

JERSEY / JUDGMENT

The Attorney General v James Andrew Harris

COURT

Royal Court

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Superior Number Sentencing - drugs - supply - Class A - proceeds of crime**[2022]JRC147****Royal Court****(Samedi)****7 July 2022****Before :**

R, J. MacRae, Esq., Deputy Bailiff, and
Jurats Ramsden, Pitman and Christensen
The Attorney General

-v-

James Andrew Harris

Sentencing by the

Superior Number of the Royal Court, to which the accused was remanded by the
Inferior Number on 7th June 2022, following a guilty plea to the

following charges:

1 count of:

Possessing a controlled drug with intent to
supply, contrary to Article 8(2) of the Misuse of Drugs (Jersey) Law 1978
(Count 1).

1 count of:

Possessing or controlling criminal property,
contrary to Article 30(1)(c) of the Proceeds of Crime (Jersey) Law 1999
(Count 2).

Age: 39.

Plea: Guilty.

Details of Offence:	On 25th October 2021, Police executed a search warrant the Defendant's home address ("the property"). A man (not the Defendant) walked out of the property and was stopped and searched by officers and was found to be in possession of £1,120 in cash (in Jersey £20). The Defendant's fingerprint was later found on one of these notes. The Defendant's home address was searched. Officers asked if he was in possession of anything he should not be. He replied that he was, directed the Police to a dressing gown in his father's bedroom in the pocket of which was a wrapped plastic bag containing 6.31 grams of heroin (33% by weight of heroin). The Defendant was arrested. He made no reply to caution. A search of the property was carried
out and several items were seized, including:	i. £1,140 cash from on the top of the bedside table; ii. £1,260 cash from inside the Defendant's waistband of his pyjamas; and iii. plastic bags cut up into deal bags and a set of scales were seized from inside a drawer. During the search the Defendant made the unsolicited comment, "it is what it is" and claimed the drugs were for personal use.
Details of Mitigation:	Guilty pleas, although not at first opportunity. (Plea to Count 1 entered on Indictment (7th January 2022) and Count 2 on 16th January 2022 on a basis that was not accepted, and a Newton hearing was fixed. Full facts plea was entered on 25th February 2022.) Positive references.
Previous Convictions:	53 convictions of which 13 are for drugs offences including possession of a controlled drug (2014), drug trafficking (2008) and importation of heroin (2005).
Conclusions:	
Count 1:	Starting point 7½ years' imprisonment. 5½ years' imprisonment.

Count 2: Starting point 3 years' imprisonment. 2 years and 3 months' imprisonment, concurrent.
Total: 5½ years' imprisonment.
Declaration of benefit in the sum of £9,820, and a confiscation order in the sum of £2,482 sought.
Forfeiture and destruction of the drugs seized sought.

Sentence and Observations of Court:

Count 1: Starting point 7½ years' imprisonment. 4 years and 9 months' imprisonment.

Count 2: Starting point 3 years' imprisonment. 2 years and 3 months' imprisonment, concurrent.
Total: 4 years and 9 months' imprisonment.
Declaration of benefit in the sum of £9,820, and a confiscation order in the sum of £2,482 made.
Forfeiture and destruction of the drugs seized ordered.
Ms L. B. Hallam, Crown Advocate.
Advocate J-A. Dix for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: 1. James Andrew Harris, you are 39 years old, and you have a substantial criminal record, including offences involving controlled drugs. In 2005 you were sent to prison for 2 years for importing heroin. In 2008 you were sent to prison for 7 years for your involvement in an offence involving 1 kilogram of cocaine. Most recently, in 2014, you were convicted of possession of controlled drugs. 2. You have pleaded guilty to possession with intent to supply heroin on the footing that you were given £1,260 in cash as an advance payment for 3.5 grams of heroin at £360 per gram. You were to supply the person who provided you with that cash with heroin from the 6.31 grams found in your possession on arrest. 3. This was a supply for money. Accordingly, it was a commercial supply. Further, a total of £2,400 was found in cash in your bedroom on a bedside table and in your pyjamas when you were arrested. 4. You gave the police access to your mobile phone when required to do so. Your phone showed evidence of drug dealing, but in respect of Class C drugs and not heroin. 5. You pleaded guilty to Count 1 on the indictment when you were arraigned but did not enter your guilty plea at the first opportunity before the Magistrate (and we will return to that). 6. As to Count 2, the offence of being in possession of criminal property, you pleaded not guilty when you were arraigned. Subsequently you changed your plea to guilty, but only accepting at that stage that some of the cash seized from you was representative of the proceeds of crime. Ultimately you accepted that all of the cash, £3,120 was criminal property (the sum to which we referred), and also £1,120 seized from a third

party who had just left your home when the police arrived. 7. The heroin had a street value of some at least £6,300 and was 33 per cent pure, according to the police expert evidence. 8. We accept the Crown's observation that the entire sum covered by Count 2 was connected to your dealing in heroin and that you knew that. 9. In relation to Count 1, we are required to fix a starting point. Having regard to the quantity of heroin and the overall circumstances of this offence, we fix that starting point at seven and a half years' imprisonment.

10. In respect of Count 2, we have regard to the factors set out in the case of *AG v Goodwin* [2016] JRC 165 and make the following findings in relation to these factors: (i) The cash seized was the proceeds of and connected to your dealing in heroin; (ii) These are the proceeds of your criminal conduct; (iii) You were aware of the predictive offence as it was your offending; (iv) The amount of criminal property was £3,250;
- (v) These were the proceeds of your own crime; (vi) This was a relatively unsophisticated operation; and (vii) The final factor we agree is not relevant, but we endorse the Crown's observations that the trading of controlled drugs needs to be deterred.
11. We have also considered various previous decisions drawn to our attention today and, in particular the case of *AG v Harris* [2008] JRC 027, the 2008 sentencing decision when you were sentenced by the Royal Court. The Court observed in that case at paragraph 3 that a previous court had referred to a decision of the English Court of Appeal in the case of *R v Greenwood* [1995] 16 Cr.App.R. (s) 614 in which that Court said: "those who launder money for drugs are nearly as bad as those who actually deal in them, it is merely one step along the line".
12. We endorse that observation and agree with the Crown's starting point of 3 years on Count 2. Indeed, the practice of the Courts is usually to make sentences for money laundering consecutive. The Court could certainly have done so in this case. Having regard to the principle of totality, we will impose a concurrent sentence in relation to the offending on Count 2.
13. As we have said, you entered a not guilty plea when you were arraigned on indictment on Count 2. Accordingly, you do not receive full credit for your guilty plea. It was only when a Newton Hearing was fixed that you finally accepted that all the cash attributable to you was the proceeds of crime.
14. In relation to Count 1, those who wish to receive full credit for pleas of guilty should enter those pleas on the first occasion, generally before the Magistrate's Court. In your case, we reject the assertion that it was appropriate for you to withhold your plea, on the footing that you were waiting for an analyst's report. You knew that the drug in your possession was heroin.

15. However, because of the fact that the Court's decision in AG v Goncalves [2022] JRC 097 had not been published at the time that you withheld your plea and that you did subsequently plead guilty at the first opportunity in this Court, we do give you full credit for your guilty plea.
16. We have read the reports in this case, that of Dr Englebrecht and the pre-sentence report, and know of the difficulties that you have experienced in your life. We have taken into account all that has been said on your behalf by your Advocate today. We do give you additional credit for the matters referred to in the references that we have seen, in particular your work with the Jersey Citizens Panel and the work that you have done with schools. We note the reference from Dr Bailey which speaks of the work that you have done with him to educate teenagers on the problems of substance abuse, and that is commendable. He says that your participation in those talks have been invaluable.
17. For that reason, and the credit we give you for your guilty plea, we are able to slightly reduce the Crown's conclusions. Accordingly, the sentences that we impose is as follows: (i) Count 1, from a starting point of 7½ years' imprisonment, the sentence is 4 years and 9 months' imprisonment. (ii) Count 2, from a starting point of 3 years' imprisonment, the sentence is 2 years and 3 months' imprisonment both to run concurrent giving a total sentence of 4 years and 9 months' imprisonment.
18. We order Dr Englebrecht's report to be released to the prison authorities as requested. Authorities Proceeds of Crime (Jersey) Law 1999. AG v Goodwin [2016] JRC 165. AG v Herd [2021] JRC 223. AG v Le Jehan [2022] JRC 045. AG v Harris [2005] JRC 094. AG v Harris [2008] JRC 027. AG v Goncalves [2022] JRC 097. R v Greenwood [1995] 16 Cr.App.R. (s) 614.

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