

57  
173

POLICE COURT APPEALS

24th November, 1986

**Attorney General v. Barry Dimond**

Judgment

**DEPUTY BAILIFF:** We have given anxious consideration to this matter, but in our view the appellant was fully deserving of a custodial sentence. He is not a person of good character, because he had two previous convictions, one of them for an offence involving dishonesty. He was 21 years old and must therefore expect to be treated as an adult. It would have been advisable for a background report to be obtained, because the appellant had not previously served a sentence of imprisonment. It seems that the Assistant Magistrate was so minded, because his notes show "immediate sentence of imprisonment", a few dots and "background report", but for some reason he did not go on to order one. We could of course delay it further, and order a report, which could be detrimental to the accused, because he would have the case hanging over his head much longer, but we are satisfied that having regard to the appellant's wanton behaviour there must be a custodial sentence regardless of whatever a background report might show. When we talk of wanton behaviour, there was taking and driving away, which was his second offence involving dishonestly. There was driving uninsured, there was malicious damage, admitting to having a implement to commit a further offence of dishonestly, there was the theft, and there was leaving the car in a situation which can only be described as reckless, and in that respect we believe the accused or the appellant knew exactly what he was doing. We look at his own question and answer interview, which was available to counsel, we ignore the Stringfellow one which was not available, but at the end of his question and answer interview he was asked "you left the car on the slipway near the Welcome Inn at Gorey, where did you park it exactly, at the top or half way down the slipway"

Answer : "at the bottom".

Question: "on the beach"

Answer: "at the bottom".

Question: "surely you realized the tide would probably damage it.

Answer: "the tide was right next to it, it was when I woke up this morning and saw it on the beach I thought Oh shit."

Now all those matters make a custodial sentence inevitable. Nevertheless, having regard to the steps that the appellant took vis-à-vis Falles, the owners of the car, the remorse shown and the fact that a custodial sentence is in itself likely to make an impact, we think that we can probably give added weight to the mitigation. Therefore we allow the appeal only to the extent that we quash the sentences imposed and we substitute on each of the offences, all concurrently, a sentence of one month's imprisonment.