

Importation and possession of synthetic cannabinoids of Class B known as MDMB-4en-PINACA, 4-CEC and JWH-018. Failing to disclose information under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003.

[2023]GRC016

**ROYAL COURT  
FULL COURT**

**10<sup>th</sup> 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, Stuart Michael Crisp, Marilyn Jasmine King,  
Felicity Jane Quevâtre, Heather Reed, James Robert Toynton.**

**THE LAW OFFICERS OF THE CROWN**

- v -

**JOSHUA PAUL BAKER  
&  
BRADLEY JOHN KEVIN WATSON**

**Crown Advocate C G Dunford appeared for the Crown  
Advocate L C Roffey appeared for the First Defendant (Baker)  
Advocate A J Ayres appeared for the Second Defendant (Watson)**

**JUDGE OF THE ROYAL COURT:**

**Background**

**Mr Baker** and **Mr Watson** you appear to be sentenced on a five count Indictment of which three counts relate to you **Mr Baker** and the remaining two to you, **Mr Watson**. You appear together because originally there were some joint matters which you no longer face and do not concern us.

**Mr Baker** you have pleaded guilty to:

- 1 First, importing on 11 December 2020, 3123.7g of the Class B drug, a synthetic cannabinoid known as MDMB-4en-PINACA (“PINACA”), contrary to the Customs and Excise Law 1972, the maximum penalty for which is 21 years’ imprisonment.
- 2 Secondly, possessing 0.75g of the Class B drug known as 4-CEC, contrary to the Misuse of Drugs Law 1974, the maximum penalty for which is 10 years’ imprisonment.
- 3 Thirdly, failing 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 penalty for which is 2 years’ imprisonment or a fine up to Level 5, or both.

**Mr Watson** you have pleaded guilty to two counts of illegal importation on 7 August 2020 and 5 September 2020 of a total of 577.4g of a synthetic cannabinoid known as JWH-018, contrary to the Import and Export Control Law 1946 and an Order of the same name in 2010, the maximum penalty

for which is 2 years' imprisonment. That substance is, since 28 September 2020, a controlled drug of Class B, but it was not when you imported it.

The facts are very fully set out in the Prosecution Outline so can be summarised.

**Mr Baker**, the facts of Count 1 are that you had purchased a BMW in England for export to Guernsey and arranged for the liquid PINACA to be concealed in the windscreen-washer reservoir. Customs intercepted the BMW and substituted another liquid for the PINACA. You had arranged for another man to collect the vehicle but you were seen talking to that man near the Channel Seaways Office and to follow the BMW in your van. You were followed to a farm and, when you had driven the BMW into a covered polytunnel, officers entered and found you standing beside the BMW with the bonnet open. Your phone was seized. You were asked for the passcode and supplied one but it was ineffective and you failed to comply with the RIPL Notice and that constitutes Count 3.

At your first interview you accepted arranging for the car and liquid to be imported, but you denied knowing that PINACA is a controlled drug. You exercised your right to silence in the other two interviews. You have pleaded guilty. You thought that it was just CBD vape liquid but you knew that it was illegal to import that without a licence. You admitted having previously supplied CBD vape liquid to others which was not illegal at the time. Packages posted to others (not to you) in Guernsey had been stopped, so you turned to the importation in the car as "a better way of getting it in".

The States Analyst puts the mean concentration of the PINACA at between 0.87% to 1.07%. Based on your admission that you previously sold it in 10ml bottles of which 5ml would be regular vape juice, the Prosecution has calculated that you could have made 624 bottles. The Prosecution case is that the usual ratio would be 10mls of PINACA to 90ml of other and on that basis your quantity could have been sold for £312,300-£405,990. Had you mixed it 50:50 the value would have been considerably lower and your Advocate has made submissions on that point. When officers searched your home they found the 0.75g of 4-CEC which constitutes Count 2.

**Mr Watson**, you imported two quantities of JWH-018, the first in August 2020 - 208g in liquid form in two bottles in a postal package addressed to a Miss Jane Smith at an address in St Sampson and the second, 369.4g in five bottles on 5 September 2020, in a postal package addressed to Katie Watson at an address in St Martin's. That substance also became illegal on 28 September 2020. Neither package was addressed to you at your home address. You are linked to the packages through the mobile phone evidence set out in the Prosecution Outline. That evidence was taken from a phone which had been seized from you upon your arrest for another matter and in respect of which you refused to provide the passcode so were convicted and sentenced for a RIPL offence. The High Tech Crime Unit managed to access the phone anyway. The messages show that you clearly knew that what you were doing in importing the substance was illegal but the sale at that time was not illegal. The Prosecution calculates that you could have sold the liquid for between £57,700-£75,010, again based on a 1:10 ratio. Your Advocate also submitted that this valuation should be considerably lower. At interview you largely exercised your right to silence but you did admit having used CBD in the past and that the messages on the phone were about legal vape juice.

**Mr Baker**, you have no relevant or recent previous convictions. You were arrested on 15<sup>th</sup> December 2020 and have been on conditional bail throughout.

**Mr Watson**, you have no previous convictions for drugs offences but you do have recent convictions for other offences which have been set out. Whilst serving a prison sentence, you were arrested in respect of this matter on 10 August 2021. That sentence came to an end on 26 January 2022 and you remained on remand for 64 days thereafter. You have also successfully completed a Probation Order.

The procedural history of these matters is rather convoluted as **Mr Watson**, on 10 March 2022 you pleaded guilty to two charges of the importation of controlled drugs on the erroneous basis that JWH-018 was a controlled drug at the time, but it was not, and the Indictment was subsequently amended to

reflect the fact that the importation was contrary to the Import and Export legislation as it was without a licence. The Prosecution has fairly conceded that you should have your guilty plea discount from 10 March 2022.

**Mr Baker**, you had entered not guilty pleas to what are now Counts 1, 3 and a guilty plea to Count 2. You changed your pleas to guilty on 22 December 2022 ahead of the trial set for 9 January 2023.

You are both local and aged 32. You were both aged 29 at the date of the offences. **Mr Baker**, you are an electrician and **Mr Watson**, you are a floor layer. You both have children.

## **Sentencing Considerations**

### **Mr Baker – importation and possession of controlled drugs**

The sentencing guidelines applicable to most offences involving the importation of drugs are contained in the case of Richards which was recently considered and approved by the Guernsey Court of Appeal in Barras, Watt and Orchard v Law Officers of the Crown (2021) CGA 045. These guidelines deal with Class B drugs in the form of cannabis resin and herbal cannabis. In this case, the PINACA is a synthetic cannabinoid of Class B in liquid form, one of the many new emerging drugs which did not exist at the time of Richards and is not covered directly within it. Richards is nonetheless the guideline case to be applied. It gives the Court principles with which to set a starting point and matters to take into account in sentencing.

In this case, it is particularly important to reiterate what the learned Judges of Appeal said in Richards:

*“It cannot be stressed too strongly, that this Court is not attempting to establish for the Royal Court, some sort of inflexible code which covers all of the issues involved in sentencing for such offences, some of which must as yet be unknown and incapable of anticipation. These are **general guidelines only** (my emphasis). Sentencing is always a matter for the Court’s discretion, it is an art and not a science.”*

At paragraph 8 and following of Richards, the learned Judges set out the approach to the setting of a starting-point:

*“There are two primary factors, ‘quantity and role’, which are used to assess the extent of the criminal conduct, the criminality. There may be aggravating factors increasing the criminality of the offender such as sophistication of the methods of evading detection and relevant previous convictions.”*

Dealing first with weight or quantity, Richards sets out sentencing bands for Class B drugs, based on the weight or quantity of cannabis. The weight of the drugs imported by you is 3123.7g or 3.1kg which would fall into the band of 5-8 years for amounts of cannabis between 2-5kg. Weight is not however the only factor, as is said in paragraph 11 of Richards:

*“Where the quantity of a drug is being considered in assessing the **starting-point** (my emphasis), 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.”*

Your Advocate submitted that we should treat the valuation figures which have been provided by the Prosecution with some care, as they are not readily susceptible to proper challenge. He suggested that a much lower figure for valuation would be appropriate.

In your case, paragraph 16 of Richards is also relevant. It concerns a defendant's erroneous belief as to the type of drug being imported. The learned judges considered authorities from Jersey and England and concluded that the approach in Jersey should be followed, whereby such a belief was not a mitigating factor, but they added: "*But, it would be a matter for consideration in the circumstances of the case.*" In your case of course, your erroneous belief was that the substance in question was not a controlled substance at all.

Advocate Roffey accepted on your behalf, that the starting point based on weight or quantity would be a 5-8 year band. We do not consider that there should be any adjustment based on the valuations. The starting point before aggravating and mitigating factors of the offence will be 6 years.

The method of importation used by you was highly sophisticated and is a significant aggravating factor. The purchase of the vehicle at some cost and the concealment in the washer reservoir demonstrates considerable effort to avoid detection. We increase the starting point to 6½ years.

The Court is persuaded that there are also mitigating factors in your case which we will describe as the 'confusion' about the nature of the substance in your mind, which persisted, not only in your mind but in the minds of others, through charge, right through to the proceedings in this Court. There is also the procedural delay which flowed therefrom and we accept that, through no fault on your part, it took two years before you could enter pleas and a further period before coming to be sentenced, all of which has led to stress, distress and impacted on your physical and mental health.

In those circumstances, we set the Revised Starting Point before consideration of plea and personal mitigation at 4 years.

There are no particular guidelines for sentencing possession. It is unclear why you had the CEC at all but, as the amount is so small, we propose to impose no separate penalty.

### **Mr Baker RIPL**

I turn now to the RIPL offence which again is in respect of **Mr Baker**. The Guernsey Court of Appeal in Barras, Watt and Orchard considered the sentencing in respect of RIPL offences and made four observations:

- First, failing to make the disclosure required by a Notice issued under section 46 of RIPL is a serious matter; it will almost invariably call for an immediate custodial sentence.
- Secondly, 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.
- Thirdly, deterrence is an important aspect of sentencing in this context.
- Fourthly, the appropriate sentence will, of course, depend on the particular circumstances of the case.

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

### **Mr Watson – importing without a licence**

Turning now to you **Mr Watson**, there are no sentencing guidelines applicable to the offences you have committed, though there is the case of Bienvenu v Law Officers (judgment 36) of 2011. Advocate Ayres submitted that the Richards guidelines might also be helpful to us with their emphasis on quantity and not valuation by making similar submissions as Advocate Roffey in that regard.

Had you committed the offences after 28 September 2020, only a matter of a few weeks later than you did, the sentencing exercise would have been quite different, but this Court must sentence within the parameters of the law which you have contravened.

The Court of Appeal in Bienvenu discouraged the setting of a starting point higher than the maximum sentence but, in the circumstances of that case where there were two offences involving the importation of a similar quantity of Mephedrone and the facts were similar to those in this case, in that it concerned a prosecution under the Import Law of a substance soon to be classified as a controlled drug, upheld a sentence of 21 months. Cases such as that one and yours are rare. The Court has a maximum sentence of 2 years, which it should reserve for the most serious cases. It is extremely rare though not to have some mitigation. It would not be possible to pass the maximum sentence without starting above it. In your case we would have been tempted to take a starting point of 2½ years, but because of the delay, we will start at 2 years.

## Article 8

Before turning to mitigation, there is an important sentencing principle applicable to both of you to which this Court must have regard and that is the impact on family life.

In accordance with the case of Bourgaize v the Law Officers of the Crown 2014 (Judgment 49), the Court is required specifically to consider the Article 8 rights of the minor children and others, affected by your being imprisoned as well as you yourself. There are three questions to be considered:

- Is there an interference with family life?
- Is it in accordance with law and in pursuit of a legitimate aim within Article 8.2?
- Is the interference proportionate given the balance between the various factors?

A sentence of imprisonment almost by definition interferes with family life. The imposition of a sentence of imprisonment for a serious criminal offence is in accordance with law and in pursuit of a legitimate aim within Article 8.2. People with dependents who commit serious offences face prison like everyone else. The issue for this Court is always whether the imposition of an immediate custodial sentence would be a proportionate interference with family life, given the balance between the various factors.

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

## Personal Mitigation

The Court has considered carefully the thorough Social Enquiry Reports prepared in respect of both of you. We have also listened to the submissions of your Advocates which were of the finest quality and compelling – in particular, Advocate Roffey's.

We have read the materials provided, in the case of **Mr Baker**, contained in two separate bundles and in the case of **Mr Watson**, a detailed letter from his partner.

I will set out the personal mitigation in respect of each of you separately.

**Mr Baker**, you have no relevant previous convictions which is to your credit. Financial gain was your motive and on any calculation that would have been substantial.

Those who have provided references for you speak highly of you as a trustworthy, courteous and diligent man. You have demonstrated remorse. We accept that, had you known this was a controlled

drug, you would not have imported it and your offence was committed when the substance had only fairly recently been classified as a drug.

You have provided two doctors' letters and the letter from your mother and the Social Enquiry Report, which also gives information about your illness. Whilst it cannot be said that it is so serious that you should not be imprisoned, it is debilitating, and is clearly a matter which requires this Court's consideration. Additionally your mother writes about your mental health struggles over the past two years.

The materials provided by you give the Court important information also about the particular impact on your young son should you be imprisoned. This impact will be more significant on account of your son's extra needs. Your ex-partner will care for him but will suffer financially as she will have to reduce her hours to replace the shared childcare you provide. Your son will miss out on the regular contact time with you and it seems doubtful that the prison visits will be viable. One professional described the impact as "devastating". The Court has considered this impact very carefully in accordance with the principles set out above.

Added to this, is the impact on the family business of your being incarcerated, a business of which you are clearly a valued and described as a vital part.

You are assessed as having a low likelihood of reoffending which we take into account.

**Mr Watson**, you are not a person of previous good character. Financial gain was also your motive and on any calculation that would have been substantial. You have shown considerable remorse.

The Court is unimpressed by the anti-authority stance you had adopted over a period as evident in the messages and set out in the Social Enquiry Report, but the writer of that report reports that, since your release from prison, you have settled down, your compliance is excellent and that you want to move on. You are said to have stopped using substances and consuming excessive alcohol and you avoid socialising in town. You have adopted a realistic and mature attitude to the possibility that you will go to prison today.

You have a good work ethic and have established a business which is to your credit.

Your partner's support is impressive and in her letter, which the Court found to be helpful and appropriate, she writes of the devastating downward spiral in which you made a number of extremely damaging choices which have led you here today and to other Courts and conflicts in between. She writes of how you have changed yourself immeasurably since release almost a year ago and how you have embraced the chance to rebuild damaged relationships with your daughters and to make a new life with her. Your incarceration would have a negative impact on her, as set out in her letter.

Your partner also writes about your daughters from your marriage and the loss, particularly to the one who sees you regularly, although the other daughter's relationship with you is likely also to be affected. They live with their mother, so will be cared for, as they have always been, but this Court has considered the impact on them and your partner carefully in accordance with the principles set out above.

You spent 64 days on remand which we will factor into the calculation of the sentence. You are assessed as having a moderate likelihood of re-offending which has decreased from the assessment in October 2021 and we take this into account.

In respect of both of you, we note there is a request for a drug trafficking investigation and a timetable will be set for that.

## **Sentence**

It must be stressed that the approach taken by the Court today is wholly exceptional. It creates no precedent. The Court has considered carefully the sentencing principles in Bourgaize and applied appropriate discounts, reflecting particularly for **Mr Baker**, strong personal mitigation, as well as the totality principle. This has enabled the Court to consider alternatives to immediate custody for both of you.

**Mr Baker**, you took a calculated risk in importing a large quantity of Class B drugs into this Island. But, for the diligence of the Guernsey Border Agency, those drugs would have made it onto the street. It is hard to conceive of circumstances in which a person, having committed such an offence, and a RIPL offence, would not go to prison immediately, but, acknowledging the confusion and delay, your illness and the impact on your child, the Court has been able to take that exceptional course today in your case and will impose a Suspended Sentence in respect of the importation.

As respects the RIPL offence, this Court's sentencing policy is to pass a sentence of immediate custody and exceptions to that will be incredibly rare – you are one of those exceptions. The Court will impose a Community Service Order as a direct alternative to a sentence of imprisonment.

**Mr Watson**, you too deliberately flouted the law, but the Court has been impressed by what you have achieved in the period since your release and in the particular circumstances of your case is prepared to suspend your sentence. The sentence has been reduced by two months to reflect the time spent on remand.

To you both: you will not have to serve the Suspended Sentences of imprisonment unless, during the next three 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 please do not forget that.

In respect of you **Mr Baker**, we also have the Community Service Order, so I need to make you clear on the terms of that. That Order is being made as a direct alternative to a sentence of immediate custody. It offers you the opportunity to make a positive contribution to the community through unpaid work. You have signed a form stating that you are willing to be made subject to and understand the effect and nature 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 whilst 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 this work. Please note, that if you fail to complete even one hour without a medical certificate or, if you commit any other offence, you will be brought back before this Court and you will face going to prison.

**Mr Baker**, you said of this offence – *“it's ruined my life”* and it was also said on your behalf that you will *“never forgive yourself”*. As you move on, do not forget how you feel today and how close you came to losing everything.

**Mr Watson**, your partner wrote in her letter that this will undoubtedly be the last time that we will see you here. We hope so – it is in your hands.

Be in no doubt gentlemen, that if either of you does appear in this Court again, you can pretty much guarantee that the outcome will be an immediate prison sentence.

The sentences will be as follows:

- Count 1, (**Mr Baker**), the importation of the PINACA – 2 years' imprisonment, suspended for 3 years.

- Count 2, (**Mr Baker**), the possession of the CEC – no order.
- Count 3, (**Mr Baker**), the RIPL – 150 hours of Community Service as a direct alternative to 9 months’ imprisonment, consecutive to the sentence for Count 1.
- Count 4, (**Mr Watson**), importing the JWH – 10 months’ imprisonment, suspended for 3 years.
- Count 5, (**Mr Watson**) again, importing JWH - 10 months’ imprisonment, suspended for 3 years, concurrent with Count 4.

The Crown’s application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006, which was not opposed for the forfeiture of the lawfully seized phones valued at £300 (in the case of **Mr Baker**) and £215 (in the case of **Mr Watson**) which relate to the offences is also granted, as is 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 drug exhibits which were lawfully seized and relate to the offences.

So in summary, **Mr Baker**:

- 2 years’ imprisonment suspended for 3 years.
- 150 hours’ Community Service Order, as a direct alternative to 9 months’ imprisonment.
- Forfeiture of the phone.
- Forfeiture and destruction of the drugs.

So in summary, **Mr Watson**:

- 10 months’ imprisonment suspended for 3 years.
- Forfeiture of the phone.
- Forfeiture and destruction of the drugs.

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

**10 March 2023**