

ROYAL COURT

29th February, 1988

Before: V.A. Tomes, Esq., Deputy Bailiff
assisted by Jurat J.A.G. Coutanche
and Jurat G.H. Hamon

Her Majesty's Attorney General

- v -

Charles Herbert Harris

Appeal against sentence of imprisonment of
ten weeks imposed in respect of two counts of
being drunk and incapable

Advocate B.I. Le Marquand on behalf of the appellant
Advocate C.E. Whelan on behalf of the Crown

JUDGMENT

DEPUTY BAILIFF: This appeal is against two sentences of imprisonment imposed consecutively on the 10th February, 1988. It is important to note that they refer to quite separate offences, the earlier one occurred on the 19th January and was first before the Court on the 20th January. At that time the Magistrate remanded the matter for a social enquiry report. This shows that the Magistrate was prepared to consider a non-custodial disposal,

notwithstanding the appellant's deplorable record. That report was to come before the Court on the 10th February. However, the second offence was committed on the 9th February, on the very eve of the appellant's Court appearance, when he knew that he had been interviewed and knew that a report which might well keep him out of prison was being prepared, with the result that when he appeared on the 10th February, he faced two charges and had totally breached the trust placed on him when he appeared three weeks earlier.

In January the Court showed leniency for reasons that have been explained and the appellant repaid the Court for its leniency by reoffending three weeks later. I refer to the Magistrate's comments on the 20th January. He said: "Now, I am going to take a chance to see if the Probation Service with their long experience and skill could try and arrange something for you that would keep you from getting drunk and incapable every week. You co-operate with them and keep off the drink as much as possible for the next three weeks and they will then be able to do a decent report. If you get drunk and incapable again, well, they will just chuck their hand in and you will come back here and you will go to prison for about three months".

In this Court's view it was impossible after that warning for the Police Court to do otherwise than impose imprisonment and ten weeks is slightly shorter than three months. We agree with the Magistrate that the second offence is aggravated by the fact that the appellant was drunk and incapable in the childrens' library at 3.30 in the afternoon, when children were about to come out of school and go and use the library. We have studied the appellant's record, there are 75 previous convictions for drunk and incapable and 30 for drunk and disorderly, in other words, a grand total in excess of 100. We think that the appeal is without merit; it is dismissed and any question of hospitalisation can be dealt with under the Prison Law.