

Unlawful importation of the Class A controlled drug cocaine, contrary to section 2(1)(a) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974.

[2023]GRC080

**ROYAL COURT
FULL COURT**

18th September, 2023

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff
and Jurats: Claire Helen Le Pelley, Steven John Morris, David John Robilliard,
Stuart Michael Crisp, Marilyn Jasmine King, Paul Martin Burnard, Jillian Clark
and Richard Jeremy Wallen James**

THE LAW OFFICERS OF THE CROWN

- v -

MARK ANTHONY KATTENHORN

**Advocate S Watson appeared for the Crown
Advocate L C Roffey appeared for the Defendant**

LIEUTENANT BAILIFF:

Background

You appear here today for sentence on an Indictment containing one count, namely the unlawful importation of the Class A controlled drug cocaine. The maximum sentence is life. It was a postal importation of 5.79 grams. Guernsey street value £579 to £868.50.

You are now a 43 year old born in South London. You moved here in 2017 and married locally. We have heard all about your domestic circumstances and your young son's very serious health problems.

Your record is not good. On 9 August, 2018 you were sentenced to 9 months' imprisonment for burgling a neighbour's house whilst they were away and they entrusted you with access. You also have a number of not insignificant convictions back in England, including drug offences. We note, by way of example, possession of Class A and B drugs, breach of a community rehabilitation order, burglary back in 1999, etc.

We also note that you have been on bail in these proceedings and entered a timely guilty plea.

As stated, this was a postal importation to an address where you previously lived. You told your contact, who sent the drugs to that address with the name of a person who had received items when you had been living there.

You were apprehended when the package had been intercepted by the Guernsey Border Agency. You went to this old address and collected the replica dispatched there. You made full admissions and you paid £300 for the drugs. You have lived here around 6 years and said you rarely used cocaine, as it was expensive. You provided details of your PIN and your bank account. In your second interview you chose, as is your right, to say “no comment” throughout. You had earlier said that, in effect, the drugs were for consumption on your birthday. You were arrested on 21 February, 2023, your birthday was 29 February, 2023. The drugs, as we heard, were in six individual wraps.

Sentencing Considerations

Your very experienced Advocate will have told you that we are bound by guidelines given by the Guernsey Court of Appeal. They bind us, as they come from a higher court. For the quantity of Class A powder up to 20 grams there is a starting-point of 7 to 9 years. We need to select the starting-point according to the particular facts of the case and then look at applicable mitigation. Misuse of the postal service is considered an aggravating feature.

Considering the amount, which is towards the lowest end of the scale and even noting it was a postal importation, we must start at 7 years. In respect of your guilty plea we afford full mitigation. Your importation had a false name and address, which could conceivably have embarrassed someone else.

Mitigation

You are not, as we have said, a man of good character, especially after committing the burglary here. You are now lawfully resident. You have stated the six wraps were for personal use. We take note of this but this was not a small amount. We also note, your very difficult and exceptional personal circumstances and express sympathy, but they are not, they never are, a free ticket for offending. However, we do take them fully into account in this particular case. It is that factor which allows us to permit a larger element of mercy than we would normally apply in this type of case. This is mercy that can only be used once. We are aware of the Rights to Family Life under the European Convention of Human Rights and this helps you on the facts on this case today. It is not likely to help you if you re-offend in any way and I will have more to say about that in a moment.

A Community Service Order is normally not appropriate for a more than minor Class A drugs importation for a person of an unimpressive record, including drug matters. As stated, it is our duty to loyally comply with the guidelines of the higher court. However, we, on the basis of your extreme family circumstances afford exceptional mercy, not a precedent for sentencing but on its own facts.

Sentence

You referred, as we have said, to the expense of cocaine in Guernsey. This is not only due to the fact that it is an island and the good work of the G.B.A, but because the Courts here seek to punish drug importation and other similar offences, realistically and, where necessary, firmly. We have seen over the years just how much deep misery the misuse of drugs causes. You have a history of drug misuse in the UK and to an extent, here too.

The fact you have committed this offence and the consequences are down to you alone. You volunteered to be here.

When all is said and done, we must deal with offences on their own particular facts, which is why in this case a discount is considerably larger than would normally be applied. This is, we stress, not in anyway a guideline case.

The sentence is called a combination. The maximum **240 hours Community Service**, as a direct alternative to 18 months' imprisonment, plus 2 years' imprisonment, suspended for 3 years.

So if you re-offend it is a "double whammy". If you do not do every single minute of your 240 hours without a medical certificate, you will get 18 months. If you re-offend with an offence punishable with Prison in any way in the next 3 years there will be 2 years' imprisonment.

We make the **Forfeiture and Destruction Orders**, as requested.

Last week I used a form of words to somebody who also was dealt with leniently and I am going to use the same form of words coming from me, personally, today but the Court concurs in what I am saying. You re-offend in any way in the next 3 years and your ship will come in, and I will be at the quayside to punch your ticket and I also said I have got a long memory and where things like this happen a pretty nasty disposition, so do not try me out and do not foul up. These excuses have been very good; they are very sad but you cannot re-use them, as your very capable Advocate will have said. We also consider that if you do re-offend your family will not forgive you and this Court certainly will not. You are being given exceptional leniency today. I shall remember this leniency and as I said, I repeat, it cannot be repeated too often. I will be at the quayside with your ship coming in if you ever foul up.

That is the Order of the Court - **240 hours** to be done in the next 12 months. If you fail to do them, there is 18 months inside. If you foul up again it is 2 years and that is covered for the next 3 year period, plus the **Forfeiture and Destruction**.

You are walking today, but putting it bluntly, I certainly vacillated. I looked at this first of all, and I thought you would have to go down, but on thinking of the exceptional personal circumstances, as set out in the skilful mitigation we heard, we are taking this course. The members of the Court are of the same mind as me. You are walking but you will not walk again, apart from down the steps.

J R Finch, O.B.E.
Lieutenant Bailiff

18th September, 2023