

Fraudulent evasion of the prohibition on 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]GRC026

**ROYAL COURT  
FULL COURT**

**18<sup>th</sup> MAY 2020**

**Before: Richard James McMahon, Esq., Bailiff and:  
Claire Helen Le Pelley, Terry John Ferbrache,  
Joanne Marie Wyatt, Alan Stevenson Boyle, Peter Francis Gill, David John Robilliard,  
Tina Jane Le Poidevin, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**Jack Christopher Richard LE COUVEY**

**Crown Advocate F M Russell appeared for the Crown**

**Advocate D Thompson appeared for the Defendant**

**BAILIFF:**

**Background**

Jack Le Couvey, 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. Each Count relates to the importation of cannabis resin between dates in October and early November 2019 and, in your case, each carries a maximum penalty of 21 years' youth detention.

You are a local man who was 18 at the time these offences were committed. The second Count relates to a postal packet that was intercepted in transit to your grandmother's address and found to contain 204 grams of cannabis resin, with a street value of between £4,080 and £6,120. The first Count relates to what appears to be a similar importation earlier in the month, although the amount involved is unknown, the offence having been discovered following an analysis of what was on your mobile telephone.

You are studying engineering at college and working part-time. There are no previous convictions, although you have been cautioned in respect of a drug-related matter.

You have been on unconditional bail throughout these proceedings.

**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.

Looking first at the offences, we are minded to treat them as part of the same overall course of conduct and so sentence on the basis of the totality principle, rather than taking each offence and sentencing for them consecutively. In doing so, we will regard the first Count as aggravating the second Count, about which the Court knows the details. The amounts involved are, as has been pointed out by your Advocate, towards the lower end of the range but, because there were two importations, the Court is satisfied that the custody threshold in respect of your offending has been passed, the *Richards* starting point will be one of 3 years and 6 months youth detention.

Further, misusing the postal system in this way is always regarded as an aggravating factor by this Court, which we also bear in mind before considering the mitigation advanced on your behalf.

### **Mitigation**

The Court has paid close attention to what is written about you in the Probation Report and we share some of the concerns expressed about whether you have downplayed your level of involvement in these offences. We have noted, in particular, that you are assessed as presenting a very low risk of re-offending and that you do not pose any risk of harm to the public through violence. We have listened carefully to everything that has been said on your behalf by Advocate Thompson.

We have read your letter to the Court. In it you refer to associating with persons who took advantage of your naivety and stupidity and having made mistakes. Although it is not as explicit as it might have been, you do refer to having no intention to re-offend, from which the Court infers, and has observed, that you are remorseful for having committed these offences, a point made on your behalf by others. You are most fortunate to have a supportive family and we have read the character references submitted on your behalf from your family, from the programme leader at college and on behalf of your employer. They all speak highly of you and your family note with some dismay how you getting in with the wrong crowd has affected them, perhaps with the most significant consequences being for your mother. We have further noted what Ms Craske writes about you, which helpfully puts your offending into context. You are still quite young, which we take into account, and recognise your decision-making may well have been affected by your age.

We give you full credit for the guilty pleas you entered at the earliest opportunity. The Court notes that, after your initial denials of involvement, you were co-operative with the investigation, and enabled your mobile telephone to be analysed, which has resulted in the first Count being added.

In relation to the threats you say were made against you and as endorsed by the Court of Appeal, we take the view that it is always up to the individual concerned to choose what the right thing to do is. It is a matter of public policy that those playing their part in getting drugs into the Bailiwick for others should not be in a position to mitigate their conduct by claiming that their own vulnerability to persuasion by those who have recruited them minimises their involvement. Accordingly, whilst we take note of these circumstances, they do not have any significant impact on the outcome.

### **Sentence**

Jack Le Couvey, you know full well that, on any scale, the mistakes you made in 2019 rank extremely high. Whilst you are a young man, it is clear that you still have a lot of growing up to do, so the Court is satisfied that you knew that what you were getting involved in was seriously wrong and that the consequences of importing this quantity of controlled drugs most often ends up in people going to Les

Nicolles. The number of cases for drug-related offending coming before this Court shows no sign of diminishing. In too many cases the person standing in front of us says he was duped into participating. The sentences that this Court imposes for offences of this type should, in our view, contain an element of deterrence for others. The misery that unlawful drug use creates for those who choose to indulge remains an unwelcome scourge for our society and this Court endeavours to ensure that message hits home each time it passes sentence.

We believe you when you say that this has been a massive wake-up call for you and we give you credit for how you have responded. The Court does not think that you will be as foolish as you have been again and recognises that you have the makings of a decent member of our community. Accordingly, whilst what you have done is, in our view, so serious that a non-custodial sentence cannot be justified, meaning that, in accordance with the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990, a sentence of youth detention is capable of being imposed this morning, that will not result in immediate custody in your case.

Although the Probation Report invited the Court to consider imposing a Community Service Order on you, as reflected in the submissions made on your behalf by Advocate Thompson, we prefer to make the sentence of youth detention a suspended one. We are satisfied that there is a realistic prospect that you have grown up quickly in the last six months, have learnt your lesson and so can be rehabilitated without being incarcerated. Further, we take the view that having the prospect of being sent to Les Nicolles hanging over your head for a number of years were you to re-offend is a more suitable deterrent for you, or an added incentive, however you wish to view it, to ensure that you really have learnt your lesson. You should realise that this is not a soft option for you because it goes on your record as a custodial sentence rather than a community penalty.

The sentence of this Court, therefore, in respect of Count 1, having regard to the totality principle previously mentioned, is one of 24 months' youth detention, which will be suspended for the period of 3 years.

The sentence in respect of Count 2 is also one of 24 months' youth detention, which will also be suspended for the period of 3 years, and which runs concurrently with the sentence on Count 1.

You will not have to serve these suspended sentences of youth detention unless during the next 3 years you are convicted of an offence punishable with imprisonment. If you are convicted of such an offence, you are liable to serve all or part of the sentences.

The forfeiture and destruction orders sought by the Crown in respect of the cannabis resin and the packaging used to send it, which relates to the second Count and which were not opposed, are granted.

The Court's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the mobile phone is also granted. The Court notes that this was not resisted. In any event, the Court is satisfied that this phone was lawfully seized and that it was used for the purpose of committing or facilitating the commission of an offence. 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.

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

**Richard J McMahon**  
**Bailiff**

**18<sup>th</sup> May 2020**