

Being knowingly concerned in the importation of Cannabis Resin, a controlled drug of Class B.

[2023]GRC014

**ROYAL COURT
FULL COURT**

23rd March 2023

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Stephen Murray Jones OBE, Terry John Ferbrache,
Joanne Marie Wyatt, David John Robilliard, Marilyn Jasmine King,
Heather Reed, Dr Simon Ernest Bodkin, James Robert Toynton, Jillian Clark.**

THE LAW OFFICERS OF THE CROWN

- v -

GARY DEAN

JASON JOHN MACKIE

LEWIS HILL

Advocate J D McVeigh appeared for the Crown

Advocate L C Roffey appeared for the Defendant, Gary Dean

Advocate L R appeared for the Defendant, Jason John Mackie

Advocate P L appeared for the Defendant, Lewis Hill

JUDGE OF THE ROYAL COURT:

Background

Gentlemen, all three of you appear today for sentence on an Indictment containing two Counts both of which are of being knowingly concerned in the importation of Cannabis Resin, a controlled drug of Class B. Count 1 concerns the importation of 10.5grams of Cannabis Resin between 19th March and 26th March 2021. Count 2 concerns the importation of 10.4 grams of Cannabis Resin between 25th March and 2nd April 2021. Additionally, Mr Hill you appear here for a separate Indictment containing one Count, that between the 1st September and 17th October 2021, you were concerned in supplying Cannabis Resin, a controlled drug of Class B, to another. The maximum penalty for all of the above offences is 21 years' imprisonment, or a fine, or both.

The facts have been fully set out in the Prosecution outline and can be summarised. All three of you were involved in both importations, which were by way of the postal service. The package containing the 10.4 grams in respect of Count 2 was addressed to you Mr Dean. It was intercepted as a result of

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which you were arrested and your telephone seized and examined. Messages found on the phone referred to the earlier importation in Count 1; it can be inferred that it was 10.5 grams. The messages with Mr Mackie led to his arrest. Mr Hill's property was subsequently searched. His bank account linked him with the purchase of the drugs and analysis of his phone revealed messages corresponding with those found on Mr Dean's phone. There is no evidence that there was any direct connection between Mr Dean and Mr Hill. Mr Hill financed the importations which were organised by Mr Mackie, who used Mr Dean's address, with his knowledge and consent, in return for a share of the delivery for Mr Dean and for Mr Mackie.

The facts in relation to the second Indictment are that, when Police attended at your house, Mr Hill, they found a number of items relating to the dealing of Cannabis, £230 in cash and a total quantity of 72.5 grams of Cannabis. Analysis of your phone revealed a number of messages clearly concerning the supply of Cannabis. The Prosecutor read some of the messages which were with no fewer than seven separate contacts.

Mr Dean, at your interviews you admitted to being aware that Mr Mackie had ordered hash to be delivered at your house but you disputed your involvement with the earlier importation. Mr Mackie, you denied any responsibility for the importations and alleged that someone had tampered with your phone. Mr Hill, you exercised your right to silence.

The Prosecution asserts street values for the second package of 10.4 grams is between £520 and £728 and the 72.5 grams of Cannabis at between £3,625 and £5,075.

Mr Dean, you were born in England. You are 40 years old, 38 when the offences were committed. You do have old previous convictions from your youth, none of which are drug related and one recent conviction in Guernsey in June 2021 for offending prior to the importations.

Mr Mackie, you were born in Scotland and are 30 years old, 28 when the offences were committed and have one conviction in 2014 when you were aged 19 for possession of a controlled drug and convictions in Guernsey in December 2020 for driving whilst under the influence of alcohol, taking without consent and related offences for which you received 18 weeks' immediate custody from which you were released in February 2021, not long before the importations. You are awaiting sentence in the Magistrate's Court on an unrelated matter committed whilst on bail from this Court.

Mr Hill you are a local man with no previous convictions. You are now 21 years old. You were 19 at the time of the importations and 20 at the time of the supply. You had only just turned 21 on the 1st June 2022, some 22 days before you were convicted on entering your guilty pleas.

All three of you have been on conditional bail throughout the proceedings.

Sentencing Considerations

The sentencing guidelines applicable to offences involving the supply and 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 Law Officers, 2021 GCA045 and re-affirmed as current and appropriate, this Court will continue to follow those guidelines.

The Court is satisfied that the custody threshold in respect of your offending has been passed. In relation to the two importation charges, the individual starting points based on the lowest band of Richards 3 – 6 years for up to 2 kg of Cannabis - would be 3 years. Your differing roles in our view do not justify any difference to the starting points. Your previous convictions or their absence will be factored in as mitigation. There is the aggravating factor of the postal importation but the mitigating factor that the amounts are small. We accept the submission that they can be seen as one course of conduct in view of the proximity and time. We take the view that a combined starting point for those two offences of 3 years is appropriate.

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Mr Hill we have also to consider the third offence of supplying which would also attract a separate starting point of just over 3 years. We will set an increased combined starting point for all three offences in your case of 4½ years.

Plea

In the circumstances as outlined Mr Mackie and Mr Hill we afford you full credit for your guilty pleas to both offences. Mr Dean you are not entitled to any credit in respect of Count 1 because you were found guilty after a full trial and you are only entitled to minimal credit in respect of Count 2 because you only entered your guilty plea on the morning of trial. We afford you a discount of 10% and this is generous in view of your continued efforts to avoid taking responsibility for your actions as set out in the Social Enquiry Report.

Personal Mitigation

The Court has considered carefully and individually the helpful Social Enquiry Reports prepared in respect of each of you.

We have also listened to the submissions of each of your experienced and skilled Advocates who have drawn out good points for each of you. We have read the materials provided. We have taken into account the issue of delay raised as a mitigating factor for each of you. Mr Dean was arrested in April 2021, Mr Mackie in June 2021 and Mr Hill in October 2021. Mr Mackie and Mr Dean had to wait for Mr Hill's case to catch up. Mr Mackie and Mr Hill had to await the trial of Mr Dean who pleaded not guilty to one Count. Similarly we have taken into account that the offending was in lockdown with its attendant stresses.

Mr Dean

It is said in the Social Enquiry Report that you have expressed regret but you do not seem to have fully accepted responsibility. You put the offending down to your difficulties at the time and poor judgement on your part as you could have stepped away. You did co-operate with the Police investigation. It appears that you were experiencing a difficult time with your mental health as you committed the theft offence shortly after the importations. You were misusing alcohol. You consider that you are in a better place now and it is of note that we are nearly two years on from the importations. You are not assessed as needing any intervention.

Your difficulties likely stem from the breakdown of your relationship in March 2020 and the loss of contact with your children, all exacerbated by being lockdown and not being able to work at the time of the offences. You have a good work ethic and record which is to your credit. It appears that a job will be open to you on release from prison but you would lose your accommodation which is an issue in itself and in terms of contact with your children. We note the positive reference from your landlords.

You are not a person of previous good character but you have no previous drug related convictions. You have not been involved in any further offending, drugs or otherwise since the offences. There is no drug trafficking investigation in respect of you. You are assessed as having a low likelihood of re-offending which we take into account.

Mr Mackie

Mr Mackie you accept full responsibility and are open that a shortage of Cannabis in lockdown led you to look for alternative means of sourcing it. You were the arranger of the importations. You failed to consider the serious consequences. Your judgment was clouded by alcohol and Cannabis use, which you say was to manage your anxiety.

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It is to your credit that you have established a career as a fisherman also that you have settled into a relationship. You are expecting your first child. Your Advocate urged us to apply the principles contained in the case of Bourgaize v The Law Officers of the Crown, 2014 (Judgment 49) concerning the Article 8 Rights of those affected by you being imprisoned and he particularly your unborn child. We doubt that the principles can apply to your unborn child but we have nonetheless included in our deliberations the impact on you and your partner of you being imprisoned.

You have previously managed your anxiety with drugs and alcohol but report that you have taken steps to reduce alcohol. You are not assessed as needing any intervention. Your Advocate urged the Court that the delay in the proceedings, not of your making, weighed particularly heavily on you because of your anxiety.

You are not a person of previous good character. You were convicted of a drugs offence when you were 19. The more recent convictions were alcohol related. You had only just been released from custody when you committed the importation offences.

You also have a good work ethic and record. Currently and for some time you have worked as a fisherman, necessitating days at sea which we are asked to take into account should the Court's decision be that should receive a Community Service Order. As well as the practical difficulties of fitting in the Community Service, it was said that there would be an impact on your income and potentially it would place your job at risk.

We note that there is no drug trafficking investigation in respect of you. You are also assessed as having a low likelihood of reoffending.

Mr Hill

We note your young age and that, had you entered your pleas in May last year, we would have been sentencing you applying the Youth Detention Law. We take account the fact that you were the youngest of the three importers but we cannot ignore that you then set about supplying drugs with some industry. You say that you were at a very low point in your life. Your father's death had a significant impact on you, as is confirmed by the letter from your GP and your mother. We particularly note the contents of her helpful letter which describes your struggles with the loss of your father and then your friend and how you started finally to overcome those losses with the assistance of your employer, who supported you in gaining qualifications. In his letter, he describes you as having improved every aspect of your life and that you realise that you are a much better person.

Your Advocate spoke of you having made the best of the period between the offences and today and the Court was pleased to hear that you will now be working again for the same employer and that you have the ambition to study and qualify as a chef.

You are candid that you would have carried on supplying had you not been arrested. You were doing it for financial gain to fund your own habit. You have been able to reflect that you made a bad choice and on the harm Cannabis poses to the young but you have not stopped using it.

The Probation Officer describes you as motivated to change and to make a good life plan but expresses some concern about your friendships and your continued use of Cannabis. In relation to delay, your Advocate urged us to consider the impact on you in view of your young age and vulnerability.

You are a person of previous good character having no previous convictions of any type which is very much to your credit. You are assessed as having a moderate likelihood of reoffending which we take into account and we note that there is a request, unopposed, for a Confiscation Order in respect of you.

Sentence

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The importation of drugs by use of the postal service and the supplying of drugs to others are serious matters. Immediate custodial sentences are to be expected. All three Advocates urged this Court to impose alternatives to custodial sentences citing the various mitigating factors above, the small quantity of drugs involved, the delay and your individual circumstances. The sentences for each of you reflect your different and individual circumstances.

Mr Hill, you are 21 years old. As a result of circumstances beyond your control, you were unable to enter your pleas prior to reaching your 21st birthday. Had you done so, we would have been applying the principles contained in the Criminal Justice Youth Detention (Bailiwick of Guernsey) Law, 1990. Those principles do not apply in the technical sense but we consider that it is important to approach sentencing you by reference to those principles and in particular taking account of the fact that you were just 19 when the importation offences were committed and 20 at the time of the supplying. Whilst the delay has been stressful for you, it has given you an opportunity, as your Advocate put it, to “*turn over a new leaf*”. The Court is impressed that you took the opportunity offered to you to commence a career in catering and is heartened that you are able to continue working for a family friend who gave you that opportunity and who is clear, in his letter, that he will support you in your future studies and qualifications. The Court is also mindful of your acute struggles following the bereavements and considers that it is a crucial part of sentence that you receive some counselling in relation to those bereavements and ongoing professional support and supervision in the form of a Probation Order. Whilst a Community Service Order would be appropriate, we want you to focus on your studies, on your work and on the work with the Probation Service. Mr Hill, this Court could very easily send you to prison today and you would not be able to complain about that but we are of the view that, in your circumstances, and particularly taking into account your age, non-custodial alternatives are appropriate but, Mr Hill, as part of this you must immediately stop your admitted illegal use of Cannabis otherwise you will be straight back here and this Court will take a very dim view of that.

Mr Mackie, you cannot rely on youth and you are not a person of previous good character. You were the arranger of the importations and this Court could have taken the view that your role was greater than that of the other Defendants. Nonetheless, this Court recognises that you are entitled to additional discount on account of the delay which was not of your making and that your life is now stable with a new career and a new relationship. In those circumstances the Court can consider a non-custodial alternative but has decided against Community Service on account of the points which have been previously raised.

Mr Dean, this Court is not impressed with you. Your decision to enter a not guilty plea and a very late change in your plea to the other count not only deprives you of any meaningful discount but has contributed to the delay experienced by your Co-Defendants. You are not a person of previous good character but you do have a good work ethic and record and you have settled accommodation which you would lose were you to be imprisoned today to your detriment and also to the detriment of the rebuilding of relationships with your children. In your case, bearing in mind the decision in relation to your Co-Defendants, the Court is prepared to apply a discount based on leniency alone to enable it to consider non-custodial alternatives.

In sentencing all of you the Court has taken into account the totality principle. Taking into account everything and applying the appropriate discounts the sentences will be as follows:

Mr Dean

- Count 1 – 2 years’ imprisonment suspended for 2 years.
- Count 2 – 240 hours Community Service as direct alternative to 2 years’ imprisonment concurrent.

Mr Mackie

- Count 1 – 2 years’ imprisonment suspended for 2 years.
- Count 2 – 2 years’ imprisonment suspended for 2 years concurrent and additionally there will be a fine of £2,500. (to be paid in instalments)

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Mr Hill

Count 1 – 2 years’ imprisonment suspended for 3 years.

Count 2 – 2 years’ imprisonment suspended for 3 years concurrent.

On the supplying Indictment – 2 years’ imprisonment suspended for 3 years concurrent together with a Probation Order for 2 years.

The Crown’s application pursuant to Section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006 which was not opposed for forfeiture of the lawfully seized phones, the first belonging to Mr Dean valued at £245 and the second belonging to Mr Hill valued at £30, which relate to the offences, is also granted.

The Crown’s application pursuant to Section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law 1974, as amended, again unopposed, for the forfeiture and destruction of the drugs and exhibits as set out in the Prosecution outline, which were lawfully seized and relate to the offences, is also granted.

All three of you must listen very carefully to this next bit. You have all received suspended prison sentences. You will not have to serve those sentences unless during the period (in relation to Mr Dean and Mr Mackie that is 2 years and in relation to Mr Hill that is 3 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 those sentences. A suspended sentence is not a let off, it will hang over your heads for that period of time and those will be the consequences, so do not forget that.

In relation to Mr Dean, you also have a Community Service Order and thereby you are being offered an opportunity to make a positive contribution to the Community through unpaid work. We note that you have signed a form stating that you are willing to be made subject to and 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 requirements of the Order or if you are convicted of a further offence whilst the Order is in force. The Court is satisfied that provision can be made for you to perform that work and that you are a suitable person to perform work. Please note, that 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.

Mr Hill you also have a Probation Order. The Court is satisfied that it is appropriate to add a Probation Order and will do so for a period of 2 years. Over that period of time there will be an opportunity to gain a fuller understanding of your offending behaviour and respond accordingly. It will enable work and support, we hope, in relation to the bereavements. Such an Order is imposed for the purpose of your rehabilitation to prevent you offending further and to protect the public. We are satisfied that you have had explained to you the purpose and effect of the Order and the powers that follow if it is breached including the consequences thereof. The conditions are essentially the same as those suggested for a Suspended Sentence Supervision Order but in brief summary it means that you must keep in contact with your Supervisor in accordance with the instructions that you will be given from time to time, notify your Supervisor of any change of address or working arrangement, not do anything to undermine the purposes already mentioned for which the Order is made and comply with the additional requirements which we are satisfied should be attached to the Order.

- One to one appointments with the Probation Officer, weekly to begin with then reduced in frequency according to progress made.
- Sessions designed to encourage you to utilise improved decision making and consequential thinking to achieve positive change.
- Sessions designed to support and motivate you to develop a good life plan.

If you fail to comply with any requirement under the Probation Order you would be liable to be returned to this Court, which has the powers to continue the Order, with or without variation, to fine you or even to revoke the Order and re-sentence you.

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Gentleman I repeat the total sentences as follows:

Mr Dean - 2 years' suspended for 2 years, Community Service Order 240 hours or 2 years concurrent.

Mr Mackie - in total 2 years suspended for 2 years plus a fine of £2,500 (payable in instalments)

Mr Hill - 2 years suspended for 3 years, plus a Probation Order of 2 years.

Forfeiture of the phones and Forfeiture and Destruction of the drugs, as above.

Catherine Maureen Fooks
Judge of the Royal Court

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