

ROYAL COURT

32A.

2nd March, 1992

Before: The Deputy Bailiff, and
Jurats Coutanche and Vibert

Attorney General

- v -

Denis Peter Holley

Police Court Appeal: Appeal seeking
variation of a sentence of two months'
imprisonment imposed in respect of
breach of a Probation Order.

Miss S.C. Nicolle, Crown Advocate.
Advocate A.D. Hoy for the appellant.

JUDGMENT

THE DEPUTY BAILIFF: This appeal arises from somewhat confusing
circumstances.

On the 25th July, 1991, this appellant appeared before the
Police Court on a single charge of having been drunk and

incapable. He was bound over to be of good behaviour for a period of three months.

On the 9th August, 1991, the appellant appeared again before the Police Court on a charge of having committed a grave and criminal assault on a female person. There was a second charge which is not relevant to this appeal. On the 6th September, 1991, the appellant was placed on probation for one year on the grave and criminal assault charge, with a condition that he should complete 75 hours of Community Service.

On the same occasion the Centenier made a Representation to the Police Court in respect of the breach of the binding-over order of the 25th July, 1991. The Police Court discharged the binding-over order and substituted a two-year Probation Order.

Unfortunately, the appellant did not comply with the conditions of his Community Service. After two warnings he breached the conditions again by absenting himself from work, under some pretence, and visited a public house and a betting shop.

Consequently, he was returned to Court on the 24th January, 1992, when he admitted the breach. By an oversight, the Representation referred only to the breach of the one year Probation Order with the condition of 75 hours' Community Service. The Police Court discharged the Order and substituted a sentence of two months' imprisonment.

Subsequently, it was realised that the breach of the separate two year Probation Order had not been dealt with. Therefore, the appellant was re-presented before the Police Court on 18th February, 1992, on the breach of that Order, which breach was again admitted. The Police Court discharged the

Order and substituted a sentence of two months' imprisonment concurrent to the term of imprisonment imposed on the 24th January, 1992.

Under the sentence imposed on the 24th January, 1992, the appellant is due to be released on the 3rd March, 1992. However, the sentence imposed on the 18th February, 1992, albeit imposed concurrently, overlaps with the effect that there would be a delayed release date.

That that was not the intention of the Police Court is clear from the transcript of the hearing on the 18th February, 1992, where both the Magistrate and the Probation Officer refer to an oversight, the Magistrate refers to the hearing as "just a tidying up exercise", and the Magistrate says "I make it concurrent so altogether it's two months".

The Crown correctly concedes that this Court should give effect to the intention of the Police Court. Accordingly, the appeal is allowed and the sentence imposed on the 18th February, 1992, is varied to one of two weeks' imprisonment to run concurrently with that imposed on the 24th January, 1992. Mr. Hoy will have his legal aid costs.

Authorities

AG -v- Curley (5th February, 1992) Jersey Unreported.

AG -v- Hervey (26th September, 1988) Jersey Unreported.