

**ROYAL COURT
FULL COURT**

14 January 2019

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
Stephen Murray Jones OBE, David Percy Langley Hodgetts LVO, Niall David McCathie,
Jonathan Grenfell Hooley, David James Mortimer, Joanne Marie Wyatt, Peter Francis Gill,
David John Robilliard, Marilyn Jasmine King, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

David John Murray STEWART

Advocate R J Calderwood appeared for the Crown

Advocate P T R Ferbrache appeared for the Defendant

DEPUTY BAILIFF:

Background

David Stewart, you have pleaded guilty to an indictment containing four Counts. Each Count relates to being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug of Class A, being cocaine, contrary to the prohibition on importation imposed by section 2 (1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. Each Count relates to an importation carried out between different dates. Each Count carries a maximum penalty of life imprisonment.

The method used each time was you arranging for the cocaine to be sent to you in a greeting card by an off-Island supplier already known to you. It was the last of these four importations where the package was intercepted and that led to your arrest. The previous importations were discovered through analysis of two mobile telephones and your admissions in a subsequent interview. That fourth importation involved 0.44 gram of cocaine for which you paid your supplier £50 plus postage and packaging. The amount paid for each of the three earlier importations was £100 every time. The Guernsey street value is put at £100 to £150 per gram.

These offences were committed when you were aged 38. You are now a 39-year-old man, raised in England. You lived and worked in Guernsey for some years in your late teens and 20s and returned here in 2015. You have a good job with Jackson's. We proceed on the basis of treating you as being of previously good character.

You have been on unconditional bail throughout these proceedings.

Sentencing Considerations

In 2002, sentencing guidelines were established by the Court of Appeal in the case of *Richards*. Unless and until there is a change of political direction in relation to drug-related offending, this Court

is obliged to have regard to those guidelines. At this stage, we are looking at the offending and not your personal circumstances as the offender.

For Class A drugs in powder form, as here, the starting point for 1 – 20 grams is 7 to 9 years' imprisonment. Paragraph 14 of Richards has been referred to by Advocate Ferbrache. In full it reads:

“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 any 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 Crown has conceded this point and we agree.

The next question is whether the amounts involved can properly be described as “*very small quantities*”. The only quantity about which we know is the final importation in Count 4 at 0.44 gram. The quantity for each of the other importations is unknown, but we consider that it is a reasonable inference to draw that each, costing you twice as much, ignoring the costs of the cards and postage, will have involved approximately twice that amount. This Court concludes, therefore, that each of those importations involved near to, or even at, 1 gram. Accordingly, although if viewed in isolation, 0.44 gram might be close to a point where a punishment aligned with simple possession might have been considered, none of these other importations is and, in any event, the total amount of cocaine imported over the period of two months covered by the four Counts, in our view, takes your offending beyond the principle set out in para. 14 of Richards. In that regard, we have also noted in the Richards case the appeal of Martyn Noyon, where one of the Counts involved an importation of 0.3 gram of heroin.

As drug trafficking offences, we are clear that the custody threshold has been passed. As a result, the Richards guidelines potentially enable us to fix a starting point at 7 years' imprisonment, or even higher, but we are not minded to do so because we cannot say that any one of the importations necessarily reaches 1 gram. Instead, we have adopted a totality approach, through which this Court recognises that the three additional importations involve aggravating the basic facts of any one of the importations. We have chosen to take our starting point at significantly below 7 years and, without at this stage distinguishing between the four Counts, adopt 4½ years as our starting point. We add that we regard the misuse to which the postal system has been put as a further aggravating factor we are entitled to take into consideration.

Mitigation

We have listened most carefully to everything that has been said about you and on your behalf by Advocate Ferbrache. We have carefully considered the content set out in the helpful and realistic Probation Report. We have particularly noted the assessment made of you that there is a very low risk of you re-offending and that there is apparently no risk of physical harm to the public. We have had regard to the content of the supportive letters submitted to the Court on your behalf by your Advocate.

You are entitled to full credit for your early pleas of guilty. From your own letter, we recognise your sincere remorse at your actions. We understand that the circumstances in which you turned to cocaine

last year were, you say, a response, albeit misguided, to your emotional state at that time. We accept your assertion that, by being caught, you will not succumb to substance misuse in the future and that you are finally, and quite properly, now making use of legitimate means to address how to deal with your grief, your anxieties and any depression that may arise. You are fortunate to have a supportive employer, a good circle of friends and family members who want to see you flourish.

We are satisfied that there is strong personal mitigation here and the main question we have had to resolve is whether it is sufficient to lead to anything other than an immediate custodial sentence.

Sentence

This Court frequently repeats what was said in *Richards* about the misuse of drugs being, and on our view continuing to be, one of the scourges of European society. We hold the view that the deterrent effect of sentences remains a relevant factor. You are old enough, and should be wise enough, to know that turning to drugs, especially a Class A drug such as cocaine, was a huge risk however overwhelming the problems you faced at the time. As a Guernsey resident of some years' standing, you must have been aware of other cases reported by the media so, by taking that risk, you have to be prepared to accept the consequences of doing so. Whatever else, we agree with what you have written to the Court about your stupidity, and the distress you will have caused to your family and others. Your lack of judgment means that you will have to live with the shame of these drugs convictions.

Given the particular circumstances in which you committed these four offences, we will adopt an unusual course in sentencing you which we feel reflects the seriousness of these offences, still acts as a deterrent to others and should not be seen by you as a soft option. We are satisfied that each Count, in principle, merits a custodial sentence, but will not send you to prison today. We do not expect to see you before any Court again, but in order to impress upon you why you must not re-offend, we will impose suspended sentences for some Counts and, in order that you can use your skills to give something back to the people of Guernsey, as recommended in the probation report, also give you a community service order as a direct alternative to a custodial sentence. We stress, however, that we do so on the basis of your particular personal circumstances and that, but for this mitigation, these offences would result in immediate custodial sentences.

In respect of Counts 1, 2 and 3, the sentence will be 2 years' imprisonment, suspended in each case for a period of 3 years, each of those sentences to run concurrently with each other.

You will not have to serve these suspended sentences of imprisonment unless during the next three 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 those sentences.

In respect of Count 4, the sentence is that you perform 240 hours of unpaid work under a Community Service Order. This is also concurrent to the suspended sentences. This Order is made because of the seriousness of the offence of which you have been convicted.

The Court notes that you have signed a form stating that you understand the nature and effect of a Community Service Order, 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.

This Order is imposed as a direct alternative to a sentence of imprisonment. The alternative sentence that the Court was considering passing was one of 18 months' imprisonment.

The difference in the term of imprisonment for Count 4 from those for Counts 1 to 3 reflects the smaller quantity of cocaine imported on that occasion. In effect, we have taken the starting point of 4½ years or thereabouts, considered the misuse of the postal system, before making the deduction of

one-third for your guilty pleas and then further significant reductions in relation to the mitigation, and that is how we have ended up at 2 years in relation to the larger amounts and 18 months, and then we have suspended the 2 years and given a CSO as a direct alternative to the 18 months' imprisonment that we had in mind.

The overall sentences imposed by the Court today, therefore, are 2 years' imprisonment, suspended for 3 years, plus a Community Service Order for 240 hours' work, all taking effect from today concurrently.

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

The forfeiture and destruction orders in respect of the items seized, being the cocaine (0.44 gram), the postal envelope, the greeting card, even the Orange Bag and the Clear Bags, which are sought by the Crown are all granted.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the two iPhones is also granted. The Court notes that this was not resisted. In any event, the Court is satisfied that these phones were lawfully seized and that they have been 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 estimated 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.

Richard McMahon
Deputy Bailiff

14 January 2019