**Judgment 05/2013**

**Michael Anthony Falla &**
**Mandy Jane Falla v**
**Law Officers of the Crown**
**Court of Appeal**
**12th March 2013**

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**Appeal from the sentences imposed by the Royal Court – conspiracy to transfer the proceeds of drug trafficking and being knowingly concerned in the fraudulent evasion of the prohibition on importation of goods.**

**Approved Text**
**12.03.2013**

**IN THE COURT OF APPEAL OF GUERNSEY**

**CRIMINAL DIVISION – APPEAL NO 445 & 446**

**12th March 2013**

**Before:** **Nigel Pleming, President;**
**Sir Michael Birt, Bailiff of Jersey;**
**Jonathan Crow Q.C.**
**Judges of Appeal**

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| **Between:** | **MICHAEL ANTHONY FALLA** | **First Appellant** |
| | **-and-** | |
| | **MANDY JANE FALLA** | **Second Appellant** |
| | **-v-** | |
| | **THE LAW OFFICERS OF THE CROWN** | **Respondent** |

**regarding**
**Appeal from the sentences imposed by the Royal Court on 16 November, 2012 on the charges of:**

| | |
|---|---|
| 1 count of: | Conspiracy to transfer the proceeds of drug trafficking, contrary to section 7 of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006, as amended (Count 1 on the First Indictment). |
| 1 count of: | Being knowingly concerned in the fraudulent evasion of the prohibition on importation of goods (namely synthetic cannabinoids), contrary to section 77(1)(b) and 77(2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972, as amended (Count 4 on the First Indictment) |

**Advocate A J Ayres appeared for the First Appellant**

**Advocate C A Tee appeared for the Second Appellant**

**Crown Advocate W Giles appeared for the Crown**

**THIS IS THE JUDGMENT OF THE COURT**

**CASES REFERRED TO:**

1. *Richards v Law Officers* (C.A., April 18th 2002, unreported)
2. *Law Officers* v *Turner* (Royal Court, December 5, 2002, unreported
3. *Harrison v Attorney General* [2004] JLR 111
4. *R v Monfries* (2004) 2 Cr App R (S) 3
5. *Law Officers* v *Grunte* (2005) Guernsey Law Reports, Note 9
6. *Fallaize, Marsh and Hardy v Law Officers* [2007-8] GLR 1

**PLEMING, JA**

**Introduction**

1. This is the judgment of the Court.

2. These are applications for permission to appeal and, if leave is granted, appeals against sentence by Michael Anthony Falla and Mandy Jane Falla. For the reasons set out below we grant permission to appeal and allow the appeal in part.

3. Both appeals arise from the same set of circumstances. There are joint counts on the Indictment. We are satisfied it is appropriate to consider these two cases together.

4. On 16th November 2012, Michael and Mandy Falla appeared before Lieutenant Bailiff Heather Steel DBE and 9 Jurats for sentence on an indictment containing 2 counts to which pleas of guilty had been entered:

    (1) Conspiracy to transfer the proceeds of drug trafficking, contrary to section 7 of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006, as amended (Count 2 on the Indictment);

    (2) Being knowingly concerned in the fraudulent evasion of the prohibition on importation of goods (namely synthetic cannabinoids), contrary to section 77(1)(b) and 77(2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972, as amended (Count 4 on the Indictment).

    Two other charges were ordered to lie on the file and not to proceed without the leave of the Court.

5. Both Appellants received the same sentence – 8 years on the first count, and 4 years concurrent on the second count (a total of 8 years' imprisonment to run from 19th January 2012).

6. The Appellants' sons Charles and Alex were jointly charged with their parents on the first count set out above (Count 2 on the Indictment). They also received custodial sentences.

 

**The facts**

7. Michael and Mandy Falla are husband and wife. Michael Falla was 66 or 67 at the time of the offences. His wife was 49 or 50. Michael Falla was formerly a detective in the Guernsey Police Force. He subsequently owned and ran a number of businesses, including an Estate Agency, which failed during 2009 or 2010 leading to the loss of the former family home where they had lived and brought up their 5 children. In early 2011 Michael Falla became licensed to drive a taxi.

8. Both Appellants declined to explain their part in the criminality contained in the counts to which they had pleaded guilty. In those circumstances, it is not possible or appropriate to consider sentence except on the basis of the facts set out in the Particulars of Offence and in the prosecution summary.

9. In relation to Count 2, the Particulars of Offence disclose that between 16th April 2010 and 20th May 2011 in Guernsey, or elsewhere, Michael and Mandy Falla (together with their sons Charles and Alexander) conspired to transfer the proceeds of drug trafficking from Guernsey by way of multiple bank transfers to a Lloyds TSB Jersey account. According to the Prosecution Summary this count reflects an agreement or conspiracy to purchase a quantity of Class B controlled drugs. The prosecution case was that the brothers Charles and Alexander were supplying "huge amounts of Class B drugs to Guernsey residents over an extended period of time" and, running parallel to this, was the agreement of these appellants to reinvest the profits to fund further purchase of drugs with the indirect benefit being the financing of the family's general living expenses. The prosecution's case was that "the vast majority of the cash payments" towards the purchase price of £62,150 paid by Charles Falla for the ordering of approximately 15,500 Dove tablets from his supplier "were facilitated by Mandy and Michael Falla, with Mandy Falla depositing the cash into [the supplier's] account on all bar two occasions". The Dove tablets contained the constituent ingredient, Mephedrone, a Class B controlled drug. The evidence before the sentencing court, from a Senior Customs Officer, was that "each pill would sell for between £15 - £20 on the streets of Guernsey. With a purchase price of approximately £4 per pill, the potential is obvious." On these figures, not disputed by the Appellants in the course of this appeal, the admitted outlay of £62,150 would have generated a return of between £232,500 and £310,000.

10. In relation to Count 4, the Particulars of Offence state that these Appellants were "knowingly concerned in the fraudulent evasion of the prohibition of certain goods, namely synthetic cannabinoids JWH–073 and JWH–250, weighing a total of 1.588 Kilograms, both controlled drugs of Class B". The prosecution case was that this importation of Class B drugs took place on 24th July 2011, subsequent to the conspiracy referred to in Count 2. Both Appellants had travelled to France in Michael Falla's motor vehicle. Upon their return to Guernsey, 17 packages containing the synthetic cannabinoids were discovered secreted inside the plastic panel within the driver's and passenger's door. This was described by the Royal Court as "a relatively sophisticated attempt". It is estimated that these drugs would have a street value of £23,820.

11. Both Appellants were interviewed in 2011 but denied any knowledge of involvement in the supply of drugs. The trial was scheduled to be heard on 16th November 2012. On 30th May 2012, Mandy Falla pleaded Guilty to Count 4, and on 4th October pleaded guilty to Count 2. On 4th October 2012, Michael Falla pleaded guilty to both counts.

 

## The grounds of appeal

Michael Falla

12. There are 4 perfected grounds of appeal settled on the 30th January 2013 by Advocate Ayres:

    a. The Royal Court gave the First Appellant insufficient credit for his guilty pleas in that the 20% discount it applied did not reflect sufficiently the saving of costs and court time which a contested hearing would have incurred;

    b. The Royal Court took an incorrect starting point for sentencing in that it considered the involvement of the First Appellant in selling "party pills" and "legal highs" before they became proscribed substances as being an aggravating factor thereby increasing the seriousness of the offences;

    c. The Royal Court failed to apply any discount to the First Appellant's sentence to take into account personal mitigation, namely his age and previous good character; and

    d. In all of these circumstances, the sentence imposed by the Royal Court was manifestly excessive.

13. These grounds were developed before us in oral submissions.

Mandy Falla

14. The perfected Grounds of Appeal for Mandy Falla are to similar effect:

    a. The Royal Court failed to give the Second Appellant sufficient credit for her guilty pleas in discounting her sentence by only 20%, and in so doing it erred in basing the discount on her having entered her guilty pleas late, and erred in giving her the same discount as the First Appellant: the Second Appellant entered an early guilty plea to the fourth count on 30th May 2012, and a later guilty plea to the second count on 4th October 2012, whereas the First Appellant entered late guilty pleas to both counts. The Second Appellant's early and later guilty pleas saved the court time and the prosecution work, time and costs;

    b. The Royal Court failed to adopt the correct sentencing starting point in respect of the second count in deciding that the proper starting point was 10 years' imprisonment;

    c. The Royal Court erred in treating as an aggravating factor, and sentencing accordingly, the Second Appellant's engagement in the business of importing and selling synthetic cannabinoids at a time when they were not proscribed substances;

    d. The Royal Court erred in treating the Second Appellant as not having accepted responsibility for her offences, and sentencing accordingly, when she had accepted responsibility for them by entering guilty pleas; and

 

e. The Royal Court took insufficient account of, and failed to apply any sentencing discount in respect of the Second Appellant's personal mitigation, namely her previous good character over the course of her 51 years of life.

15. These grounds of appeal were developed in a skeleton argument and in oral submissions by Advocate Tee.

**Sentencing principles**

16. Count 2 involves the proceeds of drug trafficking. *Richards v Law Officers* (2002) unreported, is the leading case in relation to sentencing for drug trafficking, but not directly applicable to the offence in Count 2. As the Royal Court correctly pointed out, at page 14 of the sentencing transcript, there are no guideline sentencing cases on the Island in relation to such offences. The Court must assess the gravity of the particular offending, and the sentencing is very likely to be fact specific. This Court has already held that the *Richards* guidelines can be applied to the cultivation of drugs rather than trafficking – see *Fallaize, Marsh and Hardy v Law Officers* [2007-8] GLR 1, at paragraphs 33-37. We see no reason in principle why, in appropriate circumstances, *Richards* should not apply in other related drugs cases.

17. On the facts of these appeals, we consider the Royal Court to be correct when it concluded that the offending by the Appellants under Count 2 ("in relation to the transfer of the proceeds of drug trafficking") lay at the heart, the very centre, of the conspiracy to supply controlled drugs. In some money-laundering cases it may not be possible to identify the specific criminal act which generated the proceeds of crime, or the offence might involve cleaning a pot of money some distance from a supply or importation. Where the particular antecedent offence can be identified, some regard may then be had to the appropriate sentence for that offence when considering the appropriate sentence for the laundering offence. We here agree with the sentencing remarks by the English Court of Criminal Appeal in *R v Monfries* (2004) 2 Cr App R (S) 3, that regard should be had to the nature of the antecedent offence, the extent of the offender's knowledge of it, and the amount laundered. Here there is a close correlation between the financing and the importation and supply of drugs. Therefore, on the particular facts of this case, we are entirely satisfied that it is appropriate to apply the *Richards* guidelines to Count 2.

18. We consider it helpful to remind ourselves of the relevant sentencing process in drug trafficking cases.

19. As set out in *Richards* at paragraph 8, the Court begins by fixing upon a starting point. In arriving at that starting point, the Court must consider everything that is relevant to the gravity of the offence. That includes any aggravating and mitigating features of that offence. As *Richards* makes clear the primary features are likely to be the quantity and category of the drugs, to a lesser extent the street price, and the involvement and role of the defendant, but there may be other relevant factors.

20. The starting point as assessed is the figure from which deduction (if any) is to be made for a guilty plea (where applicable) and any personal mitigation. Paragraph 15 of *Richards* states that the discount for the guilty plea is the first item to be deducted from the starting point.

The reasoning for this was helpfully elaborated by the Jersey Court of Appeal in *Harrison v Attorney General* [2004] JLR 111, at paragraphs 90 and 91:

> "If a discount for a plea, usually expressed in fractions as we have seen, is customary in cases where the offender admits the offence, the questions arises, one-third or one-quarter, of what? There must be a figure on which the one-third or one-quarter is calculated and the question should be answered by reference to a figure allowed for the offence itself, the starting point.
> In England, as suggested in the consultation paper dated November 14th, 2003 issued by the Sentencing Advisory Panel entitled *Reduction in Sentence for a Guilty Plea*, the discount is usually given from the figure which would have been passed on the particular offender before the court (i.e. after allowance for personal mitigation) on the assumption that he had pleaded not guilty. However, in a jurisdiction such as Jersey, where resources are finite and the disruptive effect of a large number of contested trials can be substantial, we think that a slightly greater discount could usefully be applied. In our judgment the appropriate course in this jurisdiction is for the sentencing court firstly to make the appropriate allowance for any plea of guilty as a deduction from the starting point appropriate for the offence, and thereafter to make such further deduction as it thinks fit for the other mitigating factors."

21. We consider the remarks in these paragraphs also apply to the situation in Guernsey.

22. It follows that the correct approach is that the sentencing court, having deducted the appropriate discount (if any) for a guilty plea from the starting point, should then proceed to consider whether or not any *further* discount should be made for personal mitigation. This is not to suggest that this should be mechanistic, or that there should be the application of mathematical formulae. But we would expect it to be apparent from the sentencing remarks that the court has reached a conclusion on the correct starting point and then applied, where appropriate, a discount from that figure to reflect both any plea of guilty and any personal mitigation.

23. We are not here suggesting that the sentencing court must necessarily articulate separately the discounts given respectively for a guilty plea and for personal mitigation. It is perfectly in order for the Royal Court to calculate a single comprehensive discount for both a plea of guilty and any personal mitigation – see *Harrison v Attorney General*, at paragraph 92:

> "In this regard, the Attorney General has suggested that the two-stage process would or might require the Royal Court to specify in relation to each piece of mitigation what allowance or discount had been given. *Kenward v Attorney General*, 2000 JLR 251 was referred to in this connection. In that case, the Court of Appeal made it clear that in future, when considering mitigating factors, the Royal Court should calculate a single comprehensive discount for all the relevant factors including the plea of guilty and all other personal mitigation (2000 JLR at 254-255). We agree."

But it is important that the final sentence is fixed by following the approach set out in paragraph 22 above.

24. With these principles in mind we now turn to the sentences imposed in these appeals.

**Discussion**

*The correct starting point*

25. It is sensible to begin with a consideration of the correct starting point for Count 2 (there is no dispute that in relation to Count 4 there was no error in the selection of a starting point of 5 years' imprisonment). Advocate Tee submits that, for her client, the correct starting point for Count 2 should be "in the order of eight years' imprisonment" rather than the ten years identified by the Royal Court. It is said that the lower starting point should have been adopted to reflect (a) the sum of money involved in the conspiracy, namely £62,150, (b) the lack of sophistication the conspiracy entailed, and (c) the proximity of the offence to the date of 15th April 2010 when the drugs were still legal and it was therefore not illegal to transfer the proceeds of their sale.

26. The starting point has to be determined primarily by considering the quantity of the drugs and the involvement and role of the Appellants in the commission of the offence. Here the amount of money involved is not the only factor. The undisputed prosecution summary, referred to above, refers to approximately 15,500 tablets. Based on the *Richards* guidelines this would produce a band of "14 years upwards" if these were Class A drugs. Applying a reduction to two thirds (to take account of the fact that these are Class B drugs – *Law Officers* v *Turner* (Royal Court, December 5th, 2002, unreported, applied in *Law Officers* v *Grunte* (2005) GLR Note 9) the figure falls to "upwards of 9.5 years". If the role of the Appellants is then considered, as noted above described by the Royal Court as "the very centre of this operation", it is clear that a starting point of 10 years is not inappropriate or excessive. We cannot see any reason to distinguish between the Appellants.

27. We are not persuaded that the period of 10 years should be reduced by reason of the alleged lack of sophistication the conspiracy entailed, or the proximity of the offence to 15th April 2010. The fact that the importation was generally effected through the post, following orders placed usually by email, does not provide any grounds for reduction. It is misguided to treat any supposed lack of sophistication in a conspiracy such as this as a basis for reducing the starting point. Sentencing is not a reflection of a criminal's ingenuity. The conspiracy in this case was systematic and enduring: it appears to have formed a family business for the parents and 2 of their sons. Finally, the fact that the drugs in question were only recently proscribed cannot possibly be taken as a reason for reducing the starting point: indeed, perhaps the reverse is true, because the continuing process of identifying and proscribing emerging drugs of concern makes it all the more culpable where a deliberate decision was taken, as in this case, to continue importing and supplying any such drugs after they have been criminalised.

*Aggravating factors*

28. It is said that the Royal Court erred in treating as an aggravating factor, and sentencing accordingly, the Appellants' engagement in the business of importing and selling synthetic cannabinoids at a time when they were not proscribed substances. This is not what the Royal Court said or did. The relevant passage from the sentencing remarks makes this clear:

> *"We take into account in sentencing the scale of this prohibited family enterprise and the period over which it operated illegally in Guernsey, following and continuing a business that was not initially prohibited. The seriousness of the offences set out in Counts 1 to 4 is in our view aggravated by the fact that through 2009, before*

> *Mephedrone and the synthetic cannabinoids were classified and banned, the whole family were engaged in the profitable, but not unlawful, business of importing and selling these substances which were known as "party pills" and "legal highs".*
> *The evidence demonstrates that during the period leading up to the banning of these drugs, a transfer in excess of £25,000 was made to the supplier's account in Jersey from that of Michael Falla's business account, and shortly after a corresponding amount of cash had been paid into that account. We are told that when the drugs were reclassified, that fact was widely published in Guernsey and we note that the family enterprise did not then stop, but it continued, despite the fact that all involved must have known the likely consequences of discovery and prosecution. We take into account in sentencing each of you, that the enormous impact must be recognised that this family has made to the illegal supply on this Island and the harm done to young people by the chemical compounds involved in these drugs."*

The points being made in this passage are the duration of the illegal family enterprise (over a year), the fact that the family moved without interruption from lawful supply into the supply of the drugs which they knew to be illegal and, finally, note was taken of the enormous impact of the family's activities on the illegal supply of drugs in Guernsey. These seem to us to be fair points well made. In our view there is nothing in this Ground of Appeal.

29. There are also other matters which the Court was fully entitled to take into account by way of aggravating factors:

    a. Both parents should, as the Royal Court said in its sentencing remarks, "bear a heavy responsibility for the support they lent to the activities" of their sons.

    b. The offence in relation to Count 4 was committed at a time when the conspiracy covered by Count 2 was over, the family was under investigation, and one son already in custody. The parents' decision to commit another related offence at that time justifies the Royal Court's comment as to their arrogance, in this passage from the sentencing remarks:

> *"Your attitude in relation to these Court proceedings can only be described in each case as arrogance towards your current situation. It is clear from the evidence that you assisted and encouraged your son Charles in his illegal activity and you were heavily involved in this drug trafficking business."*

30. For all these reasons, we consider that there was no error by the Royal Court when it decided that the proper starting point in this case, for both Appellants, was a sentence of 10 years' imprisonment.

*Discount for a plea of guilty*

31. Advocate Tee drew our attention to the recommended reductions for a guilty plea of one third when entered at the first reasonable opportunity and one quarter when entered after a trial date has been set to be found in §4.2 of the *Reduction in Sentence for a Guilty Plea Definitive Guideline of the Sentencing Guidelines Council*, for England and Wales, Revised 2007 ('the Guidelines'). These guidelines have no effect in Guernsey, but may provide some assistance.

 

The current position in Guernsey is in fact made clear in *Richards* at paragraph 15:

> *"A guilty plea will always be an important mitigating factor, even where the accused appears to have had very little choice but to admit guilt. As a very general rule the appropriate discount is one-third from the starting point, particularly when an early indication of such a plea is given. It is generally in the public interest that the expenditure of time and money on a full trial be avoided. When there is no sensible alternative to a guilty plea, the discount will be more limited."*

We repeat this and emphasise that where there is an early guilty plea, with the consequent saving of time and money, unless there is good reason to the contrary, a discount in the region of one third should be given.

32. The rationale for giving a reduction in sentence for a Guilty plea is that it avoids the need for a trial, shortens the gap between charge and sentence, saves costs, and in the case of an early plea saves victims and witnesses from the concern about having to give evidence.

33. For Michael Falla the position is straightforward. He did not plead guilty to either count until 4th October 2012 shortly before the trial set for November, and, in those circumstances we see no cause for criticism of the Royal Court in applying a discount of 20%.

34. What then of Mandy Falla? The dates set out above show that, in relation to Count 4, she pleaded guilty in May 2012, some time before the scheduled trial date. Despite this the Royal Court treated both Appellants the same even though the facts were different, at least in relation to the date of plea, and gave each a discount of 20%. Advocate Tee submits that this was wrong.

35. It is important that a clear message is given to defendants that the court will give credit for pleas of guilty which have the effect of saving court time and, indeed, this was recognised by the closing remarks of the Lieutenant Bailiff when she noted, reflecting what is set out above, that "by their pleas the Defendants have saved a huge amount of public money and court time and for that they deserve credit which we have included in the discount which we have given them".

    The complaint on behalf of Mandy Falla is that she has not received sufficient credit for her early plea of guilty to Count 4. If a discount of 33% was applied to Count 4, and a discount of 20%, correctly, applied to Count 2, the overall discount it is submitted would be approximately 25%. (Mandy Falla's argument is that she should have received a discount of 25% on Count 2, producing the average of 33%+25%, namely 29%.)

36. If the percentage of 25% is applied to the 10 year starting point, the discounted figure would be 7.5 years, rather than 8 years. But, we do not accept that this averaging out is the correct approach. We consider these submissions to be too formulaic and unpersuasive. The lateness of the Guilty plea in relation to Count 2 cannot logically be mitigated by reference to the earlier Guilty plea in relation to Count 4: none of the benefits that might be derived from an early plea in relation to Count 2 were in fact derived in this case.

 

*Accepting responsibility*

37. Mandy Falla contends that the Royal Court erred in treating her as not having accepted responsibility for her offences, when she had accepted responsibility by pleading Guilty.

38. In its sentencing remarks, the Royal Court addressed the impact of the pleas as follows:

> *"Mandy and Michael, we take into account your pleas of guilty, but we are also mindful of the fact that those were late pleas and we take into account your failure to accept any responsibility for the offences for which you appear before the Court and which you have by your pleas admitted. The discount in your case will for each be 20%."*

39. The Court was there commenting on the fact that notwithstanding the admissions to be found in the pleas, both Appellants failed to accept their responsibility for the offences.

40. There is nothing in this point as the Guilty plea was taken into account to the proper extent as justifying the 20% discount. The separate finding of the Royal Court that Mandy Falla had failed to take responsibility for her offending was based on the content of the Probation Service Report, following 2 interviews with her at which she "continues to deny any involvement with or knowledge of drugs" and pretended that the monies covered by Count 2 were "received for the sale of car and motor cycle parts which were delivered to the family home". During the interviews she was "adamant that at no time was she aware that illicit substances were involved". In relation to Count 4, she "denies any knowledge of the drugs" being in the car. The conclusion was that: "Ms Falla presents as being in complete denial about the family's involvement with drugs as well as the impact this has had on other family members, particularly the youngest child of the family." Similar remarks were made in relation to Michael Falla. In the circumstances, the Royal Court's finding was entirely justified.

41. A plea might be indicative of some remorse, and it is accepted that remorse or contrition may, in some circumstances, amount to an additional mitigating factor – see *Archbold, Criminal Pleading, Evidence & Practice* (2012 Ed) at paragraph 5-118. The Royal Court was merely making it clear that, in its judgment, there could be no such additional discount in the case of these Appellants. We agree.

*Previous good character*

42. It is not the function of this court to fine-tune or second-guess the judgment of the Royal Court where it has reached a decision which is inside the margin within which differences of opinion can reasonably be held. The correct approach is usually that an appeal will not succeed unless the sentence passed is 'manifestly excessive'. But the sentencing court is also obliged to disregard irrelevant matters (see *Archbold* at 7-135), and by parity of reasoning to have regard to relevant matters. The weight to be given to relevant matters is for the sentencing court, unless the resultant sentence is manifestly excessive. However, if in any given case, this Court is satisfied that a relevant matter which would impact on the length of sentence has indeed been wholly disregarded by the sentencing court, it is capable of being an error of principle and this Court can then intervene.

 

43. Both Appellants contend that the Royal Court took no account of their previous good character, the First Appellant's age, and their straightened circumstances (referred to as a fall from grace). We do not consider that age was of significance in this case, nor do we see any force in the reliance on the very significant change in family circumstances. That leaves good character.

44. It is clear from the sentencing remarks that the Royal Court was well aware of the previous good character of these Appellants. It is referred to more than once, and clear in any event from the mitigation submissions made by both Advocates.

45. However, it seems this personal mitigation was not taken into account when the final sentence was determined. There is a contrast between the treatment of Charles and Alexander ("we take into account your early pleas and other mitigation…"), and, in the next sentence, these Appellants ("we take into account your pleas of guilty….."). The discount of 20% (rather than one third for Charles and Alexander) appears to be based solely on the plea (see page 10 of the transcript of the Royal Court proceedings), and does not include any credit or reduction, for personal mitigation. The disposition of these Appellants was in the following terms:

> *"On Count 2, in each case we decided the proper starting point would be 10 years imprisonment. To that we allow a discount of 20% and the sentence that we pass in respect of Count 2 is a sentence of 8 years imprisonment."*

It follows from the above that no account was, in the end, taken of the Appellants' relevant personal mitigation (good character). In normal circumstances a defendant's good character is a factor that should be taken into account, and in our judgment it should have been in this case.

46. This is not a case of applying the test of "manifestly excessive", but rather ensuring that all important and relevant factors have been taken into account by the sentencing court.

47. We therefore consider that there should be a further reduction, to reflect the Appellants' personal mitigation, of 1 year from the overall sentence of 8 years for Court 2, producing a sentence of 7 years imprisonment to run from 19th January 2012. In the circumstances of this case, we do not consider it necessary to make any adjustments to Count 4 given that it is a concurrent sentence.

48. For the reasons discussed above, permission to appeal is granted and the appeals are allowed to the limited extent set out above.

 