

ROYAL COURT
(Samedi Division) 20

4th February, 1994

Before: The Bailiff, and
Jurats Coutanche and Gruchy

The Attorney General

- v -

Thomas Henry Bartke

Application for review of the Magistrate's decision on bail.

The Attorney General.
Advocate J.D. Melia.

JUDGMENT

THE BAILIFF: The Magistrate had before him what was clearly a fairly serious matter. The medical report indicates that the victim had suffered a fairly violent attack committed upon her by the applicant.

The Magistrate also had before him the victim's statement. A plea of guilty had been entered and the Magistrate was going to proceed to sentence the accused when a request was made by his advocate that reports should be obtained, including psychological or psychiatric reports, it is not entirely clear which; the Magistrate actually says a background and psychological report.

The Magistrate having somewhat reluctantly agreed to those reports, then remanded the applicant in custody. It seems to this Court that there were some errors of procedure. If, no matter what might be in the reports, the Magistrate felt that the offence was so serious, he should have refused the application and proceeded to sentence the applicant to a term of imprisonment. But it seems to the Court that, by agreeing to order reports, he opened the door to the possibility - after reading them - of his imposing a non-custodial sentence. Secondly, it can be said - though we can well understand why the Magistrate remanded the applicant in custody - that he did not give the advocate an opportunity to

address him before making up his mind although he did allow her to do so afterwards. Nevertheless, in the Court's opinion, the procedure was flawed.

Accordingly, bail will be allowed in the sum £150.

Authorities

A.G. -v- Fischer (28th February, 1992) Jersey Unreported.