

Fraudulent evasion of the prohibition on the importation of a Class B drug, contrary to section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974.

[2021]GRC041

**ROYAL COURT
FULL COURT**

29 July 2021

**Before: Richard James McMahon, Esq., Bailiff and Jurats:
Terry John Ferbrache, Jonathan Grenfell Hooley, Steven John Morris,
David James Mortimer, Stuart Michael Crisp, Marilyn Jasmine King,
Tina Jane Le Poidevin, Felicity Jane Quevâtre-Malcic, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

**Malcolm HART
(D.O.B. 15.04.1961)**

**Advocate J D McVeigh appeared for the Crown
Advocate S E Steel appeared for the Defendant**

BAILIFF:

Malcolm Hart, you have pleaded guilty to an indictment containing a single Count of being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, cannabis, which is Class B, in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. This Count carries a maximum penalty of 21 years' imprisonment.

You are now aged 60 but this offence was committed on 11 January this year, before your last birthday. You were born in Scotland, moved into working in the airline industry and came to Guernsey in 2000 as CEO of Aurigny. During your tenure, the airline was purchased by the States of Guernsey and you continued in your role until 2013, since when you have had alternative employment as a director of companies based here.

The amount of cannabis you imported was just 3.68 grams. It had a street value of between around £180 and £250. You apparently paid between £30 and £40 for the cannabis, some of which you had consumed during your visit to see family and friends in the UK. That visit was principally to be with your mother at what turned out to be the end of her life. The drugs were purchased early on during your stay of almost four weeks and, upon returning to the Island after your mother's funeral, you put the cannabis in a condom and secreted it in your bottom. On being stopped on arrival, you initially denied any importation before a swab of a plastic bag in your luggage indicated a positive response for cannabis, at which time you admitted what was in your bottom.

You have no previous convictions and have been on unconditional bail throughout these proceedings.

Sentencing Considerations

This Court looks first at the offence and your role in relation to it before turning to any personal mitigation. The Court of Appeal has provided guidelines for sentencing for a drug trafficking offence in the well-known case of *Richards*. As set out in paragraph 8, the starting point for the offence is determined primarily by considering two factors: the quantity of the drugs and the involvement or role of the defendant in committing the offence. That paragraph also states that the “*the greater the sophistication of the methods used to evade detection, the more seriously the offence will be regarded*”. On quantity, the range given as the starting point for an offence involving cannabis of zero up to 2 kgs is 3 to 6 years’ imprisonment.

We accept that this range is not a straitjacket and that choosing a lower starting point is permissible because, as Advocate Steel submitted, sentencing is an art not a science. However, the internal concealment of the cannabis is something we treat as being a significant aggravating factor. It is unpleasant for those investigating and involves use of medical resources, which in your case relates to the x-ray to confirm there was nothing further inside you. The Court is also satisfied that taking this step shows clearly that you knew what you were doing was wrong. Indeed, we cannot ignore your previous position with Aurigny and your years of living here justify us inferring that you must be familiar with the strict approach the Island’s Courts take to drug-related offending.

In your case, that incredibly unwise decision to conceal internally inclines us to regard the combination of it being a relatively small amount and this intention to avoid detection, as warranting a starting point at the lowest end of that range, namely 3 years’ imprisonment.

Mitigation

The Court now turns to what personal mitigation there is in your case and how that impacts on this starting point.

In doing so, we have had regard to what is written about you in the Probation Report and what Advocate Steel has told the Court. From the Report, we have noted the assessment of there being a very low risk of you re-offending.

We have read your letter as well as the 10 letters provided by others on your behalf. Perhaps the most telling comment is your own description of having made the mistake of your life and one for which you are paying, and doubtless will continue to pay, an extremely heavy price. Such consequences as you will face in the future are, of course, directly attributable to you having committed this offence.

A significant element of the mitigation is the guilty plea you indicated at the earliest opportunity, for which we will afford you full credit, no matter how inevitable that plea was, noting again what is set out at paragraph 15 in *Richards*.

We appreciate just how remorseful you are, which we also take into account. Your previous good character is another point in your favour.

The circumstances of your trip to the UK in December and January were, we accept, inevitably stressful for you. Those events may well have affected your ability to think through the consequences of what you were doing. However, we have also noted from the Probation Report that you have acknowledged using cannabis for recreational purposes previously when in the UK and also when abroad, so we conclude that this was not the first occasion when you turned to using cannabis. In other words, it is not being suggested that you bought this cannabis solely because of the circumstances in which you found yourself, so we view this as part of an ongoing pattern of usage. Indeed, you made this purchase before going to visit your mother and then decided not to leave these drugs behind, perhaps to help the period of inevitable self-isolation when you returned to the Island.

A recurring theme through what others have written and to which your own letter refers, is your membership of the Child, Youth and Community Tribunal from its inception until your resignation

following the commission of this offence. The fact that you volunteered to be a member of the CYCT and were a regular participant for more than a decade demonstrates your preparedness to serve your adopted community, but we think that the positive aspect of you having undertaken that role also has to be tempered by the extreme disappointment that some of those with whom you dealt may now feel at someone performing such an important function showing so little regard for the law. In letting yourself down, you have let others down because they trusted in your judgment. As such, we do not find this to be a strong mitigating factor in your favour, as others have suggested it should be.

Sentence

Malcolm Hart, if people gave out prizes for stupidity, you would be near the front of the queue. For someone who has had a high-flying public profile, this is a spectacular fall from grace. We appreciate the impact all this has had on you but the decision to conceal a controlled drug internally evidences that you knew what you were doing was wrong and you must now understand that you have to face the consequences. To your credit, once the game was up, you have wasted no one's time through your early admission and cooperation. If, perhaps like some others, you hold views about the rights and wrongs of criminalising recreational drug use, we expect you are intelligent enough to know that, until the law is actually changed, this Court will continue to take a dim view of drug trafficking.

Although the quantity of cannabis involved is small, we would be justified in sending you to prison this afternoon, but we will not do so, principally because of your previous good character and our belief that this has been an experience you will not want to repeat, both of which lead us to conclude that we can deal with you without needing to impose that immediate custodial sentence. You have been a valued member of our community and we want you to resume your place as such. Indeed, if you are able to articulate to others the foolishness of illicit drug use because of what happens when you are caught, then some good may come of this. Further, by imposing a community service order, you can give something back to the community you have wronged. We stress that this should not be regarded by you or others as a soft option.

In respect of this single Count, the sentence is that you perform 180 hours of unpaid work under a Community Service Order. This Order is being 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 12 months' imprisonment.

The forfeiture and destruction orders sought by the Crown in respect of the cannabis are granted.

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

Richard J McMahon
Bailiff

29 July 2021