

Knowingly concerned in the fraudulent evasion of the prohibition on importation of Class A and B controlled drugs contrary to section 77(1) and (2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972 and possession of Class A and B controlled drugs contrary to section 4(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974

[2021]GRC086

**ROYAL COURT
FULL COURT**

6 July 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Stephen Murray Jones OBE, Terry John Ferbrache, Terry George Snell,
Steven John Morris, David James Mortimer, David John Robilliard,
Stuart Michael Crisp, Marilyn Jasmine King, Felicity Jane Quevâtre-Malcic.**

THE LAW OFFICERS OF THE CROWN

- v -

Michael SHEEN

**Crown Advocate C G Dunford appeared for the Crown
Advocate D R F Domaille appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Sheen, you have pleaded guilty to 6 counts on 1 indictment.

The first 3 Counts are of being knowingly concerned in the fraudulent evasion of the prohibition on importation of controlled drugs contrary to section 77(1) and (2) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972, as amended. Counts 1 and 2 are Class A drugs - cocaine and MDMA and the maximum penalty is life imprisonment. Count 3 is the Class B drug Ketamine and the maximum penalty is 21 years' imprisonment.

Counts 4 and 5 are of possession of controlled drugs contrary to section 4(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended. Count 4 is a Class A drug cocaine, which has a maximum penalty of 14 years' imprisonment and Count 5 is the Class B drug ketamine, which has a maximum penalty of 10 years' imprisonment.

Counts 1-5 all occurred on 2nd July 2020.

Count 6 is what we call a RIPL offence, namely failing between the 27th July 2020 and the 4th August 2020, to disclose certain information within seven days as required by a notice served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003. The maximum sentence for this offence is 2 years' imprisonment or a fine up to Level 5 or both.

The facts in relation to Counts 1 to 3 are that on 1st July 2020, customs officers on duty at the post office intercepted a package addressed to someone other than you, at Flat 14A at your address. It was found to contain 4 marker pens in each of which was concealed controlled drugs: 4.95g of Ketamine (in the

green pen), 8.20g of MDMA in the form of 23 tablets (including some caffeine) in the blue pen, 5.8g of MDMA in powdered form (in the black pen), and 1.08g of MDMA, together with 2.86g of cocaine, both in powdered form (in the red pen). A replica postal package was created and delivered to your property. Officers entered and caught you with it.

In total, you imported 2.86g of cocaine, valued at between £286 and £429, 23 MDMA tablets valued at between £460 and £575, 6.86g of MDMA powder valued at between £550 and £688 and 4.95g of ketamine valued at approximately £445.50.

You were arrested and officers seized various items, a bag containing 0.05g of ketamine from your glasses case, zip lock bags which tested positive for various controlled substances and specifically 0.04g of ketamine and 0.09 g of ketamine and cocaine and caffeine mixed. These amounts make up the possession Counts 4 and 5.

Turning to Count 6, two phones were seized and you declined to give the PIN twice voluntarily and you refused when served with the requisite notice. You were interviewed and exercised your right to silence.

You explained to the Probation Officer that you were a recreational user of substances. You ordered the package when intoxicated following a personal argument, tried to cancel it but it was too late. Nonetheless, you opened it when it arrived and somehow the drugs were under the bed when officers arrived. You claim that this was your only importation.

You were born in England and are 46 years of age (45 at the time of the offences). You have lived in Guernsey since 2014 though you were working here prior to that and were working for a company here for 22 years in total before you lost your job due to these offences.

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

Sentencing Considerations

The importations fall squarely within the Richards guidelines in respect of the Class A powder and tablets and the Grunte guidelines for Class B powder. We are bound to follow those guidelines. Richards gives a band of 7-9 years for 1-20g of powder and 1-500 tablets. Grunte gives a band of two-thirds of the Richards band for Class B powders so 4.5 to 6 years.

Postal importation is always seen as an aggravating factor. The method of concealment was quite sophisticated.

We will take the Class A importations as the lead offences and treat the Class B and possession offences as an aggravating factor. We will sentence you concurrently in respect of the Class B and possession charges.

The total quantity of Class A powder imported is 9.74g plus the 23 MDMA tablets. The total quantity of Class B powder imported is 4.95g.

Whilst you claimed that the amounts imported are for personal use, they are not the very small quantities for personal use described in Richards, they are the more than relatively small amounts which fall within the guidelines. The Court is satisfied that the custody threshold in respect of the importations has been passed.

The RIPL offence speaks for itself. This Court takes the view that failure to give the PIN impedes the criminal investigation and is intended to hide evidence of further offending. It crosses the custody threshold.

Starting points

For the Class A importations:

- Counts 1 importations – the cocaine powder is a starting point of 8 years
- Count 2 importations – the MDMA powder and tablets a combined starting point of 8 years

For the Class B importation:

- Count 3 – Ketamine powder the starting point is 4.5 years

We start therefore with a combined starting point of 8 years, having treated Counts 2 and 3 as concurrent in that calculation.

Mitigation

The Court must first consider the impact of your guilty pleas on sentence. You were caught red handed with the drugs and the RIPL offence is a deliberate act, so we cannot afford you full credit for your guilty pleas to all offences, although they were entered at the first opportunity and indicated before then.

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

We have also listened to the considered and realistic submissions of your Advocate. We note your assertion that you tried to cancel the order, but the package was delivered, and you took possession of it, so it is a completed offence, not an attempt or to be viewed as an attempt. There were other avenues open to you if you did not want to receive the package.

We have read the materials provided, including your detailed letter to us in which you explain your drug use and the events leading up to your offending. It is to your credit that you take full responsibility for your offending and are determined to maintain the changes you have made since committing the offences. The reference from your work colleague describes you as “intelligent, diligent and kind-natured, a man of integrity and a trusted employee”. The other letters all paint a picture of a person who has made a bad error of judgement, but who retains the confidence and support of those around him. Many of those people have attended today.

Personal Mitigation

Whilst you are not working currently, having lost your job of 22 years, you are a professional person with qualifications and an excellent work ethic. You are currently in a supportive relationship.

There have been some difficulties in your life as outlined in the report and the letters. You resorted to maladapted coping strategies unfortunately.

Your response to your offending has been good. You have sought help voluntarily since your arrest in connection with substance abuse and engaged well over a series of appointments and you are confident that you are drug free. Following that work you were referred for counselling as described in the report with which, again, you have engaged well. You are not assessed as needing any referral to assist with drug dependency or any other issue or any supervision.

You recognise that your offending impacts not only on you but on others. You have found this, your first brush with the Criminal Justice system, a salutary experience. You recognise that the RIPL offence is a deliberate act. You have expressed considerable remorse for your offending and demonstrated significant insight.

You are assessed as having a low to moderate likelihood of re-offending which we can and do take into account. It is said that you have all the necessary skills to avoid any further offending. We note that there is no request for a Drug Trafficking investigation. We have applied the totality principle in sentencing you. Your strongest mitigation is your previous good character and that and the other mitigation with your pleas entitles you to a substantial discount.

Sentence

Mr Sheen, in making such a bad error of judgment, completely out of character, as your friends describe and in importing such a quantity of Class A and B drugs via the postal service, an immediate custodial sentence cannot be avoided. The RIPL offence stands alone and also has to attract an immediate custodial sentence here. The sentences would have been much longer but for your lack of previous convictions and your considerable mitigation. As you say in your letter, you must accept the inevitable prison sentence and not let it define you or your future. You are determined that this will be your first and last appearance in a Court and you have the skills to ensure that outcome.

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

- Count 1 - 3½ years immediate custody.
- Count 2 - 3½ years immediate custody, concurrent.
- Count 3 – 2 years immediate custody, concurrent.
- Count 4 - 1-week immediate custody, concurrent.
- Count 5 - 1-week immediate custody, concurrent.
- Count 6, the RIPL offence – 9 months immediate custody, consecutive.
- This makes a total of 4 years and 3 months imprisonment to take effect from today.
- The applications for forfeiture and destruction of the exhibits are granted.

In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any parole period if 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.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the OnePlus 6T mobile phone valued at £175 and the iPhone 7 valued at between £109 and £200 is also granted. The Court notes that these have not been resisted. The Court is satisfied that these items were lawfully seized and that it is reasonable to infer that they have been used for the purpose of committing or facilitating the commission of an offence, as evidenced by your pleas. The Court has, as required by subsection (5), had 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.

The Crown's application pursuant to section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, in respect of the drugs and other items is also granted. The Court notes that this also has not been resisted. The Court is satisfied that these items were lawfully seized and relate to the offences.

Mr Sheen, in summary, the sentence today is a total term of imprisonment of 4 years and 3 months from today and the Forfeiture and Destruction of items is ordered as requested.

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

6 July 2021