

Fraudulent evasion of the prohibition on the importation of a controlled Class B drug

[2020]GRC017

**ROYAL COURT
FULL COURT**

20th March 2020

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
Stephen Murray Jones OBE, Terry John Ferbrache, Peter Francis Gill,
David John Robilliard, Marilyn Jasmine King, Tina Jane Le Poidevin,
Jurat Paul Martin Burnard, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

**Facundo Dante ISGRO’GATTI
(D.O.B. 23.04.1998)**

Advocate F M Russell appeared for the Crown

Advocate C J Fletcher appeared for the Defendant

DEPUTY BAILIFF:

Background

Facundo Isgro’Gatti, you appear this afternoon to be sentenced in respect of 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 resin, contrary to the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. This offence carries a maximum penalty of 21 years’ imprisonment.

You are 21 years old. You come from Argentina, where you were educated. You hold both Argentinian and Italian nationality, although you have never lived in Italy. In 2019, you chose to leave Argentina to work in Spain. After some six months there, you left and travelled through France before taking the ferry to Guernsey on 25 October 2019. By that time you had swallowed 92 packages of cannabis resin. From the photographs, these packages look similar to large liquorice comfits. You knew it was wrong to transport cannabis in this way, but had been promised €1,000 to do so. You had no prior connection with Guernsey and the plan was to arrive here, pass the packages and hand them over. When the ferry from St Malo arrived at the White Rock, you were detained and spoken to. Eventually, you admitted that an x-ray would show the packages and subsequently, between 26 and 29 October, you produced the packages. The total amount of cannabis involved is 420.1 grams, which at the time had a street value of between £8,400 and £12,600.

For today’s purposes, we treat you as a man of previous good character. You have been in custody throughout the proceedings. You entered a guilty plea on your first appearance before this Court on 23 January 2020, having given that indication when you were committed just over two weeks earlier.

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.

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

For an internal concealment importation, the amount of drugs involved is quite large. We are satisfied that the custody threshold is clearly passed and, in all these circumstances, we take a starting point of 3 years and 9 months' imprisonment. The size and shape of the packages show a degree of planning and sophistication in the nature of the concealment. Any internal concealment is treated as an aggravating factor because it makes the investigation of the offence unpleasant and protracted.

Mitigation

We have listened carefully to everything that has been said about you and on your behalf by Advocate Fletcher.

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 low likelihood of general re-offending and there is little by way of criminogenic need to be addressed.

Even though, on the facts, the plea was inevitable, you are entitled to, and so receive, full credit for entering your guilty plea at the earliest opportunity. We recognise that you are a young man and that you have not been in trouble like this before, which also goes to your credit. The Court does not, though, consider that you have been exploited or manipulated by anyone else, although you may not have fully appreciated the likely consequences of your actions. Further, even if you are viewed as being the courier for another's enterprise, this remains a vital role in the importation of drugs because without persons prepared to carry the drugs, they will not be imported. It is apparent that you willingly participated in what you did.

We have paid particular attention to the remorse you express in your own letter and what your parents have written about you, recognising their concerns for their only child. You have indicated that you plan to return to Argentina when you are free to do so.

Sentence

Whatever your personal views on using cannabis are, this Court always takes importations seriously. The approach is intended to deter those who are stupid enough to think about adding to the amount of drugs available in the Island from doing so. This was a money-making operation on your part where you took a huge risk and were caught. There was no coercion and anyone regarding it all as some kind of adventure shows just how misguided you have been. To your credit, you have not wasted anyone's time once caught and we do hope that you have learnt your lesson and will not be in trouble anywhere ever again. However, in all the circumstances, only a custodial sentence is warranted.

In respect of this Count, you will be sentenced to 2 years and 3 months' imprisonment, to run from 25 October 2019, which is when you were first detained.

Because it is a consequence of the legislation, we are obliged to add that, 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. Although it may be a little academic because there is

no reciprocal enforcement agreement between Guernsey and Argentina, if you were to fail to comply with the conditions of the supervision, you would 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 92 of the packages seized, totalling 420.1 grams of cannabis resin, 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 two mobile phones and €220 is also granted. This Court is satisfied that all these items were lawfully seized and it infers that all of them have been used for the purpose of committing or facilitating the commission of an offence or were intended for that 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.

Deportation

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

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. We have further noted that Advocate Fletcher made no representations relating to the making of such a recommendation, but we are still required to consider all these matters.

As explained in the report on behalf of Immigration and Nationality and by Advocate Fletcher, you appear to the Court to have no connections to Guernsey. You arrived here last October as a first-time visitor. Accordingly, there are no family connections which would be affected were you to be ordered to be deported. Indeed, you would have little option on release but to depart because you would be highly unlikely to be permitted to remain and work under the Island's population management regime.

We are satisfied that a single offence of importing drugs into this Bailiwick can be sufficiently serious to make a recommendation for deportation a proportionate response. Whilst it is acknowledged there is a low risk of you re-offending, this offence is such that the Court finds your continued presence would be to this jurisdiction's detriment.

In circumstances where you have no connection to Guernsey and have been convicted of a serious offence, we are satisfied that it is appropriate to make a recommendation to His Excellency for your deportation at the conclusion of your sentence and so make such a recommendation.

In summary, the sentence this afternoon is 2 years and 3 months' imprisonment, running from 25 October 2019, forfeiture and destruction of all the drugs, forfeiture of the two mobile phones and the cash found on you when detained and a recommendation that, at the conclusion of your sentence, you be deported.

Richard McMahon
Deputy Bailiff

20th March 2020