

ROYAL COURT

17th February, 1992

23.

Before: Bailiff and Jurats Coutanche and  
Orchard

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Police Court Appeal

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Her Majesty's Attorney General

-v-

Alexander McLees

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Appeal against sentence of 4 months imprisonment imposed  
in respect of 1 count of breaking and entering with  
intent.

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Advocate Mrs. S.A. Pearmain on behalf of the Attorney General  
Advocate Miss D. Sowden for the Appellant

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**JUDGMENT**

**BAILIFF:** The appellant in this case appeals against a sentence of 4 months imprisonment imposed on the 7th January 1992, by the Magistrate in respect of a breaking and entry by night at commercial premises in St. Helier with intent to commit a crime. The facts were that he and his co-accused had been drinking to excess on the evening in question and finding themselves near these premises, one or both of them, (his co-

accused said it was he) kicked in the door and both went in where they were eventually found by the police.

The approach to sentencing, as this Court has said on several occasions, is first of all to ask oneself what is the appropriate sentence for an offence of this nature. This Court considers that the appropriate starting bench mark would be six months. We are therefore forced to the conclusion that the learned Magistrate, after making up his mind about that, then allowed for the mitigating factors and reduced the sentence in each case to one of four months. The present appellant, however, says that he was not involved to the same extent as his co-accused and therefore there should be a distinction between their respective sentences.

One of the Jurats would be in favour of dismissing the appeal, the other would be in favour of allowing it. I have decided in the exercise of my discretion to allow the appeal with the Jurat who would also allow it for the reason that it appears to us that whilst the Magistrate may well have accepted the bench mark of six months and made a deduction of two months in the sentence (which the Jurat who would have dismissed the appeal considers adequate), we think that had the Magistrate had before him the matters urged upon us today by the appellant's counsel, he may well have thought right to impose a different sort of sentence.

The options open to us are either to reduce the sentence imposed by substituting a lesser sentence or to send the matter back to the Police Court with a request that an order be made for a probation report to be prepared, or to bind the appellant over here today on the condition that he attends the alcohol treatment centre. The Jurat who would be in favour of allowing the appeal considered that a proper sentence - having regard to all the circumstances and the principle of disparity

- would be one of two months and I have agreed with him and accordingly the sentence is varied to one of two months with legal aid costs.

Authorities

Thomas: Encyclopaedia of Current Sentencing Practice  
pp 1075 - 6; pp 1084/1 - 1085; pp 2353 - 5

Thomas: Principles of Sentencing (2nd Edition)  
pp 64 - 73, 147 -151

A.G. v Ryan (14th October, 1985) Jersey Unreported

A.G. v Raikes (19th November, 1985) Jersey Unreported

A.G. v McGregor (21st December, 1987) Jersey Unreported

A.G. v Marie (26th October, 1988) Jersey Unreported

A.G. v Coll and Gaughan (5th April, 1991) Jersey  
Unreported

A.G. v Lynch (24th July, 1991) Jersey Unreported

A.G. v Nicolas (25th July, 1991) Jersey Unreported

A.G. v Mandell (17th September, 1991) Jersey Unreported