

JERSEY / JUDGMENT

AG v W [2023] JRC 241 (01 December 2023)

[2023] JRC 241

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JUDGMENT

THE BAILIFF: 1. On 3 November 2023, W ("the Defendant") appeared before us to be sentenced with regard to a number of drugs related offences including possession of cannabis with intent to supply and possession of Class A drugs. He also was sentenced with regard to being in possession and control of criminal property and for failing to comply with a notice requiring the disclosure of passcodes to access mobile phones (AG v W

[2023] JRC 206). 2. On 17 May 2022, a member of the public found a package along a farm track on Le Grand Route de St Jean. The member of the public phoned the police shortly thereafter and on attending the officers located a green bin liner containing, within another bag, a small white carrier bag, some foam parcel packaging and three parcels. 3. The packages were examined, and found to be individually wrapped with labels. Each contained individual zip lock bags with a quantity of herbal cannabis within. 4. The Defendant's finger and palm marks were found on this item. There was in total 66.60 grams of herbal cannabis. This cannabis relates to Count 1 on the indictment. 5. On 26 May 2022, officers attended a wooded area in Trinity and a police dog began searching the area. The dog gave an indication and a white package underneath plastic was found. The package was opened and there were a number of other bags within, including tablets, suspected herbal cannabis, vape vials and a bundle of cash. A motion camera set up at the site subsequently disclosed the Defendant walking straight towards the location of the items that had been found by officers. He was arrested and an iPhone that he dropped was seized. 6. In the Defendant's rucksack was a substance believed to be herbal cannabis, a further iPhone and a pair of black gloves. 7. A search of the Defendant's home address revealed, amongst other things, bin bags which were the same make as those in the location found by police officers and a safe which contained expensive watches, a ring, a bracelet and an amount of cash. 8. The Defendant again answered no comment to all questions put to him about both the items found by the police and his mobile phone. He was given a notice requiring the disclosure of the access to his mobile phone but declined to provide it. 9. The substances seized were analysed and were as follows: (i) 6.75 grams of herbal cannabis (Count 5); (ii) 2.4 grams of MDMA (Count 3A); (iii) Not less than 6 grams of a light brown oily material containing Tetrahydrocannabinol (THC) and the traces of other cannabinoids (Count 4A); (iv) 856 milligrams of herbal cannabis (Count 6); (v) 137 milligrams of herbal cannabis (Count 7); (vi) 80 milligrams of herbal cannabis and 22

milligrams of cannabis (Count 7). 10. The total cash seized was counted and amounted to £10,270 and this forms Count 2 on the indictment. 11. The valuation of the controlled drugs is, so we have been advised, as follows: (i) 2.4 grams of MDMA - £80 to £120; (ii) 73.35 grams of herbal cannabis (comprising 66.60 grams plus 6.75 grams as mentioned above) - £2,190 to £2,920; (iii) Not less than 6 grams of the oily material containing THC - £650 to £750 (the drugs set out above in Counts 6 and 7 were not valued because of their small quantity). 12. In interview, the Defendant answered no comment to all of the questions asked of him. The Defendant has continued to decline to provide access to his phones (Count 8). 13. Although the Crown put before us the case of *Campbell v AG*

[1995] JLR 136, the quantities of cannabis involved in this matter fall far below the *Campbell* guidelines and we agree with the Crown that in the circumstances those guidelines cannot be strictly applied. The Crown has submitted to us that the credible explanation for the amount of cash involved is that it was linked with the Defendant's dealing in cannabis, and it was accordingly the proceeds of his own drug trafficking. If that be the case, and as we have said we take the view that it must be the case, we accept the Defendant must be heavily involved in the drug trade if trading on his own account. 14. With regard to the question of possession of criminal property, the Crown put before us the case of *AG v Hagin*

[2020] JRC 176 which itself reviewed other cases such as *AG v Goodwin*

[2016] JRC 165 and identified the following principles, amongst others: "(i) There is not necessarily a direct relationship between the sentence for the laundering offence and the predicate offence. Where, however, the predicate 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 in 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 predicate offence. (iv) The amount of money laundered is a relevant factor.

(v) No distinction is to be drawn as a matter of law between the laundering of one's own proceeds of crime and the proceeds of crime committed by third parties; and (vi) The duration, sophistication and scale of money laundering are also relevant considerations." 15. We have already indicated that the inference that we draw from the cash involved is that it is the product of drug trafficking, and we note the Defendant already has a previous conviction for drug trafficking. There is no doubt that the Defendant must therefore have known that the money derived from drug trafficking. We accept however the offence was relatively unsophisticated. 16. The Crown's approach to sentencing is to move for concurrent sentences with regard to Counts 1 to 7 and therefore increases the starting point from the three years that it otherwise would have been to three years and six months. 17. With regard to the failure to comply with a notice requiring disclosure of pin numbers, The case of *AG v Thurban and Others*

[2020] JRC 212 was cited to us. In that case, the Court said: "The Court agreed with the Crown that there are obvious public policy grounds for imposing a consecutive sentence for this offence if it is to have any traction at all." 18. We, of course, have had regard to the Criminal Justice Young Offenders (Jersey) Law 1994 . The Defendant has failed to respond to non-custodial penalties in the past and has offended whilst probation orders were in force. The Court, pursuant to Article 4 of that Law, is satisfied under sub-paragraphs (b)(i) and (b)(iii), namely that the person has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them and that the offence or totality of offending is otherwise so serious that a non-custodial sentence cannot be justified, apply in this case. 19. It is significant to note that the Defendant approaches the Court on the basis that he does not want to receive a non-custodial sentence. Indeed, his defence counsel spent some time in explaining that this was a considered decision. 20. Even had that not been the case, as indicated above, the Court is satisfied that this matter should be dealt with by way of a custodial sentence. 21. As we have also indicated, the Defendant has previous convictions for possession of cannabis and the importation of LSD, and also has a previous conviction for failing to comply with a notice requiring disclosure of a key to access an electronic device. 22. In the circumstances, the Defendant was fully aware of the consequences of such a refusal and the principle set out in *Thurban* above is entirely applicable and we agree with the Crown that the sentence should be consecutive to the other sentences. 23. We accept that the Defendant has the benefit of early guilty pleas and although he does have the benefit of youth, we agree with the Crown that this is somewhat limited due to his repeated and serious offending. 24. It is perhaps also of some significance to note that the Defendant's philosophical position is that he does not believe that cannabis should be illegal, and he approaches that drug, presumably, with that very much in mind. 25. After careful consideration, in our judgment the conclusions moved for by the Attorney General are entirely correct and appropriate and we sentenced the Defendant as follows: (i) Count 1

- 4 months youth detention; (ii) Count 2 - 2 years youth detention; (iii) Count 3A - 1 month youth detention; (iv) Count 4A - 1 month youth detention; (v) Count 5 - 2 months youth detention; (vi) Count 6 - 1 month imprisonment; (vii) Count 7 - 1 week youth detention; (viii) Count 8 - 1 year youth detention. 26. Counts 1 to 7 inclusive are imposed concurrently, but the sentence on Count 8 is imposed consecutively to the sentence on Counts 1 to 7, making a total of three years youth detention. 27. We simply note that before passing sentence we deferred the question of an application for a confiscation order and matters of forfeiture and destruction to a later date. *Authorities AG v W*

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Prepared on 25 October 2026 · Esheria