

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

[2022]GRC052

**ROYAL COURT
FULL COURT**

10th June 2022

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Claire Helen Le Pelley, Terry John Ferbrache,
Steven John Morris, Joanne Marie Wyatt, David John Robilliard, Stuart Michael Crisp,
Marilyn Jasmine King, Paul Martin Burnard and Heather Reed.**

THE LAW OFFICERS OF THE CROWN

- v -

CHAD STUART WEBB

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

JUDGE OF THE ROYAL COURT:

Sentencing Remarks

Mr Webb you have pleaded guilty to one Count on one Indictment, namely that, between the 28th August 2021 and the 6th September 2021, 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 on the 13th August 2021, when officers were executing a search warrant at your home, in connection with a drugs investigation, you shut yourself in a bedroom when you saw an officer. When officers opened the door you were standing next to an open window. The officers found an empty box for a Samsung mobile phone but the phone was not in the house, it was found in a hedge, below the open window.

While in custody you initially denied having a phone, which was a lie, for which you have apologised. You then declined to answer questions about the Samsung or to provide its PIN. You are, of course, entitled not to answer the questions.

You were subsequently issued with a RIPL notice with which you did not comply. When given one final opportunity to comply with the Notice, you declined, saying that there was personal "stuff" on the phone. Officers have been unable to access the phone in the course of the investigation.

You are local man of very nearly 41 years of age. You are a builder. You live with your parents. You are separated but have a child with your former partner. You have previous convictions, many as a juvenile, fewer as an adult and those include two for drugs in 2010 and 2006 for which you were Conditionally Discharged with a Probation Order and fined respectively. This is your first appearance before the Royal Court.

You have been on unconditional bail throughout the proceedings.

Sentencing Considerations

Advocate Steel made reference to the case of the decision of the Guernsey Court of Appeal in Barras, Watt and Orchard in which that court made four observations:

- (1) Failing to make the disclosure required by the notice issued under Section 46 of RIPL is a serious matter, almost invariably calling for an immediate custodial sentence.
- (2) 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) Deterrence is an important aspect of sentencing in this context.
- (4) The appropriate sentence will, of course, depend on the particular circumstances of the case and he emphasised certain aspects of that direction.

The Court cannot accept your explanation that you had left the phone outside while gardening. You claimed that you did not provide the PIN out of embarrassment because there were intimate images on your phone. That is not a good reason to withhold your passcode. It is no secret that in Guernsey those who commit RIPL offences usually receive immediate custodial sentences. Your behaviour, when officers were at the house, fully entitles this Court to assume that you did not provide the PIN because of incriminating evidence on the phone.

You have sensibly conceded, through your Advocate, that the custody threshold has been passed in this matter. We take a starting point of 12 months. There are no particular aggravating factors.

Mitigation Plea

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, nonetheless, pleaded guilty.

Mitigation

The Court has considered carefully the helpful probation report prepared in respect of you and listened to the submissions of your Advocate who has made every point possible in your favour.

We have read the reference from your employer, noting the description of you as hardworking and that you have been afforded responsibility of supervising teams and that you could progress further in your career.

Although you have a long criminal record dating back to your childhood, it is clear that you did turn your life around in your early 20's when you began to work in the building trade, settled down, subsequently married and had a child. There is a significant decrease in offending since 2002 and you have not been before any Court since 2010.

You are described as a family man, working very long hours to provide for your wife, from whom you are separated, but to whom you remain close, and your child, and undertaking duties as carer for your parents who are unwell.

The evidence of impact upon them, were you to be incarcerated today, is contained in letters from your parents and wife, your parents explain how they are fearful of the loss of your practical support at home, your wife fears the loss of your financial and emotional support and says that there will be a significant

impact on your son if you are to receive an immediate custodial sentence today. There is also a letter from your mother's doctor.

This impact on your family life is an important consideration for the Court, as it engages Article 8 rights of those impacted in accordance with the case of *Bourgaize v Law Officers of the Crown 2014* Judgment 49.

The Probation officer assesses you as not needing any form of intervention as you have no problematic relationship with alcohol or drugs. You claim to be on prescription Cannabis. You are assessed as having a medium likelihood of re-offending, based, mainly on your past, which we take into account. It is to your credit that you have brought funds to Court today for any financial penalty.

This Court has consistently sent out the message that those who withhold their passcodes can expect to receive immediate custodial sentences. In your case, exceptionally and only after much deliberation, in view of your mitigation, your efforts to turn your life around, which had, until now, been successful and in particular the impact on your family members, both in terms of financial, emotional and practical support, were you to be incarcerated, the Court can consider the non-custodial alternatives.

The Court will impose a Community Service Order and it will be for 180 hours of unpaid work and it is imposed as a direct alternative to a sentence of imprisonment of 9 months. We note that you have signed a form stating that you understand the nature and effect of a Community Service Order, 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. The Court is satisfied that provision can be made for you to perform work and that you are a suitable person to perform that work. Please note, if you fail to complete even one hour, without a medical certificate or commit any other offence, you will be brought back before this Court and you will face going to prison.

In addition there will be a fine of £5,000, £1,000 payable today and the balance to be paid within 6 months and there are 250 days custody in default of payment. It is important that you pay that fine Mr Webb.

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 of the Samsung mobile phone is also granted, it was not opposed. The 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 had regard to its value, £150-£200 and the likely financial and other effects on you of making the order.

Sentence

You are here today because you chose not to provide your passcode. As a consequence your parents, wife and child have been caused a lot of stress and could well have been deprived of your support, while you paid the price for that choice. You had done so well and it is a shame that you have offended again in such a serious way. Be in no doubt as to the consequences if you were to breach the Community Service Order or re-offend.

I repeat that the total sentences are:-

- Community Service Order - 180 hours or 9 months' custody in default;
- a fine of £5,000 payable as I have said and;
- forfeiture of the Samsung mobile phone.

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

10th June 2022