

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 importation controlled drugs of Class A and Class B in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended

[2022]GRC056

**ROYAL COURT
FULL COURT**

10th May 2022

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Stephen Murray Jones OBE, David Percy Langley Hodgetts LVO, Joanne Marie Wyatt, Stuart
Michael Crisp, Marilyn Jasmine King, Paul Martin Burnard, Felicity Jane Quevâtre-Malcic,
Heather Reed, Simon Ernest Bodkin, Jurats**

THE LAW OFFICERS OF THE CROWN

- v -

ALEXANDER DOMINIC LAMB

Advocate J D McVeigh appeared for the Crown

Advocate S E Steel appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Mr Lamb you have pleaded guilty to 7 counts on one Indictment. The first five counts are 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 on the 15th October 2021 of the Class A drugs Cocaine and Δ^9 -THC and the Class B drugs Cannabis, Cannabis Resin and 4-Methylmethcathinone (“4-MMC”) in contravention of the prohibition on importation imposed by section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974 as amended. The maximum penalty in respect of the Class A drugs is life imprisonment and in respect of the Class B drugs 21 years’ imprisonment.

The quantities and values attributed to the imported drugs by the Prosecution are as follows:-

Count 1 - Cocaine 3.42g value £342-£513

Count 2 - Δ^9 -THC paste in 10 separate pots (total paste 10.1 grams) and liquid in 7 jars each of 30 millilitres (total liquid 273.20 grams). The value of the liquid is given as £28,320-£36,816 and no value could be given to the paste.

Count 3 - Cannabis in 3 parcels each of approximately 27 grams (total 84.18 grams) value £4,209-£5,892.

Count 4 - Cannabis Resin in 5 bars each of 96-97 grams (total 583.13 grams) value £29,156-£40,819.

Count 5 - 4-MMC in the form of tablets and fragments and powder (113 tablets – total 31.34 grams) value £1,880-£2,507.

Counts 6&7 are of being concerned, between the 26th May 2021 and the 31st May 2021, in the supplying of controlled drugs of Class A and B, namely MDMA and Cannabis, respectively, to another, contrary to section 33(b) of the Misuse of Drugs Law, the maximum penalties for which are life imprisonment for the Class A drug and 21 years imprisonment in respect of the Class B drug.

The facts in relation to the importations are that on the 15th October 2021 you were stopped in your vehicle as you arrived in Guernsey on the ferry from Poole, you told officers that the contents of the vehicle were yours, that you did not have any prohibited items and that you did not use controlled drugs.

During the search a postal package was found addressed to you at Avenue Skateboards at an address in Manchester. You told officers that the package contained collectables purchased from eBay and that the address was your girlfriend's. The package was opened and found to contain the Class A and B drugs listed above.

You were arrested and your mobile phone was seized. You provided the PIN for it. While in police custody you said, *"I feel like an idiot and heavily regret what I have done"*.

During the search of your home police found a cash box containing £2,000 in £20 notes and a set of digital scales which tested positive for THC and Cocaine.

The evidence in respect of the supplying counts comes from analysis of your mobile telephone, that evidence was set out in detail by Advocate McVeigh. In summary there is a message thread starting on the 26th May 2021 between you and 'A' in which you explain that you are in Guernsey for a family event, albeit, initially in Covid isolation and you offer to supply MDMA tablets and Herbal Cannabis with details of the brand names and two photographs. You offer the MDMA tablets at £25 each or 20 tablets for £20 each as a bulk discount. The price for the Cannabis was £35 per gram. The conversation included the quality of the product and payment details linked to your skateboarding business known as Avenue Skateboards. It was clear that the purchaser was buying in bulk for onward sale, he mentioned eight others. You sent out a message saying *".... I've just done nearly 100 grams in the morning"*.

On the same day there is an iMessage thread between you and 'C'. Contact was initiated by you offering three strains of Herbal Cannabis at £35 per gram. 'C' requested 10 grams and offered to pay in English cash. Your conversation went on to discuss the evidence trail created by messages and there was reference made to having recently stopped liquids as someone had seen that a person had received a custodial sentence of 4 years as they count as Class A drugs. In the course of that conversation you sent messages acknowledging both your offending behaviour and the impact on your family of your involvement with controlled drugs. Nonetheless you go on to say *"..... but people want what they want and I can happily help out and take a risk to do so, so why not"*.

Analysis of your phone revealed further messages of a similar nature with other contacts on the 26th May and following days, including arrangements for the sale to 'T' of 6.3 grams of Cannabis for £220, to 'L' of 20 grams of Cannabis for £700, (but, when he requested more on the 30th May, you had run out of stock), to 'M' 9 grams of Cannabis of three different strains, to an unnamed contact 12 grams of Cannabis, to 'J' 4 grams of Cannabis at £35 per gram, and to 'D' 6 grams of Cannabis at £35 per gram and 3 MDMA tablets at £25. On that same day, you arranged to sell 6 MDMA tablets to 'L' at £25 each plus one more later, for a total of £150 and you offered 'G' MDMA tablets at £25 each or £22.50 each for £10 and £20 each for 20 or more before he purchased 5 tablets for £125.

Mostly you were the instigator of the conversations, you gave out details of where you were isolating for collection of the drugs and payment details. Officers were able to reconcile some payments received into your accounts with the prices given for the sales.

On the 28th May, the unnamed contact enquired about MDMA tablets and was quoted a price of £25 each, or £20 for 20 tablets. You told him that you only had just over 40 and that it was “*crazy how many people want to buy*”. You are also in touch again with ‘D’ offering him more MDMA saying that you only had 15 left. A different ‘D’ purchased 5 of these on the 28th May and the remaining 5 on the 31st May, all at £25 each.

In a WhatsApp message on the 27th May to ‘J’ you said this:-

“You might need to give me a hand to wash some of this cash when I get back, my room looks like a cashier’s desk.”

That message was followed by an image of what appeared to be a volume of UK bank notes. The contact replies to the effect that you will be taking that person shopping. The sum of £1,000 was credited to your HSBC account in Guernsey on the 2nd June 2021.

You were interviewed on the 15th October 2021 and exercised your right to silence.

You are a local man of 29 years of age. You are a graduate. You had moved back to Guernsey in early 2021 to pursue your career here but have been working as a maintenance technician pending the outcome of this case.

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

Sentencing Considerations:

It goes without saying that the custody threshold has been passed in this case and Advocate Steel sensibly conceded this.

It is accepted that the sentencing guidelines, applicable to offences involving the importation and supply of drugs, are contained in the case of *‘Richards’*, subject to the one exception I mention below. Those guidelines were recently considered by the Guernsey Court of Appeal in *‘Barras, Watt & Orchard v The Law Officers’ 2021 CGA045* and reaffirmed as current and appropriate.

Paragraphs 8 and 11 of *‘Richards’* contain the factors relevant to the setting of the starting point.

“In conducting the sentencing exercise the court should initially determine what would be the appropriate starting point in the particular case. By this is meant the appropriate sentence for the offence, after a full trial and before any mitigation is taken into account. The starting point has to be determined primarily by considering two factors, namely, the quantity of the drugs and the involvement or role of the defendant in the commission of the offence. In that way the court assesses the extent of the criminal conduct.”

The Learned Judges go on to indicate some factors which might enhance the starting points.

There is then paragraph 11, which has already been quoted by Advocate Steel:

“Where the quantity of a drug is being considered, in assessing the starting point, this should be primarily based on weight and only to a lesser extent based on street price. Further, except in cases of very high purity, or where there is reason to believe that the drugs will be cut before being passed on, the purity of drugs will not be a factor that will be taken into account in sentencing.”

Paragraph 12 of *‘Richards’* gives guidance as to how to approach sentencing where two different drugs are imported at the same time:

“It is a feature of some cases that two different drugs are imported at the same time, both in significant quantities. It may be two different Class A drugs, or a Class A drug and a Class B drug. In such cases the combined quantity is the relevant factor in determining the extent of the criminal conduct, which must be greater than if only one drug was imported. In such cases the court should assess the appropriate starting point in respect of each of the drugs and then determine a total starting point, taking into account the overall quantity. Thereafter the mitigation will be applied to arrive at the actual sentences to be imposed.”

The Court then goes on to give further guidance.

In this case both Class A and Class B drugs have been imported in different forms within each class, so this Court will have to build its starting point piece by piece. There are two separate exercises, one for the importations and one for the supplying. Before embarking on those exercises, it is necessary to say something about certain of the individual substances. Whilst the *‘Richards’* guidelines contain suggested sentencing bands for Class A tablets and in powder form and Cannabis and Cannabis Resin, they do not directly cover the Δ^9 -THC in paste and liquid form, which is a Class A drug and the 4-MMC, which is a Class B drug in tablet form. Nonetheless the *‘Richards’* guidelines apply other than to the 4-MMC and we will return to that later.

4-MMC is also known as Mephedrone and is a synthetic stimulant drug of the amphetamine and cathinone classes. There is a further relevant guideline case namely *‘Gints Grunte v Law Officers’* Court of Appeal Judgment 69/2005 which contains guidelines for class B Amphetamines in in powder and tablet form. The Learned Judges of Appeal said this, at paragraph 46:-

*“We endorse the principle that two-thirds of the Class A bands should **generally** apply to the importation of Class B drugs of similar type, being either in powder or tablet form.”*

This Court proposes, therefore, to use the *‘Grunte’* guidelines, for tablets, when setting the starting point for the 4-MMC.

Turning first to the importation offences, you have imported 3.42 grams of Class A drug Cocaine and were this Court dealing with that alone, based on its weight, it would start at 7 years.

You have also imported the Class A drug Δ^9 -THC in two forms, paste and liquid. As set out by Advocate McVeigh, in the course of these proceedings, there has been consideration as to how the *‘Richards’* guidelines might be applied to the importation of this paste and liquid and specifically how the weight is to be calculated. Advocate Steel acknowledges that the *‘Richards’* guidelines apply and does not ask the Court to set new guidelines.

In answer to questions posed by the defence, the States Analyst, carried out further tests on the paste and liquid and reported that the paste contains a high concentration of Δ^9 -THC, namely, approximately 50% by weight, which will be considered later when we get to aggravating and mitigating factors.

Advocate Steel submitted that this Court should take into account the pure weight of the Δ^9 -THC 5 grams, as its base for calculating the starting point for the paste. Advocate McVeigh submitted that to do so would be inappropriate as cutting agents and the like are usually found in drugs of this sort and sentencing should not be on the weight only of the pure drug. We concur with Advocate McVeigh.

The tests performed by the States Analyst also revealed that the concentration of THC in the liquid was 2.1 grams in the 280 millilitres. Advocate Steel urged the Court not only to treat this low concentration as a mitigating factor but also to reduce the quantity of the liquid form to reflect the fact that it is heavily diluted and the vast majority of it is, in his submission, not the actual drug. Advocate McVeigh urged this Court to treat the whole of the liquid as the weight.

This Court does not encourage the extraction of purity as a general rule. There is a considerable difference between the approaches urged upon this Court by the Prosecution and the Defence. If the Prosecution approach is adopted, the combined weight of the Δ^9 -THC is 293.3 grams and the starting point would fall within the 11-14 year band for 250-400 grams, whereas if the Defence approach is adopted, whether the full weight of the paste is taken or not, the starting point will fall within the first band of 7-9 years for 1-20 grams.

Having considered the matter carefully, the Court considers that it is appropriate to reduce the quantity of the Δ^9 -THC overall so that a starting point for the Δ^9 -THC alone, would be in the 9-12 year band. Were we dealing with the just the two Class A drugs, the starting point, based on overall quantity, would be 10 years.

Using the guidelines in 'Richards' for the Cannabis and Cannabis Resin which, together, total over 667 grams, were the Court setting a standalone starting point, based on weight alone, it would be 3 years 9 months.

Using the 'Grunte' guidelines, for Class B tablets, the appropriate band of Class A would be 1-500 tablets 7-9 years of which two-thirds is 4 years 8 months and this would be the starting point for the 4-MMC were it a standalone importation.

Taking into account the overall quantity of Class B drugs, the initial starting point for them would be 6 years.

In accordance with the guidance in 'Richards', the Court must now look to set a combined starting point for the importation offences, based on the overall quantity, before considering aggravating or mitigating factors relating to those offences. That combined starting point, before consideration of totality, will be 16 years but taking into account the totality principle the Court considers it appropriate to revise the combined starting point for the importation offences to 12 years.

Returning to the question of aggravating and mitigating factors, the aggravation of the higher purity of the paste has been factored into the calculation for the band into which the overall quantity of Δ^9 -THC is set to fall.

Turning now to the supplying offences, again, there are two classes of drugs involved, so an initial starting point will be set for each and then a combined one for the supplying overall.

The evidence is contained within the messages which disclose your arrival in May 2021 with a stock of drugs to sell. There is a high level of dealing over a short period of probably no more than 5 days. Role is an important factor when setting a starting point. Looking at your role, you were an organised and experienced dealer, you had a list of contacts who would likely want your products and you went about promoting and selling them professionally. You were offering to sell in bulk to those who were going to sell on so you were not at the bottom of the dealing chain by any stretch of the imagination. Your message about the impact on your parents discloses that this is not a one-off venture. You were well aware of the criminality of your actions and willing to take the risk. Although not factored into the starting point for this offence, it is clear that the drugs you imported were also destined for the Guernsey drugs market.

The Court does not have a definitive quantity of MDMA or Cannabis to use as its starting points but the messages disclose that you had a minimum of 50 MDMA tablets and 200 grams of Cannabis.

The Court cannot ignore the reference to 'washing the cash', which it readily accepts as reference to laundering the cash received in payment for the drugs which we note was specifically in English currency. £1,000 was found at your address and that represented cash alone.

We set a starting point for the MDMA matter at 7 years and for the Cannabis at 3 years which, together, based on overall quantity, yield a combined starting point of 10 years before aggravating and mitigating factors and the application of the totality principle.

There are no particular aggravating factors and we deal with the provision of the PIN as the provider of the evidence within mitigation generally.

Applying the totality principle we set a combined starting point for the supplying of 8 years.

The importation and supplying offences must be considered separately as they are two separate sets of offending.

Plea

The Court must first consider the impact of your guilty pleas on sentence. We afford you full credit for your guilty pleas to all offences.

Mitigation

The Court has considered carefully the concise, but informative, Probation report prepared in respect of you. We have also listened carefully to the thorough and realistic submissions of your Advocate. We have read the letters provided by your sensible and realistic referees, which attest to your good character and to the shock of those, particularly your parents, who know you, once they had discovered that you had committed these serious crimes.

A very significant piece of personal mitigation for you is that you are, in effect, a person of previous good character, which the Court has taken fully into account. Your referees describe you in glowing terms and we take this into account to the fullest extent possible.

Regarding the importations, we note and take into account your very early indication of remorse at the police station. We take into account, similarly, your acceptance of full responsibility and that the offences were committed for financial gain. It is to your credit that you do not seek to blame anyone or anything else for your offending. You understand the gravamen of your offending.

You have a good work ethic, both in terms of employment and your drive, at a young age, to build your skateboarding business. It is particularly to your credit that your previous employer will take you back when you are released. You are assessed as having no problematic drug or alcohol use, rather your issue is one of attitude, having normalised the existence of drugs and what you were doing with them.

Your messages demonstrate that you knew exactly what you were doing, the risk of a custodial sentence in Guernsey and the impact on your parents of your offending and being caught. Nevertheless your family and partner remain supportive despite the shock of your offending and you recognise the value of that support. They have turned out in force for you today.

We note your full co-operation with the investigators and particularly the provision of your PIN which has led directly to the disclosure of the evidence which underpins the supplying offences.

You are assessed as having a low likelihood of re-offending, which we take into account.

We note that there is a request for a drug trafficking investigation in respect of you.

Sentence

Even with the fullest credit possible for your plea and mitigation, a lengthy prison sentence is inevitable. The seriousness of your offending has to be met with significant punishment, coupled with a deterrent

to others, who might consider dealing drugs in Guernsey, and there is an element of protection of the public from such offending.

In view of the seriousness of the offences, alternatives to immediate custody cannot be considered.

In sentencing you, we have taken into account the totality principle, which we have done, in this case, by imposing concurrent, rather than consecutive sentences, notwithstanding the two batches of offending (importation and supplying), so that the total sentence is just and proportionate to the offending behaviour.

There is nothing this Court can say to you that you do not already know and that you have not already said in your letter or through your advocate. You are an intelligent and capable person. You know that you have made a very serious error of judgment and caused those close to you a lot of stress and pain. Your trips back to Guernsey, with drugs to sell, show a selfish and cynical disregard for the wellbeing of the people of this Island, which is completely at odds with the person described in your references.

Prison is unavoidable for importation and dealing on the scale carried out by you. One of your referees was sure that you would use your time in prison wisely and we hope that you do so and that you can, upon release, give back to your community, fully supported by those who care for you.

Taking into account all the above and applying the appropriate discounts, the sentence will be as follows:-

Count 1	-	7 years
Count 2	-	7 years concurrent
Count 3	-	4 years concurrent
Count 4	-	4 years concurrent
Count 5	-	5 years concurrent
Count 6 (supplying)	-	7 years which will also be concurrent
Count 7 (supplying)	-	2 years concurrent

All of those sentences are concurrent, which means that the sentence in total will be 7 years 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 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 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 as amended, which is not opposed, for the forfeiture and destruction of the drugs listed in the table in the Prosecution outline, which were lawfully seized and relate to the offences, is also granted.

The Crown's application, pursuant to Section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006, for forfeiture of the iPhone SX is also granted. That was not opposed, the item was lawfully seized and the analysis of it shows that it was used for the purpose of committing the supplying offences. The Court has, as required by subsection 5, had regard to the value of the property £250 and the likely financial and other effects on you of making the order before deciding to grant the Crown's application.

Mr Lamb, I repeat, the total sentence is:-

- Term of imprisonment - 7 years from today
- Forfeiture of the iPhone

- Forfeiture and destruction of the drugs.

Catherine Maureen Fooks
Judge of the Royal Court

10th May 2022