

Knowingly concerned in the fraudulent evasion of the prohibition on the importation of goods, contrary to the Customs and Excise General Provisions (Bailiwick of Guernsey) Law 1972, by the importation of a Class B drug, Cannabis.

**[2022]GRC064**

**ROYAL COURT  
FULL COURT**

**29<sup>th</sup> June 2022**

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:  
Jonathan Grenfell Hooley, Steven John Morris, Joanne Marie Wyatt,  
Stuart Michael Crisp, Marilyn Jasmine King, Tina Jane Le Poidevin,  
Paul Martin Burnard, Felicity Jane Quevatre-Malcic, Heather Reed.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**JOSHUA MATTHEW FINLAYSON**

**And**

**DOMINIC JENKINS**

**Advocate M Davies appeared for the Crown  
Advocate S E Steel appeared for both Defendants**

**JUDGE OF THE ROYAL COURT:**

**Background**

Mr Finlayson and Mr Jenkins you have both pleaded guilty to two joint counts on one indictment of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of goods, contrary to the Customs and Excise General Provisions (Bailiwick of Guernsey) Law 1972, as amended, by your importation on the 15<sup>th</sup> July 2021 and the 20<sup>th</sup> September 2021 respectively, of a Class B drug, namely Cannabis, in contravention of the prohibition on importation imposed by the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended. The maximum penalty is 21 years' imprisonment or a fine or both.

The facts are that on Wednesday 15<sup>th</sup> July 2021 customs officers intercepted a parcel addressed to Josh Matthews at an address connected with Mr Finlayson in Sark. It was found to contain 17.58 grams of Cannabis. On the 20<sup>th</sup> September 2021 customs officers intercepted a second package addressed to Josh Jackson at Mr Finlayson's address in Sark. It was found to contain 10.46 grams of Cannabis. Analysis of Mr Finlayson's phone revealed that Mr Jenkins had been involved in the importation. The prosecutor read out the relevant messages. It is the prosecution case that Mr Finlayson placed the order and made the payment and Mr Jenkins contributed a payment for part of the order.

At interview Mr Finlayson admitted ordering the first package and having it delivered to the first address in Sark and, after initially denying responsibility for the second package, he accepted that he had ordered that also.

In his second interview he confirmed that Mr Jenkins had been concerned in the importation. Mr Jenkins attended at the police station voluntarily and admitted his involvement in the importation by transferring payment to Mr Finlayson for a share of the Cannabis.

The prosecution say that at the time of the offences the Cannabis was worth between £1,402 and £1,963.

Mr Finlayson you were born in London and you are 29 years old. Mr Jenkins you were born in Cardiff and are 26 years old. You are both working in Sark as Head Chefs, careers you have both had for many years. Importantly you are both of previous good character.

You have both been on conditional bail throughout the proceedings. Mr Jenkins' case started later and Mr Finlayson had to wait while Mr Jenkins' case caught up.

### **Sentencing Considerations**

The sentencing guidelines applicable to offences involving the importation of drugs are contained in the case of 'Richards' which guidelines were recently considered and reaffirmed as current and appropriate in the Guernsey Court of Appeal case of 'Barras, Watt and Orchard v The Law Officers' in 2021. This Court will continue to follow those guidelines.

In view of the guidelines the Court is satisfied that the custody threshold in respect of your offending has been passed.

The starting point, based on the quantity of 28.04 grams, jointly imported, will be, at the first stage, the lowest available of 3 years. There is no evidence of any intention to supply others.

Postal importation is an aggravating factor, as has been conceded and although there was little effort here to hide the recipient's identity, a separate address was used. The revised starting will be, therefore, 3½ years.

### **Plea**

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

### **Mitigation**

The Court has considered carefully the helpful Probation reports prepared in respect of both of you and listened to the well-crafted submissions of your advocate. We have read the letters from others provided which are appropriately supportive whilst not seeking to condone or excuse what you have done. We have taken great account of your own letters to the Court.

You are both men of previous good character and this is important mitigation. You are also both hard working and valued by your employers and colleagues. You are well liked and valued members of the Sark community. You both co-operated with the investigation by being open with officers and you were open with Probation. You have not sought to blame each other, rather you have accepted your equal responsibility in the importations. You both made full admissions. Mr Finlayson voluntarily provided his PIN which enabled officers to access his phone.

**Mr Finlayson**, you have been a regular user of Cannabis for pain relief. You have now sought alternative treatment for your back pain. You saw an opportunity to order some Cannabis and, in so doing, took a calculated risk that the packages would not be stopped. You have demonstrated remorse and insight into your offending. Your family, partner and others who have written in support of you are, rightly, very disappointed by your conduct. They describe you in glowing terms. Your role as Head Chef is such that your incarceration would likely lead to a period of closure of the restaurant and the likely loss of your job and employment. You are not assessed as needing any help with any issues. The Court proceedings have left you 'petrified' of going to prison and you are determined not to re-offend, which the Probation Officer assesses as genuine. You are assessed as having a low likelihood of re-offending, which we take into account.

**Mr Jenkins**, you were not a regular user of Cannabis and decided to order the Cannabis as a way of relaxing after your long hours at work. You regret every day what you have done and you are embarrassed, especially as to how family and others will view you. Again, they are supportive but do not condone your actions and again they describe you in glowing terms. You have worked hard to attain the position of Head Chef and you are much respected in that role. Your offending is described as out of character. Your imprisonment is also said to be potentially detrimental to the hotel where you work. You have ceased all involvement with Cannabis and do not intend to return to it. This is assessed as genuine by the Probation Officer. You are not assessed as needing any help with any issues. You are assessed as having a very low likelihood of re-offending, which we take into account. We note that there is no request for a drug trafficking investigation in respect of either of you.

## Sentence

Whilst the Court is satisfied that the custody threshold has been passed, in view of your pleas, previous good character and mitigation, the Court is able to consider, in each of your cases, alternatives to immediate custody. The Court can follow the recommendation in the Probation reports as to Community Service.

**Mr Finlayson** and **Mr Jenkins** you appear today having committed serious offences which could easily have resulted in immediate prison sentences. The convictions are a blight on your previous good characters and will have long lasting effects for you. Those previous good characters, exceptional co-operation, remorse and excellent work ethics mean that you are able to leave the Court today to return to the community.

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

Count 1 - Community Service Order of 180 hours or 18 months' custody as a direct alternative.

Count 2 - Community Service Order of 180 hours or 18 months' custody as a direct alternative concurrent and that means the total is 180 hours or 18 months' custody as a direct alternative.

We note that you have each 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 in Sark and that you are both suitable persons to perform that work. Please note that if you fail to complete even one hour without a medical certificate or you commit any other offence, you will be brought back before this Court and you will face going to prison.

In addition to the Community Service Orders, in respect of each count, there will be a fine of £500 for each of you, so that is £1,000 each and that is to be paid, in respect of both of you, within 60 days of today and there will be a period of 50 days in default of payment.

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 which were lawfully seized and relate to the offences, is also granted.

In summary, Mr Finlayson and Mr Jenkins, you will have:

- Community Service Orders of 180 hours or 18 months in default and;
- a fine which totals, for each of you, £1,000 payable within 60 days or there will be 50 days in default and;
- Forfeiture and Destruction of the drugs is ordered.

When the Court has risen you will be able to leave.

**Catherine Maureen Fooks, Judge of the Royal Court**  
**29<sup>th</sup> June 2022**