

ROYAL COURT
(Samedi Division)

45,

7th March, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Le Ruez and Le Brocq

The Attorney General

- v -

Joao Manuel da Silva Vidinha

5 counts of breaking and entering and larceny (counts 1, 2, 3, 4, 5).
1 count of larceny (count 6).
1 count of possession of a controlled drug (cannabis resin), contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (count 7).

Plea: Guilty.

Age: 30.

Details of Offence:

The defendant broke into staff farm accommodation occupied by different Portuguese farm workers during daylight hours when they were at work. Total stolen: £6,540, 100,000 escudos and other minor items. Amount not recovered: £3,100 and 20,000 escudos. Possession of cannabis was a small personal amount found on arrest. One of the victims was a cousin. The defendant spent the day and evening with the victims notwithstanding that he had that day stolen £4,000 from their premises.

Details of Mitigation:

Totally out of character. Defendant had become addicted to gambling but had misunderstood the position and bet on outsiders. He was "racked with guilt" and expressed serious remorse. Since his arrest he had saved £2,000 in order to compensate his victims and was determined to repay the rest. He had volunteered his guilt in respect of three of the burglaries and had dealt with his gambling and cannabis problems. It was clear in Court that the defendant was very distressed.

Previous Convictions: None.

Conclusions:

Count 1 : 18 months' imprisonment.
Count 2 : 18 months' imprisonment, concurrent.
Count 3 : 18 months' imprisonment, concurrent.
Count 4 : 18 months' imprisonment, concurrent.

Count 5 : 18 months' imprisonment, concurrent.
Count 6 : 9 months' imprisonment, concurrent.
Count 7 : 2 weeks' imprisonment, consecutive.

Sentence and Observations of the Court:

Crown's conclusions right in the light of principle but circumstances wholly exceptional, particularly in the light of extreme remorse as evidenced by the saving of money to repay victims. Probation Order three years with 240 hours Community Service to be carried out within 12 months. Compensation Orders for outstanding balance to be paid within three months - three months' imprisonment in default.

The Attorney General.
Advocate S.E. Fitz for the accused.

JUDGMENT

THE DEPUTY BAILIFF: We will say at the start that these offences were particularly mean. The accused had broken into five properties of his fellow Portuguese farm workers - all in the daytime - and where he did not find a key he used force to do so. He had stolen some £6,540 and 100,000 escudos (which is about £325) together with jewellery and other items.

It almost beggars belief that in one case the accused drove his pregnant cousin and her husband into St. Helier and then had supper with them and other friends at his accommodation when he knew that he had broken into their home and had stolen a substantial sum of money and other valuable items.

He has pleaded guilty; he eventually gave some co-operation to the police but we cannot over-state the distress that housebreaking causes and we have no doubt that that distress was increased by the fact that hardworking fellow members of the Portuguese community were the victims of these acts.

Miss Fitz has told us that by dint of very hard work the accused has now saved almost enough money to repay the considerable sums that he so wickedly stole. The words "*racked with guilt*" have been used in the Probation Report and again in Court this morning. We have noted the accused's evident distress.

This Court has a clear policy that breaking and entering residential premises is extremely serious and merits an immediate sentence of imprisonment. In that light the recommendations of the learned Attorney General are completely right. However, we have given a great amount of thought to this case and after reading the Probation Report and after listening to what Miss Fitz told us this morning, we regard the circumstances as wholly exceptional.

We take the view that prison for this non-English speaker would no doubt be extraordinarily harsh and we were told from the Probation

Report that his three weeks on remand have had a deterrent effect upon him. He has a gambling problem which may be inherited and which he is apparently addressing and Miss Fitz has passed to us a letter from his employers which speaks highly of him. They are aware of his situation and are still prepared to continue to employ him.

Miss Fitz has told us - and we repeat it - that he is almost in a position to compensate his victims and because of what we are now going to do we would ask that the Probation Service take note of that undertaking given by the accused that he will continue to try to repay his victims in full.

In the circumstances we think - even though we must have strong regard to the public interests as well as to the individual interests of the accused - that justice is best served in this extraordinarily unusual case by placing Vidinha on three years' probation with 240 hours' Community Service to be carried out in the first twelve months. That may be difficult and you will have to work closely with the Probation Service to work out how that is best to be addressed. I have to say this to you: if you breach your Probation over the three year period you will be brought back to this Court and you will, without doubt, be sent to prison.

We hereby order that £2,000 by way of compensation is to be paid immediately and the balance is to be paid over the next three months. You will be sentenced to three months' imprisonment in default of payment. We further order the forfeiture and destruction of the drugs.

Authorities

A.G. -v- Allo, Collins (1983) JJ 85.

A.G. -v- Gaffney (5th June, 1995) Jersey Unreported.