

JERSEY / JUDGMENT

The Attorney General v Findlay John Mackay

COURT

Royal Court

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Superior Number Sentencing - importation of drugs - Class A - reasons**[2026]JRC093****Royal Court****(Samedi)****13 April 2026**

Before :

M. H. Temple, Esq.,
Deputy Bailiff, and Jurats Christensen MBE, Le Heuzé,
Opfermann, Entwistle and Berry
The Attorney General
-v-
Findlay John Mackay
Ms C. L. G. Carvalho, Crown Advocate.
Advocate A. E. Binnie for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: 1. On 19 February 2026 we sentenced the Defendant, Findlay Mackay, to four years and four months' imprisonment in relation to one count of importing a Class A drug, namely 69 grams of cocaine, into Jersey contrary to Article 61(2)(b) of the Customs and Excise (Jersey) (Law) 1999. These are the Court's reasons for that sentence. 2. As regards the facts of the offence, the Defendant was 26 years old at the time of the offence and had been born and raised in Scotland. On 2 October 2025 the Defendant arrived in Jersey by plane from Glasgow with his girlfriend. They were stopped by customs officers and, after questioning, their baggage was searched and an iPhone belonging to the Defendant's girlfriend was seized. 3. A strip search of the Defendant was authorised during which the officers noted the presence of lubricant around his anus. He and his girlfriend were arrested and transported to the custody suite at Elizabeth Terminal. The Defendant's girlfriend was also searched but later released without charge following interview. 4. The Defendant produced various packages in clear plastic wrapping containing white powder and, following analysis, these were found to contain a total of 68.75

grams of cocaine with an average purity of approximately 9.8% all of which had been concealed internally. 5. When the Defendant was in custody, white powder debris was also found on the floor, the cell mattress and cell pillow. The remains of a clear plastic wrapping containing white powder was also found on the mattress, which was subsequently confirmed by the official analyst to be 0.04 grams of cocaine of an unknown purity. 6. The Defendant was interviewed on 3 October 2025 during which he claimed that he was forced to import the drugs following threats to burn down his mother's house by a man from Manchester in circumstances where he had run up a drugs debt of approximately £10,000. 7. The Defendant stated that his girlfriend was unaware of the importation but admitted to using his girlfriend's phone to communicate via Snapchat messages with a contact who was involved in the importation. He refused to provide further details about this individual due to alleged threats. The Defendant said that he did not know what was inside the packages. He explained that the wrapping found inside his cell whilst in custody was cocaine for his personal use. 8. A review of the girlfriend's mobile phone was conducted by a police drugs expert and the messages found were, the Crown submits, of a friendly nature not consistent with the account the Defendant gave in interview. In a second interview the messages were put to the Defendant but he refused to comment about them as he did not want to endanger his family. 9. The drugs expert considered that the combined street value of the cocaine seized was between £10,500 and £17,500 and that it would be valued towards the lower end of this range because its purity was low in comparison with typical street level seizures.

10. The Defendant entered a guilty plea on his first appearance at the Magistrate's Court on 6 October 2025 for which we gave him full credit.
11. The Defendant has a lengthy criminal record. He has 60 convictions for a range of offences from 2016 to 2025, including convictions for three drug possession offences in 2017, 2022 and 2025.
12. A Pre-Sentence Report carried out by an officer from the Probation Service noted that the Defendant reported that his father was murdered in August 2013, that he was subsequently diagnosed with ADHD and that he has since experienced issues with his mental health. He was assessed as being at very high risk of re-conviction within the next 12 months and further assessed as posing a risk of harm to intimate partners and men. He was considered as being unsuitable for a probation order and a community service order. Mitigation
13. As regards the alleged threats which the Defendant said had caused him to import the cocaine, there was no corroborating evidence for any of the Defendant's claims of threats to him or his mother. The Court considered that there were no exceptional circumstances in this case which would amount to mitigation reducing the starting point for the sentence.
14. In AG v Goodwin [2016] JRC 165 at paragraph 11, the Court said that there were two reasons for the policy that mitigation will only be given for threats in exceptional circumstances. The first reason is that "the drug trafficker puts himself in this position. If the trafficker is a user himself, he knows perfectly well that he is moving into an illicit world where threats are an everyday occurrence and they are regularly used". The second reason is that in most cases it

is impossible to establish whether the claims of the threats are true. In the recent case of AG v Bowmen

- [2025] JRC 309, the defendant also claimed that her friend's mother's life would be at risk if the defendant in that case did not import the drugs. The Bailiff commented in that case at paragraph 14: "Such threats are simply an occupational hazard of being involved in the drugs trade as the Court has often said." Purity
15. Advocate Binnie on behalf of the Defendant submitted that there should be a discount from the starting point to reflect the exceptionally low purity of the cocaine imported by the Defendant. She filed a table containing purity levels of cases of drugs offences involving cocaine sentenced in the Royal Court in the past ten years, contending that out of a total of fifty-seven cases, the average purity level of cocaine was 65%. She also provided an extract of a report from the UK Government produced in 2019 but updated on 31 March 2021 which stated that the mean purity of cocaine powder at user level in England and Wales was 63% in 2018. Advocate Binnie submitted that purity levels of cocaine in particular regions of the UK were not readily available and the defence had no information on average purity levels in Scotland or Manchester (where the Defendant had collected the cocaine in this case). Advocate Binnie did not submit that the drugs in this case were unsaleable but they were well below average purity levels seen in the last ten years. The only other cases that she had identified involving very low purity levels of cocaine were: AG v Martin
- [2016] JRC 070B (13% purity); AG v Glendewar [2017] JRC 084A (12.8% purity); and AG v Gillespie [2015] JRC 115 (8% purity). Advocate Binnie submitted that the sentence should be reduced in cases of exceptionally low purity as the harm caused by the drugs would be less proportionate to the weight of the drug. She further submitted that uplifts were "routinely" applied in cases where the cocaine was of high purity (over 75%) and fairness therefore dictated that there should be a deduction in the starting point in cases of exceptionally low purity.
16. There was no evidence of harmful additives being included in the drugs imported by the Defendant in this case. Advocate Binnie was critical of an Addendum expert report dated 18 February 2026 provided by an officer from the Jersey Customs and Immigration Service which did not contain information on UK purity levels of cocaine and stated that the sole source of purity data for cocaine seizures locally derived from official analyst reports generated by prosecutions. The Addendum report contained no analysis of whether there were in fact harmful additives in the cocaine imported by the Defendant but did state that recent research had shown that in many cocaine related deaths it was the adulterants used, rather than the cocaine itself, which was the major contributory factor. The officer opined that the Defendant would not have been aware which adulterants were present in the cocaine imported.

17. Advocate Binnie drew the Court's attention to the case of AG v Rhodes [2025] JRC 236, in which Sir Timothy Le Cocq, Bailiff, stated at paragraph 32 to 33: "32. We hope that when we are asked to consider purity in the future, we will have expert advice as to the range of purity of the relevant drug in Jersey and be addressed on any other factors so that the Court can consider whether in any particular case it should apply an uplift for purity. It would also be of assistance to understand what the levels of purity are habitually in the United Kingdom from whence many of the drugs imported into Jersey come."
33. We are conscious that the market changes and we would wish to be addressed on the relevant circumstances if the Crown is suggesting an uplift for purity."
18. Advocate Binnie further submitted that the approach of the Court of Appeal in Rimmer v AG [2001] JLR 373 was outdated and that the Royal Court's approach to purity has since moved on. She relied on AG v Connelly
[2024] JRC 239, a case in which the purity of the cocaine was at 25%. At paragraph 10, Binnington, Commissioner, said: "As we have already noted your basis of plea asserts that you believe the cocaine that you imported to be of relatively low purity, and that it was for personal use and to share with others without charge. In relation to the purity the degree of purity is not always to be ignored. The Court of Appeal's decision in Hasson v AG [2004] JCA 124 made clear that in Rimmer v AG the Court had left open what the position might be if the low degree of purity was known to and taken into account by the defendant."
19. At paragraph 14 of Connelly, the Court took into account the low purity of the drugs, the fact that some of the drugs were for the defendant's personal use, the small quantity of drugs, together with the defendant's personal mitigation and was prepared to reduce the sentence moved for by the Crown, which was 5 years' imprisonment, to 3 years and 6 months' imprisonment.
20. In AG v Reaney [2025] JRC 266, the defendant was sentenced for possession with intent to supply 40.89 grams of cocaine of 19% purity. At paragraph 15 the Court noted that the purity of the cocaine was low in comparison to many cases that had come before the Royal Court and that defence counsel had argued that the Court could properly reduce the starting point. At paragraph 17, the Court said that it thought that it could reduce the starting point of 9 years' imprisonment suggested by the Crown, "somewhat to 8½ years as urged upon us by the defence".
21. In response to the low purity level raised on behalf of the Defendant, Crown Advocate Carvalho filed an addendum sentencing note in response to the table filed by Advocate Binnie to remove from that table a case involving heroin only and cases which were not importations but other drug trafficking offences, such as possession with intent to supply cocaine and supply of cocaine. This was on the basis that cases involving cocaine already circulating in Jersey may have been adulterated and are not of assistance when considering the average purity of cocaine imported into Jersey. The addendum sentencing note table did not include cases where the quantity of cocaine imported was very low, and also only

included one party in cases where the courier had been prosecuted and then the upward supplier subsequently prosecuted so as to avoid double counting. Nevertheless, the figures in the Crown's table needed to be approached with caution as in some cases the importation comprised multiple consignments with varying degrees of purity, but the judgments simply referred to an average purity of the cocaine. Crown Advocate Carvalho's table concluded that the average purity of cocaine imported into Jersey in the last ten years was 72.9% - i.e. higher than the average contended for by Advocate Binnie.

22. Crown Advocate Carvalho noted that in *Rimmer v AG* [2001] JLR 373 at paragraph 30, the Court of Appeal had stated: "We do not consider that there should be a reduction in the starting point where the degree of purity is below the average. Usually, neither the carrier ... nor indeed the dealer have any regard to the degree of purity, and it would not be appropriate to make a reduction in such circumstances."
23. She too relied on the statement at paragraph 10 of *AG v Connelly* that: "The Court of Appeal's decision in *Hasson v AG* [2004] JCA 124 made clear that in *Rimmer v AG* the Court had left open what the position might be if the low degree of purity was known to and taken into account by the defendant."
24. In this case, Crown Advocate Carvalho submitted that there was no evidence to support the contention that the Defendant knew about the low purity of the drugs that he had imported. Nor could he have taken this into account as it was the Defendant's own version of events in interview that he did not know that the substance that he was importing was cocaine.
25. Further, as regards the decision in *AG v Reaney* relied upon by Ms Binnie to say that the Royal Court's approach had changed as regards purity, it was not sufficiently clear from the judgment that the discount of six months was specifically for the low purity of the cocaine in that case. Further, the cocaine in that case was found with creatine powder, a bulking agent. It was therefore probable that the drugs in that case had already been mixed.
26. Crown Advocate Carvalho also drew the Court's attention to paragraph 9 of the case of *AG v Coll* [2018] JRC 047, a case in which the defendant imported 4.36 grams of heroin powder which contained less than 1% by weight of heroin containing diamorphine. JA Clyde-Smith, Commissioner, commented: "9. The case of *AG v Dolan* [2014] JRC 116 involved an accused who had imported 105 grams of powder internally. The powder contained less than 1% of diamorphine. Accordingly in that case the Court stated: "5. We agree with the Court in *Deadman and Hall* that a significant reduction in the sentence which would otherwise be passed should be given where the purity is as low as it is in this case and as it was in that case. But the fact remains that a person in the defendant's position is intending to import a controlled drug and to add to the supply of such drug in the Island with all the undesirable consequences which follow from that. It is no thanks to him that the substance turns out to be so weak that it is, in effect, unsaleable or will give rise to retaliation, or may not even be a controlled drug at all so that the offence is technically one of attempt. We have to say that we think the defendants in *Deadman and Hall* can consider themselves quite fortunate in the

sentences which were passed”."

27. The Court accepted that the cocaine in this case was of exceptionally low purity. However, its decision in this case was that there should be no reduction to the starting point in respect of the low purity of the cocaine imported by the Defendant, consistent with the approach in Rimmer. It did not consider that it was sufficiently clear from the judgments in Reaney and Connelly that the Royal Court's approach to purity had changed. It accepted that it might be appropriate to reduce the starting point in circumstances where the defendant knew that the drugs that he was importing were of low purity. However, the Court was not persuaded that it should reduce the starting point where the Defendant in this case did not know the purity level of the cocaine. As a courier, the Defendant was intending to import a controlled drug and add to the supply of drugs in the Island. The Defendant should not therefore have the benefit of mitigation for something that was outside his knowledge.
28. The Court considered that the expert's Addendum Report was admissible but gave its contents no weight as it did not assist the Court with any information concerning harmful adulterants that might have been mixed with the cocaine in this case. For future cases it would be helpful to have evidence of whether cocaine contained harmful adulterants in cases involving low purity, particularly in cases where there was evidence of the defendant's knowledge of low purity drugs. The Court further considered that it was not accurate that uplifts for exceptionally high purity were "routinely" added to the starting points for sentences involving drugs of exceptionally high purity. Whilst it was correct that potential uplifts were routinely considered in cases involving cocaine of over 75% purity, uplifts were not routinely applied.
29. In summary, the Court considered that a starting point of nine years' imprisonment was appropriate. Personal mitigation
30. The Defendant had considerable personal mitigation available to him to reduce the starting point substantially. The Court gave a full one-third discount to the starting point in respect of the Defendant's guilty plea that was entered at the first opportunity in the Magistrate's Court. The Defendant was a simple courier. This was his first drug trafficking offence and his previous drug offences were simple possession offences. He was still of a relatively young age.
31. In addition, the Defendant's father was murdered when he was thirteen which had caused him to go off the rails. The trial in relation to his father's murder had taken place when the Defendant was sixteen and he had found the trial traumatic. Two young men were convicted for the murder who were known in a tight local community. The Defendant had been addicted to heroin between the ages of eighteen and twenty before moving to a prescribed opiate. The Defendant had experienced significant mental health problems, and he had a diagnosis of possible PTSD which had not been followed through or treated.

32. At the time of the offending, he had been working hard to become drug free and had achieved that, in that he had achieved abstinence for four months prior to the offence. However, on the anniversary of his father's death, he had succumbed to drugs which had resulted in the drug debt of £10,000 and he had other debts of £30,000. His level of desperation was evidenced by his use of cocaine even whilst being held in the custody cell following his arrest in Jersey. The offence was one of naivety. He had been instructed to go to stay at the Radisson Hotel but he had not been provided enough money to afford this. The Defendant had provided a letter of remorse, a letter from his mother and a reference from his stepfather offering him work on a fishing vessel. The Defendant wanted to be free of drugs and debt so that he could start work on his stepfather's fishing vessel. He felt particularly guilty for getting his partner involved, although she continued to stand by him.
33. The Defendant was remorseful for this offence and felt that this was the worst offence that he had ever committed. In prison, he had a job in the workshop and was seeing a drug and alcohol worker. He now had some support for PTSD and was awaiting an appointment with Dr Hillier. He had made admissions when stopped and was cooperative with the officers. He had provided the PIN code to the iPhone, had signed bank disclosure authorities and had exonerated his girlfriend. As regards the allegedly "friendly nature" of the texts found on the phone, the Defendant had just been keeping the persons concerned "sweet". Ms Binnie urged the Court to impose a sentence of less than four years as this would mean that her client would become eligible for early release in Scotland after serving 40% of his sentence, assuming that his sentence could be served in Scotland. Sentence
34. The Court sentenced the Defendant on the basis that he was a courier with no ownership interest in the drugs imported. Whilst the Court was not prepared to reduce the sentence by reference to Scottish sentencing policy, the Court was prepared to reduce the sentence moved for by the Crown substantially to reflect the mitigation advanced on the Defendant's behalf by Advocate Binnie and all of the other mitigation available to the Defendant in this case. The lowest sentence which the Court considered as accurately reflecting the seriousness of the offending in this case was a sentence of 4 years and 4 months' imprisonment.
35. The Court also ordered the forfeiture and destruction of the drugs imported but not the iPhone belonging the Defendant's girlfriend. It made no order for confiscation on the basis that the Defendant had no personal interest in the value of the drugs imported and it made no order for costs in view of the financial circumstances of the Defendant. Authorities Customs and Excise (Jersey) (Law) 1999. AG v Goodwin [2016] JRC 165. AG v Bowmen [2025] JRC 309. AG v Martin [2016] JRC 070B. AG v Glendewar [2017] JRC 084A. AG v Gillespie [2015] JRC 115. AG v Rhodes [2025] JRC 236. Rimmer v AG [2001] JLR 373. AG v Connelly [2024] JRC 239. AG v Reaney [2025] JRC 266. AG v Coll [2018] JRC 047.

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