

Being knowingly concerned in the fraudulent evasion of the prohibition on importation of a Class A drug; in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs Bailiwick of Guernsey Law 1974, as amended and an RIPL offence, failing to disclose information on the passcode to a mobile telephone.

[2021]GRC071

**ROYAL COURT
FULL COURT**

28 October 2021

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and Jurats:
Claire Helen Le Pelley, Jonathan Grenfell Hooley,
David Percy Langley Hodgetts LVO,
Steven John Morris, Joanne Marie Wyatt, David John Robilliard,
Marilyn Jasmine King, Tina Jane Le Poidevin, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

JEFF JUMA

Advocate F M Russell appeared for the Crown

Advocate S E Steel appeared for the Defendant

LIEUTENANT BAILIFF:

Background

Mr Juma you have pleaded guilty to two Counts on the Indictment.

The first Count is of being knowingly concerned in the fraudulent evasion of the prohibition on importation of goods of a Class A drug, namely cocaine on the 5th of June 2021, in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs Bailiwick of Guernsey Law 1974, as amended . The maximum penalty is life imprisonment.

The second Count we call a RIPL offence, failing to disclose information on the passcode to your mobile telephone and the maximum penalty for this offence is 2 years' imprisonment.

The facts in relation to the first Count are that on 5th June this year, on your arrival into Guernsey by ferry, you were stopped by customs officers. You explained that you were in Guernsey to visit your girlfriend and new-born baby. Your car was searched. Discovery of a hypodermic needle and pill, and traces of drugs in the vehicle led the officers to conduct a strip-search, in the course of which their attention was drawn to your adjustment of your face mask which they asked you to remove. You did so, but when you opened your mouth, also on their request, they saw you make a swallowing motion and could see a package within your mouth. They were sufficiently concerned for your safety that they caused the package to be expelled from your mouth. This package turned out to be 13.86 grams of Crack Cocaine with an estimated street value in Guernsey of between £2,800 and £4,200 - of high purity.

You were arrested and your mobile telephone was seized. You were served with a Notice to provide your pin-code, which you declined to do without speaking to your advocate first. Subsequently, you said that you would only provide the pin-code if your advocate could be present whilst the phone was examined. This failure to comply with the Notice constitutes the second Count on the Indictment.

At interview you exercised your right to silence.

You are a 35 years of age. You were born in Burundi and have lived in England since you were 8 years' old. You left school with qualifications and have worked but are currently unemployed. You have a child here, nearly a year old, as well as one in the UK.

You have a number of previous convictions including for drug related offences. In 2015 you were sentenced to 42 months in custody for drug offences, including possession of cocaine and heroin with intent to supply.

You have been remanded in custody since your arrest.

Sentencing Considerations

The sentencing guidelines applicable to offences involving the supply of drugs are contained in the case of Richards. Those guidelines were recently considered by the Guernsey Court of Appeal in Barras, Watt and Orchard v Law Officers 2021 GCA045 and re-affirmed as current and appropriate. This Court will continue to follow those guidelines.

Mr Juma, the lowest band for Class A drugs in powdered form in Richards is 7-9 years for quantities from 1 to 20 grams. We set the starting point at 8 years, looking at the quantity, the surrounding circumstances and your bad record.

You have claimed that the drug was for personal use. This type of claim is considered in the Richards case. The amount of Crack Cocaine imported by you falls well above the quantity below where such a claim could reduce the sentence. Your importation would have added considerably to the stock of such drug on the Island, which is, thankfully, low as Crack Cocaine here is rare.

Your attempt to swallow the package to thwart the officers' search is an aggravating factor, as are your previous convictions - the most recent as stated, for possession with intent to supply heroin and cocaine. These factors have elevated the starting point before we consider mitigation.

In relation to RIPL offence, your justification in this case, which you maintain even now, for refusing to provide the pass-code, is that you are not prepared to allow officers to have unsupervised access to your mobile phone because of photographs of your daughter in the bath. The request for supervision by your advocate was unsurprisingly refused. You admitted to the Probation Officer that you maintained your refusal, although you knew of the potential consequences for so-doing. Your refusal was a deliberate act which we have no hesitation in assuming was motivated by a desire to hide your own, or another's criminality.

We set the starting point at 12 months to reflect the seriousness and, as a deterrent to others. We will consider the totality principle later.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence. You did indicate your guilty pleas at committal proceedings. Although you had little alternative, we afford you credit for your timely pleas to the offences.

You were caught, Mr Juma, so to speak 'in the act' and the discount, which errs on the side of generosity, is 25% for the main offence.

Mitigation

The Court has carefully considered the helpful Probation Report prepared in respect of you.

We have also listened to the submissions of your Advocate.

We have read the other materials provided

We note the abuse you suffered as a child which led to your leaving home at 17 and being homeless for 2-3 years following which you switched from smoking cannabis, which you had used since you were 14, to smoking cocaine.

Despite the difficulties at home you left school with GCSEs and even managed 2 years of your college course. Once housed you were able to work. In 2015 you received the long sentence mentioned above. After your release you did settle into work and rented accommodation but this was lost when your work was reduced during the pandemic. At the time of the offence you were living with friends.

You are making plans to settle in England once you have served your sentence and hope to build relationships with your children.

You told the Probation officer that the Crack Cocaine was intended to help you manage your anxiety/emotions in your planned month-long visit to Guernsey. You did, you say, have second thoughts on the boat, but made a conscious decision to carry on. You have become, at least psychologically dependent on cocaine, as a means of dealing with your mental health difficulties.

You have expressed remorse and you have been able to reflect that there were alternative ways to deal with your issues.

You are assessed as having a high risk of re-offending which we must take into account. That risk will not reduce until you address your substance abuse.

We note that there is a request for a drug trafficking investigation in respect of you.

Sentence

There can be no doubt that the custody threshold has very plainly been passed. Class A drugs are not tolerated in our community and those who import them face severe penalties. In view of the seriousness of the offences alternatives to immediate custody cannot be considered.

The RIPL arises from the same facts which we take into account when reaching our final total.

The sentences here will be consecutive.

We loyally follow the guidance of the Court of Appeal on the RIPL offence.

In sentencing you we have taken into account the totality principle, the limited amount of mitigation, however we give you a 50% discount on the RIPL offence out of fairness and considering the total sentence. You have abused the hospitality of this Island by committing these offences, especially with a significant amount of Class A drugs. We see you are a repeat offender and the public interest demands you are stopped from offending for a considerable period.

Taking into account all the above, the sentences will be as follows:

- Count 1 – the drugs importation, the sentence is 6 years’ imprisonment.
- Count 2 - the RIPL matter, the sentence is 6 months imprisonment consecutive.
- **Total – 6 years and 6 months** (with effect from 5th June, 2021 when you were apprehended).

Supervision

There is Compulsory Supervision for one-quarter of the sentence after release and the forfeiture of the drugs is granted and forfeiture of the mobile iPhone is also granted. We have considered carefully the question of the Range Rover, and our conclusion is, having gone over this very thoroughly, this proper application, in all the circumstances we consider the forfeiture to be disproportionate, so an Order is not made on that.

Deportation

We have the power to make a recommendation under the Immigration Act 1971, as extended to the Bailiwick of Guernsey, to His Excellency the Lieutenant-Governor.

Before making any recommendation for deportation, the Court must conduct a balancing exercise. The principles this Court must follow were established by the Court of Appeal in the case of O’Dette in 2007.

This Court, as a public authority, is also required to take into account the rights afforded to you by the European Convention on Human Rights.

We have been told that you have indefinite leave to remain in the UK, which has been your home for most of your life, and that you successfully appealed a Deportation Order made in England on the grounds that it was ‘an unlawful interference with your Rights’ under the ECHR Convention. Any decision to deport you would have to be made after full consideration of those points. You have raised your personal safety in Burundi should you be deported, thus engaging Article 2 rights to life and Article 3 right to ‘freedom from torture’. Whilst you have no home or established family life in Guernsey, you have a child here and you also have a child in England and you have lived most of your life there. This engages your Article 8 right to ‘respect for family life, private life and your home’.

You do not have in Guernsey and will not get, an employment permit, and your visits here have been limited. We note that as a Non-EU National, any Order would apply to the UK, where you have lived since a young child and have, as just stated, family ties. Different considerations might well apply if the Order applied to the Bailiwick only, but we do stress the point that if we make a recommendation and it is accepted, it applies to the UK as well, by Law, as you are a Non-EU National.

We have to note your ties in the UK; hence such a recommendation is disproportionate on the principles we are obliged to follow. You have no intention of remaining here and we don’t want to see you again. No Employment Permit, as stated, will be issued, thus preventing you working, so taking those Human Rights considerations into account, as we are obliged to by law and the Court of Appeal decision in O’Dette, we decline to make a recommendation in this Court.

So, I repeat, that the total sentence is:

- 1 6 years and 6 months imprisonment from the date given.
- 2 forfeiture of the items mentioned.
- 3 Timetable for Drug Trafficking is agreed as requested.

J R Finch, O.B.E.
Lieutenant Bailiff
28 October 2021