

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, in respect of Cannabis and Cannabis resin. Possession of a controlled drug, contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, being Cannabis.

[2021]GRC034

**ROYAL COURT
FULL COURT**

7th May 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Claire Helen Le Pelley, Terry John Ferbrache,
Joanne Marie Wyatt, Peter Francis Gill, David John Robilliard, Marilyn Jasmine King,
Paul Martin Burnard, Heather Reed.**

THE LAW OFFICERS OF THE CROWN

- v -

Benjamin Mark HIGGINSON

**Advocate C G Dunford appeared for the Crown
Advocate D R F Domaille appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Higginson you have pleaded guilty to 5 Counts on 1 Indictment.

Counts 1-4 are 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. Counts 1 and 3 are in relation to Cannabis and Counts 2 and 4 are in relation to Cannabis Resin. Each offence carries a maximum sentence of 21 years' imprisonment.

Count 5 is of possessing a controlled drug, namely Cannabis, contrary to section 4(2) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended and carries a maximum sentence of 10 years' imprisonment.

The facts are as follows:

On Friday the 17th July 2020, Customs Officers on duty at the Guernsey Post Office intercepted a package addressed to Ben HIG at your address. The package was found to contain five silver heat-sealed packets, four of which contained herbal Cannabis (13.96 grams) and the fifth of which contained Cannabis Resin (0.98 grams). On the 27th July 2020, Customs Officers again on duty at the Guernsey Post Office, intercepted a package addressed to you at your address. It contained two silver heat-sealed packets, one of which contained herbal Cannabis (13.85 grams) and the other of which contained Cannabis Resin (0.93 grams).

You did not voluntarily attend at Guernsey Police headquarters on the 4th August, as requested in a letter sent to you, so, on the 8th August, Customs Officers attended at your home and arrested you. Your iPhone was seized at that time.

A subsequent search of your home led to the discovery of a number of items of interest including 5 grams of Cannabis, although it is to be noted that this amount consists of 0.25 grams of Cannabis mixed with tobacco within a hand rolled cigarette.

In Police interview, you admitted having ordered one package but not the second and you also stated that you had not ordered any Cannabis Resin. You admitted that the items found at your home belonged to you and that they were for your personal use. You provided officers with your passcode and a further 6-digit code, but the latter failed to work. Analysis of your phone revealed evidence in relation to package 2 and package 1, together with general evidence of Cannabis use.

The total amount of Cannabis is 27.81 grams and 1.9 grams of Cannabis Resin, valued at between £594.40 and £891.60. The approximate 5 grams of Cannabis found at your home is valued at between £100 and £150.

You are a young man of 19 years of age, 18 at the date of the commission of the offences. You are from Belfast but live and work in Guernsey. You left school with six GCSEs and went straight to work and have continued to work ever since. You have no previous convictions.

You were arrested on 8th August 2020, charged on 5th October 2020, released on Police bail and have been on conditional bail since your first Court appearance on 2nd November 2020.

Sentencing Considerations

The sentencing guidelines applicable to offences involving the importation of drugs of Class B are contained in the case of Richards and this Court is obliged to follow those guidelines. The sentencing band for Cannabis and Cannabis Resin is 3-6 years for quantities up to 2 kilograms. 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 to which the mitigation is applied.

The maximum sentence in relation to the possession of Cannabis offences is 10 years.

Aggravating Factors

It is a well-established principle that Postal importations are treated as an aggravating factor when it comes to sentencing. There were two separate importations in quick succession and this Court is also entitled to treat that as an aggravating factor. The four Counts of importation cover two importations. We are minded to treat the four Counts as part of the same overall course of conduct. The importations were not particularly sophisticated in the view of the Court as you used your name and your address and even contacted the Post Office to follow up one of the packages. But in view of the Richards guidelines, the Court is satisfied that the custody threshold has been passed and, in accordance with The Youth Detention Law, that the offence is so serious that a non-custodial sentence cannot be justified.

Starting Point

There is no difference in terms of sentence between herbal Cannabis and Cannabis Resin, so we look at the combined quantity imported (29.72 grams) and sentence on that. The quantity of Cannabis imported is at the lower end of the scale so, even with the aggravating factor of postal importation, we set the starting point at the lowest possible which is 3 years. We will deal with the Cannabis found at your home separately.

Mitigation

The Court must first consider the impact of your guilty pleas on sentence. We afford you full credit for your guilty pleas to all offences which were entered at the earliest opportunity. You were a bit less than frank in police interview about the second importation, but you have generally been open and candid with the Police and the Probation Officer.

You are still a young man, now 19, but only 18 when the offences were committed. You have no previous convictions. We note that it is now nearly 10 months since the commission of the offences and that you have not committed any offences in that time.

The Court has considered carefully the helpful Probation Report prepared in respect of you, the doctor's report and the very appropriate letters of support from your family and others.

The Probation Report explains your background and the issues which led you to leave home at such a young age. It also sets out the history of your Cannabis use. The Probation Officer notes that, when you stopped using Cannabis after your arrest, you turned to excessive alcohol consumption, which is concerning, as you have swapped one dependency for another, but, to your credit, you have sought help voluntarily from In-Dependence and engaged on a regular basis with them. This shows a level of insight and maturity from one so young. You are reported as being highly motivated to maintain abstinence. Further, you have voluntarily sought help from your GP with anti-depressants, which is again to your credit.

You have a very good work ethic, having worked since you left school at 16, worked consistently since and we note that you have been promoted to supervisor. You are currently the main breadwinner in your household.

It is also to your credit that you care for and support your fiancée with her health issues and also support your brother. Your family's letters attest to your being a loyal and caring person. We take into account the negative impact on your fiancée of an immediate sentence of Youth Detention. You benefit from a supportive family who have, sadly, because of Covid, been unable to see you in person.

We have also listened carefully to what has been said very well on your behalf by your Advocate. He has drawn all the points together which amount to considerable mitigation. We were struck by his comment that "there rest on [your] shoulders so many responsibilities".

The Probation Officer assesses you as a low to moderate risk of re-offending. She points to the experience of being brought before the Court and your appropriate fear of going to Prison as having been a salutary lesson and a deterrent to future offending. She assesses you as suitable for a non-custodial alternative and for supervision, aimed at reinforcing your motivation to achieve abstinence from alcohol and substances.

You have expressed your remorse in your insightful letter to the Court and your family members confirm it.

Sentence

Although the custody threshold is passed, in view of your previous good character, early guilty pleas, youth and other mitigation, the Court is able to apply a generous discount to the starting point and consider an alternative to immediate Youth Detention which it does in the form of a Suspended Sentence. It is also appropriate to impose a Probation Order to enforce compliance upon you to deal with your issues with alcohol and drugs. In so doing, the Court has taken into consideration the totality principle.

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

- Count 1 - 18 months' Youth Detention suspended for 2 years from today;
- Count 2 - 18 months' Youth Detention suspended for 2 years, concurrent with Count 1;
- Count 3 - 18 months' Youth Detention suspended for 2 years, concurrent with Count 1;
- Count 4 - 18 months' Youth Detention suspended for 2 years, concurrent with Count 1;
- Count 5 - the possession charge - 7 days' Youth Detention, suspended for 2 years, concurrent with Count 1;
- A total of 18 months' Youth Detention, suspended for 2 years from today.

You will not have to serve this Suspended Sentence of imprisonment unless, during the next 2 years you are convicted of an offence punishable with imprisonment. If you are convicted of such an offence you will be liable to serve all or part of these sentences. A Suspended Sentence is not a let-off. It will hang over your head for that period of time and those will be the consequences, so please don't forget that.

These Orders are being made because of the seriousness of the offence for which you have been convicted. In this way it means that you are being offered an opportunity to make a positive contribution to the community by continuing to be a valuable part of it. But, at the same time, you face the Suspended Sentence of Youth Detention should you re-offend.

As already mentioned, in addition to the Suspended Sentences in respect of each Count, the Court is satisfied that it is appropriate to add a Probation Order and it will do so for 2 years. Over this period of time there will be an opportunity to get a fuller understanding of your offending behaviour and respond appropriately. It will also enable you to deal with your issues with alcohol and drugs. Such an Order is imposed for the purpose of your rehabilitation to prevent you from offending further and to protect the public. We are satisfied that you have had explained to you the purpose and effect of the Order and the powers that follow if it is breached, including the consequences thereof. But in brief summary, it means that you must:

- keep in contact with your Supervisor in accordance with the instructions you will be given from time to time;
- notify your Supervisor of any change of address or working arrangement;
- not do anything to undermine the purposes already mentioned for which the Order is made; and
- comply with the additional requirements which we are satisfied should be attached to the Order, namely:

1. attend the Criminal Justice Substance Service as directed and comply with drug testing and treatment as required;

and we add a second condition:

2. comply with any direction of your Supervisor in relation to you addressing your issues with alcohol. Additionally, we would expect work to be done around emotional regulation, problem solving skills, consequential thinking and good lives work.

If you were to fail to comply with any requirement, you would be liable to be returned to Court and this Court has the power to continue with the Order, with or without variation, to fine you or even to revoke the Order and re-sentence you.

The Forfeiture and Destruction Order sought by the Crown under section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, in respect of the drugs and grinder which you did not oppose, is granted.

The Crown's application, pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006, in respect of the iPhone is also granted. The Court notes that this has not been resisted. The Court is satisfied that this item was lawfully seized and that analysis of it showed that it had been used for the purpose of committing or facilitating the commission of an offence, as evidenced by your pleas. The Court has, as required by sub-section 5, had regard to the value of the property, some £300-£400 and the likely financial and other effects on you of making the Order before deciding to grant the Crown's application.

The Court is concerned, yet again, to see another teenager appearing before it, in connection with serious drugs offences, apparently unaware of the serious consequences and life-long implications of such offending.

Summary of the Sentences

- 18 months' Youth Detention suspended for 2 years.
- Probation Order for 2 years with the two additional requirements.
- Forfeiture and Destruction of the drugs, grinder and iPhone.

Mr Higginson, you are fortunate that you will be walking out of this courtroom today. You do not need us to tell you that your fiancée and family have been beside themselves with worry and you owe it to them and to yourself to make this your first and last appearance before this or any court. Now, you need to focus on resolving your issues. A Suspended Sentence and Probation Order are not easy options. If you reoffend in any way, and that is not just in relation to drugs and alcohol, or you fail to comply in any way with the Probation Order, you will be back before this Court and you are likely to be going to Prison.

**Catherine Maureen Fooks,
Judge of the Royal Court**

7th May 2021