

JERSEY / JUDGMENT

HM Attorney General v Callie Le Guillou

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

Reference by the AG under Article 45A of the Court of Appeal (Jersey) Law 1961. [2024]JCA204 Court of Appeal 9 October 2024 Before : Lord Anderson of Ipswich KBE KC, President Sir William Bailhache; and HHJ Paul Matthews Between HM Attorney General Appellant And Callie Le Guillou Respondent HM Solicitor General for HM Attorney General. Advocate J. W. R. Bell for the Respondent.

judgment

Bailhache ja: 1. This is the judgment of the Court, to which we have all contributed.

Introduction

2. This was a reference by HM Attorney General under Article 45A of the Court of Appeal (Jersey) Law 1961. The references made following a sentence of a total of three years and four months imprisonment imposed by the Royal Court on 15 January 2024 in respect of the following offences: (i) Being knowingly concerned in the importation of Diazepam (Class C) – sentence two months imprisonment; (ii) Being concerned in the supply of cannabis (Class B) – sixteen months imprisonment; (iii) Being knowingly concerned in the importation of Diazepam (Class C) – two months imprisonment; (iv) Being concerned in the supply of MDMA (Class A) – two years and six months imprisonment;
- (v) Possession of MDMA (Class A) with intent to supply – two years imprisonment: we have noted the discrepancy between the summary at start of the published judgment, prepared as we understand it by the Law Officers’ Department, which wrongly says 2 years and 6 months and the sentence on Count 5 of 2 years which is what the Royal Court actually imposed; (vi) Possession of cannabis (Class B) with intent to supply – twelve months imprisonment; (vii) Possession of cannabis (Class B) – two months imprisonment; (viii) Possession of Pregabalin (Class C) – one months imprisonment; (ix) Failure to comply with a Disclosure Notice contrary to Article 42F(1) of the Regulation of Investigatory Powers (Jersey) Law 2005 – ten months imprisonment. 3. All the terms of imprisonment were to run concurrently, save that on Count 9 which was imposed consecutively. 4. Leave to refer the sentence as unduly lenient was granted by Montgomery JA as a single judge of this Court on 21 March 2024. In giving that leave, Montgomery JA concluded in this way: “I consider it is arguable that, even taking account of the mitigating factors and the reduction of one-third for an early plea, the sentence on Count 4 was outside any reasonable sentencing range. The mitigating factors had to be weighed against the aggravated features of multiple offending, some committed on

bail. It is not clear how such a significant reduction from the starting point could be justified. In reaching the conclusion that the case is arguable, and therefore giving permission to the applicant to refer the case to the full Court of Appeal, I leave open three matters that will have to be considered by that Court. First, even if the Court considers that the sentence was unduly lenient, it still has a discretion as to whether to exercise its powers, see for example Attorney General's reference No 64 of 2011 (R v Crawford) [2011] EWCA Crim

2178. Second, it is not possible to form a final judgment on the mitigating factors and the weight they were given by the Royal Court at this early stage in the proceedings. Updating reports on progress made in prison should be made available to the Full Court when the case is listed. Third, the Respondent will be free to contend that the starting point for drug sentences ought to be reviewed, although she will have to deal with the points made by the Applicant in relation to the judgment of the Court of Appeal of Guernsey in *Barras* [2021] GCA 045." The facts 5. The Respondent is thirty-three years old and has previous convictions for producing, cultivating and possessing controlled drugs. At approximately 6pm on 9 February 2022, a search warrant was executed at her home address in Jersey. Within a suitcase in the hallway, officers found £670 in cash, three metal foil wraps and a quantity of suspected cannabis. The officers suspected the wraps to contain Class A controlled drugs. The Respondent was arrested on suspicion of possession of controlled drugs with intent to supply and cautioned. When asked what the substances were, she responded "I don't know. I've never seen it". She explained she had planned on going to a hotel for an overnight stay. 6. During a search of the property, the police also seized an Apple i-Phone in a gold case and some digital scales. The drugs were analysed and found to contain 2.81 grams of MDMA and Ketamine. The brown resinous material was found to contain 11.24 grams of cannabis resin. 7. The Respondent gave no comment on first interview. On second interview, she stated that on the day she was arrested, a friend had given her a bag. She was told she could do what she wanted with it. She suspected that the bag contained drugs because of how it looked. When she opened the bag at home, she saw it contained pink or purple powder. She suspected it to be MDMA and cannabis resin and she stated that she panicked. She told the police that she planned to dispose of the drugs when she left to go out that evening. She further stated that she was prescribed medicinal cannabis and had no need or desire to be involved in drugs. She said that she used one gram of cannabis per day and she used the scales to weigh it in order to regulate her usage. 8. A study of the Respondent's mobile phone was made notwithstanding her failure to provide her PIN. On that telephone was found evidence relating to the supply of controlled drugs – at least fifty-four grams of cannabis, and ten MDMA tablets. A text exchange with the Respondent's stepfather urged her to come to a venue to supply "sweets" (considered by the police to be a code name for MDMA tablets) to "a few lads" and to "deal with them direct". Also found on the mobile phone were messages relating to the purchase and importation of Diazepam into the island. A study of her bank statements showed that payments were made to her from three other people, one of whom was a previous partner

and another her stepfather. 9. A further search warrant was carried out over a year later, on 27 April 2023. On that occasion, the search revealed a block of resinous material, subsequently analysed and found to contain 72.92 and 2.46 grams of cannabis resin, and blister packs marked “Pregabalin”. When interviewed on these findings, the Respondent told officers that the cannabis belonged to her and the Pregabalin belonged to her cousin who had left it at the property when he came to stay with her. She said that she had bought a bar of cannabis resin because she was addicted to it and smoked a few grams of cannabis every day. She took Diazepam three times a day. She denied selling drugs to anyone.

10. On appearance before the Magistrate’s Court on 27 July 2023, the Respondent entered guilty pleas to Counts 1 to
8. She was granted permission to enter no plea in relation to Count 9. She subsequently notified an intention to enter a not guilty plea, but when indicted approximately five weeks later, she entered a guilty plea on Count 9 and was remanded in custody for sentencing. The sentencing decision
11. The Crown had reminded the Royal Court that the maximum sentence for possession with intent to supply or being concerned in the supply of a Class A drug was life imprisonment or a fine or both. The maximum sentence for possession with intent to supply or being concerned in the supply of a Class B drug was fourteen years imprisonment or a fine or both. *Campbell v AG* [1995] JLR 136 was the sentencing guideline case in relation to the trafficking of cannabis; *Rimmer v AG* [2001] JLR 373 the guideline case in relation to Class A controlled drugs in powder form; and *Bonnar and Noon v Attorney General* [2001] JLR 626 the guideline case in relation to the importation of Class A controlled drugs in tablet form.
12. Accordingly, the Crown contended that the Court should have regard to the weight of the drugs and the Respondent’s role and involvement as the principal factors, with the value of the drugs to be considered as a factor of less significance. In the present case, the quantity of cannabis involved was below the *Campbell* guidelines and those guidelines could not be strictly applied, but nonetheless they should be considered in terms of the Respondent’s overall role and involvement in drug trafficking. Based on all these considerations, the Crown contended for a starting point of seven years imprisonment for the drug trafficking offences. The conclusions were for a sentence of four years and eight months imprisonment (the starting point of seven years with discounts for mitigation) on Counts 4 and 5, the Class A drug trafficking offences, and ten months imprisonment consecutive on Count 9, making a total of five years and six months imprisonment.
13. The Royal Court (the Deputy Bailiff sitting with Jurats Christensen, Dulake, Hughes, Entwistle and Berry) considered that in view of the Respondent’s record and the seriousness of the offences, only a custodial sentence was warranted. It fixed a starting point of seven years “as required by authority”, but arrived at significantly lower sentences than contended for by the Crown, of two years and six months on Count 4 and two years on Count 5. The Royal Court noted the contents of the interviews, the details on the mobile telephone and

the analysis of drugs and bank statements. It further remarked that the second search warrant had been executed when the Respondent was on police bail for the earlier matters: we were told that this was not accurate, though the Respondent was aware that she was under active police investigation. The Court had regard to the immediate admission of Counts 1 to 8 and the delayed guilty plea on Count 9. Furthermore, there was a strong public policy interest in punishing those who attempted to prevent or frustrate those investigating crime, particularly into this sort of offence, by refusing to provide access to their mobile telephones and it was necessary to send out the message that such behaviour was unacceptable and would result in a consecutive custodial sentence.

14. The Royal Court was impressed with the Respondent's letter to the Court and the other references provided on her behalf. It took into account the periods of delay in bringing charges forward for which the Crown conceded there was no sufficient reason. The Court was impressed also by the steps taken in custody and by the report from the probation officer concerned with the Respondent.
15. Mindful no doubt of the very substantial reduction from the seven-year starting point that it had considered necessary in order to pass a fair sentence on Counts 4 and 5, the Royal Court further directed that the next sentencing case in which trafficking, importation, possession with intent to supply or being involved in the supply of less than 10 grams or 10 units of a Class A drug be listed before the Bailiff or Deputy Bailiff, and seven or nine Jurats, for a review of the starting points applicable under Campbell and Rimmer.
16. That direction was given effect in Attorney General v Grzegorska [2024] JRC 151 (the Deputy Bailiff sitting with Jurats Christensen, Dulake, Averty, Hughes, Le Cornu, Le Heuzé and Berry). In the light of the comments of the single judge when giving leave, both parties referred in their contentions before us to the decision in Grzegorska, to which we now turn.
17. Miss Grzegorska was thirty-six and of previous good character. On a visit to Jersey to see her boyfriend in February 2024, she was stopped by customs officers and when her suitcase was searched, she volunteered that she had some cocaine. The total weight of the cocaine came to just under four grams, and, if sold in Jersey, would have had a street value of between £600 and £1,000. It was confirmed by the Crown that there was nothing in the body of evidence which suggested the drugs were for onward sale, and it was accepted they were for personal use. The defendant pleaded guilty the following day at the first opportunity. When the case before the Royal Court for sentence, the Crown, applying Rimmer, moved for a starting point of seven years imprisonment and an actual sentence of three and a half years imprisonment having regard to Ms Grzegorska's early plea, good character and the other mitigation available to her. The Crown's view was that she should receive credit to reflect the guilty plea but not the full one-third, given the strength of the evidence against her. That approach was not accepted by the Royal Court which made it clear that the current practice is to allow defendants who plead guilty at the first opportunity in the Magistrate's Court in drugs cases to receive the full one-third discount, absent special circumstances,

notwithstanding the strength of the evidence against them.

18. The Royal Court reviewed the Rimmer and Bonnar guidelines and then addressed two questions:
 - (1) Was it entitled to revise or amend sentencing policy in circumstances where it is bound by decisions of the Court of Appeal? The Court answered that question in the affirmative.
 - (2) Should the Royal Court elect to revise or amend sentencing policy in this area? The Court answered that question too in the affirmative, opting for a more significant change than that which had been urged on it by the Attorney General (which we discuss below). The Court's conclusion is to be found at paragraph 75, in these terms: "We have considered this matter with care, and we have unanimously concluded that for weights of Class A drugs up to ten grams, the starting point henceforth will be one to seven years imprisonment. The guidelines in Rimmer have been supplemented to this extent only. Although it will be necessary for there to be a similar exercise carried out in respect of the drugs carried or sold in tablet or capsule form or other units, we felt we had insufficient evidence before us to determine the upper number of units which would be subject to the starting point of one to seven years imprisonment. That will need to be determined by another Superior Number on another day, with sufficient evidence before it to make such a decision."
19. The Court was of the view that there did not need to be a "compelling change of circumstance" if it were to review and revise sentencing policy which had been established in the Court of Appeal. To the extent that it did need a compelling change of circumstance, the Royal Court considered there were three important reasons – first of all, the lower band of the Rimmer guidelines allowed for an insufficient exercise of the Court's discretion, inconsistently with the decision of the Guernsey Court of Appeal in Barras. Secondly, at the time the lower band was set in Rimmer, the investigative authorities did not have all the techniques which are now available to them, especially so in the context of the analysis of mobile telephones. Accordingly while it was in previous times difficult for the Court to understand with clarity whether or not the offender had imported drugs for exclusively personal use and / or extremely limited supply to those close to the offender on a non-commercial basis, that is no longer the case. Thirdly, the guidelines developed in Campbell and Rimmer were principally designed to deal with trafficking on a commercial basis and were not designed for cases such as Grzegorska. The Royal Court went on: "Even if Ms Grzegorska had contested this matter and been convicted after trial, was not a woman of good character and did not have the mitigation available to her, it would not have been appropriate for her to be sentenced, accepting as the Crown did that she was importing these drugs for her personal use only, to seven years imprisonment or a sentence approaching that level."

20. The Royal Court thus, in answering its further question as to what should be done with the defendant in that case, concluded that it should take a starting point of eighteen months imprisonment but, having regard to her guilty plea and other personal mitigation, should impose a sentence of seven months imprisonment.
21. It is apparent from Grzegorska (e.g. at paragraph 81) that the Superior Number considered the purpose for which the drugs were imported to be a factor going to starting point rather than to mitigation. Whereas Grzegorska was a case concerning personal use, the offending identified in Counts 4 and 5 of the present case involved an intention to supply the drugs to several people on a commercial basis (although the profitability or otherwise of such intended transactions was not established). Notwithstanding this difference between the two cases, we consider it appropriate to address the proposal of the Royal Court in Grzegorska, as both parties requested us to do. We start by addressing the purpose of supply and whether as a matter of principle such purpose is relevant to starting point or to mitigation. Shahnowaz and the purpose of supply
22. No reference was made by the Royal Court, either in Grzegorska or in this case, to Attorney General v McKenzie and Richards [2011] JLR 689, nor indeed to many of the cases, including some in the Court of Appeal, which were reviewed in that case. For this reason, we gave notice to counsel to be ready to address us on those decisions. In particular, we indicated that we wanted to be addressed on whether the intention in drug trafficking cases to use the drugs personally or for social supply goes to personal mitigation or should be reflected in the starting point as part of the assessment of the seriousness of the offending. The reason for asking to be so addressed lies firmly in the decision of this Court in Shahnowaz v Attorney General [2007] JLR 221.
23. In Shahnowaz it was accepted by the Crown that the drugs were imported for the appellant's personal use rather than for supply. This Court (Beloff, Smith and Jones JJA) concluded that: (i) The Rimmer guidelines applied to all cases of importation, whether for personal use or otherwise; (ii) Nonetheless, where the importation was for personal use, that could be personal mitigation taken into account in reducing the sentence from the starting point identified by the guidelines.
24. For reasons particular to that case, the Court of Appeal therefore took a starting point of seven years in accordance with the Rimmer guidelines and reduced the sentence to four years imprisonment from the five and a half year sentence imposed by the Royal Court. In the course of doing so, the Court of Appeal expressly declined to follow the Superior Number's decision in the case of Finnegan v Attorney General [2004] JLR 179. In that case the Superior Number had determined that when setting the starting point, the Court ought to have taken into account the fact that the drugs were for the appellant's personal use and not for supply, and thus a starting point of five years rather than seven years imprisonment would have been more appropriate. The Royal Court had been of the view that, as a matter of sentencing policy, the defendant's intended personal use of the drugs was a characteristic of the offence of importation and not merely a mitigating factor. As her importation for

personal use was less serious than the importation of the same amount for commercial purposes, the relevant gravity ought to be reflected in the starting points for such offences so as to make the sentencing process more transparent and to avoid a sense of grievance.

25. In other words, it is clear that this question of whether the intended use goes to the starting point or to personal mitigation has directly been the subject of discussion in the Royal Court and in the Court of Appeal previously. It is a debate in which apparently attractive arguments could be advanced on either side. The reasons given by the Royal Court in Finnegan for deciding as it did can be seen in the extract following: “13. It is possible to argue the matter both ways. However, we prefer the Gregory approach for two main reasons. First, if one asks oneself the question: “Is the offence of bringing into Jersey enough heroin for a single injection serious as importing 5g of heroin for onward sale?” the answer is clearly “No”. But both are offences of importing a Class A drug and the logic of Conquer is that one must apply the same starting point of seven years imprisonment in both cases. In relation to the offence of possession of a dangerous drug, the statute provides that the intent to supply is a characteristic of the offence and creates two separate offences. Importation is, of course, a single offence, whether or not there is an intent subsequently to supply. However, it seems sensible to us as a matter of sentencing policy to apply the same distinction. It is true, as the Court of Appeal reiterated in *Mortimore v Attorney General* that the real evidence that is going to weigh with the Court is the quantity of drugs and not what the importer says about his intentions, which might change anyway if the importer’s circumstances change.
14. The second reason relates to transparency. Defence counsel drew our attention to the sense of grievance which the defendant has apparently suffered in this case as a result of the inability of counsel to explain how the sentence of eighteen months youth detention was arrived at, having regard to the high starting point of seven years. That lack of transparency would be removed if the Court were to take a starting point which reflected the true gravity of the offence and the absence of any commercial motive.
15. We therefore state that if the defendant imports a relatively small quantity of a Class A drug for personal use, that importation should not be taken as being of equal gravity for sentencing purposes in settling the starting point as the importation of the same quantity for commercial purposes. Where there is a dispute as to whether there was an intent to supply that question must be resolved as laid down in *Gregory* by a *Newton* trial.”
26. In *Shahnowaz* this Court dealt with those arguments in this way: “11. Turning to the two main reasons given by the Court in *Finnegan*, we do not find them convincing. The first is that the answer to the question “Is the offence of bringing into Jersey enough heroin for a single injection as serious as importing 5g of heroin for onward sale?” is clearly “No”. But this begs the further question of whether the less serious nature of the importation should be reflected in the selection of the starting point or by way of a deduction for mitigation. *Rimmer* and *Conquer* indicate that the latter is the proper course.

12. The second reason relates to transparency, and the sense of grievance the applicant in Finnegan had apparently suffered as a result of the inability of defence counsel to explain to her how the sentence imposed by the Inferior Number had been arrived at, having regard to the adoption of the Rimmer minimum starting point of seven years.
13. We share the Royal Court's view that transparency is important, but guidelines serve valuable ends and, where they are applicable, we do not believe that it is appropriate to disapply them simply because they inevitably give rise to complexities which defendants may have difficulty in understanding."
27. In Shahnawaz this Court had misgivings about the appropriateness of the decision in Finnegan for two reasons: "16. The purpose of guidelines is to facilitate consistency and to avoid the problems inherent in attempting to compare and contrast previous decisions, often on the basis of incomplete information. There are no separate guidelines dealing with the importation of small quantities of drugs for personal use. There is no definition of what is or what is not a small quantity. Nor is there a yardstick from an authoritative source, apart from Rimmer, which can be applied to any particular quantity of drugs and from which a starting point may be derived. And there are already signs in the series of cases furnished by Mr MacRae...of the recrudescence of the old disease, which guideline cases are designed to eradicate, of "try[ing] to calculate the exact effect given by the Court in earlier cases to each factor and then to say that those effects must be reproduced in the case in hand".
17. There is another difficulty in endorsing Finnegan. It sought to apply the Gregory approach only to cases of importation of a small quantity, whereas no such limitation is apparent from the judgment of this Court in that case. Assuming that the Rimmer guidelines would apply to larger quantities for personal use, this would result in the paradox that in the first type of case the intention of the defendant bears on the starting point whereas in the second it is relevant only to mitigation. It is for this reason that the addition to the Rimmer guidelines of a lower starting point specifically for cases of personal use would not be a satisfactory solution. A more logical solution, albeit perhaps not a perfect one, would be to add a lower starting point band for small quantities.
18. This is not an appropriate case in which to make a definitive ruling on this issue, which may require consideration at some point in the future. The quantity of drugs in this case is far above that to which the relevant charge in Finnegan – or the series of cases which followed it, to which Mr MacRae referred us – related. Even if we had concluded that Finnegan was correctly decided, we should still have taken the view that the Rimmer guidelines are applicable to the instant case and that, therefore, the personal use factor is a matter of mitigation."

28. Shahnawaz was applied by the Superior Number of the Royal Court in McKenzie and Richards. There was an obvious difference in terms of criminality between the possession of drugs with intent to supply for profit and the possession of drugs with intent to supply to friends at cost or for free but a defendant's intention to supply socially was not relevant to the determination of the appropriate starting point for sentence. It could nonetheless be taken into account by the sentencing court as a matter of personal mitigation.
29. In summary the Superior Number in McKenzie and Richards reached these conclusions: "i). It would be inappropriate to re-open any distinctions of past years in relation to the different drug trafficking offences of importation, possession with intent to supply, supply (or indeed as now determined being concerned in the avoidance of a prohibition against importation). ii). It was wrong to treat Rimmer, Bonnar and Campbell as concerned only with the trafficking of drugs for commercial purposes. Shahnawaz and Conquer v Attorney General [2002] JLR N[17] qualified those guideline cases and to hold otherwise would be for the Royal Court to disregard the system of judicial hierarchy which requires that proper regard be paid to decisions of the Court of Appeal. iii). There was an obvious difference in terms of criminality between those who import drugs for personal use and those who import drugs for commercial purposes. The gravamen of the offence of importation was that it results in the increase in the volume of dangerous drugs circulating in the country, which is itself and evil. iv). Furthermore, the quantity of drugs imported was not necessarily relevant to the extent to which the defendant was close to a main source of supply and therefore involved in drug trafficking. Thus the involvement in drug trafficking could be assessed regardless of the purpose to which the drugs would be put once they had been imported. v). The underlying intention of the importer reflected something subjective to him. It was unsurprising therefore that it should be disregarded in considering the starting point which was assessed on objective criteria."
30. Whatever approach is taken, of course it must be the case that the sentencing court should not give double credit – using the intention to import for personal use as a reason to reduce the starting point, and then affording greater mitigation because of that self-same intention at the second stage in the sentencing process. It might be argued that it does not much matter whether one approach is adopted rather than the other, so long as double counting is avoided.
31. In our judgement, however, the better course is to continue the Shahnawaz approach. The gravamen of the offence of importing drugs is that it increases the amount of drugs in the island. It follows that the quantity of drugs imported goes directly to the reason for the existence of the offence and thus the use to which the drugs might be put is a consideration personal to the offender rather than a factor which measures the seriousness of the offence. It more conveniently fits in the scheme of personal mitigation and would not be included in the assessment of the starting point. In that context, we endorse the view taken by this Court in Shahnawaz that the setting of starting point guidelines is important for ensuring a consistency of approach to sentencing in drug trafficking cases. An approach which puts a

wide starting point between 1 and 7 years imprisonment, albeit for a relatively limited quantity of drugs, is a recipe for such a variety of sentence that it becomes difficult to establish that consistency: there will be a difference not only in the starting points but also in the value of mitigation available to different defendants.

32. Secondly, the importation of drugs even for personal use is likely to mean that the existing supply of drugs in the island will not be diminished by the drugs the importer can be expected to use while here. Accordingly, there are in that scenario more drugs available for the other members of the island's community willing to take them. Importation for personal use thus is capable of having an impact on more than just the importer, and that is before one contemplates the possibility of the drugs going missing from the importer's possession.
33. Thirdly, even in cases where small amounts of drugs are imported, it is almost impossible for the Crown to disprove a stated intention that the drugs be used by the importer personally. It is better that defendants should be in the position of showing why they should be entitled to the mitigation which is advanced rather than for the Crown to have to disprove something which is within their subjective knowledge. That is not a breach of Article 6 of the European Convention. Offenders do not have to prove their innocence. The Crown still has to prove their guilt, but in assessing the penalty to be imposed, it is for the defendants, in mitigating their offence, to establish such special circumstances as lie entirely within their knowledge in order to justify a more lenient penalty for the offence in question.
34. For all these reasons, we take the view that in conformity with previous authority it is preferable not to mix the issue of starting points with that of mitigation which is personal to the offender, including the issue of personal use or social supply. Submissions of the Crown
35. On this appeal, the Solicitor General contends that the overall sentence imposed was in principle unduly lenient, and that the Superior Number made an excessive reduction on account of mitigation. He submits that Counts 4 and 5 disclose a clear case of commercial supply, and points to a number of aggravating factors including the Respondent's lies to the police and her drugs antecedents (albeit that there is no indication that these antecedents concerned any Class A drug, none of the drugs offences post-dated 2016 and none of the offences post-dated 2017). He contends that beyond her pleas of guilty at the first opportunity, the only mitigating factors at the time of sentence were a period of delay attributable to the prosecution of some two months, the efforts made by the Respondent to mend her ways while awaiting sentence, and her genuine remorse. While significant, those factors could not in the Crown's view justify a reduction in the sentence on Counts 4 and 5 from 4 years 8 months (the 7-year starting point, with allowance for guilty plea) to 2 years 6 months and 2 years respectively. No less than 3 years 6 months, it was suggested, would have been appropriate on these counts.
36. Nonetheless, the Solicitor General made it clear at the hearing that he does not invite us to increase the Respondent's sentence, bearing in mind in particular the exemplary progress that she has continued to make in prison since her sentence was passed. We saw a detailed

account of that progress and agree with the Solicitor General that in the context of this case, there is a public interest in encouraging it. We accordingly accede to the submissions of both parties that the sentence on the Respondent should not be increased. The Solicitor General still invites us however to offer any material guidance that could be useful to sentencing courts, and we approach this reference on that basis.

37. Neither the Solicitor General nor Advocate Bell, for the Respondent, seeks to challenge the Shahnawaz principle, affirmed in *McKenzie and Richards*, that the evident difference in criminality between commercial and social supply is to be reflected in sentencing policy not by the application of different starting points but by the exercise of judicial discretion. Nonetheless, the Solicitor General contends (by reference to the written submissions of the Attorney General in *Grzegorska*) that: “the judgments in *Rimmer* and *Bonnar* either understate, or do not state with sufficient clarity, the degree of discretion open to sentencers and may in consequence serve to inhibit sentencing discretion at the bottom end of Class A drug trafficking such that a too constrained application of those guidelines may be capable of working injustice in individual cases.” He refers in that connection to paragraph 34 of *Rimmer*, in which, having emphasised that the bands are only guidelines, and are not to be treated as if embodied in statute, the Court of Appeal stated that “it will be seldom that the starting point for any amount of drugs will be below seven years”, and said of *Morgan v AG* [2001] JLR 225, in which a starting point of six years was adopted in a commercial trafficking case, that it was to be regarded as an exceptional case.
38. The Solicitor General seeks to contrast that approach with the decision of the Guernsey Court of Appeal in *Barras v Law Officers* [2021] GCA045, in which that Court affirmed the continuing applicability of the guidelines in *Richards v Law Officers* 2000-02 GLR 247, which are similar though not identical to those in *Rimmer*, but also the need for flexibility in their application. In that regard the Court in *Barras* cited (at paragraph 33) the following comments of Carey P 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. Sentencing is always a matter for the court’s discretion. It is an art and not a science ...” The Solicitor General drew our attention also to the citation from *Richards* at paragraph 37 of *Barras*, in which Carey P referred to “importations of very small quantities for personal use which are punished in the same way as offences of simple possession”, whilst emphasising that in relation to importations in excess of these quantities, “a claim is made that a drug was for personal use will not generally result in a lighter sentence being imposed than when no such claim is possible, because any importation adds to the stock of drugs available in the Island”.
39. The Solicitor General further repeats the Attorney General’s submission that: “There may ... be a public interest to be served by (a) addressing through a non-custodial disposal purely personal drug use by Jersey residents trafficking for personal consumption and (b) dealing summarily with non-Jersey resident traffickers of small quantities for their personal use

while visiting Jersey through a financial penalty imposed by the Magistrate, together with the additional possibility of them being bound over to leave the Island and not to return for a stipulated period.” To descend from a 7-9 year starting point to a short custodial sentence or even a non-custodial sentence, he points out, is an exercise that might be seen as giving excessive weight to the mitigating factor of personal use under the Rimmer/Bonnar guidelines. He raises the possibility of unnecessary time being consumed by magistrates, fearful of departing too far from a high starting point, prolonging matters unnecessarily by sending defendants to the Royal Court for sentence. Accordingly, the Crown submits to us, as it did to the Superior Number in Grzegorska, that: “the existing Court of Appeal sentencing guidelines for drug trafficking offences in respect of Class A drugs might benefit from clarification by the Court of Appeal that sentencers are able to exercise a greater degree of discretion when dealing with very small amount of Class A drug imported in circumstances where, on the evidence, the assertion that the drug was entirely for the personal consumption of the importer or, at most, for sharing with a single and close personal associate of the importer, cannot be disputed.” The role of the Royal Court in revising sentencing policy

40. In Grzegorska the Superior Number proposed qualification of the Rimmer guidelines by indicating a starting point of one to seven years imprisonment at the lowest band for weights of Class A drugs up to ten grams. The Royal Court declined however to set out the circumstances that would warrant a lesser starting point than seven years (paragraph 74), and had insufficient evidence to determine the upper number of tablets, capsules or other units that would be subject to the proposed new starting point of one to seven years (paragraph 75).
41. In keeping with the approach adopted by the Superior Number itself, we address first the question of whether (and in what manner) it is open to the Royal Court to revise or amend sentencing policy contained in guideline cases of the Court of Appeal, before coming in the next section of our judgment to the question of what if any substantive revision to the Rimmer and Bonnar guidelines is appropriate.
42. This Court in *Styles v AG* [2006] JLR 210 summarised in the following terms the various processes by which a guideline set by the Court of Appeal may be revised: “79. It seems to us that, besides the States, which can, if it sees fit, legislate, there are three potential sources of impetus for revision in this jurisdiction: the Attorney General, the Royal Court and the Court of Appeal.
80. One of the Attorney General's functions is to represent the public interest. If he were to conclude that guidelines set by this Court had become outdated we would expect him to draw this to the attention of the Court of Appeal in an appropriate case or cases and to provide information necessary to enable it to decide whether review was required and, if so, to what extent. This has not happened in this case and it is clear that the Attorney General considers that the Campbell guidelines for cannabis continue to be appropriate.

81. The unwritten constitution of Jersey vests the determination of sentences in serious criminal cases in the Jurats. It would be open to the Superior Number of the Royal Court to have indicated, through the Commissioner, on the sentencing of these Applicants that the Campbell guidelines have, in its view, become outdated. Although this course was urged on the Royal Court on the Applicants' behalf, the Commissioner made it clear in his sentencing remarks that the Royal Court considered the Campbell guidelines to be, as the Commissioner put it, correct.
82. We accept that this Court has power to embark on a revision of guidelines off its own bat. However, we consider that, in the absence of a supporting signal from either the Attorney General or the Royal Court, this is something that this Court should be slow to do. The reason is that both the Attorney General and the Jurats are far better placed than is this Court to judge whether consideration should be given to revision. With the exception of the Bailiff and the Deputy Bailiff, the judges making up the Court of Appeal do not reside in Jersey and are not as familiar with the social and penological issues here that bear on sentencing policy. It was recognised by this Court in *Campbell* (at p. 140) that Jersey, as a separate jurisdiction, is free to set its own sentencing levels. As Neill JA said in *Attorney General -v- Pagett* [1984] JJ 57 at p. 65: "... the Royal Court sitting in Jersey will be aware of current attitudes here to sentencing and will know, in particular, what sort of crimes are prevalent and for what crimes it is desirable to retain a severe deterrent sentence." This could also be said of the Attorney General." In short, the impetus for review will normally come from the Royal Court or from the Attorney General, both of them more familiar with the issues bearing on Jersey sentencing policy than a Court of Appeal whose members are drawn overwhelmingly from other jurisdictions. We would add that the "indications" or "signals" referred to in *Styles* are likely to be of particular force when they emanate from the Superior Number, bearing in mind the constitutional function of elected jurats in determining sentence. It may also be that, as was the case in *Grzegorska*, the Superior Number has had the benefit of submissions from the police and other relevant agencies.
43. The Court of Appeal can be encouraged to reconsider a guideline by the Royal Court indicating, whether it applies the sentencing guideline or not, that it does not agree with it and giving its reasons. The decision of the Royal Court in that case will almost certainly come up to this Court on appeal, whether by the appellant or on an Attorney General's reference. The probability of such an outcome allows the Royal Court to make its views of the relevant issue clear to the Court of Appeal, without challenging the hierarchical structure of the island's courts.
44. As has been said many times, this court will pay the closest attention to the views of the Royal Court on sentencing policy, bearing in mind that the Royal Court is far more aware of particular problems facing the island's community than we are. It is however obvious that this Court is not bound to adopt the proposals of the Royal Court, and that in the event of any conflict it is the position of this Court that must prevail. As the senior appellate court on the island, it has a responsibility to ensure that its jurisprudence remains, so far as possible,

consistent and consistently applied.

45. Notwithstanding the Styles language of “indications” and “signals”, we accept that it may sometimes be appropriate in cases where there has been a compelling change of circumstance for the Royal Court to do more than just express a view that a guideline requires revision. In order to do justice in the case before it, the Royal Court may find it necessary to adopt the course of not applying the guidelines in question and indicating why it has taken that course. However, we respectfully do not endorse the Deputy Bailiff’s comment in *Grzegorska* that no compelling change of circumstance is necessary before the Royal Court rewrites, as it were, guidelines set down by this court, which we do not think is right in principle, nor in accordance with the preponderance of authority. Is revision of the *Rimmer/Bonnar* guidelines necessary?
46. In proposing the revision that it did to the *Rimmer* guidelines, the Royal Court in *Grzegorska* was motivated by an entirely valid concern that those guidelines should not be applied with such rigidity as to result in the over-sentencing of defendants in respect of small quantities of Class A drugs intended for personal consumption (or, in the Crown’s formulation, sharing with a single and close personal associate). That danger of course exists: for example, the citation from the 2002 case of *Richards* at paragraph 37 of *Barras* suggests such cases were often prosecuted in Guernsey as possession rather than supply, which is an option for prosecutors in Jersey as well, and the more modest proposal advanced by the Crown sought to avoid the same danger by a different route.
47. For our part, although we have not been notified by the Attorney General of any intention to seek a review of the appropriateness of the actual sentence imposed upon Miss *Grzegorska* by the Royal Court, we would be surprised if that were to be contemplated. The acceptability of the result in that case does not, however, necessarily imply the correctness of the route taken to reach it, and while giving full credit to the particular role of the Superior Number as a sentencing court, we express the following reservations about the approach proposed in *Grzegorska*.
48. The complaint that the *Rimmer/Bonnar* guidelines are excessively rigid is closely related to the issue of principle, already rehearsed in this judgment, of whether the purpose of supply is relevant to the starting point or to mitigation. If the former, as may once have appeared from *Finnegan*, the absence of a lower starting point for cases of personal use is plainly problematic, particularly given the strict insistence in *Rimmer* on adherence to the 7-9 year starting point for the lowest band. If the latter, however, personal use is capable of operating as a very significant mitigating factor, making it possible to reach without amendment of the *Rimmer/Bonnar* guidelines a low custodial or even a non-custodial sentence as was indeed the outcome in the recent case of *Attorney General v Bowman* [2024] JRC 181. Since as we have already found, *Shahnowaz* and similar cases must be taken to be determinative of this issue of principle, the wide discretion in the sentencing court to consider relevant mitigation should be sufficient to remove any perception of injustice. It is simply not necessary, for this purpose, to provide for a new range of starting points to be applied in

cases of Class A drugs weighing up to 10 grams.

49. We would add that there are inherent difficulties in a range of starting points as wide as “one to seven years”, particular in circumstances where, for reasons which we find entirely understandable, the Royal Court felt unable to specify the circumstances which might trigger the various reduced starting points. Such additional guidance could, on the Royal Court’s solution, emerge only from further cases which may well extend over a prolonged period with much potential inconsistency in the meantime. The application of such a range, particularly without express limitation to cases of personal use, might well have the effect of removing the deterrent effect of drug trafficking offences at street level, a potential outcome which the Royal Court has not so far addressed.
50. Neither are we persuaded by the submission that the Rimmer guidelines need to be softened in order to conform with the approach of the Guernsey Court of Appeal in Barras. It would indeed be anomalous, given the common composition of the Jersey and Guernsey Courts of Appeal, if significantly different approaches to this issue were to be applied in the two jurisdictions: but we consider that the supposed conflict that was identified before us is more apparent than real. The reluctance to depart from the 7-9 year starting point, save in exceptional cases, that was expressed in Rimmer at paragraph 34 does not equate to a fettering of the sentencing court’s discretion to reduce the sentence from that starting point to reflect mitigating factors, including the intended use of the drugs in question. In that respect, the courts of Jersey, consistently with Rimmer and Bonnar, enjoy precisely the flexibility referred to in the passage from Richards cited at paragraph 33 of Barras.
51. We would indeed go so far as respectfully to doubt that there was a “compelling change of circumstances” sufficient to justify the Royal Court in proposing the variation of the Rimmer/ Bonnar guidelines. The first and third of the factors put forward in that regard, summarised at paragraph 19 above, are addressed by the proper analysis of the sentencing process in the light of Shahnowaz. As to the second, we do not think the Royal Court was right to class modern investigative techniques, notably the ability to access mobile telephones for pointers as to the purpose of supply, even where access codes are not provided by a suspect, as amounting to a compelling change. The guidelines currently establish a starting point based on the quantity of drugs, which is the major factor in assessing the involvement in drug trafficking. The alleged change of circumstance does not go to the quantity of drugs but to the purpose for which they are imported, and yet, as Shahnowaz, McKenzie and Richards and other cases show, that is a feature of personal mitigation which is not taken into account in assessing the starting point. The argument that new investigative techniques constitute a change of circumstance is therefore founded on the same misconception as the other two factors relied upon.
52. We also note that Jersey Customs and Immigration Service drew the attention of the Royal Court to the English guidelines in sentencing cases, noting that the nature of the supply was sometimes a more significant factor than the amount of the drug concerned. This seems to have been endorsed by the Royal Court. Between paragraphs 65 and 69 of its judgment in

Grzegorska, extensive references were made by the Royal Court to the English guidelines with the summary that the factors were generally of utility when assessing an offender's culpability. This approach would significantly alter drug sentencing policy as has been applied by the Jersey Courts for the last twenty years or more. There would, in our judgment, need to be a much more extensive review of the desirability of taking into account those various factors before embarking on that course. It is, for example, all too easy for an offender to claim that he or she has been placed under personal pressure because of a drug debt owed or because of threats against him or his family, and far too difficult for the Crown to negate such assertions. It is quite understandable, therefore, that for many years the Royal Court has taken the view that, as part of the emphasis on deterrence, the culpability of the offender is not reduced when his offending is engaged by pressure, coercion, intimidation and / or control.

53. One can well understand how in England and Wales, given the size of the jurisdiction, a more personalised approach to culpability may be relevant. In Jersey, however, the underlying thinking for very many years has not been to address the offender's personal culpability in such a direct way, but instead to have regard to the desirability of keeping illegal drugs out of the island as far as possible. There may well be a debate to be had as to whether the result of this policy coupled with the success of law enforcement in intercepting a number of drug importations has driven up the price of drugs making the island a more attractive market for major drug importers and is therefore counterproductive. In considering that argument, one would also have to have regard to whether the price of the drugs is a significant inhibiting factor for those who are minded to take them. We express no conclusions on this issue in itself, because it would be more helpful for the Royal Court to identify why it was reaching the conclusions it did, but certainly such a significant change to drug sentencing policy requires in our judgment more justification than is apparent from a simple reference to English sentencing guidelines, especially so when laid alongside the existing starting point ranges of Rimmer, Bonnar and Campbell.
54. In this context, we note that the Royal Court in Grzegorska rightly sought the views of different Jersey agencies – Probation, the Drug and Alcohol Service, the Customs and Immigration Service, the States of Jersey Police, the Governor of HM Prison, La Moye and the director of the Public Health Department. It is very noticeable that those agencies were not agreed on the right course to follow.
55. We do, however, note from paragraph 53 of Grzegorska that the States of Jersey Police appear to have advanced the view that one cannot treat all Class A drugs the same. However sympathetic one may be to the practicality of such an argument, the courts' approach to that question was settled by this court as long ago as 2001: Bonnar at paragraphs 13 to 17. It was then held that it was a matter for the States as the legislature to draw distinctions if it thought them advisable, but that in the interim all the drugs in Class A fell to be treated in the same way.

56. To sum up, in *Grzegorska*, the Royal Court sought to reduce the prospective starting points in some cases where the importation was up to ten grams of Class A drug. It seems to us in short, with respect to the Royal Court, that where the importation was for personal use only, it was quite unnecessary to reduce the starting point. That mitigation could be taken into account and give rise to a sentence as the Royal Court (or perhaps, as may be settled in guidelines issued by the Magistrate in consultation with the Royal Court, the Magistrate's Court) thought appropriate in all the circumstances, subject of course always to the ability of the defendant, or the Attorney General on a reference, to appeal to this Court. The flexibility which the Royal Court clearly desires, as expressed in *Grzegorska*, already existed and we would therefore not endorse the variation in the Rimmer guidelines as proposed by the Superior Number. In so saying, we recognise the view of a majority of the Jurats of the Royal Court that where there is an importation of Class A drugs for personal use there should be sufficient flexibility that might enable the court to impose a low custodial or even a non-custodial sentence. In our judgment, while it follows from leaving the Rimmer guidelines undisturbed that the custodial threshold is undoubtedly passed in all these offences, the mitigation for personal use is capable in principle, in an appropriate case, of enabling a non-custodial outcome by a reduction from the Rimmer starting point that other sentencing options become possible.
57. In submissions to the Royal Court in *Grzegorska* and before us, the Crown submitted that "the existing Court of Appeal sentencing guidelines for drug trafficking offences in respect of Class A drugs might benefit from clarification by the Court of Appeal that sentencers are able to exercise a greater degree of discretion when dealing with very small amounts of Class A drug imported in circumstances where, on the evidence, the assertion that the drug was entirely for the personal consumption of the importer or, at most, for sharing with a single and close personal associate of the importer, cannot be disputed". This judgment should be read as providing that clarification, and as rejecting the need for formal amendment or variation of the Rimmer/Bonnar guidelines as proposed in *Grzegorska*. The sentence in this case
58. We now turn to the Respondent's offending and to our assessment of the sentence imposed, bearing in mind that our function on a reference such as this is to determine if the sentence imposed fell outside the range of reasonably appropriate sentencing responses.
59. As we have explained, the sentence passed in this case is not challenged by the Crown, in the light of developments that have occurred since it was passed. These include, in particular, the updated social enquiry report on the progress made by the Respondent in prison, which of course is new material not available to the sentencing court. The updating report is all positive. It illustrates that the Respondent is not only remorseful about and cognisant of the consequences not only for her but for those close to her as a result of her offending, but has also taken very positive steps to address her addictions. We agree with the Crown's position and in those circumstances can deal relatively briefly with the relevant considerations.

60. In our judgment the Royal Court was entirely right to choose a starting point of seven years imprisonment. This was in accordance with the Rimmer guidelines. Furthermore, the Royal Court was right not to increase the starting point, having regard to the cannabis and Diazepam charges. The amounts of cannabis were below the lowest Campbell category, thus implying a starting point of less than two years. Indeed it might well have signalled a non-custodial sentence as appropriate for that offending. It follows that an uplift in accordance with Valler v Attorney General [2002] JLR 383 would not have been appropriate in relation to the MDMA starting point. Furthermore, in our judgment the cannabis supply adds nothing to an assessment of the Respondent's role and involvement in drug trafficking. A starting point of seven years came unobjectionably within the exercise of the Royal Court's discretion.
61. As to her personal mitigation, the Respondent could assert: (i) Her guilty plea to the drugs offences at an early stage; (ii) All the material contained in her pre-sentence report; (iii) Her obvious remorse and the other references written on her behalf; (iv) The delay between the first police search and subsequent interview and the eventual bringing of the charges.
62. The Respondent has no mitigation for good character, though her previous offences were not recent and appear not to have related to Class A drugs. The text messages were suggestive of some commercial trafficking. She lied to the police when arrested. Some offences were committed when she knew she was under police investigation, though we recognise that the Royal Court was under a misapprehension when it proceeded on the basis that some of the offending took place whilst the Respondent was on bail.
63. It might well be said that the Respondent was fortunate that the Royal Court took the view that it did as to the sentence to be imposed. However we give considerable weight, as the Crown submitted that we should, to the exemplary progress that the Respondent has made since her sentence was passed. In all the circumstances, it would in our judgement be counter-productive to increase her sentence – an outcome for which, as we have noted, the Solicitor General did not in the end contend. The right way to deal with that is in our judgement to decline to exercise our powers, as we have a discretion to do: see Attorney General's reference No 64 of 2011 (R v Crawford) [2011] EWCA Crim 2178. For these reasons, we dismiss the Reference and leave the sentence of the Royal Court undisturbed. Authorities Court of Appeal (Jersey) Law 1961. Regulation of Investigatory Powers (Jersey) Law 2005. Campbell v AG [1995] JLR 136 Rimmer v AG [2001] JLR 373. Bonnar and Noon v AG [2001] JLR 626. AG v Grzegorska [2024] JRC 151 AG v McKenzie and Richards [2011] JLR 689. Shahnawaz v AG [2007] JLR 221. Finnegan v AG [2004] JLR 179. Morgan v AG [2001] JLR 225. Barras v Law Officers [2021] GCA 045. Richards v Law Officers 2000-02 GLR 247. Styles v AG [2006] JLR 210. AG v Bowman [2024] JRC 181. Valler v AG [2002] JLR 383. R v Crawford [2011] EWCA Crim 2178.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.jerseylaw.je/judgments/unreported/Pages/%5B2024%5DJCA204.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/hm-attorney-general-v-callie-le-guillou-2024>

Prepared on 29 October 2026 · Esheria