

**Judgment 64/2005**

**Robert Michael Whelan and Lorraine Dawn  
Cullen – Royal Court (Criminal file 25/2005) –  
10 November, 2005**

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**Importation and possession of Class B drugs – Drug Trafficking Confiscation Order –  
sentencing remarks**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 10th day of November, 2005 before Richard John Collas, Esquire, Deputy Bailiff; present:- David Charles Lowe, Derek Martin Le Page, Alan Cecil Bisson, David Michael Jory, Keith Bichard, O.B.E., Esquires, The Reverend Peter Gerald Lane, Michael Henry de la Mare, Esquire, Susan Mowbray, Barbara Jean Bartie and David Osmond Le Conte, Esquire, Jurats.

In the action of THE LAW OFFICERS OF THE CROWN against ROBERT MICHAEL WHELAN and LORRAINE DAWN CULLEN to see the said Law Officers present an Indictment containing two counts, copies of which Indictment were annexed to the summonses served upon the said accused and have been delivered to Advocates D. Domaille and A.J. Ayres respective Counsel for the said accused.

And the said Law Officers claim costs.

*[See Note of Sentencing Remarks for details of charges]*

WHEREAS on the 16<sup>th</sup> day of September, 2005 the accused Whelan appeared before the Bailiff alone and pleaded Guilty to the two counts in the Indictment and the Court recorded verdicts of Guilty;

AND WHEREAS on the said 16<sup>th</sup> day of September, 2005 the accused Cullen appeared before the Bailiff alone and pleaded Guilty to the two counts in the Indictment and the Court recorded verdicts of Guilty;

THE COURT this day having heard Advocate P. Robey for the Crown and Advocates D.R. Domaille and A.J. Ayres Counsel for the accused Whelan and Cullen respectively and having considered Social Enquiry Reports prepared by Kerry Le Cheminant, Probation Officer FOUND that the accused Whelan:-

1. Had benefited from drug trafficking

2. That the value of his proceeds of drug trafficking was £349.91

3. That the amount that might be realised in his case was £184.91

AND THE COURT accordingly made a Confiscation Order against the accused Whelan in the sum of ONE HUNDRED AND EIGHTY FOUR POUNDS NINETY ONE PENCE (£184.91);

AND THE COURT SENTENCED the accused as follows:-

**ROBERT MICHAEL WHELAN**

In respect of first Count - Four years and six months imprisonment

In respect of second Count - One month's imprisonment consecutive

**LORRAINE DAWN CULLEN**

In respect of first Count - Four years and six months imprisonment

such sentences to reckon from the 18<sup>th</sup> day of June, 2005;

AND THE COURT ORDERED the forfeiture and destruction of the drugs the subject of the charges.

S. M. SIMMONDS  
Her Majesty's Deputy Greffier

## NOTE OF SENTENCING REMARKS

**Robert Michael WHELAN (32) & Lorraine Dawn CULLEN (32)**

**Thursday 10 November 2005**

### **Background**

1. Robert Michael Whelan and Lorraine Dawn Cullen, we are told that you are both 32 years of age and live in the north west of England. Lorraine Cullen you were employed as a cleaner and have no previous criminal convictions. Robert Michael Whelan you were employed as a roofer and have appeared in the English Courts on twelve occasions between 1993 and 2004. You were sentenced for a period of imprisonment in 1997. Your only conviction for a drug related offence was in 1996 when you were fined for the possession of cannabis.

### **Offence**

2. On the first count you have both pleaded guilty to being concerned in the fraudulent evasion of the prohibition on importation of controlled drugs, namely cannabis resin. The quantity involved in the first count was 40 bars of cannabis resin with a total weight of 10.1 kgs. The first count carries a maximum penalty of 21 years imprisonment.

3. Robert Whelan, you have also pleaded guilty to a second count of possessing 0.8 grams of cannabis found in the door compartment of your vehicle upon your arrest.

### **Circumstances**

4. You travelled together on the Condor Ferry from Poole on Saturday 18 June. Concealed in the spare wheel in the boot of your motorcar were 40 bars of cannabis resin. You both state, and the Court accepts, that you were acting as couriers. You were on a short trip to Guernsey, planning to return home the following day. You said the car had been purchased for £350 shortly before the trip. When interviewed by the Probation Officers, you claimed that you would each be paid £2,000 for the trip, the money to be paid to you on your return to England. In addition, you were given £400 to cover the cost of travelling to the Island. You had both agreed to bring Cannabis into Guernsey.

### **Guidelines**

5. In the leading case of *Richards*, the Guernsey Court of Appeal referred to the misuse of drugs as being “*one of the scourges of European society at the present time*”. In *Richards* the Guernsey Court of Appeal laid down guidelines for the Royal Court to follow when deciding what should be the starting point for sentencing, that is the sentence that would be appropriate after a full ‘not guilty’ trial and before any mitigation.

6. For a quantity of cannabis weighing between 10 – 30 kgs, the starting point is in the band of 9 – 12 years.

7. In this case, the Court takes a starting point at 9 years.

8. When looking at the guidelines we remind ourselves that they are not an inflexible code and that sentencing is an art not a science. The weight of drugs involved is just one of the factors for the Court to consider when assessing the extent of your criminal conduct. The part you played, or your role, in the importation is another factor.

### **Drug Trafficking Order**

9. Mr Whelan, the Drug Trafficking Orders sought by the Prosecution are not opposed by you. Accordingly, the Court finds that you have benefited from drug trafficking, that the value of your proceeds of drug trafficking is £349.91. The value of the assets that might be realised in this case amount to £184.91. Accordingly, the Court orders that the amount to be recovered under a Confiscation Order is £184.91.

10. Lorraine Cullen, no drug trafficking benefit has been identified in respect of you so the Court has not been asked to make a Drug Trafficking determination in your case.

### **Mitigation**

11. The Court has taken account of everything that can be taken into account in this case including the very persuasive mitigation pleas put forward by your Advocates, your exceptional family circumstances as detailed in the Social Enquiry Reports and the reference from Mr Whelan's former employer.

12. You have pleaded guilty and the Court has given you full credit for your guilty pleas which have avoided the expenditure of time and money on a full trial.

13. The Court has taken account of the contents of the Social Enquiry Reports. You were both employed and hard working prior to your arrest. Mr Whelan, you are described as having a strong work ethic and place great importance on family values.

14. We have taken note of your respective personal and family backgrounds. We also note the present situation regarding the six children you have between you. The Court notes that you did not seek to involve any of your children in the commission of this offence.

15. Ms Cullen, we have seen the appalling start that you had in life, the circumstances of your relationship with your ex-partner which ended in extraordinary circumstances and the ongoing issues that were mentioned. You were previously of good character.

16. You were both leading a conventional lifestyle until you foolishly agreed to become involved in this importation.

17. You have expressed genuine remorse and acknowledged the responsibility that people like you have for the drug problem in Guernsey. You appreciate the harm that the cannabis that you were importing could have caused to people, including young people, in Guernsey.

18. We are told that both of you have behaved in an exemplary manner while on remand.

### **Sentence**

19. You will both serve the same length of sentence for the first count.

20. Having considered all the circumstances of the case and all the matters I mentioned above, the Court sentences each of you to 4 years, 6 months imprisonment on the first count.

21. On the second count, Mr Whelan, you will serve 1 month and as this is a separate offence it will run consecutively. So the total length of sentence you will serve is 4 years, 7 months.

22. The sentences will take effect from the date of your arrest the 18 June 2005.

23. Finally, the Court orders the forfeiture and destruction of the cannabis seized in this case.