

Application for leave to appeal a total sentence of 3 years imprisonment imposed on the Applicant by the Royal Court.

[2021]GCA076

**IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY
ON APPEAL FROM THE ROYAL COURT**

CRIMINAL DIVISION APPEAL No. 500

1 June 2021

BEFORE:

**CLARE MONTGOMERY QC JA
SITTING AS A SINGLE JUDGE**

BETWEEN:

PIP ARCHIBALD ORCHARD

APPLICANT

and

LAW OFFICERS OF THE CROWN

RESPONDENT

1. There is before me, sitting as a single judge of the Court of Appeal, an application for leave to appeal a total sentence of 3 years imprisonment imposed on the Applicant by the Royal Court on 4 May 2021. I have considered the application on the papers and have reviewed the pre-sentence report and the letters of commendation and other material placed before the Royal Court.
2. On 4 May 2021 the Applicant appeared before the Royal Court (Fooks J sitting with Jurats) and pleaded guilty to 5 counts on 2 indictments. The first indictment concerned 3 counts 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. The first count related to the importation of 2.95 grams of cocaine, a Class A drug. The second and third counts related to the attempted postal importation of 30 tablets of alprazolam, a Class C drug. These offences were committed in August 2020. The Applicant was interviewed twice in relation to the offences and either denied or made no comment as to his involvement in them.
3. The second indictment contained two counts. They related to a high speed car chase which took place while the Applicant was on police bail in the early hours of 5 December 2020. It transpired that the Applicant had over twice the legal limit of alcohol in his system. The Applicant pleaded guilty to driving in a manner dangerous to the public contrary to section 10(1) of the Road Traffic (Guernsey) Ordinance 2019 and to driving a motor vehicle having consumed excess alcohol contrary to section 2(2)(a) of the Road Traffic (Drink Driving) (Guernsey) Law, 1989.
4. The Appellant appeared before the Royal Court in custody. Having been again released on bail on 5 December 2020 on condition he should not consume alcohol, he was arrested for breach of that bail condition and was remanded in custody on 14 December 2020.

5. The Applicant who is now 30 years old was sentenced by the Royal Court to a total of 3 years imprisonment and disqualification from driving for 6 years. The sentence of imprisonment was made up of 2½ years' imprisonment for the drugs offences and 6 months consecutive for the driving offences.
6. The sentences for the drugs offences were based on the Richards Guidelines (see *Richards v. Law Officers*, 2000–02 GLR 247). The Royal Court took as a starting point 7 years for the importation of the cocaine. The Court then applied very significant discounts to that figure (beyond those normally justified for personal mitigation and a guilty plea) to reach a total sentence of 2½ years' imprisonment on the first count. The Court did not treat the importation of the Class C drugs as an aggravating factor and imposed concurrent sentences for those counts. The Court recognised that in those circumstances it was not possible to impose the non-custodial community sentence recommended in the pre-sentence report.
7. The Court imposed consecutive sentences in respect of the driving offences. The Court considered that the correct sentence was one of 8 months' imprisonment for the dangerous driving with a concurrent sentence for the driving with excess alcohol, but taking into account totality and time on remand, the sentence was reduced to 6 months' imprisonment consecutive.
8. It is clear from the pre-sentence reports and the letters of commendation that were placed before the Royal Court that the Applicant is highly thought of by his peers. He lived an admirable and industrious life until he fell victim to serious mental illness and substance abuse issues. His previous good character was a powerful mitigating factor as was the link between his mental illness and the drugs offences. Reliance was placed on the fact that the drugs were said to be for his personal consumption as part of a self-medication strategy. However, in my judgment, if the Richards Guidelines applied, those features were fully and fairly reflected in the very generous discount applied to the starting point under Richards.
9. The Royal Court was bound to start the exercise by reference to the Richards Guidelines because the Court did not consider it appropriate to treat the Applicant's case as being one akin to mere possession. This was a critical factual issue that was central to the Royal Court's sentencing exercise. A clear division can be drawn between importations of very small quantities of drugs for personal use which are punished in the same way as offences of simple possession, and importations of more than relatively small amounts which fall within the lower bands of weight (1-20 grams in the case of cocaine) in the Richards Guidelines. The rationale for this distinction, as explained in Richards, is that once the lowest level is exceeded, any importation will add to the stock of drugs available in the island and it is not considered to be right that an addict 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.
10. I consider that the Court were entitled to proceed on the basis of the Richards Guidelines. The argument for the Applicant that there was nevertheless a discretion within those Guidelines to impose a non-custodial sentence fails to grapple with the fact that the Royal Court plainly exercised a discretionary judgment involving considerable leniency in setting the sentence at 2½ years imprisonment for the drugs offences. It did not feel able to impose a lesser sentence.
11. It does not assist the Applicant in establishing that this sentence was either manifestly excessive or wrong in principle by pointing to other sentencing exercises (Bucknall and Stewart) where different sentences have been passed. As the Applicant's Grounds acknowledge: "Sentencing is always a matter for the court's discretion. It is an art and not a science." The Court exercised its discretion and, in my judgement, the discretionary decision that resulted in the sentences imposed in this case was not wrong in principle. It was well within the range of rational reactions to the Applicant's offending and personal circumstances, including the fact that his driving offences were committed whilst on bail and he had proved to be unable to abide by abstinence conditions imposed as part of his bail conditions. Nor do I consider that it is arguable that the sentences were manifestly

excessive. A total sentence of 3 years' imprisonment was entirely reasonable and gave considerable credit for the Applicant's extensive personal mitigation. For these reasons I refuse leave to appeal and decline to grant legal aid.