

Failure to disclose certain information within 7 days as required by a notice served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003 (“a RIPL offence”).

[2022]GRC017

**ROYAL COURT
FULL COURT**

20th April 2022

Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:

**Terry John Ferbrache, David Percy Langley Hodgetts LVO, David Allan Grut,
David John Robilliard, Paul Martin Burnard, Heather Reed, Jamie Robert Toynton.**

THE LAW OFFICERS OF THE CROWN

- v -

ROCCO LEE GUILBERT

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

JUDGE OF THE ROYAL COURT:

Background

Mr Guilbert you have pleaded guilty to one count on one indictment, namely that, between the 5th August 2020 and the 14th August 2020, you failed to disclose certain information within 7 days as required by a notice served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003 (“a RIPL offence”). The maximum sentence for this offence is 2 years imprisonment or a fine up to Level 5 or both.

The facts are that a search warrant was executed at your home address in the course of which a number of items consistent with drug use and supply were found. In the course of that search your mobile telephone namely a black iPhone was seized. You were issued with a RIPL section 46 advisory notice during your police interview on the 27th of June. On 6th August 2020, the notice requiring disclosure was read to you and explained to you in the presence of your appropriate adult. You declined to provide the pass code during the meeting on that day (6th August 2020) and within 7 days as required by the notice. You were given another chance to provide the pass code after the notice had expired but you did not do so. Your failure to provide the pass code frustrated the investigation.

At interview you exercised your right to silence.

You are a local man of 19 years of age; you were 17 at the time of the offence. You are an apprentice electrician.

You have no previous convictions.

You have been in on unconditional bail in relation to this offence but subject to bail conditions for a considerable period in relation to other offences and those conditions have not been breached by you.

Sentencing Considerations

The Guernsey Court of Appeal in Barras, Watt and Orchard considered the sentencing in respect of RIPL offences. It made 4 observations:

- First, failing to make the disclosure required by a notice issued under section 46 of RIPL is a serious matter; it will almost 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.

You have sensibly conceded, through your Advocate that the custody threshold has been passed in this matter. The standard starting point in such a case is 12 months. There are no particular aggravating factors in this case and the significant mitigating factor is your youth at the time of the offending. The Youth Detention Law applies and has been taken into account.

Mitigation

The Court must first consider the impact of your guilty plea on sentence. You indicated that plea at the earliest opportunity. The offence is a deliberate one so you are not entitled to full credit for your guilty plea but you have pleaded guilty.

The Court has considered carefully the helpful Probation Report and addendum prepared in respect of you. We have also listened to the sensible submissions of your Advocate and read the references which are very supportive and helpful.

You are a young man and you were 17, a child, when the offence was committed and we do take this greatly into account. As you were 18 before you were committed to this Court and entered your plea, you are an adult for sentencing purposes under the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 but, the Youth Detention Law 1990 applies and your age at the time of the offence entitles you to a discount from the sentence which would have been passed on an adult committing the offence in the same circumstances.

You have no previous convictions which is to your credit.

There are signs that you are growing up and changing your attitudes which is positive. The 20-month delay, not attributable to you, has given you time to reflect and mature. Bail conditions have assisted in that process. In that time you have developed a good work ethic and it is very positive that you love your work and are prioritising it over your social life. You have moved away and kept away from those who might be a bad influence on you. Your home life is stable and your partner is supportive and a good influence on you.

You have been open with the probation officer about your drinking and substance abuse, and you have managed to stop drinking. You are not assessed as needing any referrals or supervision as you have shown that you know what to do to lead a law-abiding life. You have been able to reflect on why what you did was wrong and the consequences of it.

You are assessed as having a moderate to high likelihood of re-offending based on your past but you are assessed as having all the skills to lead a law-abiding life in the future.

The recommendation from Probation is a Community Service Order to punish you, to get you to give something back to the community, but let you stay in the community so that you can carry on building a better life.

Sentence

As I have said, the Court is satisfied that the custody threshold has been passed and because of your age we have to consider whether a custodial sentence is necessary under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990. We are satisfied that a custodial sentence is necessary because the offence was so serious that a non-custodial sentence cannot be justified.

In view of your plea, your previous good character, your youth and the mitigation, the Court is able to consider alternatives to immediate Youth Detention; namely a Community Service Order.

Mr Guilbert you appear today because you have committed an offence which this Court views as serious but you are a young man and you have shown that you are maturing and you are willing to learn from your mistakes.

The Court is able to accept the recommendation for a Community Service Order. The Order is made because of the seriousness of the offence of which you have been convicted. The sentence imposed is for 120 hours of unpaid work. The Court notes that you are assessed as being suitable for Community Service and that you understand 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. Please ask your Advocate if you have any questions.

The Community Service Order is imposed as a direct alternative to a sentence of Youth Detention. The alternative sentence that we were considering passing was one of 6 months' Youth Detention. This is lower than the sentence an adult would have received for this offence and that reflects your youth.

The Court is satisfied that provision can be made for you to perform the work and that you are a suitable person. Please note, that if you fail to complete even 1 hour without a medical certificate or, if you commit any other offence, you will be brought back before this Court and you will face going to prison. Do you understand?

Forfeiture s3 Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006 as amended

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006, for forfeiture and destruction of the iPhone is also granted. That application was not opposed. This item was lawfully seized and it is to be inferred from your failure to comply with the RIPL notice that it was used for the purpose of committing or facilitating the commission of an offence. The Court has, as required by subsection (5), had regard to the value of the property (£250) and the likely financial and other effects on you of making the Order before deciding to grant the Crown's application.

Mr Guilbert, the Court has given you this chance to make a better life. You have made a good start and you need to carry on working, completing your apprenticeship and staying away from those people and things which could knock you off course. It is entirely up to you now.

I repeat that the total sentence is:

- 1 120 hours Community Service Order with a direct alternative of 6 months' Youth Detention and;**
- 2 forfeiture and destruction of the iPhone.**

Mr Guilbert, you may now leave once the Court has risen.

Catherine Maureen Fooks
Judge of the Royal Court
20th April, 2022