepare properly for whenever this reference under section 43B of the 1961 Law can be heard by the plenary Court.