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ROYAL COURT
(Samedi Division) 243.

Before: Sir Philip Bailhache, Bailiff and
Jurats Blampied and Le Ruez

19th December, 1996

The Attorney General

- v -

Carol Irene Maxwell

On 9th December, 1996, the accused pleaded guilty to one count of vagrancy and was granted an absolute discharge.
(See Jersey Unreported Judgment of that date).

The Attorney General.
Advocate S. A. Pearmain for the Defendant.

JUDGMENT

THE BAILIFF: On 9th December, 1996, we granted an absolute discharge to Carol Irene Maxwell who had been indicted on a charge of vagrancy. The Magistrate remanded the case for trial by this Court so that we could have the opportunity of considering whether such an offence still exists at law and, if so, of giving guidance to the Magistrate on how to deal with it.

The defendant pleaded guilty to the indictment, her counsel having advised her that she ought to do so. No point was therefore taken by the defence that vagrancy was no longer an offence known to the law of Jersey. The Attorney General told us that twenty-three persons have been charged with the offence this year. Twenty-two were dealt with in the Magistrate's Court and one, this defendant, was remanded for trial by this Court. There is no question therefore but that the offence has not fallen into disuse. Whether it ought to exist and whether the discretion to prosecute the offence is being satisfactorily exercised are different questions upon which both the Attorney General and counsel for the defendant addressed us. Having heard those submissions and considered the Attorney General's conclusions, we granted the defendant, as we have stated, an absolute discharge

and stated that we would give our reasons later. This we now proceed to do.

We ought first to set out the background to this case. From May, 1996, until 12th August, 1996, the defendant was resident at the Shelter for homeless persons in Kensington Place, St. Helier. On 11th August an incident took place involving the defendant and another resident which led to the defendant's being asked to leave. She declined to do so and the next day the police were called. PC Griffiths attended, learned why the defendant had been asked to leave, and spoke to her. It became apparent that the defendant had no relatives in Jersey, and no means of supporting herself. She was without funds. The police officer made a number of enquiries with other agencies in an attempt to obtain alternative accommodation, but without success. PC Griffiths explained to the defendant that there were two options available to her. Firstly, she could leave the Shelter and make her own efforts to find alternative accommodation. Secondly, she could report herself as being destitute, and the officer told her of the procedure which would then be followed. We interpose that this involved being charged with destitution, (a term which appears to us to be used interchangeably with "vagrancy"), and agreeing to be bound over to keep the peace on the condition that she left the Island and did not return for three years. In that event her fare back to the United Kingdom would be paid out of parochial funds. The defendant chose the second option whereupon she was arrested and taken to Police Headquarters. Later that day she appeared before the Magistrate on a charge of vagrancy, i.e. being destitute and without home or habitation, reserved her plea, and was remanded in custody. Four days later, on 16th August, the defendant appeared before the Magistrate and was released into the care of the Probation Service which was given the responsibility of finding her accommodation. On 6th September the defendant appeared again before the Magistrate's Court and was further remanded until 24th October when she was committed for trial by this Court.

The defendant was born in London in 1947 and is aged 49. She has appeared before the Magistrate's Court on one previous occasion in 1994 for one offence of being destitute and three offences of obtaining or attempting to obtain goods by false pretences. She was then placed on probation for three months. We had the advantage of reading background reports from the Probation Service and a report from the consultant psychiatrist. It is not necessary to describe at any length the history of this defendant. In summary, she was brought up in Canada and began travelling as a young woman. Between 1969 and 1975 she lived in the Island undertaking book-keeping and other office work before leaving for Canada. After the collapse of her marriage and a mental breakdown she returned to England in 1986. After a series of jobs of short duration she arrived back in Jersey in 1992. She has debts of

some £2,000 to various landlords. The consultant psychiatrist, who treated the defendant in 1994, gives the opinion that she is suffering from a schizophrenic illness and that she needs psychiatric support. At the time of writing his report he thought that she would probably seek such support voluntarily. Unfortunately this turned out not to be the case.

The Attorney General informed us that research into the records of this Court and of his department showed that since 1965 eleven cases of destitution had come before this Court. In most cases a short sentence of imprisonment was imposed. Interestingly all except one came before the Court between 1965 and 1969. The exception was AG -v- Simpson (1979) 41 PC 125 where the defendant appeared on an indictment which included, amongst others, a count involving destitution, for which he was sentenced to one month's imprisonment. It appears however that vagrancy is generally now charged only when the intention is that the offender should be made the subject of a binding over order with a condition that he or she should leave the Island.

Counsel for the defendant suggested that the Island had found a pragmatic solution to the problem and that in her experience vagrants were very pleased to be told that this was a means whereby their fares back to England could be paid. She added that it was not unknown for persons who had been bound over to leave the Island for three years and who wished to return within that period to contact her to see if some arrangement could be made. We understood that the offender would in such circumstances be brought back to the court so that the binding over order could be discharged and some nominal sentence imposed.

It seems clear from these submissions that, whereas even thirty years ago vagrancy was regarded as an offence which merited punishment, this is no longer the current approach. The Magistrate's Court, no doubt reflecting changing social mores as it should, has ceased to impose custodial sentences. In our judgment this is an entirely correct approach. Society needs protection from those who engage in drunken and disorderly behaviour and those who commit breaches of the peace and acts of vandalism and dishonesty. It does not need protection from those who quite simply have no money and no home. On the contrary a civilised society owes protection to such people who are usually socially inadequate or mentally ill. How and to what extent such protection should be given is not always easy but is in any event not a matter for us. Our concern is whether in these times the criminal law has any proper function to perform in this area. In our judgment it has none. We express the hope that the legislature will give urgent attention to considering the desirability of abolishing the offence of being destitute and without home or habitation.

In the meantime the Magistrate has asked for guidance as to how his court should deal with cases brought before him. We wish to emphasise that in making the remarks which follow we intend no criticism of the Attorney General. Prosecutions for destitution are invariably brought by centeniers and it is only the diligent researches of the Attorney General and of counsel for the defendant which have brought to light the state of affairs which we have described. Having said that, it is in our judgment a highly unsatisfactory state of affairs. In the first instance a criminal prosecution ought not to be a matter of choice for a defendant. We can think of no circumstances in which it is appropriate to invite a person to choose whether or not she should be prosecuted. A person may properly choose whether or not to admit a breach of the law. She may properly choose to pay an administrative penalty in order to avoid prosecution. But it seems to us extraordinary and highly undesirable to invite a defendant to choose whether or not she wishes to be prosecuted. If any conduct amounts to a criminal offence, it is for the officer of justice to decide whether or not it is appropriate in all the circumstances to mount a prosecution.

This extraordinary state of affairs has arisen because the criminal justice system is being confused with the welfare system. As we understand it, the parochial authorities will pay the fare back to the United Kingdom of a destitute non-native only if she is under the compulsion of a court order to leave the Island. But such a court order can only be made with the agreement of a destitute person. We find it difficult to see why the payment of the fare cannot be made subject to an appropriate agreement with the destitute non-native without the intervention of the judicial process.

The 1847 Commissioners' Report on the Criminal Law in the Channel Islands contains an interesting passage at page 50:

> ***"A custom prevails, which we think very objectionable, of allowing parties charged with trifling larcenies and other offences to quit the Island instead of undergoing prosecution. Their passage is then paid, either to Guernsey or England; in the latter case, ordinarily to Southampton. When a party is so sent out of the Island, a term is generally fixed, within which the party is not to return, under "telle peine qu'il appartiendra". This is seldom done in the case of natives."***

This is not directly in point, but the passage does serve to underline another objectionable feature of the current system. We understand from the submissions that prosecutions for destitution are now generally brought only when the underlying purpose is to require the offender to leave the Island. It follows that persons with a sufficient connection with the Island (five years'

residence seems to be the test) are not generally prosecuted for destitution. It is axiomatic that decisions to prosecute should be taken without discrimination on grounds of residence. Yet the "pragmatic solution" referred to by counsel appears to be applied selectively to those who have not been resident in Jersey long enough to be entitled to welfare benefits. Those who are entitled to such benefits are not generally prosecuted for destitution. In our judgment this is an indefensible state of affairs which has arisen, as we have stated, from a confusion of the criminal justice system with the welfare system. We hope that the Attorney General will examine the matter and give appropriate instructions to the parochial prosecuting authorities. We expressed our disapproval by granting the defendant an absolute discharge. While the system remains unreformed, it is open to the Magistrate to express his disapproval, if so minded, in the same way.

Authorities

AG -v- Simpson (1979) 41 PC 125.

Commissioners' Report on the Criminal Law in the Channel Islands (1847): p.50.