

ROYAL COURT (SUPERIOR NUMBER)
(exercising the appellate jurisdiction conferred upon it by
Article 22 of the Court of Appeal (Jersey) Law, 1961.)

16th February, 1995.

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Before: The Bailiff, and
Jurats Coutanche, Myles, Orchard,
Gruchy, Le Ruez, and Rumfitt.

Jason Cyril Prior,
Nicholas John George Reed,
William George McLean.

-v-

Her Majesty's Attorney General

Appeal of Jason Cyril Prior (hereinafter referred to as "the First Appellant") against a total sentence of 21 months' Youth Detention passed on the First Appellant by the Royal Court (Inferior Number) on 25th November, 1994, following guilty pleas to:

- 1 count of being carried in a motor vehicle, knowing that said motor vehicle has been taken and driven away without either the consent of the owner thereof or other lawful authority, contrary to Article 28 of the Road Traffic (Jersey) Law 1956 (count 1 of the indictment)
- 2 Counts of taking motor vehicle without the owner's consent or other authority, contrary to Article 28 of the Road Traffic (Jersey) Law, 1956. (counts 2,7)
- 1 Count of illegal entry & larceny (count 3)
- 2 Counts of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (counts 4: cannabis resin; 19: cannabis resin).
- 1 Count of possession of utensils for the purpose of committing an offence contrary to Article 8 of the Misuse of Drugs (Jersey) Law, 1978 (count 5).
- 3 Counts of larceny (counts 6,14,15).
- 1 Count of Breaking and Entering and Larceny (Count 10).
- 1 Count of failing to conform to a traffic sign, contrary to Article 36 (as amended) of the Road Traffic (Jersey) Law, 1956 (count 11).
- 1 Count of riding a pedal cycle on the footpath, contrary to Article 22(1) of the Road Traffic (Jersey) Law, 1956 (count 12).
- 1 Count of failing to carry on a bicycle obligatory lights and reflectors, contrary to Article 2 of the Road Transport Lighting (Jersey) Law, 1956 as modified by Article 6(1) thereof. (count 13).
- 2 Counts of dangerous driving contrary to Article 14 of the Road Traffic (Jersey) Law, 1956. (counts 16,20)

- 6 Counts of taking motor vehicle without the owner's consent or other authority, contrary to Article 28 of the Road Traffic (Jersey) Law, 1956. (counts 2,7,40,43,46,49)
- 1 Count of illegal entry & larceny. (count 3).
- 2 Counts of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (counts 4: cannabis resin; 33: cannabis resin).
- 1 Count of possession of utensils for the purpose of committing an offence contrary to Article 8 of the Misuse of Drugs (Jersey) Law, 1978 (count 5).
- 2 Counts of Larceny (counts 6,59)
- 2 Counts of Assault (counts 8,58)
- 1 Count of being disorderly on licensed premises, contrary to Article 83 of the Licensing (Jersey) Law, 1974. (count 9)
- 9 Counts of using a motor vehicle on a road uninsured in respect of third party risks, contrary to Article 2(1) of the Motor Traffic (Third Party Insurance)(Jersey) Law, 1948. (counts 31,38,41,44,47,50,52,54,56).
- 9 Counts of driving whilst disqualified, contrary to Article 9(4)(b) of the Road Traffic (Jersey) Law, 1956. (32,39,42,45,48,51,53,55,57).
- 3 Counts of purchasing intoxicating liquor for a person under the age of eighteen to consume on licensed premises, contrary to Article 13(3) of the Licensing (Jersey) Law, 1974. (count 34,35,36)
- 1 Count of obtaining goods by false pretences (count 37).

The said total sentence being made up as follows:

Counts 2,7,40,43, 46, 49 : 6 months' Youth Detention.

(The above sentences to run concurrently with each other and with all other sentences.)

Counts 31,38,41,44,47,50,52,54,56 : 4 months' Youth Detention.

(The above sentences to run concurrently with each other and with all other sentences.)

Counts 32,39,42,45,48,51,53,55,57 : 4 months' Youth Detention.

(The above sentences to run concurrently with each other, but to follow consecutively all other sentences.)

Count 1 : 1 month's Youth Detention, concurrent with all other sentences.

Counts 8,58 : 3 month's Youth Detention.

(The above sentences to follow each other and all other sentences consecutively.)

Count 3 : 4 months' Youth Detention, consecutively to all other sentences.

Counts 6,59 : 1 month's Youth Detention, consecutive to each other and to all other sentences.

Count 37 : 1 month's Youth Detention, consecutive to all other sentences.

- 1 Count of using a motor vehicle on a road uninsured in respect of third party risks, contrary to Article 2(1) of the Motor Traffic (Third Party Insurance) (Jersey) Law 1948. (count 17)
- 1 Count of driving a motor vehicle whilst not the holder of a licence authorising him to drive motor vehicles of that class or description, contrary to Article 3 of the Road Traffic (Jersey) Law, 1956. (count 18).
- 1 Count of failing to comply with a condition subject to which a provisional licence was granted, contrary to Article 6 of the Road Traffic (Jersey) Law, 1956. (count 21)

The said total sentence being made up as follows:

- Count 6,14,15 : 1 month's Youth Detention,
- Count 10 : 9 months' Youth Detention,
- Count 3 : 4 months' Youth Detention.

(The above sentences to run consecutively to each other and to any other sentences).

- Counts 2,7 : 3 months' Youth Detention

(The above sentences to run concurrently with each other and with any other sentences).

- Count 16 : 4 months' Youth Detention, 3 years' disqualification from driving.
- Count 1, 17 : 1 month's Youth Detention.
- Count 18 : £50 fine or 2 weeks' Youth Detention in default of payment.
- Count 20 : 1 month's Youth Detention; 3 years' disqualification from driving.
- Count 21 : £25 fine or 1 week's Youth Detention in default of payment.

(The above sentences/default sentences to run concurrently with each other, but to follow consecutively any other sentences.)

- Counts 4,5,19 : 1 month's Youth Detention.
- Counts 11,12,13 : £20 fine or 1 month's Youth Detention in default of payment.

(the sentences imposed on counts 4 and 19 to run concurrently with each other, but to follow consecutively any other sentences; the sentence/default sentences imposed on counts 5,11,12 and 13, respectively, to run concurrently with each other and with all other sentences.)

TOTAL : 21 months' Youth Detention; 3 years' disqualification from driving.

Appeal of **Nicholas John George Reed** (hereinafter referred to as "the Second Appellant") against a total sentence of **24 months' Youth Detention** passed on the Second Appellant by the Royal Court (Inferior Number) on 25th November, 1994, following guilty pleas to:

- 1 count of being carried in a motor vehicle, knowing that said motor vehicle has been taken and driven away without either the consent of the owner thereof or other lawful authority, contrary to Article 28 of the Road Traffic (Jersey) Law 1956. (count 1).

- Counts 4,33 : 1 month's Youth Detention, to run concurrently with each other, but to follow consecutively other sentences.
- Count 5 : 1 month's Youth Detention, to run concurrently with all the other sentences.
- Counts 34,35,36 : £50 fine or 2 weeks Youth Detention in default of payment, the default sentences to run concurrently with each other and with all other sentences.
- Count 9 : £150 fine or 5 weeks Youth Detention in default of payment, the default sentence to run concurrently with all other sentences.

TOTAL : 24 months' Youth Detention.

Appeal of **William George McLean** (hereinafter referred to as "the Third Appellant") against a total sentence of **8 months' Youth Detention** passed on the Third Appellant by the Royal Court (Inferior Number) on 25th November, 1994, following guilty pleas to:

- 1 count of being carried in a motor vehicle, knowing that said motor vehicle has been taken and driven away without either the consent of the owner thereof or other lawful authority, contrary to Article 28 of the Road Traffic (Jersey) Law 1956 (count 1).
- 2 Counts of Assault (counts 8,23)
- 1 Count of being disorderly on licensed premises, contrary to Article 83 of the Licensing (Jersey) Law, 1974 (count 9).
- 1 Count of Illegal entry with intent (count 22).
- 3 Counts of being a person under the age of eighteen consuming intoxicating liquor on licensed premises, contrary to Article 13(2) of the Licensing (Jersey) Law, 1974 (counts 24,25,26).
- 1 Count of Larceny (count 27)
- 2 Counts of Obtaining money by false pretences (counts 28,29).
- 1 Count of Possession of a controlled drug (amphetamine sulphate) contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (count 30).

The said total sentence being made up as follows:

- Count 1 : 1 month's Youth Detention.
- Count 8 : 3 months' Youth Detention.
- Count 22 : 1 month's Youth Detention; Consecutive.
- Count 23 : 1 month's Youth Detention, Concurrent with count 8; Consecutive to all other sentences.
- Count 27 : 1 month's Youth Detention, Consecutive.
- Count 28 : 1 month's Youth Detention, Consecutive.
- Count 29 : 1 month's Youth Detention, Consecutive.

Count 30 : 1 month's Youth Detention, Consecutive.
Counts 24,25,26 : £50 or 2 weeks' Youth Detention In default of payment.
Count 9 : £150 fine or 1 month's Youth Detention in default of payment

(The above default sentences to run concurrently with each other and with all other sentences.)

TOTAL : 8 months' Youth Detention.

Advocate S.E. Fitz for Prior
Advocate S.J. Willing for Reed
Advocate R.G.S. Fielding for McLean
A.J. Olsen, Esq., Crown Advocate

JUDGMENT

THE BAILIFF: It was submitted to us by counsel for all the appellants that the Court below erred in its appreciation of the effect of Article 4 of the Criminal Justice (Young Offenders) (Jersey) Law 1994. Paragraph (2) of that Article provides as follows:

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"A Court shall not pass a sentence of youth detention unless it considers that no other method of dealing with him is appropriate because it appears to the Court that -

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(a) he has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them; or

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(b) only a custodial sentence would be adequate to protect the public from serious harm from him; or

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And the Court shall state in open court its reasons for imposing a sentence of youth detention and shall explain to the person that on his release he may be subject to a period of supervision under Article 10".

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What the Court stated when sentence was passed, was this:

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"The Court has had to have regard to Article 4 of the Criminal Justice (Young Offenders) (Jersey) Law 1994 and to whether we are satisfied that we should pass the sentence of youth detention if the requirements of paragraph 2 of Article 4 are fulfilled. The Court is

5 quite satisfied that as regards you, Reed, and you, Prior, all three of the qualifications are more than fulfilled. As far as you are concerned, McLean, the Court is satisfied that 2(c) covers your case. The Court is therefore unanimously of the view that sentences of youth custody should be imposed".

10 Counsel submitted that the Court had not actually stated its reasons for imposing sentences of youth detention. We were referred to the equivalent provisions in United Kingdom legislation now contained in the Criminal Justice Act 1988. It is not necessary for us to recite those specific statutory provisions which only differ marginally from the provisions in force in this jurisdiction. They were, however, interpreted by the English Court of Appeal in the case of R -v- Davidson (1989) 11 Cr.App.R.(S.) 570. Russell LJ, having recited the relevant statutory provisions, stated:

20 "The Assistant Recorder should, therefore -

1. have satisfied herself that the circumstances were such that if the appellant had been 21 or over she would have passed a sentence of imprisonment; and
- 25 2. that he qualified for a custodial sentence under one or more of the three paragraphs set out.

30 She should then have stated in open court that he qualified for a custodial sentence, identified the relevant paragraph, and given her reasons".

35 We have to remind ourselves that the Criminal Justice (Young Offenders) (Jersey) Law 1994 introduced our statutory restrictions on the sentencing of young offenders.

40 The Court is now enjoined from passing a sentence of youth detention unless it considers that no other method of dealing with him is appropriate because one or more sets of circumstances applies to him. But additionally the Court is also under an obligation to state in open court its reasons for imposing a sentence of youth detention.

45 In our judgment the sentencing court, by drawing attention to the statutory formulae which it thought to be relevant, but not expressing its reasons for arriving at those conclusions, cannot be said to have complied with the provisions of the law.

50 The obligation to state reasons in open court for imposing a sentence of youth detention is not an empty requirement. Its purpose appears to us to be two-fold. Firstly, it requires the Court to focus on the reasons for determining that a young offender should be sentenced to a period of youth detention; and,

secondly, it makes it clear to the individual young offender why he is being sentenced to a custodial penalty.

5 There was, therefore, in our judgment, a procedural error in the Court below. We agree with all counsel that it would not be appropriate to remit the matter to the Inferior Number to consider the matter afresh. For a number of reasons we propose to consider ourselves *de novo* the sentences which we would have imposed had we been sitting as a Court of first instance.

10 We agree with the Crown Advocate that this was a series of disgraceful offences, particularly so far as Reed and Prior were concerned. However, we have, again as suggested by the Crown Advocate, stood back from the tangled web of offending to ask ourselves whether in their totality the sentences moved for by the Crown were appropriate.

15 We have reached the conclusion, having regard to the age of the appellants when the offences were committed, and the records of the respective young offenders, that some reduction in the sentences imposed by the Inferior Number ought to be allowed.

20 Reed, we are satisfied that in your case paragraphs (2)(a) and (2)(c) of Article 4 of the Criminal Justice (Young Offenders) (Jersey) Law 1994 apply. Your record shows that you have been placed on probation or bound over on three occasions and that on no fewer than two occasions you have breached those orders. The report of the Probation Officer which is before the Court makes it clear that you are not prepared to comply with community based sanctions. Furthermore, the totality of your offending is indeed very serious. Your violent attack upon Mr. Noor was an offence of which the Court takes particular note.

25 Having regard to all those factors we consider that a term of youth detention is, in your case, the only appropriate way of dealing with you. We propose, as I have said, to allow the appeal to this extent: the sentence imposed in the Court below of 4 months' imprisonment on counts 32, 39, 42, 45, 48, 51, 53, 55 and 57 will, in each case, be made to run concurrently with each other and with other sentences, rather than consecutively. On counts 6 and 59 the sentence of one month's youth detention will also be made to run concurrently with each other and other offences. The effect of that, Reed, therefore, is that you are sentenced to 18 months' youth detention.

30 I am also required to explain to you that you will be liable, on your release from serving your sentence of youth detention, to a period of supervision in accordance with Article 10 of the Law.

35 Prior, the Court is also satisfied that sub-paragraphs (a) and (c) of paragraph (2) apply in your case. You have been placed on probation on four occasions and have breached the Order on two

occasions. The Probation Report which is before the Court makes it clear that you are unwilling to comply with non-custodial measures. Furthermore the totality of the offending and in particular the disgraceful episode of dangerous driving, where it was indeed fortunate that someone was not killed or injured by you, makes it clear to us that a sentence of youth detention is the only appropriate sanction in your case.

As I have also indicated, the Court is proposing to allow the appeal, having regard to the matters which I mentioned earlier, to this extent: we order that the sentences on counts 16, 1, 17, 18, 20 and 21 will run concurrently with each other and other counts rather than consecutively. The sentence on counts 6, 14 and 15 will also be made to run concurrently rather than consecutively and the effect of that is to impose upon you a sentence of 15 months' youth detention. I am also required to explain to you that when you have served your sentence you will be liable to supervision by a Probation Officer or some other Officer of the Court in accordance with Article 10 of the Law.

McLean, we agree with your counsel that we can appropriately separate you from your co-accused in determining sentence. Having regard to the time which you have spent in custody, your youth at the time when these offences were committed, the relatively few offences committed by you in comparison with your co-accused, your efforts to rehabilitate yourself, - (and we have been impressed by the reference placed before us), having regard to all those matters we think that a sentence of youth detention in your case can be avoided. We therefore quash the sentences of youth detention imposed upon you, and we substitute on each count a sentence of probation for a period of two years which means that you will be liable to live and work during that time as directed by your Probation Officer and to be of good behaviour. If you fail to be of good behaviour you will be liable to be brought back before this Court and sentenced again for these offences. We hope that will not be the case and that this will be the last this Court sees of you.

Authorities

Whelan: "Aspects of sentencing in the Superior Courts of Jersey": pp.64-71, 94.

Thomas: "Principles of Sentencing" (2nd Ed'n): pp.18-20; 56-61.

Criminal Justice (Young Offenders (Jersey) Law 1994: Articles 4, 10.

Criminal Justice Act 1982: Articles 1, 2.

Criminal Justice Act 1988: Part IX: Articles 123, 124.

Davidson (1989) 11 Cr.App.R.(S.)570.

de Mouilpied -v- A.G. (14th November, 1994) Jersey Unreported.

Thomas: "Current Sentencing Practice": Release 23: 1-vi-92:
A5-2B02:p.10503: R. -v- Paddon (3rd March, 1971).