

Fraudulent evasion of the prohibition on importation into Alderney of Class A and Class B drugs contrary to the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended and failure to disclose information required by notice under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, as amended.

[2020]GRC027

ROYAL COURT

FULL COURT

20th MAY 2020

**Before: Graeme Dewar McKerrell, Esq., Lieutenant Bailiff and:
Stephen Murray Jones OBE, Terry John Ferbrache, Alan Stevenson Boyle,
Peter Francis Gill, Stuart Michael Crisp, Paul Martin Burnard,
Felicity Jane Quevatre-Malcic, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Thomas Michael BARRAS

&

Matthew WATT

Advocate C G Dunford appeared for the Crown

Advocate A J Ayres appeared for the First Defendant

Advocate S Steel appeared for the Second Defendant

LIEUTENANT BAILIFF:

Background

You are both before the court with regard to an indictment that contains the following offences to which you have pleaded guilty.

The first count is that you together on 28th December 2019 were knowingly concerned in the fraudulent evasion of the prohibition on importation into Alderney of a controlled drug of Class A, namely cocaine, contrary to the Customs and Excise (General Provisions) (Bailiwick of Guernsey)

Law, 1972, as amended. The quantity involved is 12.85 grams with a local street value of between £1285 and £1927.50. The maximum penalty for that offence is life imprisonment.

The second count is that Thomas Barras alone, on 28th December 2019 was knowingly concerned in the fraudulent evasion of the prohibition on importation into Alderney of a controlled drug of Class B, namely cannabis, again contrary to the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended. The amount involved in that offence is 19.22 grams with a local street value of between £384.40 and £576.60. The maximum penalty for that offence is imprisonment for 21 years.

The third count is faced by Mr Watt alone. It is that between 21st and 29th January 2020, being a person to whom a notice under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, as amended, you failed to disclose information required by the notice within 7 days. The maximum penalty for that offence is 2 years' imprisonment.

Your first appearance in court on these matters was on 30 December, when you were brought before the Court of Alderney. Rightly, jurisdiction was declined and the case was transferred to Guernsey. You were both committed to stand trial in this court on 16 March 2020 and appeared on 15 April 2020 to enter your guilty pleas. You have both been on bail throughout these proceedings.

Personal Circumstances

You, **Mr Barras**, are aged 26 years. Ordinarily, you reside in Burgess Hill, West Sussex. You have previous convictions, which include the importation of cannabis. You are a habitual user of that drug and you have told the Probation Service you will likely remain so. On the other hand, the court has noted the content of your letter and the references that have been written in support of you.

You, **Mr Watt**, are aged 41 years and reside in Alderney. You also have previous convictions for possession of cannabis and MDMA (a Class A drug) and also for cultivation of cannabis for which you received a 12 month sentence of imprisonment. You say you hope to remain drug free going forward and we note, too, your letter to the court and those of others that have written on your behalf.

Sentencing Considerations

The facts of the case are relatively straightforward albeit there are differences in your accounts. They are not such, however, that require a Newton hearing to be held. In simple terms, on 28 December 2019 you travelled together to France on a Rib owned by Mr Watt where a quantity of drugs were acquired. You were stopped by officers upon your return to Alderney. Mr Barras immediately offered he had cannabis on him and later said in subsequent interviews with Law Enforcement officers that he had been unaware drugs would be purchased whilst in France to bring back to Alderney. However, messages discovered on your phone suggested otherwise. Indeed, they showed that before the trip you had positively offered your services as a courier to acquire drugs (both Class A and Class B) in France for others and to bring them back to Alderney.

Mr Watt claimed there had been no such plan on his part and had acquired the cocaine by chance and yet, apparently, he had sufficient cash to pay for what he bought. You said that you had intended to split with Mr Barras the cocaine you had acquired and therefore what you were left with would have been for your personal use only. In terms of the cannabis, it is your contention you did not know about it and you do not face a count in respect of it. Therefore, subject to the other matter that you face, for the avoidance of doubt, I make it clear you are being sentenced only in respect of the cocaine.

The count relating to the cocaine, to which you have both pleaded guilty, is in the nature of a joint enterprise. The law in Guernsey is clear. Where two or more people embark on a joint enterprise each is liable for the acts of the others that are done, or might have been done, in furtherance of that enterprise. So whilst you, Mr Watt, may claim that your intended share of the cocaine was for personal use only it would seem clear that Mr Barras intended to share his with others for reward. It

does not matter when the plan was agreed between you because, whenever that was, you were both in agreement that once the cocaine had been acquired it would be taken back to Alderney. This Court and the Court of Appeal have said on many occasions that importation for personal use is really no mitigation at all. That is because anyone who brings drugs into the Bailiwick is adding to the stock within the islands and creates a realistic risk that once here it might be shared. To that extent, therefore, you largely stand and fall together in respect of that count.

With all that in mind, this Court must loyally follow the guidance provided by the Court of Appeal in the case of *Richards and others* which has subsequently been developed, but not changed, by other cases. Therefore under those guidelines the starting point for the importation of an amount of cocaine that is just short of 13 grams of cocaine sits around the midway point of the first sentencing band of 7-9 years imprisonment and the starting point for the importation of the cannabis, in respect of Mr Barras, is at the bottom end of the first band of 3-6 years imprisonment.

Turning to the offence that Mr Watt faces alone under the Regulation of Investigatory Powers Law, it relates to your refusal to comply with a lawful demand to provide codes or passwords to enable access to your mobile phone so that it may be examined for evidence. There is no sentencing guideline case in Guernsey but it is an offence that seems to have become more prevalent than was hitherto the position here. You claim the reason for your refusal to comply with the notice is because the phone contains images of a sensitive nature that the person depicted would not want others to see. As an explanation given by defendants that is not an uncommon one and, indeed, in some cases it may be true. However, whether true or not, it cannot avail you of a defence or provide mitigation of any value. In the absence of the code or password being provided to law enforcement officers (who, I should add, can be trusted to treat sensitive material appropriately) the court is entitled to assume that a refusal to do so is designed to conceal evidence connected to the offences under investigation or some other form of serious criminality. In this case, the court is entitled to assume that you may have been trying to conceal evidence of actual or intended distribution of illegal drugs. Accordingly, the sentence that must be passed for this offence has to reflect, so far as is possible within the statutory limits, the seriousness of a refusal to comply with a lawful request which may have the consequence of adversely affecting the proper administration of justice. It must also act as a deterrent to others from doing the same thing in future.

Sentence

Mr Barras – we take as our initial starting point a sentence of around 8 years but note there are aggravating features such as you previous convictions, the fact you offered to supply, and your likely continued illegal cannabis use, which takes us closer to a starting point closer to 8.5 years. The court however notes the mitigation through an early guilty plea, although such was perhaps inevitable, all that has been said and written on your behalf and the good work that you have done in Alderney. Taking all that into account the final position the court has reached is as follows, recognising as I have said, that you have imported two different types of drug which is in itself an aggravating feature, but we will deal with these sentences concurrently:

- For the importation of the Class A drug - 5 years and 9 months' imprisonment
- For the importation of the Class B drug - 18 months' imprisonment to run concurrently
- **Making a TOTAL of 5 years and 9 months**

Mr Watt – the importation of the cocaine was a joint enterprise, as I have said, and you stand and fall together with Mr Barras in respect of that. Again, an initial starting point of 8 years is correct, but there are aggravating features even if you were more lightly convicted in the past and in particular, the court is sceptical that you acquired the cocaine by chance. But again, a starting point of 8.5 years would seem appropriate, but which in your case, after taking into account the mitigation, we reduce to a final figure of 5.5 years, including the mitigation to include your early guilty plea. The RIPL offence is of course a serious one committed in the course of the same investigation, but as a separate and a deliberate decision and it has to be marked accordingly.

- For the importation of the Class A drug - 5 years and 6 months' imprisonment
- For the RIPL offence – 8 months and that is to run consecutively
- **Making a TOTAL of 6 years and 2 months from today**
- **Forfeiture and Destruction Orders are granted**
- **Compulsory Supervision after release**

Graeme Dewar McKerrell Esq.,

Lieutenant Bailiff

20th May 2020