

Youth Appeal Court

22nd September, 1997. 179

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Mrs. C.D. Audrain, Mrs. J. Le Brun, and Mrs. P. Morgan.

S. & M.

- v -

The Attorney General

S.

Appeal against the sentence of six months' Youth Custody imposed by the Youth Court on 24th June, 1997, following guilty pleas to:

- 1 count of larceny of a boat (count 1).
- 1 count of larceny of various fishing and diving equipment to the value of approximately £1,128 (count 2).
- 1 count of larceny of various items to the value of £20 (count 3).
- 1 count of resisting a police officer in the due execution of his duty (count 4).
- 1 count of taking and riding a pedal cycle without the owner's consent, contrary to Article 28(1) of the Road Traffic (Jersey) Law, 1956, (count 5).

[On 24th June, 1997, a Probation Order imposed on 5th February, 1997, was discharged].

Appeal allowed; sentences substituted as follows:

- Count 1 : 3 months' Youth Detention.
- Count 2 : 3 months' Youth Detention, concurrent.
- Count 3 : 4 days' Youth Detention, concurrent.
- Count 4 : 4 days' Youth Detention, concurrent.
- Count 5 : 4 days' Youth Detention, concurrent.

M.

Appeal against the sentence of five months' Youth Custody imposed by the Youth Court on 24th June, 1997, following guilty pleas to:

- 1 count of larceny of a boat (count 1).
- 1 count of larceny of various fishing and diving equipment to the value of approximately £1,128 (count 2).
- 1 count of larceny of various items to the value of £20 (count 3).
- 1 count of taking and riding a pedal cycle without the owner's consent, contrary to Article 28(1) of the Road Traffic (Jersey) Law, 1956, (count 4).

[On 24th June, 1997, a Probation Order imposed on 5th February, 1997, was discharged].

Appeal allowed; sentences substituted as follows:

- Count 1 : 3 months' Youth Detention.
- Count 2 : 3 months' Youth Detention, concurrent.
- Count 3 : 4 days' Youth Detention, concurrent.
- Count 4 : 4 days' Youth Detention, concurrent.

N.M.C. Santos-Costa, Esq., Crown Advocate.
Advocate J.C. Martin for S.
Advocate S. Slater for M.

JUDGMENT

5 THE DEPUTY BAILIFF: This is an appeal against sentence by S. and M. Both were sentenced on 24th June, 1997, by the Youth Court. They pleaded guilty to the charges against them; larceny of a boat owned by Mr. Gary Mourant; larceny of various items owned by Mr. Gary Mourant from that boat, and from another boat owned by Mr. Maurice Adrian Des Forges; taking and riding away a pedal cycle, contrary to Article 28(1) of the Road Traffic (Jersey) Law 1956. Both were also in breach of a Probation Order imposed upon them on 5th February, 1997. In addition, Samson was charged with resisting a police officer in the due execution of his duty.

10 Both of the accused were 15 years of age and they therefore fell within the provisions of Article 4(2) of the Criminal Justice (Young Offenders) (Jersey) Law 1994. That Law states:

15 "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 -

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

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

30 (c) the offence or the totality of the offending is so serious that a non-custodial sentence cannot be justified."

Both accused were granted bail by Judge Sowden on 1st July, 1997, pending this appeal.

35 The facts of the case can be very briefly summarised in this way: the two accused each took a pedal cycle without consent and rode those cycles from St. Clement to the Harbour. They broke into a boat in the Harbour and stole two cans of petrol, two bars of chocolate, two bottles of beer and a bottle opener.

They then found another boat, moored at Fisherman's Quay, and travelled to France in it. They landed there briefly and then turned around, and - because they had no navigational skills - followed the Emerald Ferry back to Jersey. During the trip several items from the boat were thrown overboard, including what is called a 'decker book' which, apparently, contained a record of seven years knowledge of local fishing grounds and records of the co-ordinates of those areas. This loss has had heavy financial consequences for the boat's owner.

Later, when they were taking the police officers to the boat at La Rocque Harbour, S. ran away, but was detained after a short chase.

Everything that could be said for the two accused was said by Advocate Lewis and Advocate Martin. In sentencing them, Judge Short said this:

JUDGE SHORT: I can't, I'm afraid, start thinking about compensation now. You see the procedure is difficult and uncertain, and I'm afraid it must fall probably on Mr. Mourant's insurance, heavy as his loss has been. We do sympathise with Mr. Mourant, probably more than anybody else involved in this case. I would just like to say, before we pass sentence, that we have spent the last hour or so in very anxious debate about what we should do, and what the tribunal should do with young people. And it is with no pleasure at all for any of us that we have to impose custodial sentences in this case. The public would be simply outraged if crimes like that were committed with impunity by young people, however sad their personal background may be, and part of our function here is to protect the public interest, and to protect the public from forays such as has been experienced here. So the two defendants must prepare themselves for a custodial sentence and to reside at Les Chênes until the end of June, 1998, when their education and reform will be complete. The reason under the Childrens Law that I'm required to give is the seriousness of the totality of the offences committed in this case which I am now reciting. We have paid very careful attention to reports and we would also like to thank Father Cousins and Mr. Chipperfield and the Probation Officer dealing with this case. Now is the time the tribunal must pass sentence. Will you please stand up, both of you. S, you are sentenced to six months at the Youth Detention Centre, M, you are sentenced to five months in the Youth Detention Centre with the condition after the sentence that you reside at Les Chênes. That is all, you may go.

He then went on to thank everybody who had been present in Court.

The original grounds of appeal were simply that the sentence was manifestly excessive, having regard to all the circumstances and to the mitigation offered. The grounds have been altered, although they are the same in each case. They are (1) that the sentence was manifestly excessive; (2) the sentence was unlawful in whole or in part; (3) that

the sentence was unreasonable in all the circumstances; and (4) that the sentence was wrong in principle.

5 Miss Martin and Mr. Slater, who appeared at very short notice for Mr. Lewis who was taken ill, have taken five main points of appeal. Miss Martin says that the records of the two appellants are not the same, M. has a worse record and yet S. received one month more than M. Mr. Costa, who appeared for the Crown, felt that the offences were serious enough to warrant the sentences but he felt that S. had received 10 the extra month for resisting arrest. We find that surprising because the resisting arrest seems to have been simply that he ran away when at La Rocque Harbour. Police officers were in pursuit and he was apprehended shortly afterwards. We will return to that in a moment.

15 The second point is the youth of the two accused, both were born on the same day and were fifteen years old at the time the offences were committed. That is certainly young, but the offences are serious and we do feel that as this is the first time that both of them have heard the 'clang of the gates' that should, perhaps, have been taken more into 20 account by the Sentencing Court.

25 Thirdly, the Court failed to take mitigating factors into account. The Court apparently retired in order to examine all the reports and then came back and asked counsel to address the Court in mitigation. The Court gave their conclusions without more ado. We find that unusual - Advocate Costa, in fact, called it "odd". There is, of course, no obligation for the Court to retire again and we must presume that Judge Short took the views of his panel into account when he pronounced the sentence. 30

The fourth argument was that the sentence was manifestly excessive. We have looked at similar cases in this appeal but those did not help us very much.

35 We cannot say that we dispute the severity of what happened. Indeed, Mr. Costa said that all three elements of Article 4(2) of the Criminal Justice (Young Offenders) (Jersey) Law 1994 were fulfilled, although Judge Short only mentioned two of those: the seriousness of the offence and the protection of the public. However, there are real 40 anomalies, there is a global sentence given by the Court - we do not know how the counts were itemised. The Crown readily agreed, at the beginning of this appeal, that Judge Short certainly had no power, under Article 10 of the Criminal Justice (Young Offenders) (Jersey) Law 1994, to say where the accused should reside at the end of their detention. 45

The comments by Judge Short on the decker book, as it is called, were not actually explained further in the judgment, and there was certainly an anomaly of some kind in the Court retiring for an hour before it heard the mitigation. However, we have to say in fairness to 50 the Court below that that point appears to be covered in the transcript at p.10, where this exchange took place:

55 *JUDGE SHORT: I wonder Miss Martin and Mr. Lewis, whether you would like to address us now, or when we've had an opportunity to retire and look at the probation report? Would you like to go now or after that?*

*ADVOCATE MARTIN: Well, Sir, I have no objections either way,
I do have a letter from Father Cousins which I'd like to
hand up, it refers both to Mr. M. and my client, Mr. S.*

5 There is no doubt in our mind that when the Court retired, they
very carefully examined, for an hour, all the reports that they had,
including the report of Father Cousins and of course they also had an
up-to-date summary given to them by Mr. Chipperfield, in Court, before
they passed sentence.

10 Whilst we do not wish to minimise the seriousness of the offence,
we do find that the anomalies which both counsel have pointed out to us
this afternoon are surprising. We will not remit the case back, it has
been going on for long enough. However, we will sit *de novo* and, having
15 examined all the evidence, and on that basis we must say that we regard
the six months and five months sentences as excessive. What we are
going to do is to substitute three months' Youth Detention for both of
the accused. We also have to tell you that you will both be liable to
supervision following that period of Youth Detention.

Authorities

A.G. -v- Rowe (1985-86) JLR N-26.

A.G. -v- Lelliott (29th November, 1989) Jersey Unreported.

D. -v- A.G. (21st April, 1994) Jersey Unreported.

Moreira -v- A.G. (24th July, 1995) Jersey Unreported.

A.G. -v- Martin and Selby (19th December, 1996) Jersey Unreported.

Criminal Justice (Young Offenders) (Jersey) Law 1994.

Sweet and Maxwell: Current Sentencing Practice: Part E6: pp.50501-50509.