**Judgment 12/2012**

**Robin John Hutchinson v Law Officers of the Crown – Court of Appeal**
**- Criminal File No 399**
**- 7th March 2012**

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**Appeal against conviction – possession of Class B drug – Cannabis Resin – intent to supply – change of plea to guilty – equivocal plea – appeal allowed.**

**IN THE COURT OF APPEAL OF GUERNSEY**

The 7th day of March, 2012 before Dame Heather Ann Steel DBE, presiding, Michael Scott Jones QC and Nigel Peter Pleming QC

**ROBIN JOHN HUTCHINSON**

**(Appellant)**

**-v-**

**THE LAW OFFICERS OF THE CROWN**

**(Respondent)**

In the matter of the appeal, with leave, by the Appellant from the conviction in the Royal Court on 30th July 2009, in respect of the offences of possession of a controlled drug of Class B – Cannabis Resin with intent to supply it to another;

WHEREAS on the 13th day of February, 2012 having heard the Applicant in person and Crown Advocate G Perry thereon;

AND WHEREAS, on the 16th day of February, 2012 THE COURT handed down its decision to ALLOW the appeal and quashed the conviction;

THE COURT this day ISSUED JUDGMENT in the terms attached hereto.

J TORODE
Registrar of the Court of Appeal

**Approved Judgment**
**6 March 2012**

**IN THE COURT OF APPEAL OF GUERNSEY**

**CRIMINAL DIVISION – APPEAL NO 399**

**16 February 2012**

**Before:** **Dame Heather Steel, DBE**
**Michael Scott Jones QC**
**Nigel Pleming QC**

**Between:** **Robin John Hutchinson** **(Appellant)**

**v**

**Law Officers of the Crown** **(Respondent)**

**Advocate M G A Dunster appeared for the Applicant**
**Crown Advocate G Perry appeared for the Crown**

**Authorities and Text referred to: -**
R v Durham Quarter Sessions [1952] 2 Q.B. 1
P Foster (Haulage) Ltd v Roberts [1978] R.T.R. 302, *per* Lord Widgery C.J., at page 310
R v Drew 1985 1 W.L.R. 914
S v Recorder of Manchester, [1971] A.C. 481
Regina v Turner [1970] 2 Q.B. 321, at page 326
George Kelly, Charles Connolly (both deceased) v Regina [2002] EWCA Crim 2957, at paragraph 107
R v Goodyear [2005] 2 Cr App R 20

**Jones, JA**

Judgment of the Court

*Procedural history*

1. On 28 September 2007, following the discovery of a little over 1 kilogram of Cannabis Resin concealed within a Portacabin situated at a storage facility in St Sampsons, Guernsey, the appellant was arrested under the Drug Trafficking (Bailiwick of Guernsey) Law 2000 (as amended), and held on remand. On 2 November 2007, he was charged with the possession of a controlled drug of Class B - Cannabis Resin with intent to supply it to another. A plea and directions hearing was held on 3 July 2008 when the appellant pleaded not guilty. Between the date of his arrest and that date, the appellant was represented by four Advocates. He dispensed with the services of the first in November 2007. The second was engaged in December 2007, but she withdrew from acting in January 2008. The appellant was represented by a third Advocate from March until May 2008 when she was discharged after a disagreement. The fourth Advocate acted for the appellant from July 2008 until January 2009. By letter, dated 22 January 2009, addressed to Crown Advocate Perry, the fourth Advocate

 

explained that he had withdrawn from acting, because his professional relationship with the appellant had broken down. At the pre-trial review which was held on the same day, the appellant was unrepresented. After sundry further procedure, a trial was set down for 29 June 2009. On that day, the appellant appeared in the Royal Court, unrepresented. On 30 June, he changed his plea to guilty, and, on 30 July 2009, he was sentenced to three years three months' imprisonment. The events which took place at the trial and sentencing hearing are more fully described later in this judgment.

2. This matter came before us on an application for leave to appeal against conviction, on a number of grounds. In essence, these were: that the applicant was mentally unfit to plead at the relevant time; that he pleaded under duress; that his plea was equivocal; and that, in the whole circumstances, he was denied his Article 6 right to a fair trial. On consideration of the papers, we were unanimously of the view that the fitness and duress grounds were unarguable, and we refused leave to appeal in respect of them. We took the view that the third ground raised important, albeit very unusual matters for determination and was arguable. It appeared that the fourth ground was related to the third, and we gave leave to appeal on the third and fourth grounds.

*Equivocal Plea*

3. We consider that it would be helpful to set out the law on this element of the appeal, before turning to the relevant facts.

4. Lord Goddard C.J. is credited with having characterised an equivocal plea of guilty as a plea of "guilty, but", which is a useful practical example of a plea which the court ought not to accept without, at least, further consideration. In R v Durham Quarter Sessions [1952] 2 Q.B. 1, a defendant appeared, unrepresented, before a court of summary jurisdiction on a charge of stealing a motor cycle. He pleaded guilty. No evidence was called and the prosecuting solicitor addressed the court on the facts, which the defendant did not dispute. When asked whether he had anything to say, the defendant replied, "*It was a mistake; I thought it was my mate's cycle. My mate said: 'Take it home.' My mate's bike is identical.*" The justices made no alteration in the defendant's plea, heard his record and sentenced him to six months' imprisonment. In due course, an appeal to the appeals committee of Durham quarter sessions against conviction and sentence was successful, and the case was sent back to the justices. That order was made the subject of an application for an order of *certiorari* to bring up and quash the order of the appeals committee and an order prohibiting quarter sessions from further hearing the case. These orders were sought on the grounds that quarter sessions had no jurisdiction to entertain the defendant's appeal against conviction. The Divisional Court held that quarter sessions did have such jurisdiction, and, in the course of his judgment, Lord Goddard said this:-

*"The present is not a case of a prisoner who has unequivocally pleaded guilty and then appeals on the ground that his plea was a mistake; it is a case in which the prisoner at the trial said: "Guilty, but" and added a rider to his plea of guilty which showed that he was really pleading not guilty, and which ought to be interpreted by the court as a plea of not guilty."*

5. In England and Wales, the duty of the court faced with an equivocal plea is to enter it as a plea of not guilty. It has no discretion to do otherwise (P Foster (Haulage) Ltd v Roberts [1978] R.T.R. 302, *per* Lord Widgery C.J., at page 310). In our judgment, that is also the duty of a court in Guernsey in the same circumstances.

6. R v Drew 1985 1 W.L.R. 914 is also a decision of the Court of Appeal in England. Lord Lane followed Lord Goddard in holding, at page 919, that:-

*"An equivocal plea is one qualified by words which, if true, indicate that the accused is in fact not guilty of the offence charged."*

7. The principle which underlies the rule that an equivocal plea of guilty may not be accepted can be understood from a consideration of certain *dicta* of Lord Morris of Borth-y-Gest in S (An Infant) v Recorder of Manchester [1971] A.C. 481. In that case, the appellant, aged 16 at the material time, appeared before a juvenile court on a charge of attempted rape. He consented to be tried summarily, and pleaded guilty. Before the end of the day's hearing, that plea had been accepted and the magistrates had entered a finding of guilt. The hearing was then adjourned for the purpose of inquiry into the appellant's physical and mental condition. At the adjourned hearing, the appellant was legally represented and his solicitor sought leave to withdraw the guilty plea, and to plead not guilty, for reasons that were explained. The magistrates refused the application on the ground that they had no power to grant it. They then proceeded to consider medical reports and made a hospital order against the appellant, under section 60 of the Mental Health Act, 1959. At the heart of the appeal to the House of Lords lay the question whether the magistrates' court had the power to permit withdrawal of the guilty plea at the adjourned hearing. The Judicial Committee held that it did. In the course of his speech, at page 500, Lord Morris of Borth-y-Gest said this:-

*"Though reference is often made to the "acceptance" of a plea there is no necessity for any formal pronouncement. All that is denoted by such an "acceptance" is that a court is proceeding to consider what is the appropriate course to take in regard to a person who, as the court thinks, with full appreciation of what he is doing and with adequate understanding of what is involved in and what are the ingredients of a charge preferred against him,* ***has fully and freely acknowledged and confessed to the court that he is guilty of the charge.****"*
At page 501, his Lordship continued:-

*"If, before the court has completed its task in regard to the case, an application to withdraw the plea is made and if it is made for reasons which the court deems valid and which perhaps it had previously had no opportunity of considering, is the court powerless to accede to it? It would be lamentable it that were so. The court might feel that having regard to the reasons advanced it would be wholly wrong to hold a person to some previous acknowledgment of guilt.* ***The desire of any court must be to ensure, so far as possible, that only those are punished who are in fact guilty. The duty of a court to clear the innocent must be equal or superior in importance to its duty to convict and punish the guilty. Guilt may be proved by evidence. But also it may be confessed. The court will, however, have great concern if any doubt exists as to whether a confession was intended or as to whether it ought really ever to have been made.*** *When, in the present case, the court, on June 20, heard the reasons for the application made to them, they felt, and rightly felt, that the proper course in the interests of justice would be to accede to it. It would be a grave defect in our law and system if there is some rule which thwarts the course which the interests of justice prompt. ... ... (A) finding of guilt may involve reaching a conclusion in regard to disputed or contested facts. It may involve proceeding on the basis of or "accepting" a confession made in court by way of an unequivocal and unambiguous plea of guilty which so far as the court can tell was intentionally made with full appreciation of all that it involved."*
(Emphasis supplied)

8. That a plea of guilty should, as a matter of principle, be capable of being regarded as a confession to having committed the offence is reflected in the terms of the Consolidated Criminal Practice Direction of 28 March 2006, issued by the Lord Chief Justice of England and Wales. Under the heading "*Discussions About Sentence*" the following direction is given:-

"*An advocate must be free to do what is his duty, namely to give the accused the best advice he can and, if need be, in strong terms. It will often include advice that a guilty plea, showing an element of remorse, is a mitigating factor which may well enable the court to give a lesser*

*sentence than would otherwise be the case.* ***The advocate will, of course, emphasise that the accused must not plead guilty unless he has committed the acts constituting the offence(s) charged.***" (Paragraph IV.45, our emphasis)

9. The words in bold are borrowed from the judgment of Lord Parker C.J. in what has been described as the leading case on plea bargaining. (Regina v Turner [1970] 2 Q.B. 321, at page 326, see George Kelly, Charles Connolly (both deceased) v Regina [2002] EWCA Crim 2957, at paragraph 107. R v Turner was later disapproved (in R v Goodyear [2005] 2 Cr App R 20), but on a point that is not relevant to this appeal.)

*The circumstances of the appellant's plea of guilty*

10. When the court convened on the morning of 29 June 2009 and before the Crown Advocate opened his case, the appellant addressed the court, referring to a letter that he had written to the Lieutenant Bailiff, Judge Finch. It appears that the appellant had asked him to "*sort out some issues that still remain outstanding and that I think need resolving before we proceed with the case"*. (Transcript 29 June 2009, page 1) For the purposes of this narrative, it is unnecessary to go into the detail of those issues. Suffice it to say that the appellant expressed concern about certain features of the evidence on which the Crown intended to rely and about his inability to deal with matters adequately without legal representation. Whilst he did not say so in terms, it was clear that the appellant wanted the trial to be adjourned.

11. After hearing the appellant, the Lieutenant Bailiff retired to consider matters. When he came back into court, the appellant advised him that he had "just learnt" from his forensic expert about a number of problems that she was experiencing and which he elaborated. It is clear from the transcript that the Lieutenant Bailiff was anxious that there should be no further delay in going to trial. He said this:-

"*If I were to put this off now we would soon be in the situation where Mr Hutchinson would have served the equivalent of 3 years as an unconvicted person, that is not fair to him, further delay will be deleterious to his rights and our system of justice. I am satisfied, looking at everything, that his interests can be protected by proceeding now and I will ensure he has a fair crack of the whip in putting his case. The bottom line is to ask what is the alternative? An open-ended adjournment would not be in the interests of justice, indeed, it is not likely we could reconvene until next year, looking at the calendar, that is highly undesirable. It is not for me to predict or still less direct the defence, the big issue is the fingerprints, though there are other matters. The Crown will have to prove all the elements of its case but those are the main pillars on which it rests. I consider the Court can deal with that and give Mr Hutchinson a fair trial. The old saying "Justice delayed is justice denied" applies. We will reconvene in a moment with the Jurats and hear the case.*"

12. During an exchange between the appellant and the Lieutenant Bailiff which followed, the appellant became upset, and the court rose to enable "*everyone*" as the Lieutenant Bailiff put it "*to calm down.*"

13. The court reconvened after lunch, at which time the appellant advised the Lieutenant Bailiff that a senior prison officer who was in attendance, Mr Prevel, had telephoned the appellant's forensic expert during the adjournment and had been told that she had been and remained unable to provide a report, because she had not been put in funds by the legal aid authorities and could only accept instructions from a Solicitor or Advocate. During the ensuing dialogue, the appellant expressed his concern about a number of matters, one of which was that his forensic expert had not seen an amended fingerprint report, which the Crown had produced on the Friday of the previous week. That was of some significance because, in answer to a question put to him by the Lieutenant Bailiff, the Crown Advocate confirmed that the prosecution case was based "*primarily though not essentially on fingerprints*". The Lieutenant Bailiff rose once more to consider matters. The court reconvened about twenty minutes later,

when the Lieutenant Bailiff announced that he intended to adjourn the trial until the following morning, to enable enquiries to be made of the appellant's forensic expert.

14. During the hearing before us, Advocate Dunster, who appeared for the appellant, invited us to listen to the audio recording of proceedings. The Crown took no objection. The narrative which follows is taken from the transcript and from what can be heard on the recording.

15. When the court convened on the second day of the trial, the Lieutenant Bailiff came on the bench, alone, and asked the appellant whether there was something that the appellant wanted him to look at. The following exchange then took place (in which the emphasis is supplied by this court):-

*"THE DEFENDANT: Well, not really sir, not to actually look at, just to- I've been up most of the night reflecting on the fingerprint evidence and all that and I'm aware that you've now had some contact with Nikki Smith, [the appellant's forensic expert] is that correct?*

*THE LIEUTENANT BAILIFF: I haven't no, the Greffier has.*

*THE DEFENDANT: The Greffier, sorry, but I know you must be aware that she spent the best part of 12.30 and lunchtime obtaining the necessary documents to compile a report on myself, and to no avail which has proved a big problem for me obviously, and I don't really know where to go from there. On top of that I checked the interview that I mentioned yesterday from November 2nd, when I was interviewed with reference- just before coming into custody, I told you how nervous they were with reference to fingerprints.*

*It turns out that it was more than one print, there was actually a couple of prints around the bag containing the drugs but again these appear to have gone missing, and I have that- it's only a short interview, and I've highlighted them for you, should you want to review them. Again, this highlights again, you know, some of the problems trying to get reports done for me and I still have an outstanding report which is still to be completed.*

*All that said, I then reviewed the forensic guy's notebook and it is clear that he has found prints on these objects but more concerning for me is a couple of areas where he's completely blacked out notes in his book, you know, in his notebook, and I don't even know if that's legal, but it seems an odd thing to do when you're doing forensic work, would it not? I mean, what has he scrubbed out? You know, what's he scrubbed out? This is when he's dealing with forensic work, why are these scrubbed out? What has he scrubbed out? How can I view this and prove my case? Again, this is a serious setback for me, you know.* ***All this said and done, I'm tired, you know, I'm exhausted. I mean, I can't deal with this anymore. I don't have any finances now after I've been up all night to continue these reports and it's a big problem, so I'll change my plea to a guilty one, okay."***

(At this point, it is clear from the recording that the appellant was exhibiting signs of considerable emotional distress.)

*"THE LIEUTENANT BAILIFF: Forgive me, Mr Hutchinson, I'm sorry if I should seem- do forgive me, but just so I heard that right; was it your intention you said to change your plea to guilty?*

*THE DEFENDANT: I'm exhausted, sir. I'm tired of this, I'm trying to- I've reviewed Article 17 last night of the Human Rights as well where it says- it's basically an article about the prohibition of abuse of rights, Article 17, where no one can carry out (inaudible) activity which can bring about the destruction of your human rights, you are fully aware of this. I have highlighted a number of issues, activities and things that clearly destroyed my rights of a fair trial and an ability to defend myself. Nobody fucking listens, you know, nobody listens.*

*THE LIEUTENANT BAILIFF: Well, I've been doing my best, Mr Hutchinson, whether you've agreed with me or not, I am doing my best. You've got to appreciate I am not the judge of fact in this case; it will be for the Jurats when the case proceeds.*

*THE DEFENDANT: Sir, I am so grateful for the time you've given me to express my concerns and the points I've raised. I've been looking at this for 20 months- in my cell 20 months, it's driving me insane. I don't want this anymore-*

*THE LIEUTENANT BAILIFF: Can I just break in with one thing if I may-*

*THE DEFENDANT:* ***Can I just plead guilty, I want to go back to my bed and get some sleep.***

*THE LIEUTENANT BAILIFF: Yes, on that point, is it Mr Prevel, the Senior Officer?*

*THE DEFENDANT: Yeah.*

*THE LIEUTENANT BAILIFF: Yes, I'll tell you what, Mr Hutchinson, look I'm- I'll ask you a couple of questions then I'm going to give you a few minutes again, but can I just get this absolutely right in my own mind, and I'm sorry if it sound repetitious but I've got to make sure that everything is done properly, that's my job as Judge, right?*

*THE DEFENDANT: Yes, sir, yes.*

*THE LIEUTENANT BAILIFF:* ***Now, are you saying you unequivocally plead guilty to the charge?***

*THE DEFENDANT:* ***I'm saying because I am at a clear disadvantage currently to defend myself, I don't have the financial things.*** *The prosecution by removing all the witnesses means that I have to bring them in, I don't have financial sources at my disposal to carry out the necessary reports, forensic reports, fingerprint reports, get any other reports done, so I've done 20 months in prison, my head is shot. I want to plead guilty and put an end to this mental torture. I need to plead guilty, okay. That's final, that's unequivocal, that's clear, no problem.*

*THE LIEUTENANT BAILIFF: Again, forgive me, Mr Hutchinson, because I've got to do my job, you appreciate that.*

*THE DEFENDANT: Yes, sir.*

*THE LIEUTENANT BAILIFF:* ***If you plead guilty I have to make sure otherwise I am not doing my job properly, that you are saying you committed the offence, is that right?***

*THE DEFENDANT:* ***I'll have to plead guilty to that sir, yes.***

*THE LIEUTENANT BAILIFF:* ***You admit you did it?***

*THE DEFENDANT:* ***I'm not saying I admit I did it, I want to plead guilty to put an end to this situation I'm in, sir.*** *I want to put an end to the situation I'm in, sir. 20 months is too much, I don't want this anymore, okay.* ***I want to plead guilty and put an end to this right now, right now. I want to go back and get some sleep, I'm tired, sir, and I appreciate your time and concern, I'm knackered. I need to put an end to this, I can't get a forensic report done, I can't get access to the documentation. These people simply have gone on about disclosure and I don't have the right to everything they've had clear access to. This can't be right, it can't be, I've got- again, I thank you for your time. I don't want to be part of this anymore, I'm tired of trying to climb this mountain without any equipment, you know, I need to go to my bed. I want to go back again.***

*THE LIEUTENANT BAILIFF: Right, just take a seat then for a minute, Mr Hutchinson. I'm just going to pop out in a moment but before that, Advocate Perry, I wonder if you could assist me just on- Mr Hutchinson has indicated his intention. My difficulty, Advocate Perry, is that it would be unjust to proceed on the basis of a guilty plea unless I'm sure that was the right and unequivocal plea. Is that the view the Crown takes?*

*ADVOCATE PERRY:* ***Certainly, sir, and certainly on what Mr Hutchison has said so far it obviously is equivocal.***

*THE LIEUTENANT BAILIFF: Yes, I think what I'm going to do is, I don't want too much pressure on Mr Hutchinson. Mr Prevel, if you wouldn't mind assisting-*

*THE DEFENDANT:* ***No, no, sir, please-***

*THE LIEUTENANT BAILIFF:* ***Forgive me just a second, Mr Hutchinson, okay, then I'll come straight back to you, alright. Mr Prevel in a moment when I've just finished speaking to Mr Hutchinson, pop outside, take a few minutes and have a chat with him and I'm going to come back and speak to Mr, Hutchinson, but you will appreciate the situation. I can't just say because you want to get rid of it, okay, you're guilty and you can go off to prison for a few years, I've got to be clear that is the right plea and it's not under any pressure. Now, Mr, Hutchinson, anything else you want to say to me?***

*THE DEFENDANT:* ***Sir, sir, okay. I plead guilty to the offence, okay.***

*THE LIEUTENANT BAILIFF:* ***Did you do it, Mr Hutchinson?***

*THE DEFENDANT****: [No, no,] I'm not saying [that I] - let me plead guilty please, let me plead guilty, I want this over, can we plead guilty? Please, I want this finished now, right now. I plead guilty to the offence. It was me, it was me, I plead guilty, there you are, okay. It was me, okay. I want to go, sir, I'm exhausted.***"

(The words in square brackets do not appear on the transcript, but can be clearly heard on the recording.)

"*THE LIEUTENANT BAILIFF: I appreciate that but we'll just have another few minutes out before we record it again. Look, pop out with Mr Prevel, I'll pop out as well. I'll just rise now, Members of the Court. Would you come through, Greffier, please. I'll have a word with you outside, Greffier. Perhaps, Officers, when Mr Prevel's had his chat you could let Mr Yabsley know and I'll come back in. Thank you very much.*"

16. There was then a short adjournment. In our view, by that stage, two facts were clear. The first is that the appellant appeared to be under severe pressure. That emerges from the words he used, but it is dramatically underlined by his distressed state, as can be heard on the recording. We also have the benefit of the recollection of Mr Prevel, who was asked by the appellant's representative to give an account of his involvement with the appellant when asked to assist. We are told that, in a letter, dated 22 June 2009, he reported as follows:-

*"on the second day ... ... he started to pace about the dock and was displaying the full range of emotions from anger to tears of frustration. I tried to calm him but he then requested to change his plea. Having pinned his hopes on help from Mr Finch it seemed as if it dawned on him Mr Finch was unable to delay the trial or get the report he required "the dam burst!". It was as if he could take no more emotionally, he was not his normal self, in control, and sure of what he wanted ... ... Mr Hutchinson had lost all self-control ... ... During the adjournment I tried to calm him but it was as if he was broken emotionally. He cried and he beat the walls with his fists*".

17. The second fact which, in our opinion, clearly emerges is that the appellant's wish to change his plea was not born out of an intention to confess to having committed the offence. That is clear from the answers which the appellant gave to the questions which were put to him by the Lieutenant Bailiff. In response to "*You admit you did it?*" and later "*Did you do it?*", an unequivocal answer would have been "yes" to both. To the first, however, the appellant answered "*I'm not saying I admit I did it, I want to plead guilty to put an end to this situation I'm in, sir*" and to the second he replied "*No, No, I'm not saying that I ... ... - let me plead guilty please, let me plead guilty, I want this over, can we plead guilty?*"

18. In our opinion, therefore, this was not "*a confession made in court by way of an unequivocal ... ... plea of guilty".* (S v Recorder of Manchester, page 502A) What was unequivocal was that the appellant wished to plead guilty. In our judgment, there is a critical difference between the two. Recalling the words of Lord Morris, the desire of any court must be to ensure, so far as possible, that only those are punished who are **in fact** guilty. This appellant's manifest reason for pleading guilty was that he wanted the proceedings brought to an end. In the whole circumstances, the Lieutenant Bailiff was not entitled to conclude that the appellant had, by that stage, "*fully and freely acknowledged and confessed to the court that he is guilty of the charge*." (*ibid*, page 501C) The question that arises, therefore, is whether circumstances changed.

19. When the court reconvened, the following dialogue ensued:-

*"THE LIEUTENANT BAILIFF: Right, Mr Hutchinson, you've had a word with Mr Prevel, is there anything else you want to say?*

*THE DEFENDANT: No, I just want to plead guilty, if that's okay.*

*THE LIEUTENANT BAILIFF: Yes, but you'll appreciate I'm not doing this for fun;* ***are you saying it's down to you, you are guilty?***

*THE DEFENDANT:* ***Sir, sir, I appreciate you do things by the book, I appreciate the time you've given me from yesterday and this morning. Okay then, it's me, I want to plead guilty****.*

*THE LIEUTENANT BAILIFF:* ***You are guilty then?***

*THE DEFENDANT:* ***I'm saying I'm guilty, sir, yes****.*

*THE LIEUTENANT BAILIFF: Very well, thank you, Mr Hutchinson.*

*THE DEFENDANT: Thank you.*

*THE LIEUTENANT BAILIFF: Thank you. Mr Perry- I beg your pardon, Mr Hutchinson, sorry?*

*THE DEFENDANT: How long before we can get this back to Court, could we deal with it- a Probation report or something could be done in no time, couldn't it? I just need this over and done with, you know.*

*THE LIEUTENANT BAILIFF: Yes, I was-*

*THE DEFENDANT: Could you deal with this soon?*
*THE LIEUTENANT BAILIFF: If- I'm just going to have a word with the Crown first, if you'll give me a moment, Mr Hutchinson. Advocate Perry, again can you assist the Court as an administrator of justice in this case because Mr Hutchinson isn't represented. In view of the*

*form of words just used do you think that remains unequivocal- is it equivocal or unequivocal?*

*ADVOCATE PERRY:* ***Sir, certainly the words Mr Hutchinson has just used would be unequivocal, the problem, sir, is what's been said before.***

*THE LIEUTENANT BAILIFF: Yes, okay. Thank you, Advocate Perry.*

*ADVOCATE PERRY: Sorry, sir, I can't be of any more assistance.*

*THE LIEUTENANT BAILIFF: No, any assistance is appreciated.*

*THE DEFENDANT: Sir, sir, you know, the- I'm going to be found- I've chosen to plead guilty and it doesn't really end here, does it, once I've dealt with this then we'll have financial reports then I can't get an Advocate for this, so what's going to happen then. Do you see the problems that I have, it's not just about this, it's about the forthcoming you know, it's about everything, you know. It's going to continue, isn't it?*

*THE LIEUTENANT BAILIFF:* ***I've still got to be absolutely sure in my own mind that it's an unequivocal- that the plea is meaningful and it's the right plea. I have to be just to you.***

*THE DEFENDANT:* ***I'm pleading guilty because I need to plead guilty, it's me, okay. Is that alright, is that okay? That's unequivocal, I'm not emotional now. I'll say it's me, it's me.***

*THE LIEUTENANT BAILIFF: Very well, Mr Hutchinson, would you take a seat then, please. I just think for the record to mention, this is a case which has been going on for some time. Mr Hutchinson, and I made the point yesterday and I repeat it, I'm not ascribing any fault to him at all, has had the services of four different Advocates and also there have been a total, I'm adding them up including the last one, of twelve Plea and Directions hearings and the case was committed according to my note back on 2nd June 2008, so it's been before the Court quite a bit. Advocate Perry, again, is there anything else in view of what I've just heard from Mr Hutchinson that you'd like to say to me?*

*ADVOCATE PERRY: Nothing sir.*

*THE LIEUTENANT BAILIFF: Very well. (Pause)*

*I'm just reminding myself in case I've forgotten of any points of law here. (Further pause) I will read out for the record what Blackstone's Criminal Practice says about what it calls ambiguous pleas just so that's on the Court record and the reference is Blackstone (2009) D12-93 and I will read this out, I accept it's English authority but on the whole it applies to Guernsey:-*

> *"If an accused purports to enter a plea of guilty and either at the time he pleads or subsequently in mitigation qualifies it with words to suggest he may have a defence, e.g. guilty but it was an accident or guilty 'but I was going to give it back' then the Court must not proceed to sentence on the basis of the plea but should explain the relevant law and seek to ascertain whether he genuinely intends to plead guilty."*

*Then ignoring a paragraph based on English Law:-*

> *"Should the Court proceed to sentence on a plea which is imperfect, unfinished or otherwise ambiguous the accused will have a good ground of appeal since the defect in the plea will have rendered the original proceedings a mistrial, the Court of Appeal will have the options either of setting a conviction and sentence aside and ordering a re-trial or simply quashing the conviction."*

 

*So that's why, just on Mr Hutchinson's basis I've been so very careful, because of the law, and it may be very painful, Mr Hutchinson, but* ***I understand from what you've said you unequivocally plead guilty?***

*THE DEFENDANT:* ***Yeah, yeah, if that's okay with you, yeah.***

*THE LIEUTENANT BAILIFF: Very well. Probation can normally do a report, Greffier, though we don't have a fixed date when there is a custody case for four weeks?*

*H.M. DEPUTY GREFFIER: Yes, sir, I think it would probably be from 30th July onwards.*

*THE LIEUTENANT BAILIFF: Well, as soon as they do it we'll get it in, okay, and the remand date will be notified. Order a Probation report, do the case as soon as possible and then we will proceed to sentence on the basis- I repeat, Mr Hutchinson, you must be tired of hearing this,* ***you do unequivocally plead guilty?***

*THE DEFENDANT:* ***I do, yes, thanks again.***

*THE LIEUTENANT BAILIFF:* ***And you're clear in your mind that's the right thing to do?***

*THE DEFENDANT:* ***Yeah****.*

*THE LIEUTENANT BAILIFF: Okay. Remanded then, thank you, until sentence.*

*THE DEFENDANT: Thank you.*"

20. At that point, the appellant was taken off. After a short exchange between the Greffier and the Lieutenant Bailiff, he was brought back on, the indictment was formally put to him and he was asked "*is your plea one of guilty or not guilty"*, to which he replied "*guilty"*. The sentencing hearing was then set for 30 July.

21. In our judgment, nothing that the appellant said after the court reconvened amounted to a confession of guilt. In answer to the question "*are you saying it's down to you, you are guilty?*" he might have replied "yes", but instead said "*Okay then, it's me, I want to plead guilty*". The Lieutenant Bailiff appears to have been in some doubt as to the meaning of that answer and asked "*You are guilty then?*", to which the appellant replied "*I'm saying I'm guilty, sir, yes.*" At that point in the exchange, the Lieutenant Bailiff asked the Crown Advocate, "*In view of the form of words just used do you think that remains unequivocal- is it equivocal or unequivocal?*" In our opinion, Advocate Perry was well founded in replying, "*Sir, certainly the words Mr Hutchinson has just used would be unequivocal, the problem, sir, is what's been said before.*" Further, in our view, the "problem" was not likely to be resolved by continued discussion. The appellant had made it clear from the outset that he wished to plead guilty in order to "*put an end to this mental torture*". The Lieutenant Bailiff made it clear to him that a guilty plea could only be accepted if it were unequivocal. Unsurprisingly, the appellant himself used that word to describe the plea that he was offering, in his effort to persuade the Lieutenant Bailiff to accept it.

22. During the hearing of this appeal, Advocate Perry was asked by the court when it was that the plea offered by the appellant, which in the Crown's view had been equivocal, became unequivocal. He replied that it did so when the appellant replied "guilty" after the Indictment was formally put, at the end of the proceedings on 30 June. In our opinion, that response does not withstand scrutiny. The appellant wished, indeed was begging to plead guilty in order to bring the proceedings to a conclusion as soon as possible. From what the Lieutenant Bailiff had been saying, it was obvious to the appellant that proceedings would not come to an end unless, in answer to the formal question put to him in respect of the Indictment, he gave the

formal, unqualified answer that the Lieutenant Bailiff clearly needed from him to justify concluding the proceedings. There is no doubt that, when looked at in isolation, the answer "guilty" to the question "*is your plea one of guilty or not guilty*" is unequivocal, but it cannot be understood to have decontaminated what had gone before.

23. There were further significant developments in the case between the conclusion of the hearing on 30 June 2009 and the sentencing hearing, but we pause at this stage to consider the position in which the Lieutenant Bailiff found himself. It is right to acknowledge that he was faced with a very difficult problem in a highly emotionally charged atmosphere. The appellant was clearly at the end of his tether, expressed himself to be exhausted and wanted, as he saw it, to bring an end to his misery. It is likely that the Lieutenant Bailiff felt a great deal of sympathy for the appellant. We have no doubt, however, that the guilty plea which the appellant was offering did not constitute a confession to having committed the offence with which he was charged and that the Lieutenant Bailiff was bound, in law, to reject it. As it was put in P Foster (Haulage) Ltd v Roberts, he had no discretion to do otherwise.

24. Recognising that the appellant claimed to be, and on all of the indications was, exhausted, and that he "*want(ed) to go back to (his) bed and get some sleep*", consideration ought to have been given to adjourning the trial until the following day to allow him time to compose himself and give further consideration to his position. Given that the appellant's expressed desire to plead guilty had been taken in unsatisfactory circumstances without the benefit of legal advice, some thought should have been given to affording him the opportunity to take legal advice on the implications of pleading at that stage on, for example, the length of sentence that his plea would be likely to attract. Such an adjournment would have allowed him to discuss his decision to plead guilty with family and friends.

*Events following the acceptance of the guilty plea*

25. On or about 20 July 2009, the appellant wrote to the Bâtonnier. What follow are extracts from that letter with emphasis added and typographical errors reproduced as present in the original:-

*"I write to your because my current situation is now even more desperate than when I contacted your deputy several weeks ago. I am still without any form of legal representation, it's vitally important that you are informed of the reasons why I am currently without representation. … …"*

26. There then followed a number of complaints about the quality of his representation with which this judgment is not concerned, and the letter continued:-

*"Maybe with your intervention a more pro-active and willing advocate can be appointed. There are severe time constraints on this matter as* ***I am due back before the Royal Court on the 30th of July, where I intend to change my plea back to a not guilty plea,*** *and I fully expect a trial date sometime in 2010 as stated by Judge Finch.*

*I hope that this matter can be resolved without any additional delays and a suitable advocate can be appointed for my defence. I have no access to legal documentation or books and this further cement's my view that only an experienced advocate can deal with the serious issues involved in this case.*

*I look forward to hearing from you by return, in the meantime … …"*

27. Thereafter, the appellant wrote to the Lieutenant Bailiff, on or about 27 July. That letter was copied to the Crown Advocate on or about 28 July. Extracts from that letter are reproduced below, with added emphasis (except where otherwise indicated) and with typographical errors as present in the original:-

*"I write to you out of sheer desperation and frustration with regard to the ongoing events in the case being presented against me. I am struggling to maintain my sense of purpose and being, my mental and physical demeanour is rapidly deteriorating and I am on the verge of a complete breakdown.*

*… …*

*I enclose a copy of a letter sent to the Bantonnier, advocate John Greenfield* [which we take to be the letter of 20 July] *along with two doctors letters dated the 29th of August 2008 addressed to Advocate Ayres and a letter dated the 12th June 2009 addressed to the prison governor, also enclosed is a letter from Nikki Smith of Biomark Forensic Limited, my independent forensic expert dated the 29th of June 2009, responding to a request from the court on the 29th of June 2009.*

*I also enclose a response received from the Bantonnier, dated the 23rd July 2009, I would confirm that when I changed my plea on the 30th of June 2009 the feeling of helplessness was overwhelming, so much so that I was reduced to tears before you and the court, I have no access to legal books, no advocate; through no fault of my own and was totally dependant upon you Sir; to uphold the law. I was not fully aware of my actions and emotionally unstable, however after some time to reflect and after dialog with family, friends and the probation service,* ***I give formal notice that on the 30th July 2009; I intend to reverse the decision to plead guilty and I will be offering a not guilty plea.***

*I am aware that by pleading not guilty the court case could well be delayed into 2010 to suit the courts current commitments, however this will give me time to fully instruct an advocate and the forensic experts needed to* ***mount my successful defence*** *and deal with legal arguments that I am simply not qualified to do.*

*With your indulgence I have set out the issues as I see them and a summary of events leading to this letter."*

28. There then follow 6 pages of A4 typescript, headed "Précis of the evidence against me", in which the appellant mounts a detailed challenge to that evidence under eight separate headings followed by a further two pages in which the first heading is "Evidence for my defence". In the course of that analysis, the appellant makes the following assertion, which suggests that he did not commit the offence with which he was charged:-

"*I put it to you sir that* [certain tests] *were not carried out because they would have identified the guilty parties as being Le Flock and Besnard, and that would have been somewhat embarrassing for high-ranking police officers."*

29. Finally, under the heading "Possible Sentence", the appellant wrote:-

- *"Sir, on the 30th of June 2009 in the Royal Court you stated that this is just a 30-month sentence and that I had already served 20 months on remand, and this was your reason for wanting this case resolved. If 30-months is the actual sentence for 1 Kilo of cannabis, then this 21 months of torture / remand would be over, and I should walk from court a free man.*
- *The crown in passing sentence, I hope takes into account the tortuous time spent on remand, the incredibly weak case of the prosecution; that only exists because the defence work is incomplete, i.e. forensic work of Nikki Smith.*
- *The 21 months on remand has been nothing short of emotional and mental torture, I need to have this resolved for my own sanity and well-being.*
- *Sir, a Portuguese couple recently appeared before your court for sentencing, their crime was the importation and internal concealment of 1.4 kilos of cannabis resin their sentence was only two years, of which they will serve no more than 16 month's.*

 

- *Sir, having served 21 months on remand and as you stated this is only a thirty month sentence, in the event that I should receive a greater sentence, then I have missed the opportunity to be granted release on parole, missed the opportunity to be released on work party ROTL, factors I trust that will be considered when this comes before you.*

*In short the facts of this case, the appalling investigation, fabricated forensic work, cutting of evidence bag by states analyst has all the hallmarks of a* ***set up*** *and a clear* ***miscarriage of justice****.* (Original emphasis)

*Sir, the chain and continuity of evidence has been broken time and time again, further it is clear that there has been a deliberate contamination of exhibit RJB/263/280907/1E thus rendering this exhibit inadmissible, again* ***I cannot argue these legal points and desperately need the advice of an advocate, or you Sir; to apply the law and direct the court accordingly.***

*Sir, I have on numerous occasions discredited the evidence being used against me by the crown only for that evidence to suddenly be removed from the case. In doing so showing that my human rights and right to a fair trial are being compromised* ***Sir, I have had no access to legal books and very little help from advocates supposedly assisting with my defence, so I have to rely on you to apply the law.***"

30. Enclosed with that letter was a number of documents, including two doctors' letters. The more recent of these, dated 12 June 2009, was written by the Guernsey Prison General Practitioner and was addressed to the Prison Governor. It was in these terms:-

"*I would like to express my concern over Robin Hutchinson's deteriorating mental state which appears to have been brought on by his extremely long time spent on remand. He has been seen regularly by the Healthcare team over his 19 months in prison and his mental health appears to be deteriorating. He is extremely angry and frustrated and also at times quite tearful. As you know, he is a proud man who refuses tranquilising or antidepressant medication, but he has recently agreed to see the new counsellor. Ultimately, however his mental health can only be improved by resolution to his legal predicament and I wonder if there is any pressure that you can bring to bear on the legal Establishment to bring his case-to a speedy conclusion?*"

31. A further document which we consider to be of importance in this appeal is the probation report, dated 27 July 2009, which was before the court on 30 July. That contains the following passages:-

*"Offence Analysis*

1. *The defendant had maintained a not guilty stance throughout a remand period of approximately 21 months. A trial was set for the end of June this year. The defendant had experienced various frustrations in retaining an advocate and thus finally appeared before the Court in June 2009 unrepresented. In view of this he feels he has had very limited opportunity for professional preparation of his case. The defendant has expressed extreme frustration at his position and limited ability to defend himself/present mitigation. It is not for the Probation Service to comment on the reasons for this lack of representation, and I am not fully clear as to the reason for this, however, I am concerned at this position.*

2. *Against this background he entered a guilty plea at the commencement of the trial as he wished the case to proceed.* ***At that time he reports feeling very depressed, emotional and somewhat powerless and says he could not face a further indeterminate remand whilst seeking representation.*** *It is not the purpose of the Social Enquiry Report to comment on the cause for those delays. I am aware that over*

*the preceding months there have been concerns expressed within the Prison/Prison Healthcare as to the defendant's deteriorating mental state, seemingly as a consequence of the protracted nature of this case. In August 2008 and June 2009 his G.P. wrote to Advocate Ayres and the Prison Governor respectively expressing concern at this.*

3. *There is little realistic comment I can make in respect of the specific details of the offence.* ***In interview with me the defendant maintains his innocence****. That is a matter for the Court and defendant to resolve.*"

32. We have already expressed the view that the Royal Court ought not to have accepted the appellant's plea of guilty. In our opinion, the foregoing material, which was before it on 30 July, raised of new the question whether that plea was truly a confession of guilt or, rather, whether it was offered in order to bring proceedings to an end.

*The sentencing hearing*

33. On 30 July, the Lieutenant Bailiff came onto the bench alone. The following is taken from the transcript:-

"*THE LIEUTENANT BAILIFF: Okay, I've come out, Mr Hutchinson, on my own even though the Jurats are here to see if there are any points you'd like to make to me before the Jurats come in; is there anything you'd like to say, please?*

*THE DEFENDANT: Sorry?*

*THE LIEUTENANT BAILIFF:* ***Anything you'd like to say before I get the Jurats in, please?***

*THE DEFENDANT:* ***Well, no, I sent you a pretty comprehensive file a couple of days ago.***

*THE LIEUTENANT BAILIFF: Yes, I've had that.*

*THE DEFENDANT:* ***And I don't really know where we go from here. I mean, I don't know if you've had any thoughts on what you've read or?***

*THE LIEUTENANT BAILIFF: Well, have you got any applications to make, is there anything you'd like me to do today?*

*THE DEFENDANT:* ***I don't know the procedures, Mr Finch, I haven't got a clue what this is all about. I said on 30th when I entered by guilty plea I was pretty- pretty run down, you know, at the end of my tether. After proving that most of the forensic work put together by the Crown Prosecution was false and some of the evidence had been tampered with I had hoped that you would sort of come to my aid, I've got no Advocate, I don't know the legal procedures, I've not had access to any legal books or anything to defend myself, I'm totally reliant on you as I stipulated in the letter to you.*** *However, I found it necessary to send what I thought were the facts of the case because on 30th you said a number of things which needed to be looked at, you know, I felt.* ***You said you didn't know the case as well as the Crown Advocate, was one of the points you made, so I found it was necessary to send you the case as I saw it, and had hoped that on reviewing it you would have some advice for me today. I'm pleading guilty because after 21 months I do need this resolved, but I believe there are some serious issues there, there has been tampering with evidence.*** *I don't know what avenue to go down or how to challenge these points legally. I don't know how to challenge them. The last Advocate that I had adjourned this case for seven months specifically to get the forensic work completed, that didn't happen or materialise through no fault of my own. On 29th at your request, she was contacted, a forensic expert, and she quite clearly demonstrated that through no fault of mine that she was unable to compile a report on*

*my behalf because she simply hadn't been sent the necessary files by the Advocates despite making numerous requests.* ***I mean where does that leave me? You know, this leaves me completely helpless here before you. It's a pretty daunting task to take you guys on but nevertheless after 21 months from a prison cell with limited access I have proved that pretty much 98% of what they had against me was false. The only thing I have to contest what they have against me is that a kilo of cannabis has been found in an unsecure container inside F & B Blasters, yeah?*** *Those premises are owned by Le Flock and Besnard who have a history of previous convictions, who have been done for perjury in the past; further searches of their homes have revealed more drugs, more money, growing equipment and there's been a genuine lack of interest in them for some reason, why is that, I don't know. I sort of expressed that and gone through this in that file to you and I need your help, I need your help to help solve this and resolve this.* ***If you think that tampering with evidence and doing this that and the other, how can the FSS produce a false report for the Crown and they hold that against me for 20 months? I don't understand how this can take place, sir, you know. If it's acceptable then fine, I need this resolved and I will continue with the guilty plea and just sentence me but these points I can't argue, I don't have an Advocate, through no fault of my own.*** *Advocate Ayres was asked simply to compile a report, a forensic report on my behalf, he adjourned the case and he was allowed to adjourn it for seven months from June 3rd and July 3rd 08 through to the end of January 09. Nobody has brought him to task, he is not accountable, it's my fault for some reason for simply asking "When is it going to be completed?" I don't know why I'm being hounded like I am,* ***I don't know why I'm treated like I am, I'm trying desperately, sensibly, to defend myself and it simply isn't possible at the minute and I don't know why, I don't know why. I'm at a loss to deal with this.***

*THE LIEUTENANT BAILIFF:* ***Well, I'm prepared to have the matter dealt with today, Mr Hutchinson, with the Jurats, and hear what the prosecution have got to say and what you've got to say and proceed to sentence.***

*THE DEFENDANT:* ***And that's okay?***

*THE LIEUTENANT BAILIFF: Well-*

*THE DEFENDANT:* ***In view of what I've just said, I'm on about the tampering of evidence, there are issues there that really need sorting out, could you assist me with this issue? If there is no assistance that you can offer, sir, then fine, let's proceed, but I'm a little shocked that these people can do what they want and not be made accountable. You know, if I was to bring this before the Court I'd be done for perjury, wouldn't I? If I was to bring false documents to the Court and give evidence with those which they would have done had I not pleaded guilty. I brought it before- asked the Jurats to leave on 30th to save anybody any embarrassment, you know what I mean, in an attempt that, you know, that commonsense would prevail. It just hasn't happened, why not?***
*THE LIEUTENANT BAILIFF:* ***Can I just ask so I've got it clear in my own mind, please, are you maintaining or not maintaining the plea of guilty you gave last time we were here when we went into it in a lot of detail?***

*THE DEFENDANT:* ***Well, I'm asking, Mr Finch, is there any assistance you can give me with some of the legal points that I've put to you in that file. I've asked for some help today again, with reference to this tampering of evidence, with reference to these false documents, is it acceptable to hold this against a man and keep a man in prison for 20 months before he pleads guilty, is it acceptable in your eyes, that's what I'm asking?***

*THE LIEUTENANT BAILIFF: Well, that's a bit of a "When did you stop beating your wife" question, isn't it, do you see what I mean? I mean, I don't have access to the prosecution files and as the Judge, I have a very limited role in the case, you understand that?*

*THE DEFENDANT: Yeah, but I mean, there is- I was overwhelmed with a feeling of helplessness on 30th because –*

*THE LIEUTENANT BAILIFF: Yes, but you must admit, Mr Hutchinson, I gave you a pretty fair run on that day and we went into it very thoroughly, didn't we?*

*THE DEFENDANT: I'm- I'm not doubting what you done, I'm referring to my guilty plea, I exposed a few things in my opinion that are totally wrong. The legal points I can't argue, sir, and it is pretty the feeling of helplessness was just overwhelming, you know.* ***Okay, I need this resolved for my own sanity today, if you want to proceed with the guilty plea that's fine, but on that day you said "This is a 30 month sentence" you know "1 have to take that into account" effectively I've done it if that's the truth. You also said "If it doesn't proceed today it's next year before you go up again."*** *This is pretty heavy stuff to deal with in a split second, you know, with no legal arguments or whatever, you know, that would have meant 28 months on remand, you know.*

*THE LIEUTENANT BAILIFF:* ***Yes, exactly, and I want to avoid that by dealing with the case today. That's what I think is the fairest possible way otherwise you're going to be in for too long on remand.*** *It will be a very bad thing in my view if you serve effectively with remission, accepting that you'd get remission, your whole sentence and then- or more of it- and then the case comes up, you see what I mean?*

*THE DEFENDANT: Yeah, no, I completely agree but, you know, it- I was just concerned about what we uncovered on 30th.*

*THE LIEUTENANT BAILIFF: Yes.*

*THE DEFENDANT: And it appeared to go- you simply allowed the prosecution to remove it, which seems absurd to me, I'm just a layman here, you're the professional, I don't know but to produce a false document for a Court to hold a man in prison for 20 months with those reports and then simply go, when you asked him "Have you got anything to say, Mr Perry?" there was nothing, you said nothing, you said "No, sir, nothing" It seems absurd that they can be not made accountable for this. If it was me or anybody else in this Court bringing those sort of documents to a Court to suddenly reveal that they are actually not correct, false, or whatever, we'd be made accountable for it.*

*THE LIEUTENANT BAILIFF: Okay, if you'd just give me a moment.*

*Advocate Perry, on behalf of the Crown, what is your view on the point made by Mr Hutchinson, which I think I've heard before but he's made it again today, on the falsification of documents?*
*ADVOCATE PERRY: Well, sir, certainly as far as the prosecution are concerned full disclosure has been made. No false documents have been used as part of the prosecution case, sir. I can only restate the position of the Crown.*"

(There was then a brief discussion about court microphones.)

"*THE LIEUTENANT BAILIFF: … … well I've heard what the prosecution defence (sic) are going to say and I'm going to get the Jurats in, Mr Hutchinson, and I'm going to see how I'm going to proceed today.*

*THE DEFENDANT: No, no, that's fine. I just- listen, I don't have any problem with you, sir, or anybody else in this Court, I just need a bit of clarity on what I consider to be some serious problems with it. You will proceed, I need this resolved, let's go ahead and get it done, but em.*

*THE LIEUTENANT BAILIFF: Well, if you'll excuse me for a few minutes and I'll get that arranged.*

*THE DEFENDANT: Yeah, sure, yeah."*

34. The court then reconvened with Jurats present. Advocate Perry set out the Crown's position, after which the appellant was asked:-

"*Mr Hutchinson, is there anything you'd like to tell the Jurats before we go out and decide on the sentence, please?*"

The appellant's response was:-

"*Not a great deal apart from it's, you know, the only thing I was unable to contest in this case were the fingerprints, okay. The fingerprints are on my property. There was somebody else's DNA present in that container. That was another issue that could have been dealt with but after 21 months I simply need this resolved, you know, and there were a large number of issues that could have been dealt with, haven't been dealt with, basically, I'm taking responsibility for that kilo, okay. I'm quite happy with that.*"

35. After an adjournment, the court pronounced a sentence of three years and three months' imprisonment, with effect from 2 November 2007.

36. A number of comments fall to be made about the events leading up to, and what transpired on, 30 July. The appellant had written to the Bâtonnier saying, in clear terms that he intended "*to change [his] plea back to a not guilty plea*". The court had a copy of that letter. He had written to the Lieutenant Bailiff giving "*formal notice that on the 30th July 2009; [he intended] to reverse the decision to plead guilty and [would] be offering a not guilty plea*". In the probation report that was before the Royal Court on 30 July, it was recorded that the appellant maintained his innocence. These documents are the context in which what was said by the appellant on 30 July is to be understood. On that day, the appellant began by looking to the Lieutenant Bailiff for guidance on what he should do, "*I don't really know where we go from here. I mean, I don't know if you've had any thoughts on what you've read or? … … I'm totally reliant on you as I stipulated in my letter to you. … … I need your help, I need your help to solve this and resolve this. If you think that tampering with evidence and doing this that and the other, how can the FSS produce a false report for the Crown and they hold that against me for 20 months? I don't understand how this can take place, sir, you know. If it's acceptable then fine, I need this resolved and I will continue with the guilty plea and just sentence me but these points I can't argue, I don't have an Advocate, through no fault of my own. … … I'm trying desperately, sensibly, to defend myself and it simply isn't possible at the minute and I don't know why, I don't know why. I'm at a loss to deal with this.*" As we have seen, the Lieutenant Bailiff responded by saying that he was prepared to have the matter resolved that day, to hear the prosecution and to proceed to sentence. In our judgment, the appellant's riposte, "*And that's okay?*" signified his consternation at what the Lieutenant Bailiff was proposing, and was followed up by the words, "*If there is no assistance that you can offer, sir, then fine, let's proceed, but I'm a little shocked that these people can do what they want and not be made accountable*."

37. At that stage, the Lieutenant Bailiff asked what we consider to have been an appropriate question:-

"*Can I just ask so I've got it clear in my own mind, please, are you maintaining or not maintaining the plea of guilty you gave last time we were here when we went into it in a lot of detail?"*

In reply, however, the appellant simply repeated his request for help from the Lieutenant Bailiff. The Lieutenant Bailiff explained, quite rightly, that there was a limit to what he could do to help, and at that point the appellant began to discuss sentence. That is an important passage in the dialogue, because the appellant asserted, wrongly, that on 30 June the Lieutenant Bailiff had expressed the view that "*This is a thirty month sentence".* That was an echo of what the appellant had said in his letter, dated 27 July, in which he had concluded that "*If 30-months is the actual sentence for 1 Kilo of cannabis, then this 21 months of torture / remand would be over, and I should walk from court a free man.*" In our judgment, the Lieutenant Bailiff ought not have let pass the appellant's assertion that, on 30 June, he had been told that "*this is a thirty months' sentence.*" In the event, as we have seen, the appellant was sentenced to 39 months' imprisonment.

38. We have recorded in paragraph 34 above that, when given the opportunity to address the Royal Court before its members retired to consider sentence, the appellant said:-

"*… … after 21 months I simply need this resolved, you know, and there were a large number of issues that could have been dealt with, haven't been dealt with, basically, I'm taking responsibility for that kilo, okay. I'm quite happy with that."*

The Crown argues that the last two sentences should be regarded as an admission of guilt. We disagree. In our view, the most that that could be said against the appellant is that, in their context, they are ambiguous.

39. 30 July 2009 was a Thursday. The appellant lodged his application for leave to appeal early the following week.

*Discussion of events up to and including 30 July 2009*

40. We have already expressed the view that the guilty plea which was tendered on 30 June ought not to have been accepted. The fact is, however, that it was, and it is necessary for us to consider the implications of what happened between then and the end of the sentencing hearing. The question which we have to ask ourselves is whether the appellant was rightly convicted. An accused person is convicted either when there is a finding of guilt after trial by the appropriate tribunal, or when he or she confesses his or her guilt. In this case, there was no trial, nor, for the reasons which we have explained, was there a confession of guilt.

*Disposal*

41. This appeal was brought under the provisions of section 24 of the Guernsey Court of Appeal Law 1961. Section 25(1) provides as follows:-

"*The Court of Appeal on any such appeal against conviction shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal*:"

42. In our judgment, the conviction of the appellant in the circumstances which we have narrated was a miscarriage of justice. In these circumstances, we allow the appeal, quash the conviction and direct a judgment and verdict of acquittal to be entered.

*The Human Rights (Bailiwick of Guernsey) Law, 2000*

 

43. The appellant's Article 6 challenge was not fully argued before us and, given our decision on the equivocal plea ground, it is unnecessary for us to consider it. Accordingly, we decline to do so.