

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, by importing a Class B drug, namely herbal Cannabis, in contravention of the prohibition on importation imposed by Section 21(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, and the cultivation of 6 Cannabis plants in contravention of Section 5(1) of the same Law.

**[2022]GRC050**

**ROYAL COURT  
FULL COURT**

**15 June 2022**

**Before: Catherine Maureen Fooks, Judge of the Royal Court and  
Terry John Ferbrache, Jonathan Grenfell Hooley, David James Mortimer,  
David John Robilliard, Stuart Michael Crisp, Marilyn Jasmin King,  
Tina Jane Le Poidevin and Heather Reed, Jurats**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**GARY LEE HOTTON**

**Advocate M Davies appeared for the Crown  
Advocate S E Steel appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Sentencing Remarks**

Mr Hotton, you have pleaded guilty to 2 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, by your importation between the 21<sup>st</sup> June 2021 and the 2<sup>nd</sup> July 2021 of a Class B drug, namely herbal Cannabis, in contravention of the prohibition on importation imposed by Section 21(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended. The maximum penalty is 21 years' imprisonment.

The second Count is of cultivation of 6 Cannabis plants between the 6<sup>th</sup> May 2021 and the 15<sup>th</sup> July 2021 in contravention of Section 5(1) of the same Law, the maximum penalty for which is 14 years imprisonment.

The facts are that on the 30<sup>th</sup> June 2021 a parcel addressed to Gary Lee at your home address was intercepted and found to contain 16 resealable packets of a green herbal substance and 8 black boxes containing glass jars, also containing green herbal substance, which, in total, was found to be 84.32 grams of Class B herbal Cannabis.

On the 15<sup>th</sup> July 2021 a search warrant was executed at your home. On arrest you told officers that you didn't know about any post but that there were 2 plants in the kitchen and a couple more outside. Officers found a green grow tent in the garden containing 3 plants at different stages of growth and a further cultivation site behind a false glass oven front in the kitchen containing 3 more plants with electrical growing equipment and a thermometer.

Forensic examination of your phone showed history relating to Cannabis and medicinal Cannabis and Royal Mail and Guernsey Post tracking websites in the days following the interception of the package.

At interview you told officers that you had been using Cannabis daily since you were 12 years old and admitted to growing the plants and making attempts to conceal them because you were aware that cultivating them was illegal. You denied any knowledge of the postal importation.

In terms of value, herbal Cannabis is valued at £50-£70 per gram, which gives a value of £4,216-£5,902 for the imported Cannabis. Arguably a higher value for the cultivated Cannabis based on the United Nations Office on drugs and crime publication, to which we were referred, which indicates that a fully matured plant yields, on average, between 20-40 grams, though it is to be noted that variations, due to cultivation factors, have to be considered. Using this average yield, the plants, if fully matured, could have yielded on average between 132 and 246 grams of Cannabis, but we note that your plants were not fully matured.

You are a local man of 46 years of age. You were working as a gardener prior to your arrest and you have worked subsequently, but you are now unable to work for medical reasons.

You have a considerable record, 43 convictions, spanning most of your life with a few gaps. Convictions include a lot of traffic offences but also robbery, possession of an offensive weapon, dishonesty, criminal damage, public order and one possession of drugs. The most recent convictions in 2018 are for theft for which you were imprisoned for 4 months. This is your first appearance in the Royal Court for sentencing since 1995. You have been on unconditional bail throughout the proceedings.

The sentencing guidelines applicable to offences involving the importation of drugs are contained in the case of *Richards*. Those guidelines were recently considered by the Guernsey Court of Appeal in *Barras, Watt & Orchard v The Law Officers* 2021 GCA045 and re-affirmed as current and appropriate. This court will continue to follow those guidelines.

The Court of Appeal in *Marsh, Hardy and Fallaize v The Law Officers* 2007-08 GLR1, to which your Advocate referred, held that the *Richards* guidelines also apply to cultivation cases based on potential yield for quantity and factoring in the sophistication and scale of the operation. We note the different maximum sentence.

There is no dispute that the custody threshold in respect of your offending has been passed.

The quantity of imported Cannabis is 83.42 grams. We take a starting point, before aggravating and mitigating factors, of 3 years for that offence. The potential yield for the plants, if fully matured, is between 132-246 grams, which would ordinarily attract a higher starting point but the plants were not matured and that yield is not guaranteed, so we would have started at 3 years.

We propose, generously, a combined starting point of 3 years and 3 months.

Postal importation is an aggravating factor through it is to be noted that in your case you used your own name and address. The cultivation in the garden is not the most sophisticated but there was an attempt to conceal the plants in the house and a level of sophistication in the operation in terms of growing equipment.

We ignore the one previous drugs conviction and do not treat your overall poor record as an aggravating factor. We accept that there is no evidence of any intent to supply. We set the revised combined starting point, before consideration of plea and personal mitigation, at 3 years 6 months.

## **Mitigation - Plea**

The Court must first consider the impact of your guilty pleas on sentence. The delay in entering them was explained. We afford you full credit for those pleas.

### **Mitigation**

The Court has considered carefully the Probation Report prepared in respect of you, which gives helpful background and insight into your thinking. You are a life-long user of Cannabis. You have your views about Cannabis, to which you are entitled, but the States of Guernsey makes the laws which bind those who live here. Your early life was difficult and you are now suffering with a degenerative disease. You have the benefit of a supportive partner to whom you recently got engaged and she would welcome you to move in with her were you to be given a community based sentence today.

We note your co-operation on arrest. We have also listened to the thorough submissions of your Advocate. You underestimated the consequences of the importation but you have subsequently accepted the likely sentence and been planning for it. You have your medical issues which cause you to collapse and black out and you are currently undergoing investigations. All of this is taken into account.

We note that there is no request for a drug trafficking investigation in respect of you. You are assessed as having a high likelihood of re-offending, based on beliefs that condone offending behaviour, but of low risk of harm to the public, which we also take into account.

In view of your record and the seriousness of the offending, alternatives to immediate custody cannot be considered, but, out of leniency and applying the totality principle, we have reduced the term of the immediate custodial sentence.

Mr Hotton you have accepted that you deliberately committed these offences and that you are facing a custodial sentence. You are reaching the age where it is time to accept instead that you should live within the laws of the land so that you can live your life away from these courts and indeed from prison.

Taking into account all the above and, as I say, applying leniency and the totality principle, the sentences will be as follows:-

- |                |   |  |
|----------------|---|--|
| <u>Count 1</u> | - | 18 months' immediate custody                         |
| <u>Count 2</u> | - | 18 months' immediate custody concurrent with Count 1 |

So the total term of imprisonment is 18 months with effect from today.

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 of 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 imprisonment, a fine or both.

The Crown's application pursuant to Section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended, which is not opposed for the forfeiture and destruction of the imported Cannabis and plants, which were lawfully seized and relate to the offences, is also granted.

In summary:

1. 18 months immediate custody from today in total and;
2. forfeiture and destruction of the plants.

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

**15 June 2022**