

**IN THE CROWN COURT IN NORTHERN IRELAND**

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**THE QUEEN**

**-v-**

**JAMES FRANCIS McDONNELL and ARTHUR MICHAEL FEARON**

**Defendants**

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**STEPHENS J**

[1] Arthur Michael Fearon on 24 September 2012 by a unanimous jury verdict you were found guilty of being knowingly concerned in that part of a cigarette smuggling operation which occurred in a warehouse at Low Road, Meigh, County Armagh on 29 June 2010 contrary to Section 170(2) of the Customs and Excise Management Act 1979 (“the offence”). You were on bail prior to and during the course of the trial. After the prosecution case had closed and you had decided not to give or to call evidence you failed to attend court. I adjourned the trial to allow time for enquiries to be made. A bench warrant was issued for your arrest. I decided to proceed with the conclusion of the trial in your absence and as I have indicated you were convicted of the offence. I adjourned imposing sentence until the conclusion of the case against your co accused. That case concluded on 12 September 2013. The question then arose as to whether I should impose sentence on you in your absence. On 20 September 2013 I ruled that I should proceed to impose sentence despite your continued absence.

[2] James Francis McDonnell you were also tried in September 2012 in respect of the offence. The trial commenced on 7 September 2012 and concluded on 24 September 2012. The jury was unable to reach a verdict. You were retried in December 2012 with the trial commencing on 10 December 2012 and concluded on 13 December 2012. Again the jury was unable to reach a verdict. You were tried again in September 2013. The jury was sworn on Friday 6 September 2013 but on the application of the parties I did not put you in charge of the jury until Monday 9 September 2013. All the evidence was concluded by Tuesday 10 September 2013. Various legal issues were dealt with on Wednesday 11 September 2013 together with

closing speeches and the majority of my charge to the jury. On 12 September 2013 by a unanimous jury verdict you were found guilty of the offence.

### **Factual background to offence**

[3] James Francis McDonnell you are an HGV driver and on 29 June 2010 you went to Butterly Retail Park, Dundalk, Ireland, where CCTV images recorded you connecting an articulated lorry's tractor cab, registration number 03KE 2913, to a trailer carrying a Tex sea container. From the events that subsequently occurred, it can be calculated that there were then inside the Tex sea container 8.38 million counterfeit Benson & Hedges Gold Brand cigarettes. You then drove that vehicle and the cigarettes from Dundalk across the land border to Bridgeview Industrial Estate, Low Road, Meigh, County Armagh, Northern Ireland. This is a small industrial estate with some units at the rear together with some four units at the front facing a relatively minor public road in close proximity to the land border with Ireland. There is a sign for a business over one of those four units at the front but no sign over the remaining three units, all of which had roller shutter doors. You drove the lorry into the centre unit of the three units. The roller shutter door was closed but you kept the engine of your lorry running. There were a number of people in that unit together with two other and smaller box type lorries. Those in the warehouse were in the process of moving the cigarettes from the Tex sea container to the smaller box type lorries when customs officers and police officers arrived at the location.

[4] The police and customs officers started the process of checking all the units at the industrial estate and during the course of that exercise Constable Mahood heard the sound of a lorry's engine inside the unit. He and another constable approached the heavy steel roller shutter doors which were closed. Constable Mahood kicked the shutter door and it opened about 6 inches and then closed again. He then kicked it again and it opened again about 6 inches. He got down on his hands and knees and looked under the door. He could see a lorry at the rear of the warehouse and several pairs of feet running around. He then radioed to other police that there were people at the front of the premises. Suddenly he heard the revs of the lorry's engine rise. He jumped clear of the doorway and a white rigid box lorry crashed through the door and knocked him over. He landed approximately 12-15 feet away from the door.

[5] Constable Duffy was standing outside the roller shutter door at the time that the lorry crashed through it. It was his obligation to keep a watch on the road and on the fields. He was therefore looking away from the direction of the unit. He was struck by the lorry. He fell to the ground. He was dragged along. He was pulled into the motion of the wheel and the wheel went over him. He screamed for someone to come and help him. He was attended to by other officers in the area. The lorry turned right and raced off at high speed towards the land border with Ireland. The driver of the lorry ignored a police officer with a drawn side arm who

directed him to stop. The lorry was subsequently found overturned a short distance across the land border at Carrickcarnon, County Louth. The driver was not detained. The white rigid box lorry was found to contain some 4.99 million cigarettes.

[6] After the white rigid box lorry had crashed out through the roller shutter doors of the unit all the other people who had been inside came out from under the damaged roller shutter doors and started to run away. The exact numbers who came out cannot be stated with certainty except to say that there were between 5-10 people. There were large numbers of police and customs officers in the area. You James Francis McDonnell were instructed to stop and you complied. Force had to be used in respect of you, Arthur Michael Fearon, to affect your arrest. All the other individuals who ran out of the unit made good their escape across the land border.

[7] Both you, James Francis McDonnell, and you, Arthur Michael Fearon, were subsequently interviewed by first the police, and then customs officers and neither of you explained what you were doing inside the unit. Neither of you co-operated.

[8] The police investigation included the collection of forensic evidence from inside the unit, from the various vehicles involved, and from the boxes which contained the cigarettes. The forensic evidence was initially under the control of the police who were primarily concerned with the investigation concerning the injuries sustained by the two police officers when the lorry crashed out through the roller shutter doors. It was the responsibility of the customs officers to deal with the offence. There was a failure of coordination in relation to the forensic evidence between the customs officers who were responsible for the investigation of the offence and the police who were responsible for the investigation of any offence relating to the injuries sustained by the police officers. In the event neither the police nor the customs officers made a request that the forensic evidence be analysed. At the first trial those appearing on behalf of the prosecution assumed that the forensic evidence had been analysed and that it had been found that there was no forensic evidence implicating either defendant. The lack of any analysis of the forensic evidence only came to light during the first trial when senior counsel for the defendant, James Francis McDonnell, asked junior counsel for the prosecution as to the state of the forensic evidence. Junior counsel initially responded that it had been analysed but nothing had been found implicating either defendant. However he caused an inquiry to be made and it transpired that his assumption was incorrect. He immediately informed defence counsel. After the jury were unable to reach a verdict in relation to you, James Francis McDonnell, the prosecution then analysed the forensic evidence and shortly before the retrial was scheduled to start the prosecution served additional forensic evidence which evidence was said to establish that you had driven the lorry from Dundalk to the unit. You James Francis McDonnell did not have time to analyse that evidence prior to the start of the trial. An application was made to me by the prosecution to adjourn the second trial on the basis that the prosecution had just served forensic analysis and to permit those

representing you James Francis McDonnell time to carry out their own investigations in relation to that evidence. I refused that application. By the date of the second retrial your representatives had an opportunity to examine the forensic evidence and in view of that evidence you admitted that you were the driver of the lorry from Dundalk to Low Road, Meigh. The questions for the jury in all three trials included a question as to whether the prosecution had proved beyond reasonable doubt that the defendant was concerned in any way (that is the physical element of the offence: the defendant has to have done something). At the first trial that was in issue in relation to both of the defendants. It remained in issue at the second trial in relation to you James Francis McDonnell. Subsequently at the third trial you, James Francis McDonnell, admitted that you were the driver of the lorry from Dundalk to Low Road, Meigh. Accordingly though that issue, and all the issues, were left to the jury there was no dispute in the third trial but that you were concerned. The only substantive question for the jury in the third trial was as to whether the prosecution had proved the mental element of the offence.

[9] The failure to have the forensic evidence analysed at an appropriate stage was a factor which contributed towards there being two retrials in relation to Mr McDonnell. There should be a clear policy in cases such as this as to whether the police or the customs officers are responsible for organising any forensic examination. The prosecution should check at an appropriate time as to whether a forensic examination has taken place and if so what was the outcome of that examination.

[10] No United Kingdom duty had been paid on the 8.38 million cigarettes. The amount of duty has been calculated as being £1,629,993.80. No VAT had been paid on the cigarettes. VAT would have amounted to £392,522.76. The total including VAT was £2,022,516.56 however the evasion of VAT is not a part of the offence. Accordingly I proceed on the basis solely of the amount of duty evaded.

[11] Neither of you were the organisers of this smuggling operation. You, James Francis McDonnell, played an important role at a crucial stage of the smuggling operation transporting the cigarettes from Ireland to Northern Ireland which clearly indicates that you were a trusted individual within the organisation. You, Arthur Michael Fearon, played a less important but all the same a significant role in the distribution of these cigarettes which role I consider to have been one of facilitating breaking bulk by the movement of the cigarettes from the Tex sea container to the smaller lorries.

### **Sentencing guidelines in respect of the offence**

[12] The maximum sentence for being knowingly concerned in the fraudulent evasion or attempt at evasion of duty chargeable on cigarettes contrary to Section 170(2) (a) of the Customs and Excise Management Act 1971 is seven years though in certain circumstances which do not apply here there can be enhanced penalties, see

section 170(4) & (4A) and schedule 1. The prosecution state that the offence is neither specified nor serious within sentencing provisions in the Criminal Justice (Northern Ireland) Order 2008.

[13] I seek to apply the principles set out in R v Jozef Eugene Czyzewski [2004] 3 All ER 135, [2004] 1 Cr App R(S) 49. In that case the Court of Appeal in England and Wales set out guidelines in relation to sentencing for offences involving the evasion of duty on imported goods. The guidelines are for sentences following a trial for a defendant with no relevant previous convictions and disregarding any personal mitigation. The Court stated that the principal factors in gauging the seriousness of such an offence are the level of duty evaded, the complexity and sophistication of the organisation involved, the function of the offender within that organisation and the amount of personal profit to the particular defendant. An offence will be aggravated if the offender:

- (a) played an organisational role
- (b) made repeated importations, particularly in the face of a warning from the authorities
- (c) was a professional smuggler
- (d) used a legitimate business as a front
- (e) abused a position of privilege
- (f) used children or vulnerable adults
- (g) threatened violence to those seeking to enforce the law
- (h) dealt in goods with an additional health risk because of possible contamination
- (i) disposed of goods to under age purchasers

[14] At paragraph 9 of the judgment in R v Jozef Eugene Czyzewski Lord Justice Rose stated:-

“9. We adopt the Panel's suggestions that, following trial, for a defendant with no relevant previous convictions and disregarding any personal mitigation, the following starting points are appropriate:

- (i) where the duty evaded is less than £1,000, and the level of personal profit is small, a moderate fine, if there is particularly strong mitigation, and provided that there had been no earlier warning, a conditional discharge may be appropriate;
- (ii) where the duty evaded by a first time offender is not more than £10,000, which approximately

equates to 65,000 cigarettes, or the defendant's offending is at a low level, either within an organisation or persistently as an individual, a community sentence or curfew order enforced by tagging, or a higher level of fine; the custody threshold is likely to be passed if any of the aggravating features which we have identified above is present;

- (iii) where the duty evaded is between £10,000 and £100,000, whether the defendant is operating individually or at a low level within an organisation, up to nine months' custody; some of these cases can appropriately be dealt with by magistrates, but others, particularly if marked by any of the aggravating features which we have identified, should be dealt with by the Crown Court;
- (iv) when the duty evaded is in excess of £100,000, the length of the custodial sentence will be determined, principally, by the degree of professionalism of the defendant and the presence or absence of other aggravating factors; subject to this, the duty evaded will indicate starting points as follows: £100,000 to £500,000, nine months to three years; £500,000 to £1 million, three to five years; *in excess of £1 million*, subject to the comment we have made earlier where many millions of pounds are evaded, *five to seven years*". (emphasis added)

[15] The earlier comment referred to by Lord Justice Rose as to many millions of pounds being evaded was that it may be appropriate to impose consecutive sentences or alternatively, to charge an offence of cheating the public revenue for which the maximum sentence is life imprisonment, rather than charging the offence under Section 170.

[16] Lord Justice Rose in paragraph 10 went on to stress two matters namely:-

"10 ... First, our proposals provide guidelines, not a straitjacket. Secondly, from the starting points indicated, sentencers can be expected to move up by reference to aggravating factors, or down, by

reference to mitigating factors, particularly a prompt plea of guilty and co-operation.”

[17] In R v Grew & Ors [2011] NICA 31 the Court of Appeal recorded that two of the accused entered pleas on the basis that they were labourers engaged to unload cigarettes from the lorry and that the defendants Grew and Abernethy were present at the time of the recovery of the items but that neither was an importer or organiser. The trial judges imposed terms of imprisonment on all of the defendants but those sentences were suspended. In addition confiscation orders were made. The defendants appealed against the confiscation orders, but not against the suspended sentences. The prosecution argued that it was open to the Court of Appeal to increase a sentence where a defendant appeals and that the sentences should be increased as they were unduly lenient. The Court of Appeal held that it could increase the sentence on appeal by a defendant but that it was a course which should only be taken in exceptional circumstances. The Court of Appeal further indicated that the course taken by the sentencing judges resulted in lenient sentences, but that having regard to the whole course of the proceedings it would be unfair in the circumstances to intervene by way of increase of the sentences in the Court of Appeal. In giving the judgment of the Court of Appeal Girvan LJ stated:

“[44] However, having regard to the quantity of the smuggled goods, the degree of organisation involved in the enterprise and the amount of duty evaded we consider that a lengthy custodial sentence should be the norm. We are not convinced that the circumstances of these cases were sufficiently exceptional to justify the leniency shown by the sentencing judges in suspending the sentences. This type of smuggling activity represents a heavy drain on the public exchequer, involves complex and expensive investigation, and results in criminals making substantial profits at the expense of the public and legitimate trade. Accordingly, we consider that it should normally attract a substantial deterrent custodial sentence.”

Accordingly the offence for which each of you has been convicted should normally attract a substantial deterrent custodial sentence. There is no feature in this case which would lead me to depart from the normal and accordingly I will impose a substantial deterrent custodial sentence.

[18] I agree with the various reasons for the seriousness of this type of offence which have been set out by His Honour Judge McFarland at paragraph 4 of his judgment in R v Ashok Kumar [2013] NICC 12.

[19] In this case the total amount of the duty evaded amounts to £1,629,993.80. Accordingly applying the guideline in R v Jozef Eugene Czyzewski to this case, and subject to the qualification at the start of paragraph 9 (iv) of the judgment of Lord Justice Rose and also the qualification in paragraph 10 of his judgment, the sentence for both of you (before mitigating and aggravating factors and before taking into account the sentencing provisions as to youth) falls into the bracket of a term of imprisonment of 5 – 7 years. The suggested guideline of between 5 and 7 years allows for a distinction of 2 years between offenders with different levels of culpability. It could be suggested that this is a rather narrow range to accommodate the differences between:

- a) those who control the operation and those who play a much lesser role
- b) differences in amount from a million to many millions and
- c) the presence or absence of the aggravating features in paragraph [13] (a) – (i)

However there are two points. The first is that the guideline is not a straitjacket and in an appropriate case one could impose a starting point of less than 5 years or having adopted a starting point of 5 years adjust the sentence down. Second the guideline emphasises that *any participation at any level* in an offence involving this amount of duty is ordinarily to be viewed as serious warranting a substantial custodial sentence.

[20] The date of birth of you, Arthur Michael Fearon, is 12 August 1992. You were 17 years 10 ½ months old at the date of the commission of the offence, 20 years and one month at the date of your conviction and you are now 21 years and 2 months. Your age at the date of the commission of the offence means that you were then a child, see Article 53(6) of the Justice (Northern Ireland) Act 2002. Since the commission of the offence you have crossed a significant age threshold but the sentence that I should impose on you is that which you would have been likely to receive if you had been sentenced at the date of the commission of the offence, R v Ghafoor [2002] EWCA Crim 1857. There would have to be good reasons to approach the sentencing exercise on any other basis and the prosecution accept that there are no such reasons in your case. Accordingly I will sentence you as if you were 17 years and 10 ½ months. The sentencing principles for a child are that a sentence of detention should be a last resort and for the minimum period necessary. I seek to apply the principles enunciated by the Court of Appeal in R v CK [2009] NICA 17.

[21] The impact on children of sentencing a parent offender was considered by the Court of Appeal in England and Wales in the case of R v Rosie Lee Petherick [2012] EWCA 2214, [2013] 1 Cr. App R.(S.) 116. The principles which I seek to apply are set out at paragraphs 16 to 25 of that judgment. The article 8 rights of the children are clearly engaged. At paragraph 24 Hughes LJ stated that:



“In a case where custody cannot proportionately be avoided, the effect on children or other family members *might* afford grounds for mitigating the length of sentence, but it may not do so. If it does, it is quite clear that there can be no standard or normative adjustment or conventional reduction by way of percentage or otherwise. It is a factor which is infinitely variable in nature and must be trusted to the judgment of experienced judges.”

[22] The effect of bail conditions may be a mitigating factor. In R v Glover [2008] EWCA Crim 1782 the Court of Appeal in England and Wales acknowledged that this was a matter which the court could take into consideration in a case where the bail conditions amounted to virtual house imprisonment. Hughes LJ said at paragraph 14:

“The judge was asked to make this adjustment. Clearly after thought, he did not do so. The question for us is whether that was wrong in principle. It seems to us that the judge was quite entitled to decide that the onerous conditions of Glover's bail did not put him in a position equivalent to being in prison, where no doubt he would have been in the hospital. It is perfectly true that bail on conditions which amount to house arrest are not conditions which individuals would choose to have applied to them, but the judge was entitled to say that it is distinctly different from being in prison. In prison Glover would not have been in his own home; he would not have had his own things around him; he would not have been attended by his own family. He would have been subjected to a very much more severe regime — prison officers, institutional treatment, security and limited visits. It is possible that in some circumstances a judge might be persuaded by the facts of a particular case to make some modest adjustment in the final sentence in circumstances of this kind, but it seems to us that that is a question for assessment by the judge in each case. This judge was, we are quite satisfied, perfectly entitled to say that this was not the same as being in prison. He cannot be criticised for taking that view. Indeed, if he had shortened Glover's sentence on this ground this court might have been faced with an

argument from Jones that an illegitimate distinction had been created between them.”

[23] In relation to any period of imprisonment I am required by Article 8 of the Criminal Justice (NI) Order 2008 to specify in relation to each sentence the custodial period at the end of which you are to be released on licence. It is provided by Article 8(3) that the maximum custodial period is one half of the term of the sentence. Accordingly by law there is no discretion in that I cannot impose a custodial period of more than one half of the term of the sentence. The exercise of discretion in relation to the appropriate licence period was considered by the Court of Appeal in DPP’s Ref No 2 of 2013 [2013] NICA 28. At paragraph [31] Morgan LCJ delivering the judgment of the court stated:

“The duration of the licence period is dependent upon the assessment by the judge of the effect of probation supervision in protecting the public from harm from the offender and preventing his commission of further offences. It is apparent from the test that the source of the material upon which to exercise the judgment is likely to be found particularly in the pre-sentence report although sources such as expert reports may also be available. When a judge decides to impose a period of licence in excess of the minimum period of 50% of the determinate sentence he should give brief reasons for that decision which will often include reference to matters contained in the probation or other relevant reports. Where he rejects such a submission he should also give reasons. That is necessary to make the sentence transparent.”

There was no submission on behalf of either of you that the licence period should be in excess of 50% of the determinate sentence.

**Your responses at police interview, your personal circumstances and consideration of remorse.**

[24] You, James Francis McDonnell, did not co-operate during the police and customs officers interviews. You were born on 10 November 1971. You are 41. You have had steady employment throughout your life in a variety of jobs. Recently you have been working with your brother in the livestock trade. You are married with two young children. You enjoy a stable family life and a stable life in the community. You regret your involvement in the offence which you still assert was unwitting. You concede that you suspected that what you were requested to do was somewhat “dodgy.” The probation board assess, and I agree, that your remorse is

centred on the position that you find yourself in, rather than for your involvement in the offence. You have been assessed as a low likelihood of reoffending and as not presenting with a significant risk of serious harm to others. I am certain, given all that has been said in the references, your stable home and working life that you play an important role as a father providing a secure environment within which your children can develop.

[25] You, Arthur Michael Fearon, did not co-operate during the police and customs officers interviews. I do not have the benefit of a pre-sentence report in relation to you due to the fact that you have absconded. Your counsel has explained to me that you are the second child in the family and showed signs of academic ability at school. You intended to obtain employment in the construction industry and had a period of employment on a fishing trawler. You are stated to suffer from migraine headaches and depression. You are also stated to be very naïve and easily led.

### **The starting point**

[26] In relation to the principal factors identified in R v Jozef Eugene Czyzewski in gauging the seriousness of the offence, the amount of duty involved was £1,629,993.80, the organisation was both complex and sophisticated, you James Francis McDonnell played an important role at a crucial stage of the smuggling operation as the driver of the lorry transporting the smuggled cigarettes and you Arthur Michael Fearon played a less important but all the same a significant role in the distribution of these cigarettes. Neither of you were involved in planning or organising the offence. Neither of you were the controlling mind of this operation. I consider that neither of you personally profited from the operation except by payment for the work that you did. I fix the starting point in relation to you James Francis McDonnell at 6 years.

### **Aggravating features in relation to the offence**

[27] None of the specific aggravating features set out at (a) to (i) of paragraph 13 of this judgment are present in either of your cases.

[28] It is contended by the prosecution that there is an aggravating feature that these were counterfeit cigarettes not subject to industry regulated standards which means that there was the potential for additional risks to human health. This feature would be an aggravating feature in relation to anyone who knew that the cigarettes were counterfeit. Such persons would include those who controlled the operation. There is no evidence that either of you knew that the cigarettes were counterfeit and neither of you were in control of the operation. It is not an aggravating feature in relation to either of you.

[29] The prosecution also submit that the injuries which were sustained by the two police officers are an aggravating feature. Neither of you inflicted those injuries nor is there any evidence that you were responsible for them in any respect. It is not an aggravating feature in relation to either of you.

### **Mitigating features in relation to the offence**

[30] There are none.

### **Mitigating features in relation to the offender**

[31] Mitigating features in relation to you James Francis McDonnell

- a) You have a clear criminal record. You have produced many references to the effect that you are a reliable individual who is a trusted business man.
- b) Your personal circumstances including the circumstances of your wife who suffers from depression and has difficulty in coping with family pressures particularly in your absence.
- c) The effect on your children during their formative years of which there is clear evidence as set out in the report of Damien McCullagh, Consultant Forensic Clinical Psychologist.
- d) It has been suggested on your behalf that the bail conditions with which you complied over an extended period of time is a mitigating feature. Your bail conditions initially required you to live in Coalisland and then in Hilltown. This disrupted family life. The conditions included a requirement that you report to the police four times a week and in compliance with that requirement you presented to the police in the region of 400 times. You were confined to your home address between 9 pm and 6.30 am with an obligation to present at the door during those hours if requested to do so by the police. You deposited a cash surety of £10,000. You were excluded from a defined area of South Armagh. I do not consider that in the circumstances of this case this is a mitigating feature.
- e) It has also been suggested that you had to endure three trials. The fact that you endured three trials in part was due to a failure by the prosecution to produce all relevant evidence in time for the first or in time for the second trial. I have seen you in court and I accept that you had to endure the emotional pressure of three criminal trials including the delays that were consequent on that. I am prepared to give some modest adjustment for this. Contesting a charge can never be and is not in your case an aggravating feature. However when a person is found guilty and seeks to rely on a mitigating feature it is appropriate to assess that feature by reference to what

the individual could have done. The modest adjustment is on the basis that you could have adopted the simple expedient of co-operating with rather than attempting to frustrate the criminal investigation.

- f) It has also been suggested that there was delay on the part of the prosecution before the first trial. I do not consider that to be a factor appreciably affecting the sentence which I will impose.
- g) It has also been contended that the method you adopted of agreeing statements and evidence and therefore shortening the trial was a factor in mitigation. I accept that could be a mitigating factor in some cases but not your case. What occurred was what was appropriate and ordinary. The first trial could also have been shortened. The agreement of witnesses could have come at an earlier stage. You could but did not co-operate with the criminal investigation.

[32] Mitigating features in relation to you Arthur Michael Fearon

- a) Your youth in that you were 17 years and 10 ½ months at the date of the commission of this offence. I accept that you were naïve and impulsive.
- b) You have a clear criminal record.
- c) It has been suggested that there was delay in bringing you to trial. I do not consider that to be a factor appreciably affecting the sentence which I will impose.

#### **Aggravating features in relation to the offender**

[33] There are none in relation to either offender.

#### **Balance of aggravating and mitigating features in respect of the offence**

[34] There are no aggravating features in relation to either of you. There are mitigating features.

#### **Conclusion**

[35] In relation to you James Francis McDonnell I impose a sentence of 5 years and 6 months. Prior to this offence I have no doubt that due to your stable and reliable character you would have been assessed as a low risk of committing the offence and as presenting no harm to the public. Yet you did commit the offence. You are now, as you would then have been, assessed as a low risk of re offending and as not presenting with a significant risk of serious harm. You do not appear to have insight into the serious damage that this offence causes to others, for instance legitimate

traders. In those circumstances I fix the custodial period at one half of the term of 5 years and 6 months. At the end of that custodial period the Secretary of State shall release you on licence. That licence may be revoked.

[36] In relation to you Arthur Michael Fearon in view of your youth a sentence of imprisonment should be a last resort. I consider given the seriousness of the offence and the need for deterrence that a sentence of imprisonment should be imposed. I am also required to impose a sentence for the minimum period necessary and given the seriousness of the offence, the need for deterrence and the mitigating factors I consider that the minimum period necessary is a period of 2 years. You did not comply with your bail conditions. I do not consider that you would comply with probation supervision. I fix the custodial period at one half of the term of 2 years. At the end of that custodial period the Secretary of State shall release you on licence. That licence may be revoked.