

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

[2020]GRC025

**ROYAL COURT
FULL COURT**

6th MAY 2020

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
Stephen Murray Jones OBE, Terry John Ferbrache,
Joanne Marie Wyatt, Alan Stevenson Boyle, Peter Francis Gill, Tina Jane Le Poidevin,
Paul Martin Burnard, Felicity Jane Quevatre-Malcic, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Darren Craig BRINEY

Advocate J McVeigh appeared for the Crown

Advocate P Cobb appeared for the Defendant

DEPUTY BAILIFF:

Background

Darren Briney, you have pleaded guilty to an indictment containing two Counts 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. Both Counts relate to importations of cannabis in August 2019, on the 1st and 21st days of that month. Each Count carries a maximum penalty of 21 years' imprisonment.

You are a 35-year-old Englishman, who only arrived in Guernsey in July 2019. It is, therefore, apparent that you wasted no time in trying to obtain cannabis here before turning to friends back in England to have the drugs sent to you. Both postal packages were intercepted. Together, the amounts involved totalled 8.81 grams, having a street value of between £175 and £265.

You are of previous good character. You have found employment here as a data analyst, having worked in retail in England.

You have been on unconditional 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 these importations were for your personal use. The Court does accept that and proceeds to sentence accordingly.

This means that the Court adopts a different starting point in respect of these offences than the range usually starting at 3 years' imprisonment. Further, although there were two importations almost three weeks apart, the Court will look at what happened by reference to the totality principle. The fact that there were two importations at different times might result in consecutive sentences being imposed, but we prefer to regard the fact of these two importations as aggravating each other.

Misusing the postal system in this way is always a factor that this Court regards as being an aggravating factor so doing it twice is doubly aggravating.

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 your mitigation, the starting point will be one of 2 years' imprisonment.

Mitigation

We have carefully considered what has been written about you in the Probation Report and what has been said on your behalf by Advocate Cobb.

We have also read the character references submitted on your behalf, which speak highly of you, and paid particular attention to your own letter to the Court, in which you express your regret at making such a very silly mistake.

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

We have noted, in particular, from the Report that you are assessed as presenting a low risk of re-offending, and so are unlikely to benefit from any form of supervision, and that you do not pose any direct risk of physical harm to others.

Viewed in the round, we recognise that you have now managed to settle better into Island life and that there is scope for you to put your experiences to good use, having learnt your lesson and realise that

turning to unlawful drugs is not the answer to any problems you might face. We regard your case as being one in which there is strong personal mitigation.

Sentence

Darren Briney, you had only been here as a new arrival for a matter of weeks before arranging to have drugs sent here. From what you wrote to someone, it is clear you knew the stance taken to drug-related offending here in Guernsey – zero tolerance. When the first package, for which you used a false name, did not arrive, you persisted with a second attempt, this time using your real name, and where we find that the title of the DVD used to hold the cannabis was rather prophetic for you. As you now know, that was extremely rash and has resulted in you throwing away your previous good character. You should have thought about the consequences for others of your stupidity. If this has been a wake-up call for you, at least some good has come of it.

We accept your contrition and believe that you will not do anything like this again. In those circumstances, rather than send you to prison for these offences, we will follow the recommendation of the Probation officer and impose a Community Service Order in respect of each Count. In this way, you can actually give something positive back to the Island without being a burden on the taxpayers. The Court further notes 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 Count 1, the Court requires you to perform 180 hours of unpaid work.

In respect of Count 2, the Court requires you to perform the same number of hours of unpaid work but, having regard to the totality principle, this order will run currently with the sentence on Count 1. In other words, the total number of hours being imposed today is 180 hours of unpaid work.

These Orders are being made because of the seriousness of the offences of which you have been convicted. They are imposed as a direct alternative to a sentence of imprisonment. The alternative sentence that the Court was considering passing in respect of each Count, but also to run concurrently, was one of 12 months' imprisonment.

The forfeiture and destruction orders sought by the Court in respect of the cannabis and the packaging used when sending them, which were not opposed on your behalf by Advocate Cobb, are also granted.

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

Richard J McMahon
Deputy Bailiff

6th May 2020