

Acquiring, possessing or using the proceeds of criminal conduct and attempting to take an amount of cash in excess of the specified amount of €10,000 out of the Bailiwick

**[2019]GRC033**

**ROYAL COURT  
FULL COURT**

**16<sup>th</sup> May 2019**

**Before: Richard James McMahon, Esq., Deputy Bailiff and:  
Barbara Jean Bartie, Stephen Murray Jones OBE, Jonathan Grenfell Hooley,  
David James Mortimer, Peter Francis Gill, David John Robilliard,  
Marilyn Jasmine King, Terry George Snell, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**Paul Alan BETTIE**

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

**Advocate Advocate Christopher J Green appeared for the Defendant**

**DEPUTY BAILIFF:**

**Background**

Paul Bettie, you appear today for sentencing on an Indictment containing two Counts, both of which arise out of the same facts.

The first Count, in respect of which you were found guilty on 20 March this year, following a three-day trial, relates to acquiring, possessing or using, the proceeds of the criminal conduct of one or more other persons, being £153,200, on 28 August 2017, contrary to section 40(1) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended. This offence carries a maximum penalty of 14 years' imprisonment. The second Count relates to attempting on the same day to take an amount of cash in excess of the specified amount of €10,000 out of the Bailiwick without completing a cash control declaration, contrary to section 1(1) of the Cash Controls (Bailiwick of Guernsey) Law, 2007, as amended, and section 1(1) of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006, as amended, and that offence carries a maximum penalty of 2 years' imprisonment.

The facts of these offences were covered in some detail during your three-day trial less than two months ago. In summary, the vehicle in which you were travelling with your daughter and granddaughter heading back on the ferry to England was stopped at the White Rock on the day in question. Despite being asked about carrying more than the specified amount permitted before a cash control declaration needs to be made, when asked about this you did not mention that you had in your bag in excess of £150,000, comprising a mix of notes from England and the Channel Islands, predominantly Guernsey notes (54.8% of the total amount). That money had been heat sealed in a considerable number of plastic packages with no consistency of amounts in each, which were then packed in further plastic packaging, all as found in your bag.

Although you chose not to give evidence at your trial, as was your right, the explanation you had offered in interview, namely that this was all your own money, being principally what you had brought with you when you arrived in Guernsey a few days earlier, to which had been added monies you had won gambling, as well as having been repaid a sizable earlier gambling debt by another visitor to the Island that weekend, must, by verdict of the guilty verdict, have been disbelieved. Further, analysis of the mobile telephone traffic at around this time demonstrated that various other persons were taking a great interest in your movements at the relevant time, which is consistent with you acting as a go-between rather than entirely independently of them.

At the time of these offences you were 63 years old and you are now 65. You live in the London area in England and you have no previous convictions at all. You have been on bail throughout these proceedings.

### **Sentencing Considerations**

Count 1 is a money laundering offence and so the more serious aspect of your offending and the area on which we will concentrate. The failure to make the cash control declaration, in our view, provides some context and is very much part and parcel of this money laundering offence, but adds little, if anything, to the seriousness of the money laundering offence.

Guidance was provided by the Court of Appeal in *Taylor* in 2011 where the observation that the underlying criminality of money laundering is the assistance, support and encouragement afforded to criminal activities was endorsed. Just as those who steal need an outlet for their stolen property and so look to handlers for assistance, money laundering is always a consequence of prior criminal activity. Unlike in *Taylor*, your activities did not involve the use of the local financial services sector and so any comments about the impact on the reputation of that plank of the Island's economy do not apply to your offence.

Advocate Green has referred to the guidance given in paragraph 22, in particular, of the appeal of Michael Doyle to the Court of Appeal. Those factors are listed as:

- i. The nature of the role played (whether leading or limited) where the offending is part of a group activity*
- ii. The level of pressure or influence it either exerted or experienced*
- iii. Any abuse of position of power, trust or responsibility*
- iv. The degree of sophistication in the nature of or of planning required for a scheme*
- v. The period of time over which the criminal activity has been carried out*
- vi. The nature of the predicate criminality*
- vii. The level of awareness or understanding of the extent of the predicate criminal activity*
- viii. The degree of proximity between the activities of the defendant and the scheme which reflects the underlying offence*
- ix. The amount of money laundered*
- x. The degree of economic harm, especially widespread or serious harm caused to a smaller number of individuals*
- xi. The level of gain achieved by the individual from his criminality”.*

We have had regard to any of those factors that are relevant in your case. But we do not know what the prior criminal activity producing these proceeds was. It may have been some form of dishonesty or it may have been drug-dealing. Given the amount involved, if this were the proceeds of drug-dealing, it represents a very significant operation which must have involved considerable quantities of whatever Class of drug it would have been. If only to give an example of what the consequences would be, were this related to importing cannabis resin, selling at the top price of £30 per gram deal, the amount of money found on you equates to in excess of 5kg, which could well result in a starting-point of around 7 years' imprisonment for such an importation. However, we simply do not know,

and so proceed on the basis that carrying someone else's proceeds of crime to the tune of over £150,000 is serious, whatever the criminal activity producing those proceeds was.

As it was noted in an English case in 2002 to which this Court has referred previously, *Basra*:

*“The criminality in laundering arises from the encouragement and nourishment it gives to crime in general. Without it, many crimes would be rendered much less fruitful and perhaps more difficult to perpetrate”.*

Although this Court is not bound to follow them, we gain further assistance through referring to the English Sentencing Council Guidelines to offer examples of the factors that aggravate and mitigate the offence itself, always recognizing that we must take into account any particular Guernsey sentencing considerations.

Although we find that the manner of packing up this money and the telephone traffic points towards you playing a key part in a wider operation that had been carefully planned – without someone acting as the courier, this large amount of cash would not have been able to leave Guernsey – we further recognise that you appear to have been acting under the direction of others. As a result, we consider that your offence falls neither into what in English terms would be the high or lesser culpability bands and so is somewhere in-between.

That Guideline also refers to factors that increase and reduce the seriousness of the offence, or that amount to personal mitigation. One of those aggravating the offence is if it is committed across borders, which we consider applies here. The plan was to transport money to where it would reward those who had engaged in the criminal activity or be re-cycled into further criminal activity. It seems to us that the cash would have had less utility for those interested in it if it had had to remain in Guernsey.

Unlike for some other offences, the manner in which this Court alights on an appropriate starting point for the sentencing exercise such as this is more case-specific, where all the relevant circumstances have to be taken into consideration to reflect the overall criminality of the situation. We do find that the amount you were carrying that day to be a large sum of cash and so view it as having been a risky enterprise for all concerned. We take the view that you were a courier acting on behalf of others, but that situation is always going to arise where the nature of the case concerns the ill-gotten proceeds others have derived from their criminal endeavours being transported to another place outside the Island. We consider that travelling with members of your family was a deliberate attempt to appear more normal than would have been the case had you travelled solo, which is another aggravating factor. It was all part of what we view overall as being a sophisticated plan. Having regard to the whole circumstances of this offence, we have decided that a starting-point of three years' imprisonment is appropriate.

### **Mitigation**

Given that you continue to protest your innocence, it has made it difficult for Advocate Green to offer any explanation as to what exactly was happening in the summer of 2017 during your visit here. We have, though, carefully listened to everything that he has said on your behalf and read more detail about you in the Probation Report. We have also read the character references submitted this morning on your behalf.

That Report assesses that there is a very low risk of you re-offending and that you do not pose a risk of physical harm to the public through violence. We have noted the medical issues that you have experienced, particularly of late, as well as the composition of your family and the contact you have with them.

When considering the cash controls offence, the Court will give you credit for your early guilty plea. However, because you contested the money laundering offence, no discount can be given in respect of plea, although we do note the way in which the trial length may have been reduced through the way you chose to conduct it. Further, we pay particular attention to the fact that you have managed to get to your 60s without committing any offences, which is to your credit. We have also noted the impact any sentence has on your family and so have been as generous as we feel we can be.

## **Sentence**

This Court is clear that the custody threshold has been passed in respect of what you did on 28 August 2017. Participating in the transportation of more than £150,000 of dirty money, the proceeds of whatever crime or crimes had already been committed, is such a serious offence that even though it is your first brush with the law, no other form of disposal can be contemplated.

Because the elements of personal mitigation relate primarily to your previous good character and your health issues, we find that we cannot drop very significantly from the starting point already mentioned for Count 1. Accordingly, for that money laundering offence, we impose a sentence of two years' imprisonment on you.

Turning to Count 2 (the cash controls offence), because of the custodial sentence in respect of Count 1, we are satisfied that this can be dealt with by a short sentence of imprisonment, recognising your guilty plea. Accordingly, the sentence for Count 2 is two months' imprisonment and, because this offence was committed on the same occasion as Count 1, we make that sentence to run concurrently with the sentence on Count 1.

The total sentence this morning therefore is 2 years' immediate imprisonment.

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.

The prosecution's section 11 statement in relation to the proceeds of crime investigation has already been served and you have not sought to oppose the application for confiscation of the £154,000 (as it has now been re-counted) as the amount you were carrying on 28 August 2017. In those circumstances, the Court is satisfied to the requisite standard that the whole of that amount represents the proceeds of crime and accordingly orders the confiscation of all £154,000 forthwith. Because section 9 of the 1999 Law is discretionary and the amount will now be received by HM Sheriff immediately, we do not indicate what term of imprisonment would follow if there were non-payment. Further, pursuant to section 29 of the Law, the Court appoints HM Sheriff as the receiver of that property.

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

**16<sup>th</sup> May 2019**