

ROYAL COURT

185

9th December, 1991

Before: the Deputy Bailiff assisted by
Jurats Gruchy and Vibert

POLICE COURT APPEAL

Attorney General

- v -

William Sutherland McGregor

Appeal against six month sentence of imprisonment imposed
in respect of one count of being drunk and disorderly.

Advocate S.C.K. Pallot on behalf of the Attorney General
Advocate R.G.S. Fielding for the appellant

DEPUTY BAILIFF: The appellant pleaded guilty before the Police Court
on 11th November, 1991 to two charges. The first was that on
8th November, 1991, at about 15.30 hours at the junction of Bath

Street and Nelson Street in St. Helier, he was drunk and incapable. The second, was that on the next day 9th November, 1991 at about 14.05 hours in King Street, St. Helier, he was drunk and disorderly. On the first charge he was sentenced to one week's imprisonment, on the second, to six months' imprisonment. Both sentences to be concurrent.

The appellant appeals against the sentence of six months' imprisonment on the ground that it was manifestly excessive. On 13th September, 1991, the Royal Court had sentenced the appellant to five months' imprisonment on a charge of being drunk and disorderly; he had only recently been released from prison after serving that sentence.

On the first occasion the appellant was staggering into the roadway in front of passing traffic; he was quite incapable of looking after himself. On the second occasion he was observed outside the premises of Marks and Spencers in the King Street pedestrian precinct, behaving in a disorderly manner by swearing and shouting at pedestrians including several women who were collecting on behalf of the British Legion Poppy Appeal.

In his notice of appeal the appellant claims that he pleaded guilty only to save time and that another person was arrested simultaneously and taken to the Police Station but not charged. The appellant claims that it was the other person who swore. However, he has not sought leave to appeal against conviction and we are concerned only with sentence. According to the transcript the appellant did say that it was his mate swearing and that he, the appellant, never swore at women. Nevertheless, he did plead guilty to being drunk and disorderly. Therefore, we will ignore the matter of the alleged swearing at women and proceed on his version of events.

The Magistrate correctly applied the principle laid down by this Court, that is to say, that each successive time the sentence should be increased until the maximum is reached. If the Magistrate is to be criticized at all, it is for imposing too lenient a sentence for the first offence of being drunk and incapable. The appellant has twenty-three previous convictions for being drunk and disorderly, he also has twenty-four previous convictions for being drunk and incapable. Additionally, he has six previous convictions of being drunk on licensed premises. There are fifty drink related convictions in the last six years.

The appeal is totally without merit but the Magistrate should have applied the same principle to the offence of being drunk and incapable as he did to the offence of being drunk and disorderly, whereby sentences are progressively increased. Unfortunately, the Police Court has been wholly inconsistent over the years, alternating fines and imprisonment without any clear course. For example, the last three convictions of being drunk and incapable resulted in a fine of £25 followed by six weeks' imprisonment, followed by a fine of £25 and we now have one week's imprisonment. But the appellant has appealed only against the sentence of six months imprisonment for being drunk and disorderly and therefore we cannot interfere with the other sentence in order to increase it, as we would wish to do.

Accordingly, the appeal against sentence is dismissed. We reiterate what the Court said on the last occasion:

"Counselling and medical help is available both in the prison and upon release. It is up to the appellant to show the necessary motivation".

Advocate Fielding will have his legal aid costs.

Authorities

A. G. v. McGregor (13th September, 1991) Jersey Unreported