

ROYAL COURT
(Samedi Division)

221.

4th November, 1994

Before: F.C. Hamon, Esq., Commissioner,
and Jurats Vibert and Potter

The Attorney General

- v -

Stephen James Hendry

Application for review of Relief Magistrate's decision to refuse bail.

On 21st September, 1994, the applicant appeared in the Police Court charged with (a) possession of a Class A drug (11th June, 1994); and (b) permitting another person to drive a car uninsured and unlicensed (29th July, 1994).

A plea was reserved and bail granted until 13th October, 1994.

On 13th October, 1994, the applicant entered guilty pleas to the offences with which he was charged on 21st September, 1994, and was remanded on bail for sentence on 10th November, 1994.

On 27th October, 1994, the applicant appeared in the Police Court, and pleaded guilty to (a) a parking offence (11th July, 1994); (b) larceny (7th September, 1994); and (c) driving under the influence of drink (7th September, 1994).

The applicant was given an absolute discharge on (a); a 2 month sentence of imprisonment on (b) and a fine of £200, or 1 week's imprisonment, in default, on (c).

The Applicant lodged a notice of appeal on 31st October, 1994, against the custodial sentence imposed on 27th October, 1994.

On 1st November, 1994, the Applicant appeared in the Police Court and:

- (1) pleaded guilty to receiving a stolen credit card and to attempting fraudulently to obtain alcohol therewith.

He was remanded in custody for sentencing on 17th November, 1994, on this charge and on the charges laid against him on 21st September, 1994; and

- (2) was granted bail, pending appeal, against the custodial sentence passed on 27th October, 1994.

A.J. Dessain, Esq., Crown Advocate.
Advocate P.S. Landick for the Applicant.

JUDGMENT

THE COMMISSIONER: This is a representation against a decision of the learned Relief Magistrate not to grant bail to Stephen James Hendry. As Crown Advocate Dessain has very clearly put to us, it is not for us to substitute our opinion for that of the learned Relief magistrate unless we feel that in some way he has misdirected himself.

Let us for a moment look at the provisions - bearing in mind that this offender is 19 years old - of Article 4 of the Criminal Justice (Young Offenders) (Jersey) Law, 1944, which states at paragraph 2:

"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:

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

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

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

Mr. Landick has set out very clearly the scenario of events leading up to this application and there are three major dates (we need not go into the details of the offences) but Mr. Hendry appeared before the Police Court Relief magistrate on 21st September, 1994, 27th October, 1994, and 1st November, 1994.

What disturbs us (and this is not in any way a criticism of the learned Relief Magistrate) is that it is quite clear that by the 7th September, the prosecuting authorities had sufficient to charge all these offences as one and instead they chose to present them as a piecemeal prosecution and it is, we feel, that piecemeal prosecution that has caused, quite understandably, some confusion in the lower Court.

At the end of the hearing on 1st November, 1994, on the application for bail, Judge Dorey said this:

"Well, I will grant bail pending appeal on the other charge, on the earlier charges, because of the delay there will be in hearing the appeal but as regards these charges

I am remanding them in custody to enable the probation reports to be completed and also to prevent them re-offending before they come up for sentence on the 17th. So, they are remanded in custody until the 17th and then, unless they are given a custodial sentence, then they will be released on bail pending appeal for the more serious offences".

We think that there is sufficient in that paragraph to enable us to substitute our own decision for that of the Relief Magistrate because the words that concern us are those "I am remanding them in custody to enable the probation reports to be completed", and then almost as an aside the learned Relief magistrate says "and also to prevent them re-offending".

We are not criticising the learned Relief Magistrate in not allowing bail to be granted because, as we say, had the prosecuting authorities properly presented this prosecution instead of presenting it piecemeal, we think that he would not have been faced with what was essentially an extraordinarily confusing series of events.

In the circumstances we are prepared to allow bail in this unusual case and we are going to set bail at £200. We are going to require the accused to report to the police once a week. Mr. Landick, that probably means there will be two appearances and that at a time convenient to the police, so you will have to make arrangements for that.

We also require you to restate the undertaking that you gave to us through your client that he will not re-offend between now and the time that he comes up before the Relief magistrate.

Addressing not you, Mr. Landick, but addressing your client, we want to say this: because of your age we are going to give you a chance. We are very worried because you appear to us to be heading towards what we call in law, recidivism, and the consequences of that - when you pass the age when the Court is able to help you and we are only able to help you because of your age - are going to be very serious indeed. We have seen many cases where people continually re-offend and once you reach a certain age the only thing that will happen to you is you will keep going to prison which is a complete waste of your life and of the efforts of everybody else who has given support to you.

We are going to give you a chance, which we hope you will take, however we are not saying how it will affect the learned Relief Magistrate; indeed, it may not affect him at all when you come up for sentence before him.