



**IN THE SUPREME COURT OF GIBRALTAR**

2022/CRIM/001

**BETWEEN:**

**REX**

**-v-**

**MAXIMUS AZOPARDI**

**Ishbel Armstrong** (of the **Office of Criminal Prosecution and Litigation**) for the **Crown**

**Shane Danino** (instructed by **TSN**) for the **Defendant**

Sentencing date: 23 November 2022

**SENTENCING**

**YEATS, J:**

1. In an early appearance before this Court, the defendant pleaded guilty to charges of possession and possession with intent to supply a preparation containing 6.42 grams of cocaine, contrary to the provisions of section 506(2) and 506(3) respectively of the Crimes Act. Cocaine is a controlled Class A drug. He also pleaded guilty to the possession and possession with intent to supply a total of 134.69 grams of cannabis resin – cannabis resin being a controlled Class B drug.

2. The facts are these. On the 23 April 2021, at around 10:30 at night, an officer was in the area of Little Bay on traffic duties. The officer saw the defendant walking towards his location. Upon noticing the officer, the defendant turned around and started running in the opposite direction. The officer called to the defendant ordering him to stop and a chase ensued. This ended after the defendant discarded some items into the undergrowth by Camp Bay. A packet of cigarettes containing 10 wrappers of cocaine was found, together with a small piece of cannabis resin. A further piece of cannabis was seized from the defendant's trouser pocket. A set of digital scales was also found in the undergrowth. The total street value of the drugs is said to be between £1,000 and £1,225.
3. The defendant is now 21 years of age. He was a few weeks away from his 20<sup>th</sup> birthday when he committed these offences. He lives with his mother and her husband. He has three convictions for possession of cannabis resin, all of which were dealt with by the imposition of financial penalties.
4. A feature in this case, which unfortunately it has in common with many other cases, is that the defendant's involvement in the supply of drugs was directly linked to his own addiction. He has been consuming drugs from a young age. The effects of his addiction on his well-being and on his relationships with those around him have been laid out by Mr Danino in his written submissions and by Mr Bell, the Probation Officer, in his reports.
5. Initially, the Probation Officer reported that the defendant was unwilling to address his addiction and he was assessed as being at medium risk of re-offending. However, prior to the first sentencing hearing on the 29 April 2022, the defendant was persuaded by his family that he needed to engage and change his path. As a result, the defendant took steps to obtain a place at Bruce's Farm Rehabilitation Centre. I adjourned the sentencing and referred the matter back to the Probation Officer for re-assessment. He was admitted to Bruce's Farm on that same day.
6. On the 1 June 2022, I had the benefit of a further report from the Probation Officer. He reported that the defendant was still at an early stage of his

rehabilitation. He had presented with some challenging behaviours but had demonstrated a willingness to learn and was motivated to change. Having considered the Probation Officer's observations, I deferred sentence until today. It appeared to me that the defendant was attempting to address his addiction and that deferring sentence would give the court an opportunity to monitor this. I imposed two requirements as part of the Deferred Sentence Order. First, that the defendant complete the 12-week program at Bruce's Farm. Second, that he submit to drug testing by the Probation Officer. I indicated to the defendant that, if he completed the program at Bruce's Farm, and if he remained drug free, he would in all likelihood avoid an immediate custodial sentence.

7. In his latest report dated 16 November 2022, the Probation Officer confirms that the defendant completed the program, is actively engaging with supervision, and has tested negative in all 12 drug tests undertaken since leaving Bruce's Farm on the 22 July. The Probation Officer now assesses the defendant's risk of reoffending as "*very low*" - if he continues with his progress.
8. Today in court Mr Bell has said how impressed he has actually been with the defendant and how, in his opinion, the defendant is very committed and engaged.
9. So, how will I deal with the defendant? These are serious charges which ordinarily result in offenders being imprisoned. That said, the defendant has complied with the requirements that I imposed in the Deferred Sentence Order. I will therefore follow the indication I gave on the 1 June and I will not impose an immediate custodial sentence. For the reasons that I will now explain, I will sentence the defendant to 2 year's imprisonment suspended for a period of 3 years.
10. Although not binding, this court ordinarily follows the Sentencing Councils Guidelines for England and Wales. This is provided for by section 484 of the Criminal Procedure & Evidence Act. The drugs guidelines require the sentencing court to make determinations as to culpability demonstrated by

the offender's role and to determine the category of the offence. On culpability, it seems to me that I should classify this as a 'lessor role' case. The defendant told the Probation Officer that he was supplying some friends. There is no evidence of any of the factors present in the higher roles of the guidelines. As to category, this is a street dealing case and therefore a category three. The starting point is therefore 3 years' custody with a range from 2 years to 4 ½ years. As to the cannabis charge, the starting point would be a high-level community order with a range of low-level community order to 26 weeks' custody. (In this case, because of the sentence on the cocaine charge, I am not considering a community order.)

11. In my judgment, this case is so serious that only a custodial sentence can be justified. Having regard to the Sentencing Council's guidelines, the sentence on the possession with intent to supply the cocaine charge, had this case gone to trial, would have been one of 3 years' imprisonment. To that, I have applied a discount of one-third on account of the guilty plea to arrive at a sentence of 2 years' imprisonment. As to the intent to supply the cannabis, the appropriate sentence would have been one 3 months' imprisonment. Applying credit for the guilty plea, I arrive at a sentence of 2 months. Both sentences are to run concurrently. I will impose no separate penalty on the simple possession charges.

12. Importantly, I have considered that the mitigation which is personal to this defendant, and which I have highlighted, is such that I should be suspending the sentence pursuant to section 507 of the Criminal Procedure and Evidence Act. It seems to me that the imposition of the maximum period of 3 years is appropriate taking into account the seriousness of the offences. This will also ensure that, as Mr Bell put it in his last report, he continues along his progressive pathway.

13. The drugs are to be destroyed.

Mr Azopardi the sentence I have passed is one of 2 years' imprisonment suspended for 3 years. A suspended sentence means that you will not go to prison for this offence unless you are convicted of another offence which is

punishable with imprisonment and which is committed during a 3-year period starting from today. If, therefore, you are convicted during this period of another offence which is punishable with imprisonment, the likelihood is that you will not only be sentenced for that further offence but that this sentence will also be activated.

**Liam Yeats**  
**Puisne Judge**

Date: 23 November 2022