

JERSEY / JUDGMENT

AG v Hagin [2020] JRC 176 (03 September 2020)

[2020] JRC 176

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JUDGMENT

THE BAILIFF: 1. On 4th August, 2020, we sentenced Benjamin Robert Hagin (the Defendant) for seven counts of money laundering, five counts of offering to supply cannabis and one count of possession of cannabis (AG v Hagin

[2020] JRC 157). 2. Counts 1 to 4, Count 6, and Count 11 on the Indictment were related to the moving of criminal property from Jersey contrary to Article 31(1)(d) of the Proceeds of Crime (Jersey) Law 1999 and concerned the removal of cash from Jersey on the dates specified on the counts of the indictment as follows:- (i) Count 1

- 4 December 2018 £10,000 (ii) Count 2 - 16 January 2019 £10,500 (iii) Count 3 - 31 January 2019 £1,980 (iv) Count 4 - 25 February 2019 £10,500 (v) Count 6 - 13 March 2019 £10,000 (vi) Count 11 - 5 April 2019 £10,810 3. Counts 5, 7, 8, 9 and 10 were charges of offering to supply a controlled drug to another contrary to Article 5(b) of the Misuse of Drugs (Jersey) Law 1978 . All related to cannabis resin and specified the following periods. (i) Count 5
- 5 March - 14 March 2019. (ii) Count 7 - 27 March 2019 (iii) Count 8 - 26 March - 29 March 2019 (iv) Count 9 - 26 March - 1 April 2019 (v) Count 10 - 29 March - 1 April 2019 4. Count 12 on the Indictment related to the possession of criminal property contrary to Article 30(1)(c) of the Proceeds of Crime (Jersey) Law 1999 and specifically that on 7th April, 2019, the Defendant had in his possession cash to the sum of £12,690. 5. Count 13 on the Indictment related to the possession of cannabis resin on 7th April, 2019. 6. The Court adopted the conclusions of the Crown and sentenced the Defendant as follows:- (i) Count 1
- from a starting point 5 years imprisonment, a sentence of 3 years imprisonment; (ii) Count 2 - from a starting point of 5 years imprisonment, a sentence of 3 years imprisonment; (iii) Count 3 - from a starting point of 5 years imprisonment, a sentence of 3 years imprisonment; (iv) Count 4 - from a starting point of 5 years imprisonment, a sentence of 3 years imprisonment; (v) Count 5 - 12 months imprisonment; (vi) Count 6 - from a starting point of 5 years imprisonment, a sentence of 3 years imprisonment; (vii) Count 7 - 12 months imprisonment; (viii) Count 8 - 12 months imprisonment; (ix) Count 9 - 12 months imprisonment; (x) Count 10 - 12 months imprisonment; (xi) Count 11 - from a starting point

of 5 years imprisonment, a sentence of 3 years imprisonment; (xii) Count 12 - from a starting point of 5 years imprisonment, a sentence of 3 years imprisonment; (xiii) Count 13 - no separate penalty. Counts 1, 2, 3, 4, 6, 11 and 12 were imposed concurrently with Count 1 and Counts 5, 7, 8, 9, 10 were imposed concurrently with each other but consecutively to Count 1 making a total of 4 years' imprisonment. 7. On the same occasion, we ordered the forfeiture and destruction of the drugs and made a Declaration of Benefit, which was not opposed, in the sum of £4,440 with a Confiscation Order in the nominal sum of £1. 8. At the time of sentencing we indicated that we would provide brief reasons on a subsequent occasion. These are those reasons. 9. The facts of the case were fully set out by the Crown in the Statement of Facts but, in essence, on 7 th April, 2019, the States of Jersey Police executed a warrant issued under the Misuse of Drugs (Jersey) Law 1999 at the Defendant's home address. Entry was forced. A number of items were seized including cannabis resin, drug grinders, weighing scales, a postal receipt, a deal book and sheets, £2,690 in cash and a package containing £10,000 in cash addressed to a third party. A second search was carried out on 7 th April, 2019, and a number of other items were seized including more cannabis, deal lists with figures and initials, a deal list, a Jersey post receipt and a notebook of names and figures. 10. In essence from all of the material obtained, the Defendant's answers in interview and various expert reports relating to drugs matters that we have seen, it is clear that there was a significant money laundering operation dealing with the proceeds of the sale of drugs. From the Defendant's own account he would collect money relating to drugs deals from individuals identified to him and when it had been accumulated to a sufficient sum he would send it in accordance with instructions through the post. The information obtained disclosed a number of these actions and these are reflected by the counts in the Indictment. Count 12 relates to a sum in cash found at the Defendant's premises which was in the process of being sent but had not yet been posted. 11. In addition it was clear that the Defendant was offering cannabis for sale. He did not provide the PIN number for the phone on the grounds that there were personal messages between himself and his girlfriend but it is clear from an examination of the phone that the Defendant was offering to supply cannabis to a number of individuals for payment. As far as the phone discloses there were five individuals to whom the Defendant offered drugs. In interview he answered " no comment " to questions put to him in this area as well as other entries on his phone. 12. The total amount of cannabis resin seized in the Defendant's flat was 3.819 grams. 13. It could not be said that the Defendant was fully cooperative with the Police. He gave some information relating to his habit of bulk buying cannabis for his own use and he did sign a bank authority to allow the Police to access his bank accounts. As explained above, however, he refused to give his PIN number for his mobile phone and gave " no comment " answers to questions relating to the supply of cannabis or the named individuals to whom monies were sent. 14. During one of his interviews he indicated that he had a personal drugs debt of approximately £5,500 from buying cannabis but he had managed to reduce that debt to £3,000 by collecting and sending money on behalf of others. He indicated that for every £1,000 he collected he would get £25 removed from his drug debt and for every package he sent to England he would get a further reduction. He estimated that he had posted

approximately £10,000 to the United Kingdom on five separate occasions. 15. The Defendant does not have a clean record and has some seven previous convictions for 21 offences including, in 2010, possession of cannabis and, in 2013 importation of cannabis. The Defendant on that occasion was dealt with in the Magistrate's Court and was placed on probation for six months. 16. The Social Enquiry Report does not disclose anything of substantial significance in the Defendant's background. He was, however, introduced to alcohol from the age of 14 and he has been using cannabis from a young age. It is clear that his involvement with drugs, as a consumer, has taken place over many years and indeed the Social Enquiry Report assesses him as a moderate risk of reconviction. 17. In moving conclusions, the Crown referred us to the judgment of the Superior Number in AG v Goodwin

[2016] JRC 165 in which the Court considered the principles for sentencing cases of this nature. At paragraph 4 of the judgment the Court considered the English authority of R v Monfries [2004] 2 Cr. App. R. (S) 3, a judgement of the English Court of Appeal, AG V Gomes and others

[2007] JRC 129 and Bhojwani v AG

[2011] JCA 034 and identified the following principles and factors:- (i) There is not necessarily a direct relationship between the sentence of the laundering offence and the original antecedent offence. Where, however, the particular antecedent offence can be identified, some regard will be had to the appropriate sentence for that offence when considering the appropriate sentence for the laundering offence. (ii) The criminality of laundering is the assistance, support and encouragement it provides to criminal conduct. (iii) Regard should be had to the extent of the launderer's knowledge of the antecedent offence. (iv) The amount of money laundered as a relevant factor. (v) Regard should be had to the period of time during which the money laundering occurs. (vi) No distinction should be drawn as a matter of law between laundering one's own proceeds of crime and the proceeds of crime committed by third parties. (vii) A professional money laundering service is not necessarily more serious than laundering the proceeds of a one-off fraud

- it may be so, but each case will depend on its own facts. (viii) The interest of Jersey as a finance centre justifies an element of deterrent. 18. The predicate offence is clearly drug trafficking and given the surrounding circumstances is most likely to be the trafficking of cannabis. The Crown accordingly referred us to Campbell v AG

[1995] JLR 136 . The Crown made reference to the drug experts report and the amount of money that the Defendant sent out to England cumulatively was £66,480 which would equate at today's prices to approximately 4.4 kilogrammes of cannabis. That, according to the Campbell guidelines would indicate a starting point of between 2 and 6 years (for 1 - 10 kilos of cannabis). 19. The Defendant collected all of the money and minded it at his home address, he packaged up and either sent it to England himself or arranged for it to be sent. The Defendant clearly had knowledge of the predicate offence and on his own account he

was paying off his own drugs debt. He was also involved in offering to supply cannabis to individuals. 20. As said above, the total amount involved was £66,480 and it is clear that the Indictment covers a date range from December 2018 to April 2019 and that the Defendant had been involved in laundering the proceeds of crime for some five months. 21. We accepted the Crown's characterisation of the offending against those principles. The Crown also placed before us a number of cases which gave examples of how offending of this nature has been approached by the Court in the past. We do not think it is necessary to refer to those cases as, of course, whilst they were of interest each case turns on its own facts and none of the cases referred to by the Crown purported to set out guidelines as to an appropriate tariff or sentence in a case of this nature. 22. With regard to the possession of cannabis and, more significantly, the offering to supply cannabis, there are no comparative cases. However in the AG v Gilbraith and Rawlinson

[2017] JRC 155 the Court accepted the Crown's conclusions for a 12 month imprisonment was the correct sentence for offering to supply cannabis by an individual who had no previous convictions but, as an act of mercy, imposed a Community Service Order instead. 23. The Defence argued that a five year starting point, based on 4.4 kilogrammes of cannabis resin was too high. It was argued before us, which we accept, that the calculation of an appropriate starting point was not an exact science and further the Defence argued that a greater allowance should have been made for mitigation and was inherent to the Crown's conclusions. It was pointed out that the Defendant had faced threats although it was equally accepted by the Defence that that did not amount to mitigation. We were referred, of course, to the letter of remorse provided by the Defendant to the Court in which he says amongst other things that the only reason he agreed to handle any of the money was because " I had threats made towards myself and my family and also my girlfriend who were all innocent parties..... " The Defendant also had the benefit of positive references from family members and others which described a rather different individual than the index offences suggest. 24. The Defendant also made something of the fact that he had voluntarily attended the Alcohol and Drugs Service following his arrest. This is confirmed by an email from that Service of 22 July 2020 but all it reflects is that the Defendant himself referred to that Department for help and support, was seen on one occasion where he reported he has ceased cannabis use, received information and some support and there were no follow up appointments. It is difficult, therefore, for us to form any view as about this attendance at Alcohol and Drugs Service and certainly does not confirm to us that the Defendant has become free of a habit when on his own admission he had been taking cannabis since he was about 11 years of age. 25. As we have said, the Defendant does not have a good record but he has full benefit for a guilty plea. Although there are positive aspects to his character, as reflected in the letter of remorse which has some value there is no doubt that he was trusted by those higher up the drugs dealing chain with handling substantial amounts of money on their behalf accumulating it and sending it as ordered. He also was involved in the supply of drugs. It is difficult, therefore, for us to accept that the Defendant was a victim in these circumstances. 26. Threats and violence are

frequently found in the world of illicit drugs and the fact that the Defendant may have been subject to threats, which we accept, does not in our view amount to mitigation. 27. Whilst he showed some measure of cooperation he was not fully cooperative with the Police and the investigating authorities. 28. It is correct to say that the identification of the starting point is not a precise science and it is not always directly tied to sentencing for the predicate offence. In this case, however, it is possible to identify with a significant degree of confidence the nature of the predicate offence and the value of the drugs that the monies transferred reflected. In our view there is nothing wrong in principle with the Crown's approach to starting point in this case and we think that the starting point assessed by the Crown is reasonable and appropriate and we adopted it. 29. As the Court has said on a number of occasions money launderers encourage and facilitate the supply of drugs and they are an essential part of that trade. The Defendant was involved in it for a significant period and in substantial sums. 30. The Crown allowed in our view an appropriate discount from the starting point of 5 years in the money laundering offences for the mitigation available. 31. With regard to the offering of cannabis we also agreed with the Crown that the appropriate sentence was reflected in one of 12 months' imprisonment and that should be consecutive to the money laundering offences. They are of a different nature and should attract a separate and therefore consecutive penalty. 32. For these reasons we imposed the sentences of imprisonment set out in paragraph 6 above

Authorities AG v Hagin

[2020] JRC 157 . Proceeds of Crime (Jersey) Law 1999. Misuse of Drugs (Jersey) Law 1978. AG v Goodwin

[2016] JRC 165 . R v Monfries [2004] 2 Cr. App. R. (S) 3. AG v Gomes and others

[2007] JRC 129 . Bhojwani v AG

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