

In the Supreme Court of St. Helena

Citation: SHSC 10/2023

Criminal

Sentence

Attorney General

-v-

Rick Thomas

Sentence dated 13th October 2023 (and corrected 10th November 2023)

The Chief Justice Rupert Jones

1. The Defendant, Rick Thomas pleaded Guilty on 30 August 2023 to 3 counts of a 7 count indictment as follows:

Count 1, Cultivation of Cannabis, namely 21 plants on 4th June 2023 at Mulberry Gut, St Helena.

Count 3, Being Concerned in the Supply of a Class B Drug, namely Cannabis .The indictment named the time period for this offence as between 23rd July 2022 and 5 June 2023. However, the Defendant pleaded guilty on the limited basis that it took place between the 23rd November 2022 and 5 June 2023. While the Prosecution do not accept this basis of plea, they accept it would not make any difference to the sentence to be passed.

Count 4, Importation of a Controlled Drug, namely Cannabis into St Helena between 21 January and 3 February 2023.

2. The Remaining 4 Counts on the indictment are to lie on the file.

The Facts

3. On Sunday 4th June 2023 Police attended the Defendant's property to serve a Warning notice upon him in respect of an unrelated matter but he was not at the property.

4. Upon arrival PC Craig Williams noticed a number of small Cannabis Plants growing on the paved area near to the door to the property. A total of 21 plants were recovered, all of which could be described as immature pants with the tallest plant being some 300mm (30 cm). The plants were photographed by PC Williams and identified as Cannabis.

5. It is these cannabis plants to which the Defendant has pleaded guilty to cultivating.

6. The following events describe his involvement in the importation and supply of cannabis.

The defendant's arrest and search of his car and property – 5th June 2023

7. The following day, on 5th June 2023, officers were in the Longwood area with a view to locating Mr Thomas. He was seen driving a Red Ford Fiesta. Officers were in a marked police vehicle. PC Sebastian Williams, on foot, approached the Fiesta on Longwood Green, telling Mr Thomas to remain where he was. Mr Thomas began to drive off, with PC Williams reaching through the open driver's window with a view to trying to stop the car. Mr Thomas continued driving and PC Williams went to ground, narrowly avoiding being run over. The vehicle drove away at speed. Officers subsequently found the car abandoned close to a reservoir at Mulberry Gut.

8. The car was searched and items of relevance were seized including Cannabis seeds, grow bags, a mobile phone and a bank statement which showed that Mr Thomas had a significant amounts of money going in, and out, of his account.

9. Mr Thomas was eventually located and arrested on the Longwood Golf course where again he sought to run off from officers.

10. Having sought authority to search Mr Thomas property a search warrant was executed at this home address. Inside the locked bedroom of his property the officer discovered what can best be described as a typical drug dealers set up.

11. Inside the bedroom officers discovered a quantity of Cannabis bush in a variety of packages with a combined weight of 1.149 kilograms, Weighing scales, over a 1000 small plastic bags, St Helena bank notes and cash total amount £1,041.25 and what appeared to be a “dealers list” of names and initials with amounts next to them.

12. It should be noted that drugs, weighing scales, dealer bags, dealer list and cash were all recovered from the same location, a chest of drawers next to the Defendant’s bed.

13. The Cannabis seized was sealed inside a “Vac-Pac” type package and did not have the appearance of the widely available locally grown cannabis available on-island. Officers had not seen cannabis packaged this way before, nor did Mr Thomas have access to the ability to package drugs in this way. As such it was suspected that the cannabis was imported cannabis. The total weight of Cannabis seized from Thomas address was 1.149 kilograms.

The defendant’s interview, charge and subsequent police action

14. Mr Thomas voluntarily surrendered and was then interviewed on the 5th of June 2023 and provided “no comment” responses. He provided a written statement saying that all items seized were for his own personal use. He did not provide the PIN code for his mobile phone. He said that much of the growing equipment was for use in legitimate business of growing vegetables for onward sale.

15. Following interview Mr Thomas was charged with Cultivation, Possession with Intent to Supply and Dangerous Driving and subsequently remanded into custody at HMP Jamestown where he has remained since.

The financial analysis

16. On the 7th June 2023 a freezing order was placed on Mr Thomas bank account as it was suspected the large amount of cash in his bank was linked to the proceeds of crime. The balance at the point of freezing was, and remains, £18,000.92.

17. Production orders were then issued allowing the police to look at Mr Thomas bank accounts. This led to bank statements being obtained which showed that between 1st August 2020 and 7th June 2023, 18 cash deposits totalling £82,221 were made. Since 30th November 2020 there had however been numerous bank transfers to accounts in South Africa totalling £56,700. Officers sought to ascertain who these payments were made to.

18. A laptop had been handed in to the police by Rebecca Caesar-Crowie, the then partner of Mr Thomas. This has been examined with her consent. An Excel spreadsheet was found which appears to show cash income for the period of 6/02/23 to 16/02/23 which total £4,650. Also on the spreadsheet are a list of names and initials that have numbers after each, suggesting a further dealers list.

Telephone evidence and evidence of island wide drug dealing

19. The phone download contained a massive amount of data, revealing photographs and images on the phone evidencing importation and hundreds of messages which evidence wide scale drug dealing across the island.

20. Messages found on the phone demonstrate that Mr Thomas had been involved in the supply of Cannabis from, at least, November 2022 although it is suspected that his involvement went further back than that given the financial transactions (cash payments since August 2020 and South African payments since November 2020).

21. On 18th November 2022 there were messages from Thomas offering “cape nug” suggestion he was offering Cannabis. On the 23rd November 2022 there was a request for £500 worth of Cannabis from Thomas, and he replies that would get the purchaser 55grams.

22. In January 2023, prior there are a number of messages suggesting that “the shop is closed” and that he had run out of cannabis.

Messages regarding importation of cannabis – 21st January to 2nd February 2023

23. The messages then make clear that Mr Thomas has been involved in the importation of Cannabis from South Africa, via the MV Helena.

24. The phone contained images, sent by Thomas on WhatsApp to another user, showing how to open the Cardinal Light on Rupert's Jetty. This was where the drugs were to be "dropped". The images were sent prior to the arrival of the MV Helena on 21st of January 2023. Indeed, Mr Thomas had a copy of the MV Helena's schedule on his phone. He then, on 19/01/23 sent a Video clip of Rick THOMAS demonstrating how to open and lock the door to the cardinal light.

25. Within Mr Thomas's phone were contacts for South African nationals who, according to the passenger manifest for this voyage of the MV Helena, were on the boat. These individuals were Byron Bester and Wellie Boysie. Phone messages show that on the 17th December 2022 Mr Thomas and Mr Bester negotiated a deal for a Kilo of Cannabis to be provided for £2,500 Sterling.

26. On the 21st of January 2023 Mr Thomas withdrew £3,570 in cash. The MV Helena arrived at St Helena on this date. There were further images of the cardinal light where the drugs were to be dropped taken and sent on this date.

27. There are images of packages which have the appearance of blocks of cannabis. They were taken on the date of the boat's arrival. There are then images of the cardinal light, again seemingly taken on the date of the boat's arrival, which appear to be taken from an elevated position, possibly on board the docked MV.

28. Also on 21st of January 2023 there is a photograph showing large amount of sterling bank notes which is then sent to an unknown 3rd person, seemingly making clear Mr Thomas was in possession of a significant amount of cash. He then went on to withdraw a further £2,212 in cash before the MV departed on the 2nd of February 2023. This was sufficient to have paid for 2 kilos of cannabis at the rate negotiated with Bester who had been on-board the MV.

29. A day after the boat departed Mr Thomas took 6 photos on his phone of packages, seemingly mirroring the packages of the blocks of cannabis taken on the date of the boat's arrival, being weighed on the same set of scales that had been seized from Mr Thomas home address.

30. There were 6 different packages of varying weights totalling 5,705g (5.7kg). Accepting that the packages are wrapped, and that the packaging has some weight in addition to the drugs, this gives an indication of the amount of Cannabis in the Defendant's possession which is estimated to be around 5 kilograms.

Evidence of subsequent supply between January and June 2023

31. Having taken receipt of the Cannabis there are then around 600 messages from the 24th January to the 5th June 2023 that made clear that Mr Thomas had supplied Cannabis to a large number of individuals on the island following the arrival of the shipment on the MV Helena. He begins by sending a message on Facebook saying "shop open" on 24th January 2023 2023.

32. There are then numerous messages arranging deals and meeting locations. These continue right up to the point that Mr Thomas was apprehended by police on 5th of June 2023. Indeed, they make clear that he was in the process of dealing cannabis the very day he was apprehended.

33. When confronted with additional evidence gathered from the mobile phone during a further interview on the 9th August 2023 Mr Thomas answered "no comment" to all questions in interview.

34. He was charged with additional offences of Importation and being concerned in the supply of Cannabis on the same date.

35. Mr Thomas entered a Guilty plea when he was arraigned on the 30th August 2023. That was the 1st time the counts on the indictment were put to him. As above, the prosecution accepted that the remaining counts were to be left on the file.

Profits

36. It was very clear that Thomas was making a significant profit as a result of this operation (£82,000 in cash deposits over three years), and sending large quantities to South Africa (£56,000 sent in payments over three years), to accounts linked to a Leroy Vember.

37. Another individual, Wiseman Mbatha, referred to as "Wise" in messages between Thomas and Vember, has been charged with Money Laundering offences in relation to the assistance he has provided to Thomas in the money being sent to South Africa and Vember,

seemingly with a view to launder using “Forex” – the foreign currency exchange. Mr Mbatha pleaded guilty on 5 October 2023 to money laundering on a basis of plea that he retained and controlled £13,500 but did not profit from it.

38. In terms of his profit from his offending (the importation and supply) this can be established from the evidence gathered as to how much the cannabis cost to import and how much the defendant has sold it for.

39. For the reasons set out later, I accept the crown’s submission that Mr Thomas, during the indictment period profited approximately £32,500 and deal with the evidence for this as part of the confiscation proceedings.

Sentencing guidelines

40. The St Helena sentencing guidelines provide guidance in respect of both Cultivation of Cannabis and being concerned in the supply of cannabis. They do not however deal with importation related offences, and as such, the English guidance will be followed.

Importation offence

41. Dealing with the Importation Offence, the relevant English guidelines address Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug contrary to s.3 of the Misuse of Drugs Act 1971 and section 170 of the Customs and Excise Management Act 1979 –) <https://www.sentencingcouncil.org.uk/wp-content/uploads/Drug-offences-definitive-guideline-Web.pdf>.

42. These English guidelines would cover the equivalent offence in St Helena (section 5 of the Drugs Prevention of Misuse Ordinance).

43. When applying the English guidelines, I make some allowance for the fact that the importation of class B drugs offence carries a maximum sentence of 14 years imprisonment in England and only 10 years in St Helena (see section 6 of the relevant Ordinance). However, I do not make much allowance because the St Helena guidelines for supply, which I will be applying for the corresponding offence of supply, are of an identical length and character as the English guidelines for importation.

44. First, I am satisfied that in this case the Defendant, in assessing culpability, can be said to have played a leading role in directing or organising the importing, buying and selling of cannabis on a commercial scale with expectation of significant financial gain.

45. Based on the all evidence I have outlined earlier, I am satisfied that the Defendant played a leading role in the importation and supply of the cannabis and his role cannot be downplayed as merely significant as the Defence suggest.

46. Even if I were to accept the defence suggestion that the Defendant's importation started mainly for the purpose of recovering his costs for his own addiction, it evolved way beyond that and the Defendant accepts that there was profit arising and following importation, widescale supply.

47. It can reasonably be inferred that he was taking the leading role on island in the importation and supply of the drug. Many of the indicative features from the guidelines indicating a leading role are present in this case:

- directing or organising buying and selling on a commercial scale;
- substantial links to, and influence on, others in a chain;
- close links to original source;
- expectation of substantial financial gain;
- uses business as cover;

48. The features of the lesser 'significant role' from the guidelines are obviously less appropriate:

- operational or management function within a chain;
- involves others in the operation whether by pressure, influence, intimidation or reward;
- motivated by financial or other advantage, whether or not operating alone;
 - some awareness and understanding of scale of operation.

49. I do not accept the defence suggestion that this was not a complex drug trafficking/supply case because it did not involve complex levels of hierarchy. The Defence suggest it was a low level business because the Defendant operated from a single room at his home address, using small household scales to weigh, small bags for packaging, a single mobile phone. It is suggested that the operation is so small in its scope because the defendant knows

each of his customers personally. The Defence argues that these were elements not necessarily found in leading role offenders who often operate with numerous mobile phones, complex supply and delivery models involving numerous foot soldiers far detached from the end user.

50. I do not accept the relevance of this. The reality is that there was a significant level of importation, direct contact and organisation with the exporter from South Africa, which was international in nature, and involved island wide distribution and supply for significant profit. The fact that the defendant's operation did not require further hierarchy beyond himself and the exporters without complex supply and delivery models, or foot soldiers – is not unsurprising. The Defendant's operation reflects that which he needed to for an island population the size of St Helena – further sophistication was unnecessary given the scale of St Helena. The operation was as sophisticated as it needed to be.

51. For all these reasons, when assessing culpability, the importation (like the supply) is properly characterised as an offender take a leading role in complicated, high value drug trafficking matters which must be taken far more seriously than less serious one man operations, where there is a naïve, low value level of offending.

52. Harm should be placed at Category 3 given the starting point is based upon 6kg of Cannabis, even though the amount Mr Thomas had in his possession is slightly below this at 5.7kg including packaging (or around 5kg of the drug). Category 4 relates to much smaller amounts such as 100g of cannabis.

53. Based on leading role culpability and Category 3 harm, I am satisfied that I should apply the starting point for the English sentence at 4 years' imprisonment with a range of between 2 and a half years to 5.

54. When assessing the aggravating features include Mr Thomas's attempts to evade the police. and his refusal to provide the PIN number for his mobile phone which led to delay in proceedings given the phone had to be sent to England for analysis.

55. I also consider the context of this offence in light of the conditions on St Helena for the purpose of aggravation. Whilst Cannabis offences may sometimes be treated reasonably leniently on island, this has often reflected the fact that offending related to locally grown and

sourced cannabis (whether or not it has a lower THC content than the imported cannabis in this case, for which there is no evidence).

56. What is particularly serious in this case is that Mr Thomas opened an international gateway to the importation of what he has clearly seen to be a better quality of cannabis product. He made reference is made to poor quality product not selling and to “Cape Weed”. It is also worth noting that this channel for the supply of cannabis could have been developed to import other equally or more serious prohibited or other illegal substances or items, such as Class drugs A.

57. I also take into the account significant profit and the organised nature of the operation.

58. For all these reasons I am satisfied that the starting point for the English guidelines before the application of any mitigation, and without regard to totality, would be towards the top of the range at 5 years imprisonment. However, I have reduced the starting point of 5 year from the top of the range in the English guidance to 4 years’ imprisonment to take account of the lesser maximum sentence for the offence of importation of class B drugs in St Helena.

59. The starting point is therefore 4 years’ imprisonment for the importation offence.

60. I then turn to the St Helena sentencing guidelines and the starting point for the supply of cannabis.

61. In assessing the St Helena guidance covering the supply of Cannabis, the starting point and range is very similar, if not identical, to the English guidelines for importation. For reasons I have already outlined above, I am satisfied that the Defendant has had a leading role for the purposes of culpability, like he was for the importation, and the harm is to be placed at category 3 on the scale.

62. The starting point and range for the St Helena offence of supplying Cannabis is almost exactly the same as for the importation offence on the English guideline as set out above (four years’ imprisonment starting point with a range of two and a half to five years’ imprisonment).

63. For the same reasons as set out above, I am satisfied that the starting point for the supply of cannabis at four years' imprisonment should apply having regard in addition to the aggravating features.

64. I then go on to consider the mitigation.

65. The Defendant is entitled to full credit and the maximum one third reduction in sentence for his guilty pleas at the first opportunity that the indictment was put to him even though he did not admit the offence in interview. He has a record of offending but no relevant previous convictions for any drugs offences.

66. He has expressed remorse, and I have read the pre sentence report prepared by probation and some character references and letters which speak well of him.

67. I have also taken into account the mitigation developed orally.

68. I accept that the importation and supply – equating to the buying and selling of the cannabis -are inextricably linked and involve the same drugs being supplied as were imported. When considering totality, I am satisfied the sentences for each should run concurrently.

69. Having regard to totality, the least sentence I can therefore pass on each of the offences of importation and supply of cannabis is one of 2 years and 8 months' imprisonment on each offence to run concurrently.

70. In relation to the cultivation, I will sentence on the basis that Mr Thomas was also producing Cannabis as part of his enterprise. I consider the totality principles when sentencing this offence given the immaturity of the plants. I am satisfied that this falls within the classification significant role and at category 4. This offending in isolation would have resulted in a community level starting point but in light of the sentence of imprisonment on the primary offences and the connection to a more serious operation, I am satisfied that I should pass a sentence of one month's imprisonment for this offence to run concurrently with the other sentences.

71.

Sentence of imprisonment

72. Would you stand up please Mr Thomas, for the offences of importation and supply of cannabis, I sentence you to 2 years and 8 months' imprisonment on each offence to run concurrently with a term of one month's imprisonment for cultivation also to run concurrently.

73. That is a total of 2 years and 8 months' imprisonment. The time you have already spent on remand of over 4 months, since your remand in custody on 6 June 2023, will count towards the sentence you will serve.

74. The other orders I make are as follows:

Forfeiture and destruction:

75. In accordance with s.29 of the Drugs (Prevention and Misuse) Ordinance 2003 I order the following property seized by police to be forfeited and destroyed: CW/01 21 Cannabis Plants, CW/02 Plastic Container for Growing Cannabis, SW/01 SW/02 Herbal Cannabis and containers, SW/07 Cannabis Seeds, SW/08 Black and Silver Electronic Scales, SW/09 small plastic bags, SW/23 & 24 Clear Plastic "dealer" bags, JWV/01 Cannabis Seeds, JWV/03 Black Mobile Phone, JWV/08 &09 Black grow bags with soil.

Costs:

76. The cost of prosecuting this case, in particular to the Police, had been substantial such as the cost of sending the mobile phone to the UK for examination. I am aware that the St Helena police budget, particularly when it comes to forensics, is extremely limited. As such the Crown apply for costs in the sum of £1,800 to cover the cost of the forensic analysis plus the shipping cost of £71.22.

77. However, for the reasons set out below, I will be ordering that all of the Defendant's realisable property – his current assets - are to be assessed in the recoverable amount that he is ordered to pay under the confiscation order.

78. By virtue of section 5(5)(b)(ii) of the Drugs (Trafficking Offences) Ordinance, 2003 I must take into account the confiscation order before making any other order for payment against the defendant. For the reasons I set out later, I am satisfied that there would be no excess sums available to the defendant to satisfy any order for costs in addition to the confiscation order. I therefore make no order of costs but the confiscation order in priority to any order for costs.

79. I now turn to the confiscation of the proceeds of crime.

Application for Confiscation of Proceeds of Drug Trafficking (s.5 Drugs (Trafficking offences) Ordinance 2003.

80. Before making any confiscation order under section 5 of the Ordinance, the court must first determine whether the Defendant has benefited from drug trafficking pursuant to s.5(2)-(4):

- (2) The Court must first determine whether the person has benefited from drug trafficking, as explained in subsections (3) and (4).
- (3) A person who has at any time (whether before or after the coming into force of this Ordinance) received any payment or other reward in connection with drug trafficking carried on by that or another person has benefited from drug trafficking.
- (4) If the Court determines that the person has so benefited, the Court must, before sentencing or otherwise dealing with the person in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 8 the amount to be recovered in the person's case by virtue of this section.
- (5) The Court must then, in respect of the offence or offences concerned—
 - (a) order the person to pay that amount;
 - (b) take account of the order before—
 - (i) imposing any fine on the person;
 - (ii) making any order involving any payment by the person; or
 - (iii) making any order under section 29 of the Drugs (Prevention of Misuse) Ordinance, 2003; and
 - (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with the person.

...

In this Ordinance—

- (7)(a) an order made under this section is referred to as a “**confiscation order**”.

81. The burden is on the prosecution on the balance of probabilities to prove that Mr Thomas has benefited from drug trafficking as defined under s.5(2) and/(3) of the Ordinance.

82. Section 6 explains the concept of benefitting from drug trafficking further by explaining how the proceeds of drug trafficking should be calculated:

Assessing the proceeds of drug trafficking

6. (1) For the purposes of this Ordinance—

- (a) any payments or other rewards received by a person at any time (whether before or after the coming into force of this Ordinance) in connection with drug trafficking carried on by that or another person are the person's proceeds of drug trafficking; and
- (b) the value of the person's proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The Court may, for the purpose of determining whether the defendant has benefited from drug trafficking, make the assumptions set out in subsection (3), except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.

(3) Those assumptions are that—

(a) any property appearing to the Court to have been—

- (i) held by the defendant at any time since the conviction, or
- (ii) transferred to the defendant at any time within 6 years before the proceedings were instituted,

was received by the defendant, at the earliest time at which the defendant appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by the defendant;

(b) any expenditure of the defendant since the beginning of that period was met out of payments received by the defendant in connection with drug trafficking carried on by the defendant; and

(c) for the purpose of valuing any property received or assumed to have been received by the defendant at any time as such reward, the defendant received the property free of any other interests in it.

....

83. Thereafter the court is required to determine the amount to be so recovered (s.5(4)), before making an order for the defendant to repay that amount (s.5(5)).

84. Section 8 explains the amount to be recovered further:

Amount to be recovered under confiscation order

8. (1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order is the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking.

(2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 7 or otherwise), the Court may issue a certificate giving the Court's opinion as to the matters concerned, and must do so if satisfied as mentioned in subsection (3).

(3) If the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order is the amount appearing to the Court to be the amount that might be so realised.

...

85. Therefore, under s. 8(1) a confiscation order is to be made in the full amount of the Defendant's benefit (his proceeds of drug trafficking), unless the court is satisfied that the amount to be recovered (the value of the defendant's realisable assets that might be realised and recoverable from him) is less than the benefit (see s.8(3)).

86. While the burden is upon the prosecution to prove the benefit, the burden is on the defendant to prove his realisable assets are less than his benefit from drug trafficking, and if so, the confiscation order is made in the lesser amount.

87. Pursuant to section 7 of the Ordinance, the Prosecution may serve a written Prosecutor's statement setting out its case on the issues of benefit and proceeds of drug trafficking— I am satisfied it has done so by virtue of the sentencing note it has produced. Likewise, the Defence may then be required to reply to the statement in writing with any acceptance of matters made therein being conclusive for the court's determination. The defence sentencing note has made some concessions that there has been benefit in the sum of at least £25,000 but also disputed matters. I address these matters now.

88. Neither party has chosen to serve or call any evidence in these confiscation proceedings as they would otherwise be entitled to do, so there is no need to adjourn for any separate confiscation hearing and I can proceed with the confiscation order at the same time as sentencing (technically section 5(4) requires me to determine the benefit and recoverable amount before any other sentencing).

Benefit from drug trafficking

89. It is not in dispute Mr Thomas benefited financially from Drug Trafficking. As such the court is required to determine to what extent he benefited as the first stage before assessing what is recoverable from Mr Thomas.

90. In the indictment period the Crown say the Defendant has benefited from drug trafficking up to £32,500.

91. The prosecution rely on messages with a contact “C-anna” suggest that 55g will sell at £500 (£9 a gram). This may be a bulk price. As such the quantity seized from the defendant’s home address (1.149 Kilos) would have had a sale value of, at least, £10,445, approximately £9,000 per kilo. The images on Thomas phone of Drugs being weighed post the delivery on the MV Helena suggest a total approximate weight of 5.705 kilos. Whilst it appreciated the true weight would be less due to packaging, an approximate sale figure for 5 kilos would be £45,000. With purchase price of the drugs estimated at £2,500 per kilo the prosecution estimate the Defendant would have profited to the tune of approximately £32,500 on the sale of 5kg (£6,500 per kilo).

92. The prosecution says this figure is supported by the banking evidence in the case. There has been movement of £19,350 out of the Defendant’s bank account and £13,500 in cash handed to Mbatha during the indictment period. The Crown say the large amount of cash withdrawn is likely to have included the £13,500 handed to Mbatha. There is then a total of £14,000 deposited into accounts linked to Leroy Vember in South Africa. These payments in and then out stop in February 2023. It is following that the cash was provided to Mbatha. As such the Crown say the total outgoing through the laundering operation was £27,500. This is not far short of their estimated total proceeds of £32,500.

93. The defence submit that the true benefit from criminal activity is a lesser figure, the total benefit being £25,960.15.

94. They say the benefit from the importation was the resale at £9.00 per gram for 3.273 kilos of cannabis (the reduction from the 5 kilos of the 1.1kg seized at the property and a further allowance of about 700grams for the weight of seeds and stems which could not be sold). This would total £29,460.15.

95. They say that from the sum of £29,460.15 the purchase price of £12,500 must be deducted leaving a total benefit from the criminal activity as £16,960.15. In addition, the Defence say that a further £9,000.00 would be the benefit from supplying the 1kg of unsold drugs which totals £25,960.15.

96. I do not accept either parties’ case in their entirety on the figure for the benefit from drug trafficking but am satisfied the following is proved on the balance of probabilities.

97. First, section 5(2)-(3) & (6) require me to value the proceeds or benefit. I am not satisfied that the parties have applied the statutory definitions of benefit by trying to calculate the 'profit' from the drug trafficking. However, pursuant to the definitions under sections 5(2)-(3) and 6, benefit is not the same as profit and has a wider meaning.

98. The Act defines benefit by reference to payments and rewards. Benefit under section 6(1) is any payments or other rewards received by the Defendant at any time (whether before or after the coming into force of this Ordinance) in connection with drug trafficking carried on by him. This is to be calculated by reference to payments or rewards received in connection with the drug trafficking of which a defendant is convicted – by virtue of section 6(1) but also any transfers, assets or expenditure in the six years prior to the prosecution being brought which is also assumed to be from the proceeds of drug trafficking by virtue of section 6(3) unless demonstrated to be incorrect by the defendant.

99. Second, I am not satisfied that the estimates that the Defence rely upon for making these calculations, of the amount of cannabis sold being only 3.27 kilos is as likely to be accurate as the prosecution figures. I accept there was 5kg of sellable cannabis purchased and imported by the Defendant. I make some allowance for the packaging to reduce the figure from 5.7kg but do not make any further allowance for stems etc. as this is a gross weight of the drug.

100. In terms of the benefit, the figure of 3.85 kilos of cannabis as having been supplied should be used (5kg imported, purchased and supplied minus 1.15kg, imported, purchased then seized) then the figures for the benefit from importation and supply would be £34,650 (3.85 x £9,000). This is the sum of money the Defendant is likely to have received as payment for supplying 3.85kg of cannabis which he had imported – see section 6(1).

101. In terms of the benefit from cannabis imported but not supplied (because it was seized) the drugs seized of 1.15kg should also be taken into account. They do not have a lawful value in themselves but the benefit that can be taken into account is expenditure by the Defendant in acquiring them (1.15kg at a purchase price of £2,500 being £2,875).

102. In determining this value as the proceeds of drug trafficking I apply the assumption in s.6(3)(b) which the Defendant has not proved to be incorrect – '(b) any expenditure of the defendant since the beginning of that period [up to six years before the criminal proceedings

were instituted in June 2023] was met out of payments received by the defendant in connection with drug trafficking carried on by the defendant’.

103. This expenditure of £2,875 on drugs imported, purchased but then seized should be added to the payments received of £34,650 for supplying the drugs which were imported, purchased and then sold.

104. The purchase of 5 kilograms estimated to be at a price of £2,500 per kilo (£12,500 in total) should not be deducted at all because it is the Defendant’s expenditure on drug trafficking which is also assumed to come from the proceeds of drug trafficking as it has not been proved otherwise (see s.6(3)(b)). However, I assume it would be double counting in respect of the 3.85kg which were purchased from expenditure but then sold on and for which payment was received. Therefore, I have only considered the expenditure on 1.15kg as set out above.

105. I am satisfied that it can be assumed that not only the Defendant’s payments received from the imported and supplied drugs are his benefit but also his expenditure on the imported but unsold drugs can be assumed to be as well because the expenditure was met from drug trafficking proceeds. I am satisfied that this does not involve double counting. The benefit from the supply figure is not the total of the benefit which includes his expenditure to purchase imported drugs that had not been sold but were seized. The defendant may well have spent much of his benefit from drug trafficking but if it is no longer available to him in assets that will be taken into account at the second stage of the calculation.

106. These calculations are consistent with a pattern of expenditure and payment received by the Defendant in the three years’ prior to the prosecution. It is apparent that the Defendant has made cash payments into his account in the previous three years since 2020. It is likely that Thomas was making a significant profit as a result of this operation over a number of years (£82,000 in cash deposits over three years), and sending large quantities to South Africa (£56,000 sent in payments over three years), to accounts linked to a Leroy Vember.

107. It is possible that the actual benefit figure may be far higher - if the assumptions under s.6(3)(a)(ii) and s. 6(3)(b) were applied in respect of all transfers and expenditures during the previous three years to June 2020. However, the prosecution has not applied this assumption, so the defendant has not had an opportunity to explain three years’ of payments and

demonstrate why the assumption is incorrect. Therefore, it would be unjust to apply any further assumptions which would increase the benefit figure.

108. Therefore I am satisfied that the correct figure to be ordered as the Defendant's total benefit from drug trafficking (from the importation and supply) is £34,650 plus £2,875 (from the importation) equalling a total of £37,525. This is the value of the total benefit from drug trafficking for the purposes of section 5(2)-(4) of the Ordinance.

The recoverable amount

109. Turning to the recoverable amount (the amount that might be realised of the Defendant), it is clear that the defendant's realisable assets which might be recovered includes the total of what remains in Mr Thomas frozen bank account, £18,000.92, and the cash recovered from his home, £1,041.25. That makes a total of £19,042.17.

110. Insofar as non-cash assets are concerned the prosecution rely on the fact that Mr Thomas has 2 vehicles registered to him on island VRN 1702, a Grey Ford Focus and VRN 2359 a Red Ford Fiesta. It is understood the Focus is off the road, and I accept the defence submission that is worth scrap value only. However the police believe the value of the Fiesta to be between £1,000 and £2,000. I accept the median figure at £1,500.

111. I also accept that some £3,950 in cash was seized from the address of Wiseman Mbatha, who has pleaded guilty to Money Laundering linked to Mr Thomas' offending. This was on the basis that the cash belonged to Thomas. If the court feel able to order that cash be, despite being seized from Mr Mbatha, I am satisfied it was owned by the Defendant despite being seized from Mr Thomas as Mr Mbatha states in his basis of plea. It is evident that cash stems from the offending of Thomas and was part of his realisable assets. That makes a further recoverable amount of £3,950.

112. I am satisfied the Defendant's realisable assets have been proved to be considerably less than the defendant's benefit from drug trafficking (much of the benefit having been spent

115

113. The total recoverable amount (the Defendant's realisable property of cash, bank credits and non-monetary property therefore totals £24,492.17. This is the figure of the recoverable amount for the purposes of section 5(4) and 8(3)

114. I therefore order that the Defendant pay the amount of £24,492.17. I make a confiscation order in that sum for the purposes of section 5(5) and 8(3).

115. The sum is to be paid within six months. There is to be a term of imprisonment of 12 months in default term of payment – see section 9 of the Ordinance (for sums less than £50,000).

Addendum

116. In my sentencing remarks regarding SERGIO VILLATORO BRAN dated 22 September 2023. I noted the following:

‘In conducting this exercise, I have noted the effect of immediate imprisonment on Saint Helena in current prison conditions upon the defendant himself. In *R v Fairclough* :[2021] EWCA Crim 1214 the Court of Appeal approved the sentencing court taking into account the likely effect of that sentence on the defendant and anyone else likely to be directly affected by it and to factor in the conditions in prison brought about by the Covid pandemic when considering the length of any custodial sentence. Although I do not take this into account in the context of length of sentence or whether to suspend sentence, I do note the prison conditions on St Helena due to the current overcrowding, and the long periods that people would be in their cells and isolated. In St Helena, the cells have no natural light, are poorly ventilated and can get very hot, at present there would be 4 to a cell due to the overcrowding – the prison is currently at capacity and full. This should be less of a problem from the end of October 2023 as there will be 6 new beds created but the prison will still be overcrowded. It had a certified normal capacity of 18 persons but that was increased to 24 on 6.10.22 as a temporary measure, so even with 6 new beds being created in October 2023 it will be overcrowded.’

117. In light of the issues of overcrowding and conditions I would like to take this opportunity to draw the attention of the Superintendent to Rule 7 of the Prison Rules 1999 which provides for the remission of sentences for good behaviour on the following basis:

Remission of sentence

7. (1) Subject to this rule the Superintendent may, on account of a prisoner's good conduct and industry while in prison, grant him or her a remission of portion of his or her sentence not exceeding one third of the prisoner's adjudged term, if his sentence is 30 days or more.

(1A) The Superintendent may, on granting remission under sub-rule (1), impose any conditions that appear to him or her to be desirable either generally or in a particular case, and any such conditions may be varied from time to time or cancelled.

(2) A prisoner referred to in sub-rule (1) must be discharged when that part of the adjudged term of his or her sentence less the period of remission has been served.

...

118. I would also like to draw to the attention of the Governor and Visiting Committee, Rule 38 of the Prison Rules regarding early release on licence for prisoners serving a sentence of imprisonment of 3 years or more:

RELEASE ON LICENCE Early release on licence

48. (1) The Governor, if recommended to do so by the Committee in consultation with the Superintendent, may order the release on licence of a person serving a sentence of imprisonment of 3 years or more after that person has served not less than one-third of the sentence.

(2) Any person released on licence under this rule must comply with any conditions from time to time specified in the licence.

(3) A licence granted to a prisoner under this rule may be made subject to any conditions that appear to the Governor to be desirable either generally or in any particular case, and any such conditions may be varied from time to time or cancelled. Before imposing, varying or cancelling any conditions, unless doing so upon the recommendation of the Committee, the Governor must consult the Committee.

Rupert Jones, The Chief Justice

13th October 2023