

Being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug of Class C, contrary to section 77 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972.

[2021]GRC081

**ROYAL COURT
FULL COURT**

6 August 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Jonathan Grenfell Hooley,
Steven John Morris, David James Mortimer, David John Robilliard,
Stuart Michael Crisp, Marilyn Jasmine King,
Felicity Jane Quevâtre-Malcic, Heather Reed.**

THE LAW OFFICERS OF THE CROWN

- v -

Grant Richard SMITH

**Advocate R J Calderwood appeared for the Crown
Advocate S E Steel appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr. Smith, you have pleaded guilty to three counts on one Indictment, All of which relate to being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug of Class C, contrary to section 77 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972, as amended. Count 1 concerns an Ester of nandrolone, Count 2 methandienone and Count 3 stanozolol. Each of these offences carries a maximum penalty of 14 years' imprisonment or a fine, or both.

The facts in relation to the Indictment are, at the time of the offences, you were a manager at Guernsey Post responsible for the parcel depot, the form left locker and the airport drivers. Commensurate with that responsibility you had keys and an alarm code to enable you to access Envoy House, the postal headquarters. You were based in the parcels department and outside your office is a table where parcels which cannot be delivered are placed prior to being returned to the sender or to the returned letter branch.

Analysis of the evidence derived from your iPhone and the examination of your bank account disclosed that on the 7th of June 2020 you placed an order by message from an individual called 'anonymous avenger'. In the message you referred specifically to stanozolol. You made a transfer of £600 in relation to the purchase of drugs to an individual on the 8th of June 2020, which order included legal substances. On the 9th of June 2020, the customs officer on duty at Envoy House, intercepted a package addressed to an address in Steam Mill Lane ie other than your home address, to someone other than you, although that person is a real person and a previous occupant of that address. The package was found to contain the following:

- 1 Two vials of liquid each containing 10ml of nandrolone decanoate (20ml)
- 2 Two product boxes each containing 100 methandienone tablets (200 in total)
- 3 (In a separate envelope addressed in the same way) four boxes each containing 10 (1ml ampoules) of stanozolol (40 ampoules/40ml in total) respectively.

These drugs are performance enhancing steroids commonly abused within gym culture.

It is to be noted as that there was a trail of evidence on your iPhone linking you to this package.

Although you were not meant to be working on the afternoon of the 9th of June 2020, you were captured on CCTV walking around Envoy House. You asked a colleague, a postal worker, twice in a short space of time, if he had seen a registered packet for a friend of yours. Your colleague deduced from previous enquiries made by you that you were looking for a package addressed to Steam Mill Lane. When he saw you shortly after, he asked you if the parcel had been found. You told him that it had been scanned to Customs and that you didn't want anything to do with it. That parcel had in fact been intercepted by the customs officer.

Following the seizure of the parcel you had an exchange of messages with your supplier from which it is clear that you were in no doubt that you were breaking the law in ordering the drugs to be sent to you by post. Items seized at your house suggest that you are a user of steroids.

It is to be noted that the customs officer working at Envoy House perceived your behaviour to be odd and a hindrance to her investigation. As is your right, you exercised your right to silence when questioned. You did provide the PIN to your phone.

The Prosecution has been unable to give an accurate 'black market' price for the drugs. Its best estimate is £70 for the nandrolone (£35 per vial), £50 for the methandienone (£25 per box) and £220 for the stanozolol (55 per box).

You are a local man of 32 years of age. You are currently working as an HGV driver.

You have no previous convictions and you have been on unconditional bail throughout the proceedings.

Sentencing Considerations

As we have been reminded, sentencing is an art not a science. In Richards the Court of Appeal set sentencing guidelines for drug trafficking offences which this Court applies, but those guidelines do not cover Class C drugs. Previously the Royal Court had adopted a starting point of one-half of the Class A tariff when sentencing in respect of Class C drugs. In the case of Lamb (2012), the Guernsey Court of Appeal was invited to lay down general guidelines for the sentencing of Class C drugs. It declined to do so, and it declined also to endorse the Royal Court's practice of a starting point of one-half of the Class A tariff. As is rightly pointed out by Advocate Calderwood, later in 2012, the maximum penalty for importing Class C drugs was increased from 10 years (as it was at the time of the appeal in Lamb) to 14 years and Lamb must be read with that in mind.

Identifying a starting point cannot be a mathematical exercise. As the Court of Appeal said in Lamb, *"any starting point is to some extent arbitrary any starting point for one class of drugs which seeks to derive its legitimacy from a mathematical comparison of the maximum sentences for that class and another class of drugs is necessarily dependant on the respective levels of those maximum sentences which can obviously change from time to time"* Bearing in mind that the maximum penalty for Class C was increased very shortly after those statements were made, we consider that they remain valid today.

The Court of Appeal in Lamb also identified an issue with the arbitrariness of laying down parallel scales for the same drug depending on its form. In your case, and in so many others, this court is faced with a number of different Class C drugs in different forms. The first and third (in your case) are in a liquid form to be injected (nandrolone) and the second one in tablet form (the methandienone). The Prosecution has invited us to treat the volumes of liquids as equivalent to the weight of dry matter. This is fraught with difficulty in our view.

We are reminded by paragraph 12 of Richards not to embark on any distinction between different types of drugs within a Class.

You imported three different types of Class C drugs within one package resulting in three counts in respect of which we must set individual starting points before determining a total starting point.

The Prosecution has provided Website evidence which suggests that the quantity of stanozolol would be approximately 3 to 7 weeks' worth (21-49 days), the nandrolone 2 weeks' worth and the methandienone 25-67 days' worth, if all were used by just one person. We note and accept, that this quantity of drugs in total was a single course of steroids and in the circumstances and with the difficulties outlined above, we adopt the same starting point in respect of each Count, and we will sentence concurrently.

There can be no doubt that the custody threshold has been passed in respect of your offending.

Were we applying one-half of the Richards guidelines for Class A, the starting point for a Class C importation of the type in Count 2 (200 tablets of methandienone) would be approximately 4 years. By way of comparison, the importation of 200 tablets of Class B would attract a starting point of two-thirds of the Class A tariff ie 4½ to 6 years (which is from the case of Grunte).

We must, at all times, keep in mind the maximum penalty for Class C importations which is 14 years, whereas it is 21 years for Class B and life imprisonment for Class A. Taking everything in the round, we consider that a starting point of 3½ years is appropriate for each Count in this case.

Aggravating factors

There are aggravating factors in your case. The abuse of the Postal Service is always an aggravating factor in itself (as set out in Richards at paragraph 39) and that is present in your case. In our view though, much more serious is the abuse of your position as a manager within Guernsey Post. As a trusted manager, you had inside knowledge as to the postal service. You had the opportunity to commit the crime undetected, you clearly had the means to intercept the package before it went out for delivery and by using an empty house, you gave yourself the opportunity to intercept the package again, if it was returned to the desk outside your office. You suggest that this was not your intention, but you went in on your day off looking for the parcel. We consider that you have damaged the reputation of the Post Office by your conduct.

Further, not only did you use an address and name other than your own, but you deliberately used the name of a former tenant of the property, thus risking the implication into the offending of an innocent person.

Accordingly, we increase the starting point by 6 months for the aggravating factors and the starting point therefore becomes 4 years on each Count.

Mitigation

The Court must first consider the impact of your guilty pleas on sentence. You initially entered 'not guilty' pleas and matters were advancing to trial and you then changed your pleas to 'guilty'. You had little alternative other than to plead guilty. The Prosecutor has outlined your attempts to enter guilty

pleas based on a lie that a third party had used your iPhone and paid for the order. This led to additional work on the part of the Prosecution and this attempt to avoid taking responsibility for your actions is not to your credit.

You then entered your guilty plea on the basis that all the drugs were imported by you solely for your personal use even though you know that this is not accepted by the Prosecution, nor can it be accepted by the Court in view of paragraph 14 of Richards which makes it clear that an assertion that an importation is for personal use, only applies to “very small quantities” of drugs and clearly does not apply to your importation. Although the steroids are said to be for your use in a course of treatment, we cannot treat this as a simple possession. In the circumstances we cannot afford you full credit for your guilty pleas and reduce the discount to 25%.

The Court has considered carefully the helpful Probation Report prepared in respect of you and we have also listened to the very well-crafted submissions of your Advocate. We have also read the materials provided. Your Advocate and your letter confirm your remorse and your insight into what you describe as your idiotic and selfish conduct in your letter. We note your very well-respected family offering you strong support, which you will need. You know the harm that you have caused to your family.

We also note the challenges which you have faced as a young person and continue to face with body image. We have received a good reference from your current employer.

Your personal mitigation

Your strongest point in mitigation is your previous good character and you are entitled to considerable credit for that.

Although you left school with no formal qualifications, you worked hard up through the ranks at the Post Office to attain the position of Postal Higher-Grade officer. Your offending brought your hard-earned career of 16 years to an abrupt end. It is to your credit that you have found another job.

You took a calculated risk with the postal importations. Your offending has not only lost you your job and the companionship of your colleagues, but the financial consequences have led to the loss of your home. These are certainly very serious consequences for you. The Probation Officer considers that these very serious consequences, coupled with your remorse and the absence of any identified issue with drugs or need for therapy, means that you are unlikely to take the risk again.

You explained that you started to train at the gym to improve your appearance which is a legitimate and understandable aim, but you then became addicted and slipped into steroid abuse.

You are assessed as being conventional and pro-social person with a good degree of insight into the reasons which led to your offending and as motivated to avoid re-offending. This low likelihood of re-offending is something which we can and do take into account. You do not need any ongoing input from Probation.

We are able to afford you a generous discount for your previous good character and your personal mitigation. Taking into account all relevant matters and the totality principle, we are able to reduce the sentence on each Count to 2 years’ imprisonment.

Sentence

You made a serious error of judgement when you decided to start using illegal substances. But that error is completely overshadowed by your abuse of your trusted position. You have lost your job, the financial security you had worked so hard to achieve, your home and your friends.

Were it not for your good character and mitigation, you would be going to prison today but we are able to impose a non-custodial alternative in that we propose to suspend the sentences. You will need to draw on all your resources now to rebuild your life, but you have those resources and the support of your family. Your focus has to be ensuring that you stay far away from any situation in which you may be tempted to re-offend.

- In respect of Counts 1 to 3, the sentence we impose is one of 2 years' imprisonment but that will be suspended for a period of 3 years from today.
- All of these sentences will be concurrent.
- The total sentence is 2 years' imprisonment, suspended for 3 years.

You will not have to serve the suspended sentence of imprisonment unless during the next 3 years you are convicted of an offence punishable with imprisonment. If you are convicted of such an offence you will be liable to serve all or part of those sentences. A suspended sentence is not a let-off; it will hang over your head for that period of time and those will be the consequences so please do not forget that.

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 in respect of the package and its contents is also granted. The Court notes that this has not been resisted. The Court is satisfied that these items were lawfully seized and relate to the offences.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006 in respect of the iPhone is also granted. The Court notes that this has not been resisted. The Court is satisfied that this item was lawfully seized and that the analysis of it shows that it has been used for the purpose of committing or facilitating the commission of an offence, as evidenced by your plea.

The Court, as required by sub-section 5, has regard to the value of the property and the likely financial and other effects on you of making the Order, before deciding to grant the Crown's application.

Mr Smith, I repeat that the total sentence is one of 2 years' imprisonment on each Count concurrent, suspended for 3 years from today and the forfeiture of the iPhone and I repeat what I warned you, that you must not commit any further offences otherwise you will back here and those Suspended Sentences will be activated.

**Catherine Maureen Fooks
Judge of the Royal Court**

6 August 2021