

**ROYAL COURT  
FULL COURT**

**15 January 2019**

**Before: Richard James McMahon, Esq., Deputy Bailiff and:  
Stephen Murray Jones OBE, David Percy Langley Hodgetts LVO, Niall David McCathie,  
Jonathan Grenfell Hooley, David James Mortimer, Joanne Marie Wyatt, Peter Francis Gill,  
David John Robilliard, Marilyn Jasmine King, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**Ashley Steven COLLUM**

**&**

**Adam CLAYTON**

**Advocate G S Perry appeared for the Crown**

**Advocate L C Roffey appeared for the Defendant**

**Background**

Ashley Collum and Adam Clayton, you have both pleaded guilty to a single Count each on an Indictment containing two Counts. The first Count relates solely to Mr Collum and involves being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug of Class A, being cocaine, contrary to the prohibition on importation imposed by section 2 (1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. The second Count relates solely to Mr Clayton and concerns attempting to commit the fraudulent evasion of the prohibition on importation of cocaine, being a controlled drug of Class A, in contravention of the prohibition on importation imposed by the same provision. Both offences carry life, being imprisonment for Mr Collum and, because of his age, youth detention for Mr Clayton.

These offences took place on 2 September 2018 when you were stopped at the White Rock on arrival on the ferry from Poole. Although you both initially denied carrying any drugs, tests indicated positive results and you were subsequently subjected to searches. After a degree of obstructive behaviour, it became apparent there was internal concealment. In Mr Collum's case, a Kinder egg containing 8.52 grams of cocaine was found. There was a further 0.43 gram of cocaine in his sock. He says these amounts were for his personal use. In Mr Clayton's case, another Kinder egg was found. He believed it contained cocaine, but the substance in it has been found to be 18.27 grams of caffeine.

Mr Collum is 23 and was employed as a mechanic at the time of arrest. Mr Clayton was 19 at the time of the offence, and is now 20, and similarly employed as a mechanic at the same workplace. Both of you are from Preston in England and were on a day-trip to Guernsey. Neither of you has relevant previous convictions.

Both of you have been in custody since your arrests on 2 September 2018.

### **Sentencing Considerations**

In 2002, sentencing guidelines for drug trafficking offences were established by the Court of Appeal in the case of *Richards*, to which this Court is obliged to have regard.

For Class A drugs in powder form, which is how we regard the cocaine, the starting point for 1 to 20 grams is 7 to 9 years' imprisonment. The total amount imported by Mr Collum is considerably higher than could be regarded as a very small quantity, and so is not punishable merely as simple possession in accordance with para. 14 of *Richards*. This was, we find, a drug trafficking importation and the Court shares the concerns of the probation officer as to the credibility of the assertion that this was not a commercial importation.

In relation to Mr Clayton's importation of caffeine, we recognise that this act does not in itself constitute an offence. By thinking he was importing cocaine, he was doing what the law classifies as attempting the impossible. We have noted the guidance given by the Court of Appeal in another case, *O'Dette* from 2007, which concerned a conspiracy, but also dealt with the question of how the Court might approach the *Richards* guidelines when the substance in question is found not to be a controlled drug. Sentencing starts from the premise of what an offender believed to be the case. However, at para. 31 of that judgment, the Court of Appeal further explained:

*"... in our view it is wrong for a court to ignore the fact that in cases where the drug imported turns out to be harmless or not prohibited, part of the mischief identified in *Richards* is clearly absent and we conclude that the absence of that factor should be reflected to some extent in sentence. Whether such a factor influences the starting point or serves to reduce the sentence once the starting point has been defined, as a factor additional to a plea of guilty (in appropriate cases), or to mitigation (if applicable), will be unlikely to matter at all."*

and added in para. 32:

*"What is plain, in the view of this court, is that some allowance should be made for the fact that the consequence or result of the importation, albeit unknown to the offender and albeit undesired by him, will not be the same as if the substance was a controlled drug because it will not add to the stock of drugs available in this jurisdiction in accordance with the principles of *Richards*."*

As we have already pointed out, the lowest band in relation to Class A drugs, covering 1 to 20 grams, and so applicable to the importation of Mr Collum and in principle to the quantity found on Mr Clayton, is 7 to 9 years' imprisonment. [*We do not combine the two amounts and use the higher starting points for 20 to 50 grams on the basis that the amount of Class A drug actually involved was below 20 grams.*] The street value of the cocaine in Mr Collum's Kinder egg is between £852 and £1,278, and the smaller amount in the sock of 0.43 gram has a street value of £43 to £64.50. Had the substance in Mr Clayton's Kinder egg been cocaine and not caffeine, it would have had a street value of between £1,827 and £2,740.50.

Because Mr Clayton is under 21 years old, this Court is obliged to consider the provisions of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990. We are satisfied that the offence is so serious that a non-custodial sentence cannot be justified.

Applying these guidelines, we are satisfied that the custody threshold in respect of each of you is clearly passed. The starting point for Mr Collum's importation of cocaine is 8 years, also taking into account that the bulk of it was concealed internally, which we regard as an aggravating factor. The starting point for Mr Clayton's belief he was importing cocaine is similarly 8 years, but we will reduce this to reflect that what was actually imported would not have contributed to the stock of

controlled drugs on this Island and so adjust the starting point to 6 years. Again, we treat the fact that Mr Clayton concealed the Kinder egg up his backside as being an aggravating factor.

### **Mitigation**

We have listened carefully to everything that has been said about each of you and on your behalf by your Advocates and read the letter submitted on behalf of Mr Collum.

We have carefully considered the content set out in the two Probation Reports. In your case, Mr Collum, we note the assessment that there is a high likelihood of re-offending. For this offence, there is apparently no risk of harm to the public by way of violent or aggressive behaviour. In your case, Mr Clayton, the assessment is of a low likelihood of general re-offending and similarly you do not pose an ongoing risk of harm through violence to members of the general public.

We note that both of you express your remorse, and take into account fully your early guilty pleas. We are satisfied that there was an ulterior motive, being financial gain, in bringing these substances to Guernsey. When the two Kinder eggs are viewed together, there being no suggestion that Mr Clayton was acting independently from the group in which you travelled, there seems to be no other adequate explanation for the day-trip you were taking that day.

Both of you are quite young, with Mr Clayton's age being a particular factor we have taken into account. Your childhoods appear to have been unsettled at times. Mr Collum's life had become chaotic, he had gone off the rails and was addicted to crack cocaine. We understand and take into account that Mr Collum has young children and Mr Clayton's partner is currently pregnant. We note that both of you had a good work ethic.

### **Sentence**

This Court still sees many more drug-related offences coming before it than ideally it should. Consistent with what was said in *Richards*, drug-related offending is a blight on society. These are serious offences and we remain of the view that the deterrent effect of the sentences passed by this Court remains a relevant factor for us. You took a great risk in bringing Class A drugs, or believing you were doing so, to this Island and must now pay the consequences. The realistic probation reports demonstrate that you knew before today that there is no option other than immediate custody.

Both of you state that you have learned your lesson and that you will put your time in custody to good use. We do hope that you are not just saying that for effect and that you hold true to your word. If so, each of you has the potential to play a positive part for your families and the communities to which you will return to work. We have given you both as much credit as we feel able in terms of your guilty pleas and such mitigation as has been advanced.

By way of explanation, the difference in our treatment of you is that we find Mr Clayton's role to have been less than that of Mr Collum, who we regard as the primary instigator. We have taken into account his particular age. In addition, the starting point for Mr Clayton was lower because it was caffeine in the egg and not cocaine as he believed.

In respect of Count 1, Mr Collum, the sentence we impose is one of 5 years' imprisonment. That period will run from 2 September 2018 because you have been detained since then.

In respect of Count 2, Mr Clayton, the sentence we impose is one of 3 years' youth detention. That period will also run from 2 September 2018.

In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any Parole period if applicable), Mr Collum and, if there is a direction once Mr Clayton reaches the age of 21, him as well, will be subject to

supervision by the Probation Service for a period equal to one quarter of the total sentence or the period you would have served had you not received remission, whichever is less. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine, or both.

There is no request on behalf of Her Majesty's Procureur for a drug trafficking investigation.

The forfeiture and destruction orders in respect of the various items in which the cocaine and the caffeine were found, plus the total amounts of cocaine, in four pieces, and caffeine, all as seized and that are sought by the Crown are granted.

**Richard McMahon**  
**Deputy Bailiff**

**15 January 2019**