

Being knowingly concerned in the fraudulent evasion of the prohibition on importation of goods, contrary to section 77(1)(b) and 77(2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended and failing 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, as amended.

[2022]GRC018

**ROYAL COURT
FULL COURT**

17th March, 2022

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Claire Helen Le Pelley,
Steven John Morris, David James Mortimer, Joanne Marie Wyatt,
David John Robilliard, Marilyn Jasmine King, Felicity Jane Quevâtre-Malcic,
Heather Reed, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

JAMES LUKE FRANK BICKLEY

**Crown Advocate C G Dunford appeared for the Crown
Advocate C J Green appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Bickley, you have pleaded guilty to two counts on one Indictment.

The first is of being knowingly concerned in the fraudulent evasion of the prohibition on importation of goods, contrary to section 77(1)(b) and 77(2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended and states that on 31st May 2021, you imported 29.86 grams of ADB-Butinaca, a Class B controlled drug. The maximum penalty is 21 years' imprisonment.

The second Count is what we call a RIPL offence, namely between 21st June 2021 and 30th June 2021, failing 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, as amended. The maximum sentence for this offence is 2 years' imprisonment or a fine up to level 5 or both.

The facts in relation to the first count are that, on the 31st May 2021, you travelled to Guernsey as a foot passenger on the ferry from Poole. You were stopped by Customs. You lied in your responses to their usual questions. Drug related items were found in your rucksack. You were arrested on suspicion of importing controlled drugs by internal concealment. You were not co-operative at first when offered an X-ray. When you later did consent to the X-ray, two packages were visible in your bowel. You were then kept at the hospital under 24-hour surveillance until the packages emerged; the second one 26 hours after your arrest.

As for the second count, you were given a Notice on 22nd June 2021, requiring you to disclose the access code to your mobile telephone, which you did not do within the required period or at all. You were interviewed once and exercised your right to silence.

You are 32 years of age and were born in England where you have your home. You were employed at the time of your arrest.

You have previous convictions from 2016 for the production of anabolic steroids, Class C drugs, for which you received a 32 month custodial sentence for possession of Class C drugs with intent to supply, for which you received a 16-month consecutive sentence and money laundering offence, for which you received a concurrent 32-month sentence and a substantial Confiscation Order was made against you.

You were released in 2018 and completed your post-release supervision on 20th July 2020. You have been remanded in custody throughout the proceedings in Guernsey. As the Prosecution has said, your case has taken a bit longer because there was the need for legal argument as to the sentencing guidelines to be applied in your case.

Sentencing Considerations

The sentencing guidelines applicable to most offences involving the supply of drugs are contained in the case of Richards which was recently considered and approved by the Guernsey Court of Appeal in Barras, Watt and Orchard v Law Officers of the Crown (2021) CGA 045. Those guidelines deal with Class B drugs in the form of cannabis resin and herbal cannabis. ADB-Butinaca is a synthetic cannabinoid of Class B in powder form, one of the many new emerging drugs which did not exist at the time of Richards and not covered directly within it. But Richards is nonetheless the guideline case to be applied. It gives the Court principles with which to set a starting point and matters to take into account in sentencing.

In this case it is particularly important to reiterate what the learned Judges of Appeal said in Richards:

“It cannot be stressed too strongly, that this Court is not attempting to establish for the Royal Court, some sort of inflexible code which covers all of the issues involved in sentencing for such offences, some of which must as yet be unknown and incapable of anticipation. These are general guidelines only. Sentencing is always a matter for the Court’s discretion, it is an art and not a science.”

At paragraph 8 and following of Richards, the learned Judges set out the approach to the setting of a starting-point:

“There are two primary factors, ‘quantity and role’, which are used to assess the extent of the criminal conduct, the criminality. There may be aggravating factors increasing the criminality of the offender such as sophistication of the methods of evading detection and relevant previous convictions.”

Dealing first with weight or quantity, Richards sets out sentencing bands for Class B drugs, based on the weight or quantity of cannabis. The weight of the drugs imported by you is 29.86 grams which would fall into the lowest band of 3 to 6 years for amounts of cannabis up to 2 kgs. Weight is not however the only factor relevant to sentence, as is said in paragraph 11 of Richards:

“Where the quantity of a drug is being considered in assessing the starting-point (my emphasis), this should be primarily 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 drugs will not be a factor that will be taken into account in sentencing.”

In your case, the Court considers it appropriate to consider purity when assessing the appropriate starting-point. ADB-Butinaca is said to be more potent than cannabis with unpredictable results, unpleasant and very harmful effects and is considered highly addictive. The States Analyst has performed some tests on the powder to determine its purity. Allowing a 5% margin of error, he calculated that its purity had a mean value of 85.5% in one package and 87.9% in the other. This is very high purity. This Court has encountered this drug before, in the case of Law Officers of the Crown v Shafaq & Williams [2022] GRC0004 when it was imported in diluted form to be vaped. Sentencing in that case was based on the weight of the liquid.

In your case you have imported powder which had not been diluted or cut in any way. The States Analyst has worked out what the quantity in this case would be, were it to be diluted, for illustration purposes in the same proportions as it was in Shafaq & Williams. He calculates that the finished weight would be 2.27 kgs to 3.04 kgs which would, if used as the quantity, take the starting-point into the next band of Richards.

Using the same calculation of value as in Shafaq & Williams (by way of illustration), the value of the diluted product would be £36,530, considerably more than the value of 29.86 grams of cannabis. The Court notes that you do not accept the States Analyst calculation as to the finished product or this method of valuation. It is accepted that there is no evidence that you knew what would be done with the drug. It has not been possible to agree the street price value of this powder and the parties considered that the purity was the more relevant factor for sentencing. The Court accepts this as consistent with paragraph 11 of Richards and has not factored value into its calculations.

As was sensibly conceded by your Advocate, there can be no doubt that the custody threshold in respect of your offending has been passed. Adopting a starting point based on 29.86 grams of cannabis of 3 to 6 years, would not reflect the true quantity, taking into account the very high purity of the ADB-Butinaca in your case. The Court has based its sentence therefore on purity, but not on the illustrated finished product.

Taking into account all of the above, the starting point, before consideration of aggravating and mitigating factors, is 4½ years. The Court cannot ignore the significant additional aggravating factor of internal concealment in your case which is distasteful and an unnecessary drain on this Island's precious medical and law enforcement resources.

You are also a person with previous convictions for drug offences, for which you received sentences of considerable length and a considerable confiscation order was made against you. You had only completed your post-release supervision on the 20th July, 2020. Your previous offending is another aggravating factor.

The Court has also considered your assertion that you were only a drug mule and therefore performing a low-level role. But that has to be balanced with your obvious intelligence and previous involvement with drugs and the lies that you told on your arrest. Taking into account all of this, the starting-point is revised to 5½ years.

The RIPL Offence

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

1. Firstly, 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.
2. Secondly, 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.

3. Thirdly, deterrence is an important aspect of sentencing in this context.
4. Fourthly, the appropriate sentence will of course, depend on the particular circumstances of the case.

Again in your case, the custody threshold is clearly passed and the starting point will be 12-months.

Mitigation

Plea

The court must first consider the impact of your guilty pleas on sentence. You entered those pleas at the earliest opportunity, but you did have little choice in the circumstances. The Court affords you full credit for your guilty pleas to all offences. The delay in sentencing is not held in any way to your detriment.

Mitigation

The Court has considered carefully the thorough and realistic Probation Report prepared in respect of you. The Probation Officer sets out in detail, your explanation as to why you committed the offence. You say this was to protect those whom you love but without thinking about the consequences for yourself if caught or what you were actually doing. You acknowledged to the Probation Officer that there is work to be done in terms of your decision making and that you would benefit from some work around your personal issues.

It was to your credit that, on leaving prison last time, you went straight back into employment and got yourself a flat and that you have been making plans for work and home on your release from here.

You are not assessed as in need of referral for any substance abuse.

We have also listened carefully to the comprehensive submissions of your Advocate and we have read your letter which expresses your deep remorse and shame and gives some insight as to how you came to offend in this way. You accept full responsibility for your actions and their consequences. We have also taken into account what you told the Court in person. The references attest to your strong work ethic from a young age. Those who have employed you would do so again, despite your spells in prison. The letter from your mother describes the impact on your family of your offending which is something you acknowledge and regret.

We take into account your personal history, medical issues and mental health struggles. You are assessed as having a low likelihood of reoffending which we can and do take into account. We note that there is no request for a drug trafficking investigation in respect of you.

An immediate custodial sentence is required as punishment, deterrent and for the protection of the public in your case. In view of the seriousness of your offending, alternatives to immediate custody cannot be considered.

Sentence

In sentencing you we have taken into account the totality principle so that the total sentence must be just and proportionate to the offending behaviour.

You have said that your motive for carrying out the importation was to protect those you love from harm. You gave no thought at all to the harm which would have been inflicted on the people of this Island had you not been intercepted. An immediate prison sentence is inevitable. You need to use your

time in prison this time wisely, to make sure that on release you really have cut all ties with your past life. As your mother said, she hopes that this will be your last ‘wake up’ call and as you say, this is not how you want to spend your life.

Taking into account all the above and applying the appropriate discounts and applying the totality principle, the sentences will be as follows:

- On Count 1 - immediate custody of 3½ years from 31.05.2021
- On Count 2 - 9 months’ immediate custody, consecutive to that sentence
- Total: - **4 years and 3 months’ imprisonment with effect from 31.05.2021**

In accordance with section 1 of Criminal Justice Supervision of Offenders (Bailiwick of Guernsey) Law 2004, upon release or completion of any parole period 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 the shorter. If you fail to comply with the conditions of the supervision you will be liable to further imprisonment, a fine or both.

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 in respect of the Huawei phone is also granted. That application was not opposed. This item was lawfully seized and it is to be inferred from the failure to comply with the RIPL notice that it has been 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 (£150) and the likely financial and other effects on you of making the order before deciding to grant the Crown’s application.

Forfeiture under the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended

The Crown’s application pursuant to section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended, which is not opposed, in respect of the lawfully seized drugs, the subject of the first count, is also granted.

In summary therefore, an immediate custodial sentence of **4 years 3 months’** with effect from 31st May 2021, forfeiture of the telephone and forfeiture and destruction of the drugs.

Catherine Maureen Fooks
Judge of the Royal Court

17th March 2022