Criminal appeal – Extension of time for Leave to appeal Sentence – Drug importation – Procedural delay – Manifestly excessive sentence. Application refused.

[2025]GCA058

IN THE COURT OF APPEAL OF GUERNSEY
(CRIMINAL DIVISION)

Between:

JAMIE MALCOLM FERBRACHE **Applicant**

-v-

THE LAW OFFICERS OF THE CROWN **Respondent**

APPLICATION FOR AN EXTENSION OF TIME TO APPEAL & APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE

Decision on the Papers

Decision of Jessica E Roland, Deputy Bailiff

Date of Decision: 23 July 2025

Counsel for the Applicant: Advocate S E Steel

Introduction

1. On 14 May 2025, the Royal Court sentenced the Applicant, Jamie Malcolm Ferbrache of being knowingly concerned together with two others, in the fraudulent evasion of the prohibition on importation of goods, namely 9.37 kg of cannabis resin, a Class B drug contrary to section 77(1)(b) and 77(2) of The Customs and Excise General Provisions (Bailiwick of Guernsey) Law, 1972, as amended, 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 (the "First Count"); possession of a Class C drug namely 7 tablets containing stanozol, oxymethalone, methandienone and mestanolone contrary to section 2(1)(a) of The Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended; one count of failing to disclose certain information within seven days of 29 March 2019 as required by a notice served under section 46 of The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law 2003 ("RIPL"); and failure to surrender to custody contrary to section 10 of The Bail (Bailiwick of Guernsey) Law, 2003.

2. The maximum penalty for the First Count is 21 years' imprisonment and for the possession of the Class C drugs, 4 years' imprisonment. At the time the Applicant was convicted, the maximum sentence for the RIPL offence was 2 years' imprisonment or a fine. Failing to surrender to custody has a maximum sentence of 12 months.

3. The sentences imposed were 6 years 6 months' imprisonment (running from 21 February 2025) for the First Count with 1 month's imprisonment concurrent for the possession of the Class C drugs, 6 months' imprisonment for the RIPL offence consecutive to the first count and the Applicant received a further 5 months' imprisonment running consecutively to the first count

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for failing to surrender to custody. The Applicant's total sentence of imprisonment was 7 years and 5 months running from 21 February 2025.

4. The First Count to which the Applicant pleaded not guilty relates to an importation of 9.37kg of cannabis resin into Guernsey in March 2019 for which he was charged along with Daniel Gauvain and Luke Blondel. He was found guilty after a trial (along with Mr Gauvain) in November 2020. Mr Blondel pleaded guilty. The Applicant also pleaded not guilty to the possession of the Class C drugs which were found in a police search and to the RIPL charge and was found guilty of both of these counts after trial. Mr Gauvain and Mr Blondel were sentenced on 19 January 2021. The Applicant's co-defendants received sentences of 8.5 years and 5.5 years. The Applicant was due to be sentenced on this date too, however, he had absconded to the UK. An arrest warrant was issued. Having been found in the UK through detective work, he was arrested and brought back to Guernsey on 21 February 2025. He was remanded in custody from that date. He pleaded guilty to the failing to surrender to custody.

5. In his application dated 11 June 2025, the Applicant seeks leave to appeal against the custodial sentence for the First Count. Although the notice of the application for leave to appeal is dated 11 June 2025, it was not lodged within the prescribed 28 day period. Therefore, in an application dated 14 July 2025, the Applicant applied for an extension of time to appeal.

6. The Applicant says he instructed his advocate to apply for leave to appeal prior to the deadline. The notice was signed on 11 June 2025 but was not delivered to the Greffe. This became known when the Applicant's advocate queried the status of the application with the Greffe only to discover it had not been received by the Greffe. The advocate for the Applicant takes full responsibility for the error.

7. Section 30(3) of the Court of Appeal (Guernsey) Law, 1961 (as amended) provides that the time within which a notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Appeal. The test for considering an application for leave out of time is set out in *Fernandes v Law Officers 53/2014.* In essence, the appellate court must consider the length and reason for delay and the prospects of success of the appeal. The Applicant submitted in his skeleton argument filed on 17 July 2025 that the test also included whether the applicant had the benefit of being legally represented, however, I do not see this as a separate test but rather as part of the facts behind the delay.

8. In this case, the Applicant's advocate has fallen on his sword. He accepts full responsibility for the delay and says, in terms, that the Applicant is blameless. The Applicant had instructed his advocate who had represented him at first instance to lodge an application for leave to appeal his sentence within the time limit. The advocate had drafted the notice but somehow the notice had not been lodged at the Greffe. By the time the advocate realised that this had occurred just over a month had passed from the deadline. It seems to me that in these circumstances the circumstances for the delay and the extent of the delay can be excused.

9. However, as set out at paragraph 15 of *Fernandes* "*even in a situation where the delay can be excused, the Court should consider whether the appeal has any prospects of success before giving leave out of time".*

10. The one ground of appeal relied on by the Applicant is that the 6 years and 6 months for the First Count is manifestly excessive due to his personal mitigation. In his skeleton argument, which he filed in support of his application for an extension of time to appeal, it says that he feels strongly that the personal mitigation, in particular the positive steps he made to turn his life around in the community (albeit after fleeing the island and failing to answer bail) justifies a greater discount than that which was granted by the Royal Court.

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11. There can be no dispute that the First Count was a drug trafficking offence to which the guidelines in *Richards* apply. For a quantity of 5-10 kg, the starting point is 7 to 10 years. The quantity imported here was 9.37 kg, thus at the top end of this band. The sentencing remarks confirm that the Royal Court took the same starting point of 9 years and 6 months for the Applicant as had been taken for the co-defendants back in 2021, including the aggravating factors of the planning involved and the involvement of an employee at the airport in the importation. The starting point was further aggravated in the Applicant's case by his previous drugs conviction and the Class C possession charge. Thus, the revised starting point for the Applicant was 9 years and 9 months.

12. The Applicant could not receive a discount for pleading guilty although credit was given for the admissions that were made at trial. Taking into account the discount for the admissions, the Applicant received a third reduction in his sentence for the First Count on the basis of his personal mitigation, as well as the sentence taking into account the totality principle when taken with the sentences for the other 3 counts. In giving this substantial reduction, the sentencing remarks show that the Royal Court had given the Applicant considerable credit for the positive steps he has made to turn his life around whilst living in the UK. He received this reduction in circumstances where the Applicant did not, despite his transformation, return to face the consequences of his criminality but rather remained in the UK until he was tracked down and returned to be sentenced for what was a substantial importation of cannabis resin to the island (along with the other counts).

13. In my judgment the approach taken by the Court cannot be faulted. Having regard to the material which was before the Royal Court in this case I am not persuaded that it can be properly said that 6 years 6 months was manifestly excessive for the First Count. I, therefore, refuse the application to extend time on the basis that the appeal is without merit. It follows that the leave to appeal the sentence is also refused as is the application for legal aid.

14. If the Applicant wishes to do so, he can renew his applications before the plenary Court of Appeal.

Jessica E Roland
Deputy Bailiff

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