

Fraudulent evasion of the prohibition on importation contrary to section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, driving in a manner dangerous to the public contrary to section 10(1) of the Road Traffic (Guernsey) Ordinance 2019 and driving a motor vehicle having consumed excess alcohol contrary to section 2(2)(a) of the Road Traffic (Drink Driving) (Guernsey) Law, 1989, as amended.

[2021]GRC018

**ROYAL COURT
FULL COURT**

4th May 2021

Before: Catherine Maureen Fooks, Judge of the Royal Court

And Jurats:

Claire Helen Le Pelley, Terry John Ferbrache,

David James Mortimer, Joanne Marie Wyatt, Peter Francis Gill, Marilyn Jasmine King,

Paul Martin Burnard, Felicity Jane Quevâtre-Malcic, Heather Reed, Jurats.

THE LAW OFFICERS OF THE CROWN

- v -

Pip Archibald ORCHARD

Advocate C G Dunford appeared for the Crown

Advocate L C Roffey appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Mr Orchard you have pleaded guilty to 5 counts on 2 indictments.

The first indictment contains three 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. The first count relates to the importation of a Class A drug namely cocaine and carries a maximum sentence of life imprisonment. The second and third counts relate to the importation of a Class C drug namely alprazolam for which the maximum sentence is 10 years imprisonment.

The second indictment contains two counts. The first is of driving in a manner dangerous to the public contrary to section 10(1) of the Road Traffic (Guernsey) Ordinance 2019 which carries a maximum sentence of two years imprisonment or a fine or both. The second count is of driving a motor vehicle having consumed excess alcohol contrary to section 2(2)(a) of the Road Traffic (Drink Driving) (Guernsey) Law, 1989, as amended, which carries a maximum sentence of 12 months' imprisonment or a fine or both.

The facts in relation to the first indictment are that, on the 18th of August 2020, customs officers intercepted a package addressed to an Emily Fields at an address in George Road (not being your address) and which package was found to contain 2.95 grams of cocaine. On the 25th of August 2020, customs officers intercepted a further package addressed to the same address but to a different person,

Emma Johnston, which was found to contain 15 tablets of the Class C drug alprazolam. A missed delivery form in respect of the first package was left at the address on the 28th of August 2020 and you attempted to collect the package later that day. You were arrested at the post office on the 29th of August 2020 when you again attempted to collect the first package. A search of your property uncovered paperwork in relation to the address to which the packages were to be delivered and the names on those packages.

You were bailed until the 29th of October pending further enquiries.

On the 1st of September 2020, customs officers intercepted a further package addressed to Emily Fields at the George Road address which was found to contain a further 15 tablets of alprazolam. It is accepted that that package had been ordered prior to your arrest on the 29th of August 2020.

In your first interview under caution on 29th August 2020, you denied any involvement in or knowledge of the matter. In your second interview on the 12th of November 2020, as is your right, you answered no comment to all questions of substance.

The 2.95 grams of cocaine is valued at between £295 and £442.50 and the 30 alprazolam tablets, each of 1 gram, are valued between £30 and £120.

The facts in relation to the second indictment are that, whilst on police bail, on the 5th of December 2020 at 01:00, an officer on patrol at the South esplanade conducting high visibility drink drive checks, noticed a silver Ford Fiesta registration 15432, which was being driven by you, heading towards the Val des Terres on the wrong side of the road. The officer followed the vehicle and noted that it had stopped on the opposite side of the hill with another car stopped just in front of it and two pedestrians standing on the pavement nearby. The officer illuminated his blue lights and, shortly after, you drove off.

There then followed a chase up the Val des Terres with you driving on the wrong side of the road and, at one point, at 35 mph, a speed in excess of the speed limit of 25 mph. There was a near miss with a taxi coming down the hill which had to mount the pavement to avoid a collision. Another taxi also had to stop when you were on the wrong side of the road and to the right of the 'keep left' bollard at the top of the Val des Terres. The chase continued into narrow single-track lanes through which you accelerated to speeds of around 38 mph and, at one point, mounted a grass bank causing the car to travel on two wheels for a short time. Eventually, you lost control of the vehicle and hit the grass bank. You initially ran from police but were arrested. In custody, you provided two specimens of breath, the lower of which isolated 80 micrograms of alcohol in 100 millilitres of breath, the legal limit being 35 micrograms, so you were in excess of twice the legal limit for driving. You have made an unsubstantiated allegation that your drink had been spiked, unsubstantiated as unfortunately no blood test was taken.

Following your arrest on the 5th of December for the driving offences, you were released on conditional bail, one of the conditions being not to consume alcohol. Following a breach by you of that condition, you have been remanded in custody since the 14th of December 2020. We have taken your being in custody into account in the overall sentence.

You are a local man of 29 years of age. You are well educated and you have worked as a well-respected medical professional. You have no previous convictions. No evidence has been placed before the court to indicate that you were intending to supply any other person with drugs and no drug trafficking investigation is sought. This does not negate the fact that the importation of drugs adds to the stock in the Island. Whilst, initially, you declined to provide the pass code for your mobile telephone, you did do so subsequently, and you have surrendered it voluntarily rather than an order being necessary for its forfeiture and destruction, which is to your credit.

Sentencing Considerations

The sentencing guidelines for offences involving drugs of Class A and B are contained in the case of Richards and this Court is obliged to follow those guidelines. The sentencing band for Class A drugs in powdered form is 7 to 9 years for quantities between 1 and 20 grams. The maximum sentence in respect of the Class C drugs is 10 years. As set out in Richards, we are obliged to identify a starting point for each of the importations and then determine a total starting point for all 3 to which the mitigation is applied.

It is a well-established principle that postal importations are treated as an aggravating factor when it comes to sentencing. There were three separate importations in quick succession and this court is also entitled to treat that as an aggravating factor. Nonetheless, we are minded to treat them as part of the same overall course of conduct and so sentence you taking the most serious Count, the Class A importation, as the lead offence and we will regard the second and third Counts as aggravating the first Count. In view of the quantity of controlled drugs, the Court is satisfied that the custody threshold in respect of your offending has been passed.

The dangerous driving and driving with excess alcohol arise out of the same facts. We are minded to treat the driving with excess alcohol offence as aggravating the dangerous driving. It is no excuse to say that you would not have driven with excess alcohol in other circumstances. The court views this prolonged episode of dangerous driving as serious and, again, considers that the custody threshold has been passed.

Whilst the two sets of offences, the drugs and driving are not related, we take into account the totality principle when sentencing you.

Mitigation

The court must first consider the impact of your guilty pleas on sentence. We note that the prosecutor very fairly gives you credit for facilitating the prompt committal of the driving matters to the Royal Court and saving the prosecution time. We give you credit for that and we afford you full credit for your timely guilty pleas to all offences.

Your personal mitigation is impressive. We have considered very carefully the helpful information contained within the probation report and well-crafted letters of support from family and professionals who think highly of you and are saddened at this turn of events. This Court rarely sees such excellent fulsome references including references from professionals. Your conduct is described as “being out of character” and “unrecognisable”. Wisely, your family and friends seek neither to condone or excuse your conduct which gives their letters greater weight.

We also take account of the able submissions made by your Advocate today. We concur with him that it is tragic that you find yourself before the Court in these circumstances. In our view, you have been knocked off the rails and could not find your way back. Despite medical assistance and significant support, you then made the serious mistake and error of judgment in taking the path of illegality in sourcing your own coping strategies.

It has to be said, however, that the quantity of Class A drug is significant and, in respect of the driving offences, in contrast to the caring person described in the letters, you showed a total disregard for the safety of others. It is a miracle that no one was coming the other way in those small lanes and that no one was hurt.

It is clear that you have used drugs and alcohol as an inappropriate coping strategy. You say that the drugs were ordered as part of a self-detox. You know that you should have sought support from those who care about you and professional help.

You have undergone an enforced detox in custody but it is to your credit that you have accepted therapeutic help and have made plans to continue, if released.

We note that you have taken responsibility for your flawed thought processes which were impacted but not excused by alcohol addiction. We also note your strong work ethic and that you have secured employment, were you to be released.

We of course do take account that you have been remanded in custody for over 4½ months. Importantly, you are a person of previous good character.

Sentence

The Richards guidelines are binding on this Court. Having considered Richards, we take a starting point of 7 years for the Class A offence and 6 months for each of the Class C offences and have determined a combined starting point of 7½ years for the 3 importations. We sentence you in respect of Counts 2 and 3 concurrently with Count 1.

Even taking the lowest starting point for the first Count, without any significant increase for the Class C importations and aggravating factors, and giving you the fullest discount for your guilty plea and a generous further discount for your good character and personal mitigation, so as to reach a total discount of over one-half, a sentence of immediate custody is unavoidable.

The driving offences are separate and should attract a separate and consecutive penalty which we conclude should be 8 months for the dangerous driving with a concurrent sentence for the driving with excess alcohol, but the Court will take into account totality and time on remand, to minimise any additional custodial sentence.

Taking into account all the above, and applying generous discounts for pleas and mitigation, the sentences will be as follows:

First Indictment:

Count 1 - 2½ years' imprisonment with effect from 14th December 2020.

Count 2 - 3 months concurrent.

Count 3 – 3 months concurrent

Second Indictment:

Count 1 – 6 months' consecutive to Count 1 of the First Indictment.

Count 2 – 6 months' concurrent.

Driving Disqualifications

You must be disqualified from driving in respect of both driving offences and, as a matter of law, that disqualification has to start from now and the disqualifications have to be concurrent. On Count 1 of the Second Indictment, you are disqualified for 6 years in all categories, and on Count 2 of the Second Indictment for 3 years in all categories concurrent - total 6 years' disqualification from today. We must warn you that the penalties for driving whilst disqualified are most severe and you would be likely to receive an immediate custodial sentence.

Summary of sentences

- Immediate imprisonment of 3 years with effect from 14 December 2020 and
- Disqualification from driving in all categories of 6 years from today.

The forfeiture and destruction order sought by the Crown in respect of the drugs, which you did not oppose, is also granted.

Catherine Maureen Fooks
Judge of the Royal Court

4th May 2021