

**ROYAL COURT
FULL COURT**

17th May 2019

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
Stephen Murray Jones OBE, Claire Helen Le Pelley, David Percy Langley Hodgetts
LVO, Terry John Ferbrache, Jonathan Grenfell Hooley, Steven John Morris, Joanne Marie
Wyatt, Alan Stevenson Boyle, Peter Francis Gill, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Reinis VAIVARS

**Advocate C G Dunford appeared for the Crown
Advocate S Maindonald appeared for the Defendant**

DEPUTY BAILIFF:

Background

Reinis Vaivars, you have pleaded guilty to an Indictment containing 6 Counts. The first Count relates to attempting to evade the prohibition on importation of a controlled drug on a date between 31 December 2016 and 21 January 2017, contrary to section 77 and 77A of the Customs and Excise General Provisions (Bailiwick of Guernsey) Law, 1972, as amended, and section 1 of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006. The other five Counts all relate to being knowingly concerned in the fraudulent evasion of the prohibition on importing cannabis resin, or in some instances, cannabis, contrary to section 77 of the 1972 Law, where the timeframe for each is 31 December 2016 to 24 February 2017.

The maximum sentence for each of Counts 2 to 6 is 21 years' imprisonment. On the basis that Count 1 relates to a further importation where you thought it was cannabis, the Court treats that offence as also carrying the same maximum penalty.

The six offences arise from a course of conduct through which packages of class B controlled drugs were sent to your home address through the postal system. Count 1 relates to the package you collected from Envoy House on 19 January 2017. In interview, you admitted you passed it on to another person.

Count 2 relates to a package addressed, not to you, but to a Jack Bodeen, which was selected for examination at the sorting office on 21 January 2017. It contained 5 bars of cannabis resin with a total weight of 483.9 grams. Count 3 relates to a package addressed to Radric Matterson which was also examined the same day and contained a further 5 bars of cannabis resin with a total weight of 483.6 grams.

Count 4 relates to a package examined on 24 January, bearing your name and address. It contained 27.1 grams of herbal cannabis. Count 5 relates to another package addressed to you, examined on the same day, which contained 20.6 grams of herbal cannabis. Count 6 relates to a package also

addressed to you, which was examined on 26 January 2017 and found to contain 34.2 grams of herbal cannabis.

You made contact by telephone with the Post Office on 25 January 2017, enquiring about the package addressed to Radric Matterson. You subsequently attended at Envoy House on 6 February enquiring about the same package. It was as a result of this enquiry that you were subsequently arrested on 24 February 2017. At that time an iPhone 7 was seized from you and you provided the passcode to access it. In interview that day, you explained that you had become involved in this venture because the person to whom the first package was handed by you had threatened you. You admitted it had been you who went to the Post Office about the Radric Matterson package after handing over the first package, which is covered by Count 1 and shows that you were also supplying what was being sent to your address to another, you were told a further five packages were expected, which corresponds with the five packages that had, by then, been intercepted and form the subject of Counts 2 to 6.

The street value of the cannabis resin covered by Counts 2 and 3 is between £19,350 and £29,025. The street value of the total amount of herbal cannabis (Counts 4 to 6) is between £1,638 and £2,457.

You are a Latvian National who, at the time these offences were committed, was just 18 years old, although you are now 20. Having been brought up and educated in Latvia, when you were 15 your mother brought you to Guernsey where she had been living and working for some years by that time. You have been in employment for most of the time you have been here and have demonstrated a good work ethic. You were initially admitted to bail, but were then remanded in custody from 21 February this year.

Sentencing Considerations

The Court of Appeal has, in the case of *Richards*, set out sentencing guidelines for drug trafficking offences, which this Court is bound to take into consideration. For a drug trafficking offence involving cannabis, referring to resin, although the same approach applies to herbal cannabis, where the weight is below 2 kg, the guideline starting-point is in the range of 3 to 6 years' imprisonment or, in your case, youth detention. Although such a starting point in principle applies to each of the Counts, having regard to the totality principle, we view the multiple importations as aggravating each other when deciding the view the Court takes about your overall culpability. So it is not the case of aggregating six distinct starting points, but instead of adjusting the starting point for each Count upwards to reflect everything with which you have been involved. Further, because there was more than one importation, we view your course of action more seriously than if the total quantity of the cannabis had been in a single consignment.

Because you are 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 each offence is so serious that a non-custodial sentence cannot be justified for any of the Counts.

Having regard to the guidelines, we are satisfied that the custody threshold in respect of your offending is clearly passed. The starting-point we choose is one of 4 years' youth detention. We further bear in mind that these offences involved a misuse of the postal system which this Court consistently treats as being a further aggravating factor that it is appropriate to take into account.

Mitigation

We have listened carefully to everything that Advocate Maindonald has said about you and on your behalf this afternoon and carefully read the positive Probation Report. We note from that the assessment that there is a medium likelihood of you reoffending and that, if you choose your friends more carefully and abstain from using drugs, you may well keep out of trouble. There is no evidence to suggest that you present a direct risk of harm to the general public through violence. We have also

read the various letters containing character references for you and your own letter to the Court in which you express your remorse.

Your guilty pleas were not entered at the earliest opportunity but all came before the trial that was listed for March had commenced, for which you deserve some credit. You changed your plea to Count 3 (the Radric Matterson importation) approximately 2½ months after having entered not guilty pleas to all Counts. Your change of plea on the other five Counts did not happen until 8 March 2019, with your trial listed to commence just 3 days later. In those circumstances, whilst a discount in respect of Count 3 could be as high as 25%, the lateness of the other changes of plea, especially in relation to Count 2, which is the other Count we regard as the most serious because of the quantity involved, the appropriate discount for plea is, in our view, reduced to around 15%.

In addition to your guilty pleas, the Court does accept that you have now learned your lesson that you need to avoid being involved in anything that is criminal. We appreciate just how young you were when these offences were committed. Your role was one under the direction of others, to whom you gave misplaced loyalty. You co-operated with the investigation and, in particular, we recognise that Count 1 would not have come to light but for what you volunteered in interview. There was a high level of naivety involved and it strikes us that you appear to have got in with a bad crowd, which you have now realised, albeit belatedly and after the damage has been done. You have thrown away your previous good character (and in that regard we disregard the traffic offending), but the fact that this has been your first experience of this Court is something that we do take into account. It has also taken a long time for these proceedings to reach this stage of you being sentenced and so we further factor in that this case has been hanging over you for a couple of years.

The references that have been made to pressure being exerted on you, though, through threats and you wanting nothing further to do with this enterprise, do not, in our opinion, take matters much further. By that time, all the packages had reached Guernsey and you chose not to come clean about your part in it until after your arrest. Had you co-operated voluntarily in the immediate aftermath of being unable to retrieve the Radric Matterson package, the Court would have regarded that as even stronger personal mitigation. Further, as the Court of Appeal has indicated before, if a sentencing court offers leniency to reflect mitigation of pressure, those who look to find others to assist in their criminal activities will target those susceptible to threats because of what happens to them if caught, with the likelihood being that the availability of drugs in the Island will increase rather than decrease.

Sentence

Mr Vaivars, you have been extremely stupid and foolish. Unless you have taken no interest in local current affairs, it cannot have escaped your attention before you committed these offences, given the media coverage of the high number of cases with which we deal, that this Court regards drug trafficking offences seriously. We remain of the view that the deterrent effect of the sentences passed by this Court remains a relevant factor, because drug relating offending continues to be a blight on society.

We have, however, decided to take an unusual approach in your particular case. What you have done is serious, but we see no virtue in imposing immediate youth detention on you today. In doing so, we trust that your experience of almost 3 months on remand will be sufficient for you never to want to enter Les Nicolles unwillingly again. We consider that the most appropriate outcome for you is to deal with some of your offending by way of suspended sentences and some by imposing a long Community Service Order. Mr Vaivars, you should be under no illusion at all that this outcome amounts to a soft option for you. The suspended sentence is still very much a custodial sentence and you will have to find the time to fulfil your obligations by giving up many of your otherwise free days to perform all the hours of the work imposed upon you.

The principal reason for imposing suspended sentences is the longer period for which they will be operative, which we think will be an added incentive for you to keep out of trouble, during which time you will have the opportunity to mature still further. We differentiate between the two Counts involving the larger amounts, which we consider to be the most serious, and then deal with the other Counts.

Accordingly, in respect of Counts 2 and 3, the sentence will be 2 years' youth detention, suspended in each case for 3 years (and that is the maximum period), each of those sentences to run concurrently.

You will not have to serve the suspended sentences of youth detention unless during the next 3 years you are convicted of an offence punishable with imprisonment which, for these purposes, includes youth detention. If you are convicted of such an offence, you are liable to serve all or part of the sentence. In other words, if you are back here, the likelihood is you will get the 2 years added to whatever else you get.

In respect of the other four Counts, reflecting that smaller amounts were imported in each case, and also accepting in respect of Count 1, what you said about it, the sentence is that you perform 240 hours of unpaid work under a Community Service Order. Each Order is also concurrent to the suspended sentences and each Order is made because of the seriousness of the offence of which you have been convicted.

The Court notes from the Probation Report that you have had the nature and effect of a Community Service Order explained to you, which includes the power of the Court to review the Order, and you also understand 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, and that extends to almost any offence whilst the Order is in force.

Each Order is being imposed on you as a direct alternative to a sentence of youth detention. The alternative sentence that the Court was considering passing was one of 18 months' youth detention.

There is no request on behalf of HM Procureur for a Drug Trafficking investigation.

The forfeiture and destruction orders in respect of the five packages and the drugs each of them contained, all as sought by the Crown, which have now not been opposed, are granted, and the Crown's application, pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the iPhone 7 is also granted and we note that that has not been resisted. In any event, the Court was satisfied that this phone was lawfully seized from you and was used for the purpose of committing or of facilitating the commission of an offence and 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.

Deportation

We are required to consider separately the question of whether or not to recommend that you be deported.

In relation to deportation, we emphasize, 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 you reoffending.

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 rights to respect for family life, private life and your home.

As explained in the report on behalf of Immigration and Nationality and by Advocate Maindonald, your connections to Guernsey arise from the presence here of your mother. You do not have any siblings and you have no knowledge of your father's whereabouts. Your other family is in Latvia. You recently commenced a relationship with your girlfriend who lives here but you have no children.

We note the Probation Report refers to a medium likelihood of re-offending but we further note the author believes you when you say that you have learned your lesson and that similar offences will never happen, with which we concur, and hope that no offences will happen in the future.

Although your involvement in the scheme to import drugs into the Island arose from pressure from someone else, the total amount involved was quite significant and so this Court is satisfied that the offences you have admitted are serious enough to merit deportation.

In many instances, this Court would regard the seriousness of what you have done as justifying a recommendation for deportation, especially where your family connections are just one parent. However, the Court has decided that the balancing exercise it is required to conduct tips in favour of declining to make that recommendation today. Indeed, the Court would not have imposed the types of sentences it has if it were also minded to recommend your deportation. In reaching that conclusion, we have taken into account that you are a young man with a promising future ahead of you, even if it has been adversely impacted by your bad decision to involve yourself in these importations. We do incline to the view that you have now learned your lesson and so will not trouble the Courts again. We consider that your mother and your relationship with her are aspects that show the greatest prospect of ensuring that you do stay out of trouble in future – mother knows best. As such, from everything we have gathered about you today, 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 than you have thus far and so do not regard your continued presence as being detrimental within the community. In those circumstances, the Court has decided that no recommendation for deportation will be made.

Richard McMahon
Deputy Bailiff

17th May 2019