

ROYAL COURT

(Superior Number exercising the appellate jurisdiction conferred upon it by Article 22 of the Court of Appeal (Jersey) Law, 1961)

21st October, 1988

Before the Bailiff, assisted by Jurats J.A.G. Coutanche, M.E. Lucas, P.G. Blampied, C.L. Gruchy and M.J. Le Ruez.

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The appeal of James Demore against the sentence of six months' imprisonment on two counts of being drunk and incapable and the consecutive sentence of three months' imprisonment on a count of larceny of one bottle of whiskey valued at £5.52.

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Advocate C.E. Whelan for the Crown.

Advocate C.J. Scholefield for the appellant.

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Judgment

Bailiff: Mr. Demore please stand up. We have listened to your arguments Mr. Scholefield and the first thing we want to say is that the Court cannot accept the difference you would have us consider between the offences of being drunk and incapable and being drunk and disorderly and your argument finds no favour with the Court. It is quite clear from the previous decisions of the Full Court that a sentence of up to nine months imprisonment for offences of drunkenness be they drunk and incapable or drunk and disorderly are not regarded as excessive. Applying those principles we reach the conclusion, quite clearly, that the sentence of imprisonment imposed by the Inferior Number was neither wrong in principle nor manifestly excessive. However, the Court having arrived at that conclusion then went on to consider whether it could properly exercise a degree of mercy and not uphold the sentence but to substitute a different sentence.

The Court, as you have probably gathered from the time that we were out, gave anxious consideration to this matter and we have to ask you Demore are you prepared, if the Court were to place you on probation for one year, to enter the Adult Psychiatric Unit and remain there as long as the doctors require you to remain there?

**Mr. Demore:** I do, Sir.

**Bailiff:** Very well, as either an in patient or an out patient.

**Mr. Demore:** (nods assent)

**Bailiff:** Very well as an act of mercy (and by a majority I might add) the Court is going to place you on probation concurrently for each of the offences for a period of one year and we note, quite clearly, that the Probation Officer was unable to recommend this, but as an act of mercy we are doing this because you now appear from what your counsel has said to be willing to undertake this course of treatment. You are placed on probation for a year on those conditions, but this is your last chance. If you don't take it and there are any further offences we will have no hesitation, and I say this with the approval and authority of the Full Court, in upholding this sort of sentence whatsoever. Do you understand Mr. Demore?

**Mr. Demore:** Yes Sir.

**Bailiff:** Is this a legal aid case?

**Advocate Scholefield:** Yes Sir.

**Bailiff:** Legal Aid Costs.

**Advocate Scholefield:** I'm obliged.

**Authorities cited.**

A.G. -v- A.D. Cambell (Inf No.) (24th July, 1987) (Unreported)

A.G -v- A.D. Campbell (Superior No. appeal)(7th September, 1987) (Unreported judgment  
No:142)

A.G. -v- A.D. Campbell (Superior No. appeal)(17th October, 1988) (Unreported judgment  
No: 198)

A.G. -v- R.V. Surcouf (Inf No.) (2nd February, 1987) (Unreported judgment)

A.G. -v- Le Monnier (Inf No.) (13th March, 1987) (Unreported judgment No:13)

R -v- Queen (1981) 3 Cr. App. R. (S) 245

Proportionality principle

R -v- Skidmore (1983) Cr. L.R. 407

R -v- Moylan (1970) 1 Q.B. 143

R -v- Coombes (1981) 3 Cr. App. R. (S) 300

R -v- Clarke (1975) 61 Cr. App. R. 320

Shoplifting

Bradbury -v- A.G. (Superior No.) (1985) 1 LR, Pt 17

R -v- Anderson (1972) 56 Cr. App. R. 863

A.G. -v- Poppleton (Police Court Appeal) (17th October, 1988) (Unreported No. 195)

A.G. -v- Jones (Police Court Appeal) (17th October, 1988) (Unreported No:196)