

Unlawful importation of the Class B controlled drug cannabis, contrary to section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 and unlawful possession of a controlled drug of Class B, namely cannabis resin, in contravention of s4(1) of the Misuse of Drugs Law.

[2024]GRC040

**ROYAL COURT
FULL COURT**

14th May 2024

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats Steven John Morris,
Stuart Michael Crisp, Marilyn Jasmine King, Simon Ernest Bodkin,
James Robert Toynton, Jillian Clark and Richard Jeremy Wallen James**

THE LAW OFFICERS OF THE CROWN

- v -

SAMUAL HORACE BANCROFT

**Advocate P F Cobb appeared for the Crown
Advocate S Balmer appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Bancroft you have pleaded guilty to two counts each 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 of a Class B drug, namely cannabis, on two occasions, the first between 23rd and 28th September 2023 and the second on 19th October 2023, 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 (“MDL”). The maximum penalty is 21 years’ imprisonment and/or a fine.

The third count to which you pleaded guilty is possession on 20th October 2023 of a controlled drug of Class B, namely cannabis resin, in contravention of s4(1) of the Misuse of Drugs Law, for which the maximum penalty is 10 years and/or a fine.

The facts are that on 19th October 2023, customs officers intercepted a package addressed to ‘James Smith’ at your address. A postal worker left a ‘missed delivery’ card which gave a time after which the package could be collected. You turned up to collect it and were arrested. The package contained 27.72 grammes of cannabis and is the subject of Count 2. When searching you after arrest the officers found 0.98 grammes of cannabis in your rucksack which is Count 3. Your phone was seized. Initially you refused to provide the PIN but you did so when presented with a RIPL notice. Analysis of the phone revealed evidence in terms of messages and video footage of the earlier importation, this time addressed to ‘Tom Price’ of approximately 28 grammes of cannabis between 23rd to 28th September which is the

subject of Count 1. The cannabis found on you was in a packet with the same logo as that imported on the first occasion.

The total cannabis imported is 51.71 grammes with a value of between £2,228 and £2,785. The 0.98 grammes has a value of £39 - £49.

At Interview you largely exercised your right to silence but admitted the possession for personal use. You are 18 and were 18 when the offences were committed.

You were born in England but have lived here since September 2023 when you moved to Guernsey to live with family and to make a fresh start. You have some qualifications and have been working in engineering since your arrival, in addition to which you have taken up part-time bar work recently.

Sentencing Considerations

This Court will continue to apply the sentencing guidelines applicable to offences involving the importation of drugs into the Bailiwick contained in the case of Richards, which guidelines were reaffirmed by the Guernsey Court of Appeal in Barras, Watt and Orchard v Law Officers 2021 GCA045.

In accordance with Richards we start with quantity rather than value and role. Each amount imported by you of 27 or 28 grammes is at the lower end of the first band of Richards of 3 to 6 years for up to 2 kg of cannabis. But is not so low as to fall into the category of very small quantities for personal use which would be treated as possession offences. You did give officers access to your phone and there is no evidence of dealing so we can accept that the importations were for personal use, but that is not mitigation. As observed at paragraph 40 of Barras, Watt and Orchard v Law Officers, such importation not only risks drugs falling into the hands of third-parties, but enables a drug supplier to traffic his drugs elsewhere, thus adding to the overall stock of drugs in the Island.

We will set a starting point for Count 2 at 3 years which we aggravate to reflect the earlier importation less than one month earlier, both importations being by the abuse of the postal system which is always an aggravating factor. The use of the false name and the collection by you yourself mitigates that factor as does the fact that the earlier importation only came to light because you provided your PIN to the Police so we are able to keep the starting point at 3 years. The sentence for Count 1 will be concurrent.

There are no sentencing guidelines for the possession of drugs as the Richards guidelines do not apply. The amount in this case is small and it appears to be part of the first (September) importation so we will impose no separate penalty.

In your case, age is a specific consideration. First, you are a young person under the terms of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990, so the Court must be satisfied that the only appropriate method of dealing with you is to pass a custodial sentence which is one of Youth Detention which must not be passed unless one of three factors is satisfied. The first does not apply to you. The second and third are: that a custodial sentence is necessary for the protection of the public or the prevention of crime or, that the offence was so serious that a non-custodial sentence cannot be justified.

Secondly, in the Guernsey Court of Appeal case of Topley v the Law Officers (2023 GCA027) it was emphasised that there is a need for this Court to take account of age as a mitigating factor. We consider that your age is a very important consideration when sentencing you and it will be reflected in the final sentence set.

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 indicated at the earliest opportunity, even before committal.

Personal Mitigation

The Court has considered carefully the helpful Social Enquiry Report prepared in respect of you and listened carefully to the comprehensive and helpful submissions of your Advocate.

We have read your letter and the references provided. They describe a hard-working young man with many fine qualities.

It is an important point for mitigation in your favour that you have no previous convictions.

We note the report-writer's assessment of you as "naïve" – it is recognised that young people are not fully developed and this impacts on decision making and the ability to consider consequences. It is also the case that your decision making will have been impacted by your use of drugs since the age of 15.

We note and take account of the fact that your education and young life were disrupted by Covid and moving around, isolation and increasing mental health issues. Fortunately, you have the support of your family here.

We note your good work ethic. You have worked since you have come here and you are holding down two jobs. It is also to your credit that you have begun therapy (from February 2024) to address your lingering mental health issues and the view of the report-writer is that you do not need any intervention.

You have expressed remorse and accepted the seriousness of your offending. You are assessed as having a 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 you.

Sentence

Even taking into account the required considerations under the 1990 Law, there is no doubt that the offending was so serious that a non-custodial sentence cannot be justified, but, in view of young age, your previous good character, your good work ethic and your response to offending, the Court is able to consider alternatives to immediate Youth Detention and is of the view that you should be given a chance to settle down in the Community, continue to work and to address your issues.

The Court proposes therefore to impose a Community Service Order as an alternative to immediate Youth Detention for Count 2 so that you can pay back the community for your offending. This Order is being made because of the seriousness of the offences for which you have been convicted. You are thereby being offered an opportunity to make a positive contribution to the community through unpaid work. We understand that you have signed the forms 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 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 and that you are a suitable person to perform this. 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 into Youth Detention.

In addition to the Community Service Order, the Court has also decided to impose a financial penalty of £1,000 with a default period of 50 days. We order that that is paid within 7 days and we expect it to be paid by you and not by any member of your family.

In sentencing you we have taken into account the totality principle.

Your plan for a fresh start has gone very wrong – as you put it, you made a big mistake and you did not think it through. You will be 19 next month and you have managed to get yourself convicted of drugs offences which will have long-lasting consequences for you. The Island does not welcome those who import drugs and its stiff penalties, which usually involve immediate custody, reflect that. In your case we have been able to impose an alternative so that you have another chance to make that fresh start. Make sure that you take that chance. Keep on with the therapy and keep working hard and stay out of trouble. You are lucky to have the support of your family. That chance will not come around again.

By way of summary, the sentences are as follows:

- In respect of Count 2 – 180 hours Community Service as a direct alternative to 1 year’s Youth Detention,
- in respect of Count 1 – 180 hours Community Service as a direct alternative to 1 year’s Youth Detention, concurrent, which means a total of 180 hours Community Service as a direct alternative to 1 year’s Youth Detention.
- There is no separate penalty in respect of Count 3.
- In addition, in respect of Count 2, there will be a fine of £1,000 payable within 7 days, with a default period of 50 days.

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 Apple iPhone 13 mini, valued at £276 - £343 which relates to the offending is also granted, the Court having considered the likely effects on you of forfeiture.

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 and packaging which were lawfully seized and clearly relate to the offending is also granted.

By way of summary:

- 180 hours of Community Service as a direct alternative to 1 year’s Youth Detention.
- A fine of £1,000 payable within 7 days, or 50 days in default.
- Forfeiture and destruction of the drugs and packaging.
- Forfeiture of the iPhone.

Thank you Mr Bancroft, you will be able to leave the Court once the Court has risen.

Catherine Maureen Fooks
Judge of the Royal Court

14th May 2024