

ROYAL COURT  
(Samedi Division)

197.

25th October, 1996

Before: Sir Philip Bailhache, Bailiff, and  
Jurats Blampied and Potter.

The Attorney General

- v -

Alan George Corcoran

- 1 count of grave and criminal assault (count 1).
- 1 count of attempted robbery (of which count the accused was found guilty in the Police Court on 15th July, 1996, and on 5th August, 1996, was remanded to the Inferior Number of the Royal Court for sentencing in accordance with the provisions of Rule 4A of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949, as amended (count 2).

Plea: Count 1: guilty.

Age: 20.

Details of Offences:

Defendant followed victim out of night club; beat him savagely about head and face with belt, then punched and kicked him when he was lying on the ground. Attempted to steal wallet containing £40 from victim's trouser pocket. Victim ran off, pursued by Defendant. Member of public prevented matter going any further. No provocation. Some element of deliberation and the buckled belt constitutes a weapon. Victim's injuries extremely unpleasant, but he did not require hospitalisation and the injuries were not in the most serious category.

Details of Mitigation: Youth. Strong Probation support for individualised approach.

Previous Convictions:

- 1992: Assault of a sexual nature. Two years six months' imprisonment.  
1992: Serious Road Traffic offences. One year ten months' imprisonment.  
1995: Larceny. Fined £125.  
1996: Larceny and attempted larceny. Probation Order. Condition of ASG. Defendant was in breach of this Order at the time he committed these offences.

Conclusions:

Count 1 : 2 years 6 months' Youth Detention.  
Count 2 : 1 year's Youth Detention, consecutive.  
Following Norris and having regard to totality principle.

Sentence and Observations of the Court:

The use of Article 4A procedure in a case such as this was "entirely wrong". It was only to be used in cases where the Magistrate finds the accused guilty and thereafter forms the opinion that the case is outside his jurisdiction, having regard to his previous record of convictions or any other fact brought to his knowledge at the conclusion of the Hearing. In this case it must have been obvious that the appropriate sanction for a violent robbery would be outside his jurisdiction before the case began. Use of the procedure in this way would be in effect to deprive accused persons of their right to trial by jury. The Court could not quash the conviction recorded in the Police Court, but nonetheless could mark its disapproval of the use of the procedure in this way by imposing an absolute discharge. This the Court did.

As regards the grave and criminal assault, this was a serious offence, with some deliberation and the use of a weapon. A custodial sentence was inevitable to mark the Court's disapproval of conduct of this type. The Court took into account the Defendant's youth and that the injuries were of not great seriousness. Those factors together enabled the Court to impose a sentence towards the bottom of the scale. Two years' Youth Detention.

A.J. Olsen, Esq., Crown Advocate.  
Advocate R.G. Morris for the accused.

#### JUDGMENT

5 THE BAILIFF: Corcoran was charged before the Police Court with two offences, firstly of having committed a grave and criminal assault in the early hours of 9th July, 1996, in the Ordnance Yard; and, secondly, with having, on the same occasion, attempted to commit the crime of robbery.

10 On 12th July, 1996, Corcoran pleaded guilty to the first charge, but not guilty to the second charge. The Police Court proceeded in connection with the second charge to conduct a hearing at the conclusion of which the learned Relief Magistrate convicted the Defendant, pursuant to the powers conferred by the Police Court (Miscellaneous Provisions) (Amendment No. 5) (Jersey) Law, 1996, and committed the Defendant for sentence by this Court. Insofar as the first charge was concerned, the Defendant was  
15 committed for trial.

20 This appears to have been the first occasion upon which the power to convict and to commit an offender for sentence has been exercised by the Police Court. Unfortunately it seems to us that it was an inappropriate case in which to exercise that power and we think it desirable to say why. In our judgment the power was conferred on the Police Court to meet the situation which can  
25 arise where the Court, exercising its function as a Court of summary jurisdiction and intending to deal with the matter itself, becomes appraised at the end of the hearing of facts which lead it to the conclusion that its powers are insufficient to deal with the case. The power should not be exercised in cases involving serious alleged offences where there is no doubt from the start of  
30 the hearing that the case must fall to be dealt with in this Court. To exercise the power in cases of serious alleged offences is to deprive an accused person of his right to trial by jury.

In this case, however, the error was compounded by convicting the accused of attempted robbery while at the same time remanding him for trial on the charge of grave and criminal assault. The result was that when Corcoran appeared before this Court he had been convicted of attempted robbery but it was open to him to plead not guilty to the indictment which charged him with grave and criminal assault. Had such a plea been entered, Corcoran would have stood trial before the Assizes for the offence of grave and criminal assault having been convicted by the Police Court of an attempted robbery arising out of the very same incident. The procedure followed in the Police Court was, in our judgment, quite wrong. We cannot, of course, quash the conviction for attempted robbery but we propose to deal with the matter by imposing an absolute discharge for that offence.

We turn, therefore, to the remaining charge of grave and criminal assault. This was, as the Crown Advocate has rightly submitted, a serious assault planned to an extent in that Corcoran followed his victim from the public house in which they had been drinking. A weapon was used, namely a belt with a buckle, and the victim was kicked whilst he was on the ground both to the body and to the head. At the time when the offence was committed the accused had been placed on Probation by the Police Court for other offences but a few weeks before.

The Court has given very careful consideration to the suggestion that a Probation Order should be imposed with a condition of attendance at training sessions. It may well be that the Defendant would benefit from such training, but the offence is one which in our judgment must attract punishment to demonstrate society's disapproval of street violence of this kind.

Corcoran is 20, it being one day before his 21st birthday and the provisions of the Criminal Justice (Young Offenders) (Jersey) Law therefore apply.

We have reached the conclusion that a custodial sentence must be imposed because the offence is so serious that no other method of dealing with the case is appropriate.

In mitigation we have taken into account the youth of the Defendant and his guilty plea. We have also accepted the submission of defence counsel that on the facts of this case the grave and criminal assault is at the lower end of the scale. It seems clear that the victim's injuries were not, in the event, very serious.

Corcoran, the law requires me to explain to you why the Court is imposing a custodial sentence and I think it is obvious from what I have just said that the Court regards gratuitous street violence of this kind as being so serious that it cannot deal with the matter other than by imposing a custodial sentence. I have to

tell you that when you have served the custodial sentence which the Court is about to impose you will be liable to a period of supervision thereafter by a Probation Officer or some other officer. The sentence of the Court is that you be sentenced to Youth Detention for a period of two years.

There remains - although neither counsel dealt with the matter - the breach of the Probation Order imposed on 14th June, 1996, by the Police Court. In the light of the sentence which the Court has just pronounced we propose merely to discharge that Probation Order.

Authorities

A.G. -v- Norris (3rd June, 1992) Jersey Unreported.

C.E. Whelan: "Aspects of Sentencing in the Superior Courts of Jersey": pp.91-94.

Ibid: 1994-95 Noter Up: pp.36-39.

Ibid: 1995-96 Noter Up: pp.31-33.