

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, by importing a controlled drug of Class B.

**[2022]GRC055**

**ROYAL COURT  
FULL COURT**

**28<sup>th</sup> January 2022**

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:  
Stephen Murray Jones OBE, David Percy Langley Hodgetts LVO,  
David James Mortimer, Joanne Marie Wyatt, David John Robilliard, Marilyn Jasmine King,  
Tina Jane Le Poidevin, Paul Martin Burnard, James Robert Toynton.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**DANIEL THOMAS CURLEY**

**Advocate R J Calderwood appeared for the Crown**

**Advocate S E Steel appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Background**

Mr Curley, you have pleaded guilty to a single count on one indictment 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.

The particulars are that on 8<sup>th</sup> November, 2021, you imported herbal cannabis by bringing it with you into the Island. The maximum penalty is one of 21 years' imprisonment or a fine or both.

The facts have been comprehensively set out by the Prosecution. You came to Guernsey on the ferry with your employer's van and another person. You were coming here to work. You confirmed that you understood that there were restrictions on importing certain goods. You were asked specifically if you had any controlled drugs and you said "no".

Your van was searched and 19.65 grammes of cannabis was found in a large tool bag. You immediately acknowledged that it was yours. You were then arrested and you explained that you had mental health issues and depression and that you smoked cannabis on a regular basis. You made various comments to the effect that you had not appreciated that Guernsey was a separate jurisdiction from England and you thought that there would be no problem bringing in some cannabis across with you.

You were then interviewed and you explained that you had purchased the cannabis for £90 and that you had hidden it in your bag because you wanted to make sure that you had it in Guernsey because you were dependent on cannabis.

The Prosecution has accepted that you did not realise that Guernsey was a separate jurisdiction from England or the United Kingdom and has accepted your guilty plea on the basis that you were aware at

the point when you had your conversation with the Customs officer in which you were told that it was prohibited to bring cannabis into Guernsey. You accept that you evaded the prohibition on importation by hoping that, by keeping quiet about the presence of the cannabis, it would not be discovered.

The value of the cannabis is between £982.50 and £1,375.50 – an increase in price compared with previous cases (we are told) arising from the pandemic.

You are an Englishman of 34 years of age. You had been working in the building trade prior to your arrest.

You have previous convictions, the most recent and relevant being two years' imprisonment for a Class A drug offence in 2016. You have been remanded in custody since your arrest on 8<sup>th</sup> November 2021.

### **Sentencing Considerations**

The total amount of cannabis imported by you was 19.65 grammes.

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 and Orchard v Law Officers (2021) GCA045 and re-affirmed as current and appropriate. This Court will continue to follow those guidelines.

The cannabis imported by you falls within the lowest band in Richards namely three to six years for amounts up to 2kg. We set the initial starting point at 3 years.

The Court is satisfied that the custody threshold in respect of your offending has been passed. There is an aggravating factor in your case in that you have a previous conviction for a drug related offence – the Class A offence already mentioned. There are mitigating circumstances in the way in which the offence has been committed, namely in a very short time period and in circumstances where the evidence of its commission has come from your admission.

As your Advocate, Advocate Steel, said, “*the mens rea was triggered at the last possible moment*”. There is no evidence of any intention to supply to a third party. We therefore set the revised starting point before mitigation still at 3 years.

### **Mitigation**

#### Plea

The Court must first consider the impact of your guilty plea on sentence. That plea was indicated at committal and we afford you full credit for your guilty plea.

#### Mitigation

The Court has considered carefully the helpful Probation Report prepared in respect of you. We have also listened to the well-crafted submissions of your Advocate.

We note your sad and difficult childhood and how you fell in with people who were part of the drug culture and how you have struggled with mental health issues. Despite these issues you have at times worked and engaged in positive social activities. You had become dependent on cannabis. You have had some difficult times. You have sought help from ‘Change, Grow, Live’ which is to your credit.

You are in a stable relationship and your partner is expecting your child. You are rightly concerned at the worry you have caused her by committing this offence and the consequences of a custodial sentence. The letter from her highlights the detrimental effect on her and your soon to be born child of your

offending but also of any immediate custodial sentence. You have children from another relationship as well who clearly miss you and have been affected by separation from you and who would be affected further should you receive an immediate custodial sentence.

Your poor record includes a number of drug offences including the Class A offence. You were released from custody in 2016. Your response to offending has been positive. Whilst being dependent on cannabis, you can now see its harmful effect on others and also on yourself and you can see the need to find a different way to cope with your mental health difficulties. You say that you want to make changes in your life for the sake of your family and yourself.

We note that you are considered a valuable employee and that your job is secure were you to be released now. We note your remorse. We have carefully read your heartfelt letter to the Court and all the character references which were provided just before the hearing about you. They paint a picture of a loving father and a good and caring person. There is a lot of information contained in those documents besides that to which reference has been made above. All relevant matters have been considered.

You are assessed as having a moderate likelihood of re-offending. This arises from your cannabis use, but you have now been effectively detoxed in Prison. The Probation officer views your motivation to change as genuine. We note that there is no request for a drug trafficking investigation in respect of you.

The circumstances in which you have committed the offence are unusual and confined to a short period of time. Your admission forms the basis of the case against you. You did the right thing in making that admission.

### **Sentence**

Your offending, nonetheless, crosses the custody threshold. You have been in custody for almost 3 months which must be taken into account. It has been a salutary experience by all accounts. The Court has considered all the mitigation and specifically considered the Article 8 rights engaged in respect of you, your partner, your children and your unborn child, all of whom rely on you for emotional support. You are not assessed as needing any supervision as you know how to access the help that you need. The Probation officer recommends a suspended sentence.

In view of your plea, the unusual circumstances of the offence, the mitigation and the Article 8 rights engaged, the Court is able to consider alternatives to immediate custody.

Mr Curley, you have described this as the biggest 'wake-up' call and that your eyes have been opened to your addiction and the harm that it has caused. You have expressed your hopes and your aspirations as a family man and for your future.

The Court is going to impose a Suspended Sentence on you. Do not waste this opportunity to sort your life out for the sake of those who look up to you and depend on you.

Taking into account all the above and applying the appropriate discounts, the sentence will be one of 15 months' imprisonment from today, but suspended for 2 years. You will not have to serve this Suspended Sentence of imprisonment unless, during the next 2 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 that sentence. A Suspended Sentence is not a let-off, it is a sentence of imprisonment. It will hang over your head for that period of time and those will be the consequences.

### **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 drugs, packaging and grinder 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 offence.

**Mr Curley, I repeat, the sentence today is a term of imprisonment of 15 months from today, suspended for 2 years and the Forfeiture and Destruction of the drugs and associated items.**

You may leave once the Court has risen.

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

**28<sup>th</sup> January 2022**