

ROYAL COURT
(Samedi Division)

204

7th October, 1994

Before: The Deputy Bailiff, and
Jurats Blampied and Vibert

The Attorney General

- v -

M

Decision after "Newton" hearing and sentencing following guilty plea to:

1 count of wilfully assaulting a child, contrary to Article 9 of the Children (Jersey) Law, 1969.

PLEA: Guilty.

DETAILS OF
OFFENCE:

M who was married to the mother of the victim but was not the father of the victim was left for the afternoon in charge of his wife's 3 children, aged 6 years, 2½ years and 9 months. The Court held, following the Newton hearing, that during the afternoon M assaulted the child aged 2½ by delivering a punch to the left side of his forehead and giving the boy what was described in medical evidence as a 'thrashing' on his bare bottom. Although the boy sustained considerable bruising there was no permanent damage. It was accepted that this was an isolated incident resulting from a loss of self-control. M claimed that he remembered nothing after smacking the child.

DETAILS OF
MITIGATION:

Found himself unable to cope with pressures and responsibilities of marrying into an 'instant family'. Showed remorse although found it difficult to accept that he could have struck the child with his fist. Of previous good character. Relationship with wife now at an end therefore likelihood of further contact with child remote.

PREVIOUS
CONVICTIONS: None.

CONCLUSIONS: 15 months' imprisonment.

SENTENCE AND
OBSERVATIONS OF THE COURT:

9 months' imprisonment. Court accepted reference to English authorities for guidance on principles to be applied. Jurats were divided on the weight to be given to mitigating factors. Deputy Bailiff, in accordance with convention, gave his casting vote in favour of the lower sentence.

A.R. Binnington, Esq., Crown Advocate.
Advocate S.J. Habin for the accused.

JUDGMENT
(Decision after the "Newton" hearing)

5 THE DEPUTY BAILIFF: The Court is satisfied beyond reasonable doubt that the injury to the side of B's head was caused by a punch delivered by the defendant. The Court is equally satisfied that the injuries to the child's bottom and genital area were caused by the defendant who delivered, in the words of Dr. Spratt: "a thrashing to him".

JUDGMENT
(Sentencing)

10 The defendant has pleaded guilty to a single count of wilfully assaulting a child, contrary to Article 9 of the Children (Jersey) Law, 1969. The offence took place on 16th January, 1994, when the defendant assaulted a child of his wife, aged 2 1/2 years.

15 Although admitting the offence the defendant disputed the extent of the violence inflicted and the Court accordingly held a "Newton" hearing.

20 After hearing evidence the Court declared itself satisfied beyond reasonable doubt that the defendant had delivered a punch of considerable force to the side of the child's head, causing a severe bruise. The Court was also satisfied that the defendant had delivered a series of hard slaps to child's bottom, described by Dr. Spratt as "a thrashing". Severe bruising to the bottom and some bruising to the genital area resulted.

25 This Court decided in A.G. -v- Mallett (20th March, 1991) Jersey Unreported that it was legitimate to refer to English cases for guidance as to the principles to be adopted in this jurisdiction in sentencing in this type of case.

30 We were referred by the Crown Advocate to a number of cases, but one in particular struck the Court as being helpful. That case is the case of Todd, (1990) 12 Cr.App.R.(S)14, which came before the English Court of Appeal. The facts are not significant but in delivering Judgment, Leggatt J said this:

35
40 "It must be emphasised that this appellant had not previously lost his temper with the child so far as the evidence goes, nor caused any such injury as happened on the occasion which brought him before the court. The sentence of the court must of course reflect the

5 *seriousness with which any assault on a small child is to be treated and must remind those who feel inclined to give way to stress by taking it out on the child how seriously the courts and indeed the public view any such behaviour. That is why an immediate custodial sentence in a case such as this is inevitable."*

10 It is true that there are degrees of gravity which range from the sadistic or premeditated perpetration of violence upon children to the isolated incident resulting from a sudden loss of temper.

15 We do not think that there is evidence of a sadistic or premeditated perpetration of violence in this case. Equally, however, this case is not at the bottom end of the scale.

(The defendant admitted that he lost his temper on two occasions; the first occasion followed his annoyance when the child was apparently sick. He then - as we have found - delivered the savage blow to the side of the child's head. On his account the defendant then took the child up for a bath and left him in the bath. He went downstairs and busied himself with the preparation of a meal and watching a video. The child then came down the stairs having climbed out of the bath himself and there followed the second incident of violence when the child apparently put his hand in a pot of nappy rash cream and placed his hand in his mouth. This led to the sustained slapping of the child's bare bottom.

30 The evidence given by Dr. Spratt as to the nature of the violence was summarised in his report which was placed before the Court in evidence. In that report he stated: "that the case ranked as serious" in his view "on a number of accounts"; and he said "secondly, at least one injury, a large bruise on the child's left forehead, represents a heavy and direct blow to that part of his head, probably a righthand, forehand, fist punch. The force of the blow would have spun the little fellow's head around to the right and for that reason would probably not have caused physical brain injury. However if it had been delivered along the side of the child's head a blow of that force would have been likely to have caused neurological damage, namely impaired consciousness, concussion, residual headache, fits, or worse. The little boy also received two additional glancing blows near the top of his head, one on each side. I think he was simply lucky to have escaped without some degree of brain injury on this occasion. Thirdly, presumably after he had sustained a flurry of blows to his head, the child must have been turned over and subjected to a heavy beating around his buttocks, anus and genitalia. These injuries could not have been inflicted through a napkin, I can only believe he was thrashed on his bare bottom."

40

45

50

We accepted that evidence and in our judgment the assault cannot be placed at the lowest end of the range.

5 In mitigation the defendant is of good character, he has
pleaded guilty and he has expressed some remorse for his actions.
His employer has spoken well of him. We accept that after
10 marrying his wife he found himself facing responsibilities for
three small children for which he was not prepared. In some ways
he may be immature for his years. We also have taken the view
that he was not well treated by his wife during the short
marriage. We take all that into account in passing sentence.

15 We cannot however - notwithstanding all those factors - do
other than mark society's disapproval and abhorrence at this kind
of offence by imposing a custodial sentence. As to the precise
sentence to be imposed the Jurats were divided. One Jurat would
have attributed a greater significance to the mitigating factors
than the other. In accordance with custom I have cast my deciding
20 vote for the lesser sentence and, M , you are accordingly
sentenced to nine months' imprisonment.

Authorities

Thomas: "Principles of Sentencing": pp.108-110.

Thomas: "Current Sentencing Practice": B2-71001 - B2-73A17.

R. -v- Lewis (1983) 5 Cr.App.R.(S)14.

R. -v- Greenhill (1986) 8 Cr.App.R.(S)261.

R. -v- Jeffrey (1989) 11 Cr.App.R.(S)265.

R. -v- Howard (1992) 13 Cr.App.R.(S)720.

R. -v- Todd (1990) 12 Cr.App.R.(S)14.

A.G. -v- Mallett (20th March, 1991) Jersey Unreported.

A.G. -v- Le Claire (11th February, 1994) Jersey Unreported.

A.G. -v- Larose (11th March, 1994) Jersey Unreported.

