

Fraudulent evasion of the importation of a Class B drug in contravention of the prohibition on importation imposed by section 2 (1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974
[2020]GRC024

**ROYAL COURT
FULL COURT**

6th MAY 2020

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
Stephen Murray Jones OBE,
Terry John Ferbrache, David Allan Grut, Steven John Morris, David James Mortimer,
Michael Crisp, Marilyn Jasmine King, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Luis MASON

Advocate J McVeigh appeared for the Crown

Advocate D Thompson appeared for the Defendant

DEPUTY BAILIFF:

Background

Luis Mason, 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 in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. This Count relates to the importation of cannabis resin on 8 October 2019 and it carries a maximum penalty of 21 years' imprisonment.

You are originally from the United Kingdom and came to Guernsey in July 2019. You are now 30 years old, and were 29 when committing this offence. You arranged for the cannabis to be sent to you through the post. It was intercepted and found to weigh 10.39 grams, which had a street value of between £207.80 and £311.70.

You have worked in the hospitality sector. It is apparent that you have some history of drug use and we have noted your previous convictions from England in 2009 and 2015 relating to Class A drugs, the earlier of which led to a suspended sentence and an unpaid work requirement imposed by the Crown Court at Nottingham.

You have been on conditional bail throughout these proceedings, which would have been concluded last month, but for the arrival of the coronavirus.

Sentencing Considerations

When it comes to sentencing for these offences, this Court has regard to the guidelines set by the Court of Appeal in 2002 in *Richards*. The range given as the starting point for a drug-trafficking offence involving cannabis of up to 2 kg is 3 to 6 years' imprisonment.

The approach to take in respect of small amounts for personal use is set out in para. 14:

“As we have identified, importation is a drug trafficking offence, whatever the intention of the offender as to the use to which the importation is to be put. There is, however, a clear division between importation of very small quantities for personal use, which are punished in the same way as offences of simple possession, and importation of more than relatively small amounts, which still fall within the lower of the bands we have set out. In the case of such importation, the fact that a claim is made that a drug was for personal use will not generally result in a lighter sentence being imposed than where no such claim is possible, because the importation adds to the stock of drugs available in the Island. Although these cases must be looked at with care, it cannot generally be right that an importer of the drug to which he is addicted can be heard to claim some credit for the likelihood that he will be consuming all or part of it.”

In the light of that guidance, the first question for this Court, therefore, is whether we accept your assertion that this importation was for your personal use. The Court does accept that, which means that the Court adopts a different starting point in respect of this offence than the range starting at 3 years' imprisonment.

Misusing the postal system in this way is always a factor that this Court regards as being an aggravating factor. Your previous convictions for drug-related offending are a further factor we bear in mind as making your offending worse than if you had never committed such offences previously.

Viewing all these matters in the round, the Court is satisfied that the custody threshold in respect of your offending has been passed and, before considering the mitigation advanced on your behalf, the starting point will be one of 2 years' imprisonment.

Mitigation

The Court has considered carefully the realistic and helpful Probation Report relating to you and everything that has been said on your behalf by Advocate Thompson. We have noted, in particular, that you are assessed as presenting a low risk of re-offending and that you do not pose any direct risk of physical harm to others. We have read the character references submitted on your behalf from your family, your former employer and a work colleague. They speak highly of you.

We give you full credit for the guilty plea you entered at the earliest opportunity.

We recognise that you now regret your actions, but that has to be balanced against what you should have learned from your past offending. There seems to be a pattern historically of turning to drug use when the going gets tough. However, you have expressed your remorse at making a silly mistake this time around to deal with the situation in which you found yourself and have assured the Court that you have learnt your lesson and will keep away from drugs in the future.

Sentence

Luis Mason, there is no excuse for turning to drugs, however difficult you consider your situation. It is not what good citizens do. The Court does not accept that you were unaware of the consequences of your actions. You had been in Guernsey for a few months by the time you sourced these drugs to be sent to you, so that is long enough to become aware of the strict stance the authorities take. You

have clearly been a regular user over a number of years, even if you modified your behaviour from using Class A drugs to just Class B and you have shown you can refrain for periods of time. Our concern is that you will not have learnt your lesson properly if the Court were to show really exceptional leniency. There must continue to be an element of deterrence in the sentences we hand down.

That said, rather than send you to prison for this offence, which would be entirely justified, we will follow the recommendation of the Probation officer and impose a Community Service Order in respect of it. In this way, you have the opportunity to prove that you really have turned over a new leaf and, at the same time, actually give something positive back to your adopted home. If you abuse the hospitality that has been afforded to you again and were to re-offend, it is unlikely that such a benevolent outcome will follow.

The Court appreciates that the nature and effect of a Community Service Order has been explained to you, which includes 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. You have indicated your willingness to be made subject to such an order.

In respect of this Count, the Court will require you to perform 180 hours of unpaid work.

This Order is made because of the seriousness of the offence of which you have been convicted. Further, it is imposed as a direct alternative to a sentence of imprisonment, where the alternative sentence that the Court was considering passing in respect of this single Count was one of 12 months' imprisonment.

The forfeiture and destruction orders sought by the Crown in respect of the cannabis resin and the packaging used to send it are granted.

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

Richard J McMahon
Deputy Bailiff

6th May 2020