

ROYAL COURT
(Samedi Division)

185.

11th October, 1996

Before: The Bailiff and Jurats Rumfitt and Jones

The Attorney General

-v-

Thomas Hugh O'Brien
Scott Gourlay

THOMAS HUGH O'BRIEN

1 count of grave and criminal assault (count 1)

Plea: Guilty

Age: 36.

Previous Convictions: Dishonesty; public disorder; possession of drugs. Last offence: 1990.

Conclusions: 2 years' imprisonment

Sentence and Observations
of the Court:

1 Years probation with 180 hours' Community Service.

SCOTT GOURLAY

1 count of grave and criminal assault (count 2).
1 count of possession of a controlled drug (cannabis resin) contrary to Article 6 (1) of the
Misuse of Drugs (Jersey) Law 1978 (count 3).

Plea: Guilty

Age: 36.

Previous Convictions: Dishonesty; 1 of violence; Last offence: 1987; Conviction of assault 1976.

Conclusions:

Count 2: 2 1/2 years' imprisonment.
Count 3: £50 fine or 3 weeks' imprisonment, consecutive.

Sentence and Observations
of the Court:

Count 2: 1 year's probation, with 180 hours Community Service

Details of Offence: (Both accused)

Both accused in the Elfine Hotel. O'Brien said he was very drunk. Gourlay had drunk twice his normal amount. O'Brien was annoyed by Robson (victim) and head-butted him. When Robson was on the floor Gourlay hit him with a bar stool. Robson's nose was broken but no evidence to show whether by the head-butt or the bar stool. A personal amount of cannabis was found at Gourlay's home.

Details of Mitigation: (Both accused)

Robson was one of a group all drunk and making trouble. O'Brien was provoked by being called a Scotch cunt. Gourlay had intended to hit someone else whom he thought was attacking Robson.

The Solicitor General
Advocate S.A. Meiklejohn for T.H. O'Brien
Advocate S.J. Crane for S. Gourlay

JUDGMENT

THE BAILIFF: Offences of grave and criminal assault in public houses are offences which generally lead to custodial sentences. The Court will not condone violence in public places which ought to have no place in our society.

At the same time, however, these offences must be set in context. The submissions which we have heard make it clear that there was a considerable amount of intoxication and drunken behaviour in the public house in question and it appears to the Court that if action had been taken by the responsible authorities to halt that behaviour then these offences might not have taken place at all. For that reason we are going to request the Attorney General to cause enquiries to be made by the police into the events which took place at the Elfine Public House and to give consideration to the question of whether a reference should be made to the Licensing Assembly in due course.

Gourlay, we have taken into account all the matters which have been put before us by your Counsel, extremely ably, and we accept that there was an element of provocation, we accept that you acted out of character on this occasion and we have been impressed by the references which have been put before us. We have reached the conclusion that justice in this case can be met by a non-custodial sentence. On count 2 we are going to place you on probation for 1 year, subject to a condition that you perform 180 hours of Community Service, on count 3 you will be fined as moved for by the Solicitor General, £50 or three weeks in prison in default.

O'Brien, much that I have said in relation to Gourlay applies to you also. We accept that there was provocation, we accept that you too acted out of character on this occasion and that there are other mitigating factors arising from your co-operation

with the police, and there is your guilty plea, of course, and also the references which have been put before us which we have taken into account. The Court hopes that neither of you will behave in this way ever again and we consider that, in your case, again, a non-custodial sentence would meet the justice of the case. The sentence of the Court is that on count 1 you will be placed on probation for one year subject to you performing 180 hours Community Service.

No Authorities