

ROYAL COURT

55.

23rd April, 1990

Before: The Deputy Bailiff, and
Jurats Hamon and Vibert

The Attorney General

- v -

M W

and

C D

Sentences of Borstal training passed on two juveniles (M W and C D) who pleaded guilty to 8 specimen counts of malicious damage to motor vehicles and property at Patriotic Street car park, one count of conspiracy to cause malicious damage to motor vehicles and property at Pier Road multi-storey car park and five counts of larceny (approximately £575.00). The total value of the malicious damage which took place on the 2nd and 3rd February, 1990, amounted to approximately £60,000.

Advocate S.C. Nicolle for the Crown,
Advocate S.E. Fitz for the accused M W
Advocate S. Slater for the accused C D

JUDGMENT

DEPUTY BAILIFF: It cannot be over-emphasised or said too often that self-induced intoxication is an aggravating factor; these youths cannot avoid responsibility for their crimes by saying that they were drunk or by seeking to blame the off-licence shopkeeper who sold the liquor to them.

Having said that, there are two subsidiary matters.

One is that the Court trusts that the Police made every effort to identify the shop in question - it should not have been too difficult to put these two into a Police car and tour the area in question in order that they could point it out. The Court wishes Crown Advocate Nicolle to make enquiries and in due course to inform the Court whether a prosecution ensued and if not why not.

The second is that we doubt whether the defendants were truly drunk - after the Patriotic Street incidents they were able to sort out and share or dispose of all the stolen property. They were then able to plan the Pier Road offences - to arm themselves with a hammer and knives and a rucksack to remove the loot for a further shareout. Therefore that crime was premeditated. Although undoubtedly the alcohol was a factor, in the opinion of the Court they remained fully responsible for their own actions.

This was a case of deliberate, wanton damage on a vast scale. Taking the Pier Road incident, there was just under £57,000 worth of damage - without checking records the Court doubts whether there has ever been a case of malicious damage in Jersey where £57,000 worth of damage was caused in a single incident. It is certainly one of the worst if not the worst ever. The attitude of the defendants is clear from the fact that they systematically damaged every single car there, and that after hiding whilst an alarm was ringing, returned to complete the job by damaging the two or three cars that were left untouched.

There are many cases where the interests of a defendant and the interests of society coincide - and an individualised sentence can be imposed in the hope that the offender can be re-integrated within society as a law abiding citizen. Sadly, this is not one of them. In a case of this gravity, the interests of society demand that custodial sentences be imposed.

We agree with all that Crown Advocate Nicolle said about the victims of these offences. We know and appreciate the degree of emotional distress that victims of these kind of offences suffer, as well as the financial loss in many cases and of course, very considerable inconvenience in being deprived of, in many cases, one's sole means of transport. This is undoubtedly a case where the victims must be put before the offenders.

The English case of Hurren (1990) 90 Cr. App. R. 60 which the Crown Advocate helpfully put before us, is so very apt in this case. The language of Boreham J., in that case is so much in point that we adopt and adapt it. We take the view that any right-thinking member of the public would conclude that offences causing £60,000 worth of wanton damage, when viewed in their proper context, were so serious as to make a non-custodial sentence unjustified.

A reference was made to a case before this Court as recently as last Friday. It was that of Ryan and Mesney. In that case the Court declined to sentence two eighteen year old youths to a sentence of imprisonment. In that case the Court followed an earlier decision that it is wrong in principle to sentence an offender under twenty-one to imprisonment unless there are exceptional circumstances which really require the imposition of a custodial sentence. We are not, in this case, imposing a sentence of imprisonment but of Borstal training, which will be converted to youth custody, so the defendants will not be incarcerated with adult prisoners. But, in any case, we are sure that the scale and value of the damage in this case, amount to exceptional circumstances which really require the imposition of custodial sentences.

The only point at which we part company from the Crown Advocate is that for the reasons we have given, we cannot differentiate between the two defendants. It might have been different if the Consultant Psychiatrist had recommended a long period of compulsory in-patient treatment, equivalent to custody. But that is not the case. Out-patient treatment in a supportive role is all that is recommended. That does not persuade us not to apply the principles to which I have referred. We believe that to deal with the two defendants separately would be to create a disparity which could give rise to a sense of grievance on the part of C D.

Accordingly, M W and C D you are both sentenced, in respect of all the offences concurrently, to Borstal training and you will remain in custody here until your transfer to England. In the case of C D alone the Probation Order of December, 1989, is discharged and you are further sentenced to a similar term of Borstal training on each of the counts in that indictment concurrent with each other and also concurrent with the counts on the present indictment.

Authorities cited

R -v- David Peter Hurren (1990) 90 Cr. App. R. 60.

Authorities referred to

AG -v- Ryan and Mesney (21st April, 1990) Jersey Unreported.

