

**ROYAL COURT
FULL COURT**

11th January 2024

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Steven John Morris, Joanne Marie Wyatt,
David John Robilliard, Marilyn Jasmine King,
Tina Jane Le Poidevin, Simon Ernest Bodkin and Jillian Clark.**

THE LAW OFFICERS OF THE CROWN

- v -

MATTHEW ANTHONY BAUDAINS

and

ANDREW JAMES CARRE

**Advocate P F Cobb appeared for the Crown
Advocate C J Green appeared for the Defendant (Matthew Baudains)
Advocate A J Ayres appeared for the Defendant (Andrew Carre)**

JUDGE OF THE ROYAL COURT:

Background

Gentlemen, you have pleaded guilty to a single count that between the 10th and 17th May 2023, you have imported Class C drug, namely Clenbuterol. The maximum penalty is 14 years' imprisonment, or a fine or both.

The facts are that, on 13th May 2023, a postal worker tried to deliver a package addressed to a false name at an unoccupied property and it was noted that the details on the Customs declaration did not match the package. Guernsey Border Agency were contacted and the package was opened and found to contain 104 tablets of Clenbuterol and 110 other tablets which are not controlled drugs. Mr Carre you then sent messages to the Post Office via Facebook asking about the package and claiming that it was for your mother. On 15th May, Mr Baudains, you made an online redelivery request for 16th May, on which request you gave your mobile phone number. You were both spotted by the Postal worker at the address when the package would have been delivered but it was not delivered, so Mr Baudains then went to the Post Office, while Mr Carre waited outside, Mr Baudains, you completed a request, in your own name, to collect the package. Guernsey Border Agency arrested you and you said that you thought the package contained "fat burners". At interview, Mr Baudains, you did not accept that you had imported an illegal drug, and you were rather coy as to whether you knew this at the time. Mr Carre, you gave a voluntary interview at which you denied all knowledge of the package but you appeared to lay responsibility on Mr Baudains. At a later interview, under caution, you accepted some knowledge. You both gave the Police access to your phones. There was nothing of note on your phone Mr Carre, but on Mr Baudains' phone there were some messages relating to the importation, as have been read

out by Advocate Cobb. You both refer to the tablets as ‘fat burners’ and we are told that the value is £100 to £150 approximately, based on the tablets being steroids but the drug is not in fact a steroid.

You are both local men of 38 years old and you work together in Mr Carre’s business. You both have families, as set out further on in these remarks.

Mr Baudains you have no relevant previous convictions. Mr Carre you have one for possession of a controlled drug from 2011 and a Public Order matter from 2022. You have both been on unconditional bail throughout the proceedings.

Sentencing Considerations

There are no sentencing guidelines as such for offences involving Class C drugs. Richards does not apply but this Court relies on the principles of quantity and role. We note the nature of the drug in this case, the small quantity and the likely low value. Postal importation is always considered to be an aggravating factor, although here the effect of that is mitigated by the unsophisticated way in which you went about tracking and collecting the package. It is also accepted that there is no evidence of any intention to supply to others, rather the tablets were to be used as an aid to Mr Carre in his exercise regime.

We are in no doubt that you both knew that what you were doing was illegal and we adopt the Probation Officer’s words of “*wilful ignorance*” and a hope that you would get away with it. We set the starting point before consideration of plea and personal mitigation at 12 months.

Mitigation

Plea

The Court must first consider the impact of your guilty plea on sentence and we afford you full credit for those pleas.

Personal Mitigation

The Court has considered carefully the very helpful Social Enquiry Reports prepared in respect of you and also listened carefully to the helpful submissions of your experienced Advocates. We have read the letters of reference and, in Mr Carre’s case, the additional information provided about his child and his own letter to the Court.

You are mature men, who both work hard to provide for your families. We are satisfied, Mr Carre, that your business would be negatively impacted were you to go to prison. We are told that it employs you, Mr Baudains, and another member of staff.

In relation to previous convictions, Mr Carre your drug conviction is more than 10 years old and we have heard further information in relation to the Public Order matter, the circumstances of which have been explained to us. Mr Baudains, you are a person of previous good character. You have both expressed remorse.

The offending appears, in the case of both of you, to be out of character and neither Probation Officer assesses either of you as likely to re-offend. Counsel describe what has happened as a ‘one off’. The arrest and these proceedings are said to have had a “salutary” effect on both of you. Neither of you is assessed as having any issues which require intervention.

We note the difficulties in Mr Carre’s life, the serious illness in a very close family member and the illness relating to his former partner and the impact of both of those on him. We note Mr Baudains’ health issues.

Mr Carre you have a son with his own needs, whom you co-parent with his mother. In her impressive letter she has spoken highly of you and that co-parenting and the particularly negative impact on your son were you to go to prison, as well as the loss of your financial support to the household. We have been given details by your Advocate of the full family circumstances and practicalities of your son's care should you be imprisoned.

Mr Baudains you are in a long-term relationship with your partner and you live with your son and her son. Your partner cannot work, so they are completely dependent on you financially, including payment of the mortgage, without which the family home could be lost.

You are both assessed as having a low likelihood of re-offending and of posing no significant or serious risk to the public, which we take into account. We note that there is no request for a Drug Trafficking request in respect of you, as there is no financial benefit.

Sentence

The importation of controlled drugs is a serious matter and must be met with suitable punishment and deterrence to others. In both of your cases, you have minor children and in Mr Baudains' case, further dependents and, in Mr Carre's case, the mother of his child, all of whom would be impacted were there to be sentences of immediate custody and whose Article 8 Rights we must consider, in accordance with the case of Bourgaize v The Law Officers of the Crown, 2014 (Judgment 49). Advocate Ayres has set out the principles in his oral submissions. 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. Parents 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. We have been given information in the Social Enquiry Reports, the letters and by your Advocates about the likely impact and the arrangements, both practical and financial for the care of your families and we have balanced that very carefully against the legitimate aims of sentencing in a serious drugs case. This is not a case which stands on the cusp of custody. In a case, such as this, where the custody threshold is clearly passed, the balancing exercise entitles the Court to consider reducing the length of the sentence or suspending or imposing a Community Service Order as a direct alternative, all of which have been considered.

We have concluded that an alternative to an immediate custody is appropriate. We are concerned that a Community Service Order would cause undue disruption to the care of the children, particularly Mr Carre's son, and we are also concerned as to the impact of any financial penalties on the families. Having considered all matters we have concluded that the appropriate alternative in this case is a suspended sentence.

You would have no reason to complain if each of you were told to leave with the officers at the end of this hearing to start a prison sentence but the Court considers that, taking into account your previous lack of convictions, the circumstances of the importation and especially the effect on your children and dependents of such a sentence, which we would consider would be disproportionate, it can impose suspended sentences.

You have both come very close to being separated from your families and causing them great harm. We hope that you have taken on board what the experienced Probation Officers have said. It was a risk not worth taking. You know right from wrong and you need not to lose sight of that again.

Taking into account everything that has been said and applying the appropriate principles, the sentence for each of you will be one of **six months' custody, suspended for 2 years.**

You will not have to serve the suspended sentence of imprisonment unless during the next 2 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 the sentence. 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.

Forfeiture and Destruction Orders

On this occasion, the Court is persuaded that the limited use of the phone belonging to Mr Baudains and the impact on his partner and family of the loss of that phone enables the Court to exercise its discretion not to grant the Order requested by the Crown, under Section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 for the forfeiture of that phone. This should not be taken as any sort of precedent.

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

I repeat that the total sentence is one of:

- 6 months' imprisonment suspended for 2 years
- Forfeiture of the package and its contents.

Catherine Maureen Fooks
Judge of the Royal Court

11th January 2024