



**IN THE RESIDENT JUDGES' COURT OF THE SOVEREIGN BASE AREAS OF
AKROTIRI AND DHEKELIA**

SITTING AT DHEKELIA

Dhekelia Case No: 33/2018

Coram: The Honourable Mrs Justice Janet Waddicor, Senior Judge

THE CHIEF CONSTABLE

-v-

RAFAELLOS KYRIACOU

Accused

Mrs Alki Vakana: Crown Counsel for the Prosecution

Mr Yiannis Polychronis: Counsel for the Accused

18th October 2018

JUDGMENT

1. The Accused appears before this court to be sentenced for one offence of unlawfully possessing a Class B drug (cannabis) with intent to supply to another contrary to section 7 (3) read with sections 5(1), 31, 32 and 33 of the Narcotic Drugs and Psychotropic Substances Ordinance 16 of 2006.

2. The offence was committed on 7 November 2017. The Accused, having entered a plea of not guilty, was due to stand trial on 15 October 2018. On the morning of 15 October, the Accused pleaded guilty. The court granted his request to adjourn sentencing until today 18 October to allow his lawyer to obtain evidence in support of his proposed mitigation.

The facts of the offence

3. On the morning of 7 November 2017, Marios Tofallis was at work using his excavator to clear the side of a road in Ayios Nicolaos in the SBA of Dhekelia when he came across a plastic tool box apparently concealed in some reeds. He stopped the excavator and went to investigate. On opening the box, he discovered 2 transparent plastic bags each containing what appeared to be dried grass. The box also contained three separate unused plastic bags and a roll of plastic bags similar to the two containing the grass. Mr Tofallis drew the tool box to the attention of a work colleague, Loucas Mougkouru, who noticed a pungent smell and thought the contents might be drugs. Both men touched the box and the bags as they inspected them. They reported the discovery to their supervisor who did not touch the box or its contents. All three men then took the box and its contents to the police station at Ayios Nicolaos where the items were immediately seized. A police search of the area conducted the same day revealed nothing. Mr Tofallis and Mr Mougkourou provided their fingerprints and buccal swabs to the police. Both men were later eliminated as potential suspects.
4. On 14 November 2017 the contents of the two plastic bags were examined. The combined weight was 327.9 grams and the substance was identified as cannabis. The expert report of 8 August 2018 states that the cannabis consists of flower buds and is of "*good quality*". The THC content, i.e. the component with psychoactive properties, was 2.26%. That expert evidence is not challenged.
5. There is an issue as to the value of the cannabis. The expert ascribes a value of €20 per gram, giving a total value of over €6,500. The Accused has not advanced a specific value, but common sense suggests that if the cannabis were to be sold on in bulk it would fetch much less than if sold in individual street deals. In the written submissions received today, the Accused appears to be saying that the drugs were worth €1,800.
6. The Accused came to be identified as a suspect as a result of intelligence information. On 6 January 2018 a warrant was issued for his arrest and he was duly arrested on 9 January. The following day the Accused was interviewed by police in the presence of a lawyer, Miss Georghia Andreou. Save for stating that he worked in an hotel in Ayia Napa, the Accused's only reply to questions was that he would say what he had to say in court. When asked specifically if he recognised the toolbox, he requested to consult with his lawyer, Mr Polychronis, who represents him here today. Thereafter in interview, upon being shown the tool box and its contents, the Accused stated

that he did not recognise them. The Accused co-operated by providing his fingerprints and buccal swabs for DNA analysis.

7. The Accused was linked to the cannabis in two ways. Firstly, by mid-January 2018 his fingerprints had been identified on one of the three unused plastic bags and on the roll of plastic bags found inside the toolbox. Secondly, in March 2018 mixed DNA genetic profiles capable of linking the Accused were found on the knots of each of the outer plastic bags and on the knots on the inner bags containing the cannabis. The analysis of the mixed DNA genetic profiles provided no link between either of the two workmen who had touched the toolbox and the bags containing the cannabis.
8. The scientific evidence adduced by the Prosecution was subject to extensive scrutiny on behalf of the Accused, but ultimately it was not challenged.

The role of the Accused in the supply of cannabis

9. The amount of cannabis, just short one-third of a kilogram, together with the roll of bags found in the toolbox indicating that the drugs would be divided up for dealing, point to the Accused having played a significant role in its supply. There is no evidence that the Accused played a leading role and quite properly the Prosecution do not seek to assert that he did so. On 15 October Mr Polychronis said he did not dispute the characterisation of the Accused's role as significant. That might be thought to be somewhat at odds with his written submissions provided today in which he asserts that the Accused was only involved for the period 5-7 November 2017. Nevertheless, I remind myself that the Accused is guilty of only one offence committed on a single day.

Mitigation

10. There are some important points in mitigation. The Accused is a young man – 23 now and 22 at the time of the offence. He has no previous convictions. Notwithstanding a very modest upbringing and a poor education, he has managed to find employment. Since February 2018 he has been employed on a temporary basis as a hotel worker. Payslips for the past 9 months have been provided to the court.
11. Through Mr Polychronis and to Mr Boyiadji the Accused expresses remorse. I am told that he plans to marry his partner, a woman whose background is marked by loss and personal problems. The couple live together. He wants to overcome a history of 4 years of drug misuse.
12. There is a short report dated 16 October 2018 from a Mr Boyiadi who has a qualification in transpersonal psychology and who is an addiction therapist. Mr Boyiadi confirms that the Accused has attended a psycho-educational programme regarding drug use and abuse abstinence over a six-month period. He considers that the Accused is committed to rehabilitation and

abstinence. The Accused's abstinence is self-reported. There is no independent evidence in support. The court has seen one test result dated 15 October 2018 which shows negative results for all the drugs tested. I have been told that the test was a urine test.

13. Finally, the Accused pleaded guilty, albeit on the first day of trial. He will be given credit for that plea. Mr Polychronis has argued that the late plea should not be held against the Accused who was simply acting on legal advice to the effect that the evidence against him was weak. Mr Polychronis asserts that it was only when further fingerprint evidence was obtained on 8 October showing the Accused's fingerprints on the further 2 unused bags that the legal advice changed. I am not persuaded by that submission. The offence is neither complex in law nor challenging on the facts. The Accused knew all along that he had possession of the toolbox containing the drugs. He took a chance that he would get away with the offence. A plea of guilty at an earlier stage would have attracted greater credit.

The approach to sentencing

14. Both advocates have assisted the court by providing submissions and authorities on the approach to sentencing. There are marked differences between, on the one hand, sentences imposed in reported cases in the Republic and in the SBA and, on the other hand, sentences imposed in England and Wales pursuant to the Sentencing Guidelines for Drugs Offences published in 2012.
15. Pursuant to the Second Schedule (section 31) of the Ordinance, the Accused is liable to a sentence of life imprisonment and/or a fine.
16. Section 31 (4) (a) and (b) list respectively various aggravating and mitigating factors to which the court must have regard. Neither list is exhaustive. I am satisfied that none of the listed aggravating factors apply in this case. Of the listed mitigating factors, I take into account all the applicable factors namely the Accused's youth, his willingness to rehabilitate, his professed remorse, the fact that no offence other than drugs was involved, and the absence of any aggravating factors. Mr Polychronis has advanced the following explanation for the offending. He says the Accused accepted the drugs on credit because he owed a debt to other(s) of whom he was in fear. He suggests the offence was prompted by a combination of genuine fear of his suppliers as well as a need to satisfy his own drug habit. I do not consider that those explanations are necessarily truthful or reliable particularly since the Accused's own case is that he has managed to abstain from drugs for the past 10 months. I do not attribute much weight to these explanations for the offending.
17. The Ordinance does not specify any tariffs.
18. By contrast, the Sentencing Guidelines do in effect provide tariffs. A similar offence committed in England or Wales would be classified as a Category 3

(applicable to amounts of cannabis between 101 grams and 6 kg) and significant role. The starting point for sentencing would be 12 months custody with a range of 6 months to 3 years custody. A discount of not more than one-tenth would be given for a plea at trial.

19. The important point is that the Sentencing Guidelines do not apply in the SBA. They may provide a reference point, but they do not provide a starting point. The authorities in the Republic and in the SBA are keen to crack down on the use of illicit substances. Any significant disparity in sentencing between the Republic and the SBA might not only complicate any island wide strategy for tackling drug dealing, but might also produce the unintended consequence of making the SBA more attractive to potential drug dealers.
20. Taking into account all of the circumstances of the offence, and the mitigation detailed above, I am satisfied that the threshold for custody is crossed. If the Accused had been convicted after a trial, the starting point would have been 18 months. From that I allow a credit of 2 months to reflect his plea of guilty and I reduce the sentence by a further 2 months to reflect the less generous provisions for remission of sentence in the SBA and the Republic. Accordingly, the sentence is one of 14 months imprisonment. I have considered with care whether the sentence could and should be suspended. I have considered all the circumstances of the case and the personal circumstances of the Accused and I am driven to the conclusion that only an immediate custodial sentence is justified.

Amendment to correct the reduction to reflect remission provisions

21. The reduction in sentence of 2 months to take account of the different remission provisions is incorrect. In general, in England and Wales for most sentences, regardless of length, a prisoner is eligible for release on licence half way through his or her sentence. Thus, a prisoner sentenced to 16 months would expect to serve 8 months or 243 days. In the SBA, in the case of a sentence of less than 2 years, for a prisoner such as the Accused serving a first or second sentence of imprisonment, the period of remission is 6 days for each completed month of the sentence. The reduction to reflect the different remission provisions ought to be 6 months not 2 months, so 16 months down to 10 months, not 16 months down to 14 months.
22. The sentence is amended to an immediate custodial sentence of 10 months.

Janet Waddicor
Senior Judge