

ROYAL COURT
(Samedi Division)

163.

4th August, 1994

Before: The Bailiff, and Jurats
Coutanche, Blampied, Myles, Bonn,
Orchard, Hamon, Gruchy, Le Ruez,
Vibert, Rumfitt.

The Attorney General

- v -

Jose Manuel Goncalves de Freitas
John Robert Reid McGregor
Jose Elmano Mendonca Nobrega
Anthony Stearn

Sentencing by the Superior Number, following guilty pleas before the Inferior Number on 8th July, 1994, to the following counts:

McGregor and Stearn

1 count of grave and criminal assault (count 1 of the indictment).
1 count of breach of public peace (count 2).

McGregor

1 count of grave and criminal assault (count 3).
1 count of carrying an offensive weapon, contrary to Article 27 of the Firearms (Jersey) Law, 1956.
(count 4).

Stearn

1 count of malicious damage (count 5).

Nobrega

1 count of carrying an offensive weapon, contrary to Article 27 of the Firearms (Jersey) Law, 1956.
(count 6).

de Freitas

1 count of carrying an offensive weapon, contrary to Article 27 of the Firearms (Jersey) law, 1956.
(count 7).

AGE:

McGregor: 25
Stearn: 18
Nobrega: 28
de Freitas: 28

PLEA: Gully.

DETAILS OF OFFENCE:

de Freitas and Nobrega were leaving Patriotic Street carpark. McGregor and Stearn under the influence of alcohol, shouted abuse at them. Stearn threw lump of concrete through Nobrega's van window (count 5). de Freitas and Nobrega took metal bars from van and followed McGregor and Stearn as far as Grand Hotel. Confused scuffle. McGregor got hold of Nobrega's metal bar (count 4) and assaulted Nobrega (count 3). de Freitas and Nobrega fled. McGregor and Stearn remained shouting and swearing, McGregor waving bar (count 2). Bush, innocent passer-by, mistaken by McGregor and Stearn as one of earlier assailants. McGregor struck Bush to ground with bar, McGregor and Stearn both kicked and punched Bush. Assault only ended when passing taxi drivers intervened.

DETAILS OF MITIGATION:

de Freitas and Nobrega:

Good record. Respectable and law abiding. Initial provocation. Extremely upset at present involvement in criminal proceedings.

McGregor:

Bad family background, mother and successive step-fathers violent. Thought Stearn (half-brother) had been assaulted. Thought Bush had been an assailant. Expressed remorse for attack on Bush.

Stearn:

Youth (within provision of Young Offenders' Law). Like McGregor, wretched family background.

PREVIOUS CONVICTIONS:

de Freitas and Nobrega:

None.

McGregor:

Appalling record, many convictions for violence and drink related offences.

Stearn:

Some convictions, two for violence. Persistently breached probation orders.

CONCLUSIONS:

McGregor:

count 1: 3½ years' imprisonment.
count 2: 1 month's imprisonment concurrent.
count 3: 18 months' imprisonment concurrent.
Count 4: 1 month's imprisonment concurrent.
Total: 3½ years' imprisonment.

Stearn:

count 1: 3 years' detention in the Young Offenders' Institution.
count 2: 2 weeks' detention in YOI concurrent.
count 5: 1 month's detention in YOI concurrent.
Total: 3 years' detention.

Nobrega:

count 6: 1 year's probation with a condition of 90 hours' community service.

de Freitas:

count 7: 1 year's probation with a condition of 90 hours' community service.

SENTENCE AND OBSERVATIONS OF THE COURT:

Court deprecated drink induced street violence generally.

de Freitas and Nobrega:

Did not accept probation/defence submission that binding over appropriate, but in view of provocation/good character, reduced conclusions to one year probation plus 50 hours' community service each.

McGregor:

Count 1: because attack not premeditated, 3 years; counts 2, 3 and 4: conclusions granted.

Stearn:

As required by Criminal Justice (Young Offenders) (Jersey) Law, 1994, Court explained that because of (1) failure to respond to non-custodial sentences, and (2) seriousness of offence, non-custodial not appropriate; count 1: because unpremeditated, 2½ years' YOD; count 2: conclusions granted; count 5: Court regarded this as cause of evening's events, 2 months' YOD.

The Solicitor General.
Advocate P. Landick for de Freitas.
Advocate S. Sharpe for McGregor.
Advocate P.M. Livingstone for Nobrega.
Advocate R.G.S. Fielding for Stearn.

JUDGMENT

THE BAILIFF: I wish to say this: the Court is becoming increasingly concerned at the number of serious drink-related cases that continue to come before it.

5 I now turn to the appropriate sentences which the Court is going to impose on the accused. I take first the cases of de Freitas and Nobrega. We note that they had been drinking but not to a great extent, nor were they out of control and the Court notes that they were subjected at the beginning of the evening to
10 a number of unpleasant taunts, whether they were racial or not is beside the point.

15 It was, in the Court's opinion, the action of throwing the brick or piece of concrete by Stearn through the back window of the van that was really the beginning of trouble. It was, of course, wrong of de Freitas and Nobrega to arm themselves as they did with what is clearly - and they have accepted that it was - an offensive weapon. Each had one and the Court is not clear what happened to the one which was not seized by McGregor: we have not
20 been told whether it was left at the scene or taken back.

25 However, in view of the good record of de Freitas and Nobrega and the degree of provocation to which they had been subjected, the Court - whilst finding that there has to be the imposition of a sentence because it is not prepared to discharge them from the prosecution seeing that the legislature has provided for a sentence of up to two years for carrying offensive weapons - has decided to place each of them on probation for a year and to order that each shall perform to the satisfaction of the Community
30 Service Officer 50 hours' community service.

35 I now turn to McGregor and Stearn. There is no doubt in the Court's mind that the Court should make some allowance for the fact - so far as McGregor is concerned and to a lesser extent, Stearn - that the weapon which was used in the serious attack - and it was a serious and grave attack on Mr. Bush - by McGregor and then backed up by Stearn, was brought to the scene by Nobrega. This is not a case in which McGregor went armed onto the street to inflict injury with premeditation on a passer-by. The Court has
40 heard that both McGregor and Stearn believed that Mr. Bush had, in some way, been connected with the previous fracas with de Freitas and Nobrega and that led to the fight with Mr. Bush.

45 However, the Court is satisfied there was a degree of totally unsupportable violence which cannot be condoned. Indeed, I am going to issue a warning on behalf of the full Court that, in view of the increasing number of grave and criminal assaults and other assaults of that nature occurring in this Island, we shall give

serious consideration to increasing the bench-mark against which to judge assaults. Having said that, in this case, we feel we can make some allowance for the fact that the weapon was not brought to the scene by McGregor; that he was wearing soft shoes; and for the other matters to which counsel have drawn our attention, as well as the numbers of English cases and the Jersey cases to which we have been referred by counsel, who have all spoken very ably on behalf of their clients.

Under the circumstances we are going to sentence you, McGregor, as follows: count 1: three years' imprisonment; count 2: one month's imprisonment concurrent; count 3: 18 months' concurrent; count 4: one month's imprisonment concurrent, making a total of 3 years' imprisonment.

As regards you, Stearn, we reflect the same reduction that we have in the sentence on McGregor; you will be sentenced to 2½ years' detention in a Young Offenders' Institution on count 1. I will refer in a moment to what I am required to do under Article 10 of the Criminal Justice (Young Offenders) (Jersey) Law, 1994. Two weeks' detention in YOI concurrent on count 2; 1 month's detention in YOI concurrent on count 5, which we think reflects the more serious aspect of throwing a piece of concrete through the van window; a total of 2½ years.

I am required under Article 4(2) of the Law to state in open Court the reasons for imposing a sentence on you, Stearn, of youth detention. When the Court retired it examined what it had to do, and we were satisfied that there was no other method of dealing with you than imposing a sentence of youth detention. Your record spoke for itself; you had failed to respond to non-custodial penalties before on quite a large scale and we were satisfied also that the totality of what you had done was so serious that we could not justify a non-custodial sentence. I also have to say to you certain matters arising under Article 10. I have to say to you and I now say it that having imposed a sentence of youth detention Article 10 provides that once you are released from custody you shall, on being so released, be under the supervision of a supervisor who shall be either a Probation Officer or an Officer of the Education Committee. I have to tell you that whilst under supervision you have to comply with such written requirements as the Prison Board, after consultation with your supervisor, shall notify to you and the Prison Board may cancel any of the requirements notified to you. But the most important part of Article 10 is this: after you are released from Youth Detention and are subject to supervision, if you fail to comply without reasonable excuse with any requirement notified to you under paragraph (1) or (2) of the Article, you shall be liable to a fine not exceeding £500 or an appropriate custodial sentence for a period not exceeding 30 days.

There is one other matter to which I wish to refer and that is to agree wholeheartedly with you in the name of the Court, Madam Solicitor, when you commended Mr. Le Flour, Mr. Gray and Vingtenier Mahé for their bravery in behaving as they did on that night. Mr. Le Flour as it happened is not a member of the Honorary Police, the other two were, but all three are to be highly commended perhaps more so, Mr. Le Flour who was alone at the time when he personally intervened, but nevertheless the other two equally so for doing their duty not only as citizens, but as members of the Honorary Police who are, as I was brought up to believe, always on duty.

Authorities

- A.G. -v- Reucroft & Ors. (30th April, 1990) Jersey Unreported.
- A.G. -v- Norris (3rd June, 1992) Jersey Unreported.
- Norris -v- A.G. (28th September, 1992) Jersey Unreported, C.of.A.
- Criminal Justice (Young Offenders) (Jersey) Law, 1994: Article 4.
- Thomas: Principles of Sentencing (2nd Ed'n): p.p 18-20; 93-102.
- A.G. -v- Warburton (10th September, 1993) Jersey Unreported.
- A.G. -v- Welsh, O'Brien (25th February, 1993) Jersey Unreported.
- A.G. -v- Smitton (29th July, 1993) Jersey Unreported.
- Thomas: Current Sentencing Practice:
- Part A2: Criteria for the Imposition of a Custodial Sentence:
s.A2-1A: Criminal Justice Act 1991, s.1: p.p.10201-10202.
- Part E2: Detention in Young Offender Institution:
pp.50101-02.
- R. -v- Lawson (1992) 14 Cr.App.R.(S.) 46: E2-4E11: p.50136/1.
- R. -v- Harbinger Johal (1991) 12 Cr.App.R.(S.) 695:
E2-4E09: p.50136.
- Attorney General's Reference (No. 10 of 1992) (R. -v- Cooper)
(1993) 15 Cr.App.R.(S.) 1.
- Jamie Tyre (1984) Cr.App.R.(S.) 247.
- A.G. -v- Whiteford (2nd July, 1993) Jersey Unreported.