

**ROYAL COURT
FULL COURT**

8 April 2019

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
David Percy Langley Hodgetts LVO, Steven John Morris, David James Mortimer,
Joanne Marie Wyatt, Alan Stevenson Boyle, Peter Francis Gill, David John Robilliard,
Stuart Michael Crisp, Marilyn Jasmine King, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Michael Antonio WALTERS

Advocate R J Calderwood appeared for the Crown

Advocate S E Steel appeared for the Defendant

DEPUTY BAILIFF:

Background

Michael Walters, you have pleaded guilty to an indictment containing a single Count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug of Class B, being cannabis, contrary to section 77 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey), Law, 1972, as amended. This offence carries a maximum penalty of 21 years' imprisonment.

You arranged for the cannabis to be sent to you through the post. This is clear from the analysis of the messages on your iPhone. The package was chosen for inspection at the sorting office and, when analysed, found to contain 4.69 grams of cannabis. The street value is put at between £100 - £150.

You are a 24-year-old local man. You have previously been in employment in the finance sector but are now self-employed. You have no previous convictions and you have been on bail throughout these proceedings.

Sentencing Considerations

In 2002, sentencing guidelines were established by the Court of Appeal in the case of *Richards*. Unless and until there is a change of political direction in relation to drug-related offending, this Court is obliged to have regard to those guidelines. As that Court commented: "*sentencing is always a matter for the court's discretion. It is an art and not a science.*"

For Class B drugs, as here, the starting point for below 2 kilograms is three to six years' imprisonment. You chose to exercise your right in interview to remain silent, but now say that this cannabis was for personal use and that it was for self-medication. We accept this. However, we do

not accept that the quantity involved is so small that it can be sentenced as if it were simple possession because it was a postal importation.

As a drug trafficking offence, we are clear that the custody threshold has been passed. As a result, the Richards guidelines are such that, even with the aggravating factor of it being a postal importation, the small amount involved means that we choose to fix a starting point at the lowest end of the range at 3 years' imprisonment.

Mitigation

We have listened carefully to everything that has been said about you and on your behalf by Advocate Steel. We have carefully considered the content of the helpful Probation Report. We have particularly noted the assessment made of you that there is a low risk of you re-offending and that there is apparently no risk of harm to others. We have had regard to the content of the supportive letters submitted to the Court today on your behalf.

You are entitled to full credit for your early guilty plea. Your letter to the Court demonstrates that you are sorry for what you have done and provides an explanation of how it came about. We note that you cooperated with the investigation into this offence and we recognise accordingly, that you turned to cannabis as a means of alleviating some of the symptoms of the medical problems that you face, which we do not need to detail. But as you now appreciate, albeit belatedly, that was entirely the wrong decision to take because there are lawful ways in which to get treatment for such conditions which must be followed rather than dreaming up your own misguided solution and having no regard for the law in the process. We accept that you acted naively. Accordingly, the Court believes that having been caught, you will have learnt your lesson. We think you are fortunate to have support from your family and we note that your actions mean that you have now thrown away your previous good character. Overall, we are satisfied that your case is one in which there is more personal mitigation than this Court often hears.

Sentence

Having lived all your life in Guernsey, you must have been aware of the many other cases reported by the media about what happens to those who import controlled drugs. However desperate your personal situation, you were prepared to take the risk of being caught, and so have to be prepared to accept the consequences of acting so foolishly. You knew that what you were doing was unlawful. Your lack of judgment means that you will now have to live with the shame of this drugs conviction.

This Court continues to hold the view that the deterrent effect of sentences remains a relevant factor. Although the amount involved is small, it was still a postal importation and so has to be punished accordingly. We are satisfied that this offence merits a custodial sentence as opposed to any other disposal, but will not send you to prison today.

We do not expect to see you before any Court again, but in order to impress upon you why you must not re-offend, and so that you can use your skills to give something back to the people of Guernsey, as recommended in the probation report, we give you a community service order as a direct alternative to a custodial sentence.

The sentence, therefore, is that you perform 180 hours of unpaid work under a Community Service Order. This Order is made because of the seriousness of the offence of which you have been convicted.

We note that you have signed a form stating that you understand the nature and effect of a Community Service Order, the power of the Court to review the Order and the consequences that may follow if you fail to comply with any of the requirements of the Order, or if you are convicted of a further offence while the Order is in force.

This Order is imposed as a direct alternative to a sentence of imprisonment. The alternative sentence that the Court was considering passing, bearing in mind all the mitigation, was one of 12 months' imprisonment.

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

There is also now, no application in respect of the iPhone so you will get that back and the forfeiture and destruction orders in respect of the items seized, being the cannabis (4.69 grams), and the items of packaging, as sought by the Crown, and which were not opposed, are also granted.

Richard McMahon
Deputy Bailiff

8 April 2019