

**ROYAL COURT
FULL COURT**

15 May 2019

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
Claire Helen Le Pelley, David Percy Langley Hodgetts LVO, Terry John Ferbrache,
Steven John Morris, David James Mortimer, Joanne Marie Wyatt, Alan Stevenson Boyle, Peter
Francis Gill, Marilyn Jasmine King, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Andris NOVIKS

Advocate C G Dunford appeared for the Crown

Advocate S E Steel appeared for the Defendant

DEPUTY BAILIFF:

Background

Andris Noviks, you have pleaded guilty to all seven Counts on the Indictment.

The first four Counts relate to being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug of Class C, contrary to section 77 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey), Law, 1972, as amended. Count 1 covers stanzolol; Count 2 covers testosterone, being in three forms: decanoate, enanthate and propionate; Count 3 covers trenbolone enanthate; and Count 4 covers methandienone. Each of these offences carries a maximum penalty of 10 years' imprisonment.

The final three Counts relate to possession of a controlled drug of Class C, contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. The drugs are nandrolone decanoate, trenbolone acetate and testosterone propionate respectively. The maximum sentence for each of these offences is 4 years' imprisonment. By comparison to the first four Counts, these are minor offences.

You are a Latvian national, aged 27 at the time of committing these offences and now 28. You have lived in Guernsey for about 10 years. You have demonstrated a good work ethic, having been employed for almost half that time in the hospitality sector and for the remainder in the construction industry. You do not have any previous drug-related convictions, but have convictions for violence, the more recent of which resulted in a suspended sentence of imprisonment imposed last year.

The drugs covered by the first four Counts were packed inside a boxed speaker using expanding foam. That package was destined for you and was brought to the Island in a van driven by a fellow Latvian who had no knowledge of what she was delivering. After her arrival in Guernsey on 8 June 2018, the

investigation progressed and resulted in your arrest late on 10 June. At that time you had in your possession three vials of what were found to be the steroids that are the subject of Counts 5 to 7.

The total amounts involved in what was packed into this speaker are considerable. There was 70.5 grams of stanzolol, 196.3 grams of testosterone, 342 grams of trenbolone enanthate and not less than 3,861 tablets of methandienone. We have noted what Mr Freestone says about the availability and legitimate uses of these drugs in the United Kingdom and here in Guernsey. The indications given for street value are not entirely clear, but it seems that the tablets, which are the subject of Count 4, each have a value of £1 to £1.50, so aggregating to £3,861 to £5,791.50. The total value of the consignment, including the vials of liquid, must, therefore, have had a minimum value somewhat in excess of £4,000.

You have been in custody since 7 December 2018, being the date you were charged and first appeared 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*. Those guidelines do not deal with Class C drugs. It is important to stress that identifying an appropriate starting point is not a mathematical exercise. This Court has previously used starting points for Class C drugs at half of those set out in *Richards* for Class A drugs, whether in powder form or tablet form. Given the differing maximum sentences for the two classes of drug, we take the view that such an approach should be treated as creating a ceiling for identifying any appropriate starting point.

As noted at para. 12 of *Richards*, where the importation comprises more than one type of drug, and we consider this applies equally to your case, the approach to be taken is to assess the starting point for each drug and then determine a total starting point, taking into account the overall quantity.

The number of tablets in Count 4, if they had been Class A, would result in a starting point of 10 to 13 years' imprisonment. The amounts in Counts 1 to 3, if Class A powder, would produce starting points in the ranges of 9 to 12 years, 10 to 13 years and 11 to 14 years respectively. However, steroids in liquid form should not, in our view, be equated directly with powder. We consider that reducing the weight by a factor of 10 gives more appropriate ranges. Accordingly, we view Count 4 as the most serious, reflecting the higher street value, especially if a vial of liquid costs about £30, and we treat the first three Counts as aggravating that primary Count under the totality principle, always bearing in mind that if the value of the drugs had all been in tablet form and of a single type, the starting point would have risen into the next band of 11 to 14 years' imprisonment, albeit then roughly halved because Class C is involved. As a result, for the total amount of Class C drugs in this consignment, we take a starting point of 6 years' imprisonment.

The way in which this importation was carried out, in our view, seriously aggravates these offences. This was a sophisticated attempt at concealment. The lengths to which you went are clear from the mobile telephone analysis. Further, the fact that the innocent person driving the vehicle was subjected to an intrusive search makes your culpability greater. We further take into account that these offences were committed after you had entered your guilty plea to the public order offence arising out of events on 9 December 2017, but before you were sentenced on 30 August last year. You should have recognised that any offending at all following so soon after your Court appearance would be treated by a Court in this jurisdiction as you not appearing to have learnt any lesson.

In respect of the three simple possession Counts, although committed separately to the importation, we do not feel that they add much to the overall seriousness of your offending.

Mitigation

We have had regard to everything that has been said about you and on your behalf by Advocate Steel. We have noted the content of the Probation Report and the other materials. We take into account the assessment made of you that there is a low likelihood of you re-offending, and that, provided you refrain from consuming alcohol to excess, the likelihood of you causing harm to others will be reduced. We have read the letter you have written to the Court explaining more about yourself and the other letters of support that have been submitted to the Court on your behalf.

We give you full credit for your early guilty pleas.

However, we are not persuaded that this was a private venture for you and other persons interested in body building here in Guernsey. You have been in Guernsey for long enough to know the stance this Court takes to drug importers to realise that, if caught, the consequences would be far more serious than just having the drugs taken away from you. The sheer number of tablets involved, as well as the vials of liquid, satisfy us that there was more to this than simply a private venture. Were that not the case, we doubt you would have been at such pains to direct the manner of concealing the drugs inside a speaker in packaging.

We appreciate that you have been settled and gainfully employed whilst living in Guernsey. Body-building in itself is laudable but not, as doping agencies recognise, when it comes through chemical enhancements as opposed to sheer hard physical effort. We do, though, believe that you now realise the errors of your flawed decision-taking. We note that whilst on remand you have been what might be described as a model prisoner, and was by Advocate Steel, for which you deserve due recognition. Overall, therefore, we find that there is more by way of personal mitigation in your case than we hear in other cases.

Sentence

However one looks at it, what you arranged was a significant importation of Class C drugs. If successful, it would have led to a very considerable quantity of controlled drugs, which you admit you knew were illegal, finding their way on to the Island. The way in which you orchestrated this, using innocents who therefore got themselves caught up in the investigation, was, in our view, carefully calculated to deflect attention from you and, in a way, callous. Although what you arranged to be imported was Class C drugs, and so treated differently both in the legislation and by this Court from Classes A and B, this Island's aim is to keep all such drugs out, so anyone importing them has to be prepared to face the consequences of taking that ill-advised decision.

As already indicated, we approach these offences in two batches and have regard to the overall totality principle when deciding what sentences to impose. First, having regard to the serious aggravating factors to which we have referred, and then affording you credit for your guilty plea, as well as the personal mitigation advanced on your behalf, starting with Count 4, being the most serious of the offences, we sentence you to 4 years' imprisonment.

In respect of each of Counts 1, 2 and 3, this Court imposes sentences of 2 years' imprisonment, each of which will run concurrent to the sentence on Count 4. These are shorter sentences because none of these offences is as serious as Count 4, but we have not attempted to refine these sentences any further as between them, preferring instead to look at them in the round.

In respect of each of Counts 5 to 7, the simple possession Counts, we impose short sentences of 1 month imprisonment on each. Because these offences were committed separately from the importation, we will make those sentences run concurrently with each other but consecutively to the sentence in respect of Count 4.

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 all the drugs and the packaging (which includes the speaker and box), as sought by the Crown, are granted. They were not opposed.

Further, the Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the mobile telephone and SIM card is also granted and it has not, in any event, been opposed. This Court is satisfied that these items were lawfully seized from you and that they have been used for the purpose of committing or facilitating the commission of an offence. 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.

The total sentence imposed today therefore is 4 years and 1 month of imprisonment running from the 7th December 2018.

Deportation

This Court is required to consider separately the question of whether or not to recommend that you be deported. It is clear to us from your own letter and what Advocate Steel has said that it is this element about which you are most concerned.

We emphasise, as we have to in this type of case, that the Royal Court itself does not have the power to order deportation; its powers under the Immigration Act 1971, as extended to the Bailiwick of Guernsey, are confined to making a recommendation to His Excellency the Lieutenant-Governor.

Before making any recommendation for deportation, the Court must conduct a balancing exercise. The principles this Court must follow were established by the Court of Appeal in the case of *O'Dette* in 2007. It is necessary to consider in respect of you whether:

- (a) your continued presence is to the detriment of the jurisdiction;
- (b) the offence is serious enough to merit deportation; and
- (c) there is a risk of re-offending.

This Court, as a public authority, is also required to take into account the rights afforded to you by the European Convention on Human Rights and, in particular, by article 8, conferring the right to respect for family life, private life and your home.

As explained in the report on behalf of Immigration and Nationality and by Advocate Steel, your connections to Guernsey arise from the circle of friends you have established here in Guernsey rather than through family actually living here. Your father died some years ago. Your mother did live in Guernsey until 2015, but now lives in Germany. Your brother, with whom you say you do not have a good relationship, now lives in Latvia. Your grandmother, to whom you are closer, and who you had been helping to support, is also in Latvia. Your girlfriend, with whom you started a relationship in 2017, is Latvian and lives here, although you have never co-habited.

We note that the Probation Report refers to there being “*a low likelihood of re-offending*”. We are satisfied that you have had a wake-up call after being remanded in custody and that you are unlikely to resort to misusing drugs or alcohol in the future because you now know the risks associated with doing so.

Because of the scale of the importation with which you were concerned, this Court is satisfied that the offences you have admitted, namely Counts 1 to 4, are serious enough to merit deportation.

In many instances, this Court would regard the seriousness of what you have done as justifying making a recommendation for deportation, especially where your family connections are at as low a level as yours are. However, the Court has decided that the balancing exercise it is required to conduct just tips in favour of declining to make that recommendation. You are assisted first by the assessment that there is only a low risk of you re-offending. Further, this Court believes you when you assert that you have learnt your lesson and will not trouble the Courts again. As such, from everything we have gathered about you today, including your employment record, we think you can, on release, and if you are permitted to stay in Guernsey under the population management regime, play a more positive role and so be of value to our community rather than regarding your continued presence as being detrimental within the community. This belief has weighed considerably in the balance with us. In those circumstances, the Court has decided that no recommendation for deportation will be made and we trust that, if you are able to remain in Guernsey, having been a model prisoner, you will become a model resident.

The Court would also like to express its gratitude to all those members of the community who have assisted with this investigation.

So to summarise the position Mr Noviks, the sentence this morning is that you will be sentenced to 4 years and 1 month imprisonment but we will backdate that so it runs from when you were first in custody on 7 December 2018. There will be the forfeiture of all the drugs and packaging, the forfeiture of the mobile phone and SIM card, none of which was opposed, but there will be no recommendation that you be deported.

Richard McMahon
Deputy Bailiff

15 May 2019