

Being knowingly concerned in the fraudulent evasion of the prohibition on importation of a Class B 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 and failure to comply with notices served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 to provide the passcodes to unlock mobile telephones.

[2022]GRC004

**ROYAL COURT
FULL COURT**

4th January 2022

**Before: Richard James McMahon, Esq., Bailiff and Jurats:
Claire Helen Le Pelley,
Stuart Michael Crisp, Marilyn Jasmine King, Tina Jane Le Poidevin,
Felicity Jane Quevâtre-Malcic, Heather Reed, Simon Ernest Bodkin,
James Robert Toynton.**

THE LAW OFFICERS OF THE CROWN

- v -

**Qasim SHAFaq
(D.O.B. 09.01.01)**

and

**Jamal Patrick Orlando WILLIAMS
(D.O.B. 20.09.92)**

**Crown Advocate C G Dunford appeared for the Crown
Advocate C J Green appeared for the First Defendant
Advocate L C Roffey appeared for the Second Defendant**

BAILIFF:

Background

Qasim Shafaq and Jamal Williams, you have both entered guilty pleas to the four Counts on the Indictment. The first Count is the only one involving both of you and relates to being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, ADB-Butinaca, 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 (or youth detention). The other three Counts all involve failing to comply with notices served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 to provide the passcodes to unlock mobile telephones. The maximum penalty for each of these Counts, to which we will refer as "the RIPL offences", is two years' imprisonment (or

youth detention). The second Count relates to Mr Shafaq and the third and fourth Counts to Mr Williams.

These offences took place in December 2020. At that time, Mr Shafaq was 19 years old, but will celebrate his 21st birthday this coming weekend, and Mr Williams was 28 and is now 29. You are both from England. Since leaving school, Mr Shafaq has struggled to find any meaningful employment. Mr Williams was unable to complete his degree course studies, but prior to his arrest had been working full-time as an out of hours supervisor for a housing authority.

The facts can be summarised briefly. On 3 December 2020 you arrived here on the ferry in a car driven by Mr Williams, with Mr Shafaq the passenger. Despite the requirement to isolate following arrival for 14 days, you indicated you intended to return to England the same day. In the boot of the car was a 5 litre container holding a liquid that has since been analysed as ADB-Butinaca. The weight of the liquid is 5,587 grams. The quantity of liquid in the container is put at 5,170 ml and so, on the basis that a 10 ml bottle would sell at between £100 and £130, the street value is put at between £51,700 and £67,210. When apprehended, Mr Shafaq had one iPhone and Mr Williams two iPhones in his possession, which were seized. Notices in respect of these devices were served on you but you did not comply by providing the passcodes to any of these three devices.

Mr Shafaq has no previous convictions but Mr Williams has a number of previous offences, including for drug-related offending, most recently having 3 years' imprisonment imposed by the Crown Court sitting at Chelmsford on 11 January 2018 for possessing cocaine with intent to supply.

Both of you have been remanded in custody since your first appearance before the Magistrate's Court on 4 December 2020.

Sentencing Considerations

ADB-Butinaca is a synthetic cannabinoid. The Court understands that this is the first time that an importation of this substance is being dealt with in this Court. As a synthetic cannabinoid, the guidelines for drug trafficking offences found in *Richards* and recently endorsed by the Court of Appeal in *Barras, Watt and Orchard* are not directly applicable. However, there are principles set out therein which we consider helpful in determining the appropriate starting point for Count 1.

In this respect, the Court looks at the offence and the role each of you played in relation to it before turning to any personal mitigation. Paragraph 11 in *Richards* explains that:

“Where the quantity of the drug is being considered, the assessment of the starting point should primarily be based on weight, and only to a lesser extent based on street price. Further, except in cases of very high purity or where there is reason to believe that the drugs will be cut before being passed on, the purity of the drugs will not be a factor that will be taken into account in sentencing.”

The cases in that appeal were about powders and cannabis resin, where weight was a key determinant, and tablets, where the number of units would be indicative of a broad equivalent to weight.

Adopting a pure weight analysis for the Class B drug cannabis resin would result in a starting point for Count 1 for just over 5 kg of 7 to 10 years' imprisonment (or youth detention). We have considered carefully whether, as in the September 2021 decision of this Court in *Travers* weight is all that really matters, or whether there needs to be any modification to using an equivalent starting point related to weight. Whilst the financial return for an importation of herbal cannabis or cannabis resin weighing around 5½ kilograms would be significantly greater, as Counsel has pointed out, we have concluded that that element alone does not necessarily mean that the range of starting points requires modification. The harmful effects of ADB-Butinaca are not yet fully understood, but the purpose of those using it appears to the Court to be broadly similar to actual cannabis. For these reasons, we are satisfied that

we can properly consider a starting point as if this synthetic cannabinoid were cannabis itself and principally by reference to weight, adopting what is stated in *Richards* about street value being less relevant. Accordingly, we find that the appropriate range to use in the present case is custody for 7 to 10 years.

In this case the Court is satisfied that what you have done can properly be regarded as a joint enterprise for which you are equally culpable. Each of you has played a role in the offence and has acted with knowledge that what you were doing amounted to importing something illegal into Guernsey. The level of sophistication involved relates only really to the container not explicitly identifying its contents and so giving the impression that the contents were lawful vaping liquid.

It is quite clear that the custody threshold for each of you has been passed and, because of his age, for Mr Shafaq, in accordance with the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990, we find this offending so serious that a non-custodial sentence cannot be justified. Accordingly, and because there is no such thing as a straight line approach within the bands, the initial starting point for the offence in Count 1 will be one of 7 years' imprisonment.

In Mr Williams' case, the fact that he has recent previous convictions for drug trafficking offences is an aggravating factor which means that, before mitigation, we have in mind a longer sentence for him than for Mr Shafaq in relation to Count 1 and so have increased that starting point by a further 12 months.

Returning to the Court of Appeal's decision in the *Watt* appeal for the RIPL offences, whilst declining to give any sentencing guideline because cases are likely to turn on their own facts, at paragraph 79 in that judgment it was noted that:

“First, failing to make the disclosure required by a notice issued under section 46 of RIPL is a serious matter; it will invariably call for an immediate custodial sentence. Second, the sentencing court is entitled to proceed on the basis that the failure to provide access is motivated by a desire to hide something either to protect others involved in criminal activity or to conceal the accused's own more extensive criminality. ... Third, deterrence is an important aspect of sentencing in this context. Fourth, the appropriate sentence will, of course, depend on the particular circumstances of the case. ... One material factor is likely to be the seriousness of the alleged offence which is subject to the underlying investigation. When considering the length of any custodial sentence it will of course be necessary to consider with care the offender's background and personal mitigation.”

In terms of identifying an appropriate starting point for a single RIPL offence, this Court remains of the view that, before considering mitigation, a sentence in the region of 12 months is appropriate. We consider that commission of more than one RIPL offence is inevitably a further aggravating factor, resulting in some increase to that starting point for a single offence and being applicable to each. As is usual, we are also satisfied that the sentences for the RIPL offending should be made to run consecutively to the sentences for Count 1.

Mitigation

In relation to what has been said by your Advocates on behalf of each of you and the reports from the probation officers, plus the letters on your behalves, we have approached each of your situations separately, although there are some aspects that are common to you with which we deal first.

In relation to your guilty pleas, although there were some delays before they were entered, the Court accepts that this was through no fault of either Defendant and so will afford to each of you full credit for those pleas as if tendered at the earliest opportunity.

Both of you have expressed remorse, which in the circumstances we accept is genuine.

You have indicated that you carried out this importation as a means of repaying drug debts. Any impact of the pressure under which you say you were acting both in relation to the importation and declining to disclose the passcodes to your devices has to be placed into its proper context. For example, in *Mather and Cooper* in 1999, the Court of Appeal indicated that “*Leniency by Courts to reflect mitigation of pressure or dependency would, in our view, inevitably result in dealers using the services of those susceptible to threats or blandishments more frequently than at present and would tend to increase rather than to decrease the availability of drugs within the Bailiwick.*”. Accordingly, this aspect of your mitigation has little, if any, overall effect on the sentences. Much the same can be said for your overall cooperation with the investigation once your vehicle had been stopped.

For Mr Shafaq, the fact that this is your first time before a Court and you are still young are additional factors we do take into account in your favour. The report also indicates that there is only a moderate likelihood of you re-offending. All of this combines to give us some hope that your experience of being caught means that you will have learnt your lesson.

For Mr Williams, you have been in and around the drug culture for longer and it appears that your recent term of imprisonment did not result in you changing your ways. The assessment of you is that there is a high likelihood of you re-offending. However, we accept that being caught and held on remand over here in Guernsey has meant that you have been putting your time to good use and that there is a reasonable prospect now that you will realise that steering clear of drugs, or any other offending for that matter, is going to be more productive for you. We appreciate that you have shown you have a good work ethic and hope that will resume when you are released.

Sentence

Qasim Shafaq and Jamal Williams, to both of you this Court wishes to stress just how misguided you have been. Coming to Guernsey in December 2020 when there were still restrictions on the freedom to travel was a recipe for disaster and was foolhardy in the extreme. The story you used when stopped about the reasons for your visit did not help. All this inevitably raised the suspicion that you were up to no good, as proved to be the case. Your non-compliance with the notices indicates to us that you have something to hide and we regard your overall non-cooperation as seriously undermining the way this jurisdiction wishes to deal with drug trafficking.

The amount and value of the ADB-Butinaca that you were seeking to import would, if successful, have provided a significant source of this controlled drug within the Guernsey market. It would have added to the illicit drug culture in the Bailiwick, which we think can still be described as a scourge on our society. This Court is satisfied that it is appropriate to ensure that others are dissuaded from bringing here this type of synthetic cannabinoid. Our sentences should have an element of deterrence to them. No one yet fully knows the adverse effects that vaping this product will have, but the signs are that it could be as detrimental as, or worse than, the cannabis products for which it is a substitute.

As you will have been advised, this Court takes a dim view of drug trafficking offences. It is clear that the only outcome today will be custodial sentences.

For Mr Shafaq, in respect of Count 1 (the importation), the sentence will be 3 years and 8 months’ youth detention. In respect of the RIPL Offence (Count 2), the sentence will be 7 months’ youth detention to run consecutively, making a total of 4 years and 3 months’ youth detention. We will run that sentence from when you were first apprehended, which means that it runs from 3 December 2020.

For Mr Williams, in respect of Count 1 (the importation), the sentence will be 5 years and 4 months’ imprisonment. In respect of the two RIPL Offences (Counts 3 and 4), the sentence will be 10 months’ imprisonment, with those sentences running concurrently to each other, but consecutive to the sentence on Count 1. That makes a total sentence of 6 years and 2 months’ imprisonment and similarly the Court

will run that sentence from when you were first apprehended, which means that it runs from 3 December 2020.

In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release or completion of any parole period (if applicable), you will be subject to supervision by the Probation Service for a period equal to one quarter of the total sentence or the period you would have served had you not received remission, whichever is less. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine or both.

The forfeiture and destruction orders sought by the Crown in respect of the container and the contents of ADB-Butinaca have not been resisted by either of you and are granted.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the four devices, being those which are the subject of the RIPL offences plus the other iPhone, will also be granted. The Court notes again that this application was not resisted and in any event, the Court is satisfied that each of these four devices was lawfully seized and that each has been used for the purpose of committing or facilitating the commission of an offence. Further, as required by subsection (5), the Court has had regard to its value and the likely financial and other effects on you of making the order before deciding to grant the Crown's application.

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

Richard J McMahon
Bailiff

4th January 2022