

**ROYAL COURT
FULL COURT**

15 March 2019

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
Barbara Jean Bartie, Terry John Ferbrache, David Allan Grut, David James Mortimer,
Alan Stevenson Boyle, Peter Francis Gill, David John Robilliard, Marilyn Jasmine King, Terry
George Snell, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Pierre Alan LE PREVOST

Advocate R Calderwood appeared for the Crown

Advocate S E Steel appeared for the Defendant

DEPUTY BAILIFF:

Background

Pierre Le Prevost, you appear this morning to be sentenced in respect of an Indictment containing seven Counts. Two of the Counts (numbered 1 and 4) are in respect of being concerned in the fraudulent evasion of the prohibition on importation of cannabis, a Class B controlled drug, contrary to section 77 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended. The maximum sentence for these offences is 21 years' imprisonment. Two Counts (numbered 2 and 5) concern the possession of cannabis contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. The maximum sentence for these offences is 10 years' imprisonment. Two Counts (numbered 3 and 7) concern failing to disclose information required under notices served under the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, as amended, contrary to sections 46 and 49(1) of that Law. The maximum sentence for these offences is two years' imprisonment in this Court. Count 6 concerns your failure to surrender to the Magistrate's Court on 3 September 2018, contrary to section 10(1) of the Bail (Bailiwick of Guernsey) Law, 2003, for which the maximum sentence is 12 months' imprisonment.

You are a local man. You were aged 29 when committing all these offences and are now 30. There were two phases of drug importations using the postal system, and the drugs forming the possession Counts were discovered at your premises when searches were carried out following each phase, the first pursuant to a warrant. The street value of the drugs imported is put at £960 to £1,440 and of the drugs possessed at £120 to £180. You chose not to comply with the notices under the 2003 Law claiming that there was personal information on the two mobile telephones and it is said on your behalf that in respect of failing to surrender to the bail, to which you were admitted, that was an oversight.

You have a number of previous convictions, most relevantly being previous bail offences and four offences of possession of a controlled drug for which you were sentenced to 80 hours of community service on the 12 April 2018.

Although initially you were admitted to bail, you have been in custody since 4 September 2018 when you were apprehended and brought before the Magistrate's Court.

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. As that Court commented: "*sentencing is always a matter for the court's discretion. It is an art and not a science.*"

For a drug trafficking offence involving cannabis, where the weight is below 2 kilograms, the guideline starting point is in the range of 3 to 6 years' imprisonment.

Given the distinct phases of your offending we have chosen to have regard to the totality principle, by which we mean that we have sought to identify a total sentence that reflects all of your offending behaviour with which this Court is dealing and which is just and proportionate. This is different from considering each count distinctly and then aggregating those sentences. In doing so, we draw a distinction between the importation offences and the simple possession offences which, if that had been your only offending, would not have resulted in you being before this Court. The two offences of failing to disclose the key to your mobile telephones are also different and distinct.

The quantity of drugs involved in the importations is comparatively small. Accordingly, the starting point derived from *Richards* can properly be at the lower end of that range. However, the number of importations involved shows this was not a single isolated incident and we prefer to treat the multiple importations as an aggravating factor for each offence under the totality principle rather than separating the two phases of offending with a mind to imposing consecutive, as opposed to concurrent, sentences for Counts 1 and 4. The use of the postal system is a further aggravating factor. However, the most significant aggravating factor in your case is that the first importation occurred just a matter of days and at most weeks following your appearance before the Magistrate's Court when you were sentenced to community service orders as a direct alternative to two months' imprisonment. We think you were prepared to take a huge risk in the circumstances. You then compound your situation still further by arranging further importations having been bailed following the first importation. The combination of these aggravating factors results in significant increases from that initial starting point, so that, before mitigation, we had in mind a sentence of 4½ years' imprisonment.

The simple possession offences add nothing to the overall drug-related offending. However, the two non-disclosure offences are where we find that you have deliberately chosen to frustrate any wider investigation of your offending. The approach consistently taken is to regard this as warranting a short custodial sentence imposed consecutively to the main sentence. We do not accept your explanation for refusing to comply and regard the second refusal as worse than the first one because that mobile telephone was acquired after the seizure of the two phones just a couple of months earlier. In those circumstances, a sentence in the region of 9 months before mitigation is what we take as the starting point.

Mitigation

We have listened both attentively and carefully to everything that has been said about you and on your behalf by Advocate Steel and we have read all the material submitted on your behalf. Your early guilty pleas go to your credit and we have, therefore, afforded you the full one-third discount in respect of them.

We have taken into account what is written about you in the Probation Report. In doing so, we note the assessment that there is a high likelihood of general re-offending, albeit arising from historical matters that you cannot change. However, you are not assessed as presenting a direct risk of harm to members of the general public.

We bear in mind that you did not have the easiest of childhoods and that your recent circumstances have been difficult. The added stresses you have faced are understood but, as this Court hopes you now realise, resorting to drug-taking is not the solution. It seems that you have managed to use the time spent in custody productively thus far, to address some of the problems you have.

Sentence

Mr Le Prevost, the number of occasions on which this Court has to sentence for drug importations sadly shows no signs of diminishing. It is quite clear to us that you failed to heed the warning that should have been ringing loudly in your ears after your sentences in April 2018. You must have known that immediately engaging in importations, even on a comparatively small-scale, would lead to serious consequences for you. You should also have realised that not co-operating with the investigation by responding positively to the notices served on you to disclose details to allow access to your mobile telephones would reflect badly upon you – it suggests to the Court that you had something to hide.

Although the probation report invites us to exercise exceptional leniency and impose a Suspended Sentence Supervision Order, we find that the totality of your offending takes you beyond where such an outcome is permissible. Apart from your early guilty pleas, there is little further mitigation that we can find on your behalf, especially in the light of how these offences came so swiftly after your appearance before the Magistrate's Court last April. In our view, only an immediate custodial sentence can follow and we start with the most serious offences, the drug importations.

In respect of Counts 1 and 4, being as generous as we can, you will be sentenced to 2½ years' imprisonment (30 months), which will run from 4 September 2018, which is when you were first remanded in custody. Those two sentences will run concurrently to one another.

In respect of Counts 2 and 5, possession of class B controlled drugs, we will sentence you to 1 month imprisonment on each, both sentences also to run concurrently with the sentences on Counts 1 and 4.

In respect of Count 7 (which is the second of the non-disclosure offences), you will be sentenced to 6 months' imprisonment. That sentence is to run consecutively to the sentences on Counts 1 and 4.

In respect of Count 3 (that's the earlier of the non-disclosure offences), you will be sentenced to 4 months' imprisonment and that sentence will run concurrently to the sentence on Count 7. Accordingly, the discrete sentences in respect of the non-disclosure Counts will be 6 months in total, which will be consecutive to the longer sentences in respect of the drug-related offences.

In respect of Count 6 (the Bail Law offence), you will be sentenced to 1 month imprisonment, and we have decided that this should be made to run concurrently with the sentences on Counts 1 and 4.

The total sentence today, therefore, is 3 years' imprisonment, which runs from 4 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), you 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 items seized, being the drugs themselves, the three metal tins, the postal packages and other packaging, the three sets of digital scales, the knife and the grater, all as sought by the Crown, are granted.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the four mobile telephones is also granted. The Court is satisfied that all four devices were lawfully seized and that each has been used for the purpose of committing or facilitating the commission of the offence or, particularly in relation to the so-called 'Third Nokia', which was found in your room during the execution of the second search, that it was a telephone intended to be used by you for such a purpose. The Court has, as required by subsection (5), had regard to the value of the property and the likely financial and other effects on you of making the order before deciding to grant the Crown's application.

Richard McMahon
Deputy Bailiff

15 March 2019