

ROYAL COURT
(Superior Number)

95

3rd June, 1992

Before: The Bailiff, and
Jurats Coutanche, Myles and Rumfitt

The Attorney General

- v -

Richard Christopher Norris

Sentencing, after conviction at the Criminal Assize on
1 Count of Grave and Criminal Assault.

PLEA:

Not Guilty.

DETAILS OF OFFENCE:

Group of "bikers" to which the accused belonged set upon a stranger outside a night club at closing time. In an entirely unprovoked assault the accused (and possibly others) kicked the victim about the head and face breaking his jaw in two places, causing the loss of six teeth and damaging the supporting bone of the gum.

DETAILS OF MITIGATION:

It was submitted by the defence that this was a case of mistaken identity - accused thought the victim was someone against whom the "biker" group had a grievance. It was also submitted that the accused had not been solely responsible for the recorded injuries. Neither point was accepted by the Court as mitigation. Account was taken only of the fact that the accused had a supportive wife, cared about his children and seemed to recognize a need to reform himself.

PREVIOUS CONVICTIONS:

Several for violence, public disorder and possession offensive weapons; also some cannabis offences.

CONCLUSIONS:

3 years 6 months' imprisonment.

SENTENCE AND OBSERVATIONS OF THE COURT:

Conclusions granted. Superior Number prepared to adopt the English tariff band of 3-5 years for grievous bodily harm (analogy with Jersey offence of grave and criminal assault). In a case of serious attack in a public place in Jersey, Court regards 4 years as a proper benchmark.

C.E. Whelan, Esq., Crown Advocate.

Advocate P.M. Livingstone for the accused.

JUDGMENT

THE BAILLIFF: In cases of this nature, the principles of sentencing practice in England are not so far removed from our own that we should not have proper regard to them. The offence of inflicting grievous bodily harm is not all that different from that of a grave and criminal assault.

Accordingly we are prepared to say that in cases of this gravity a proper benchmark is between three and five years, depending on the circumstances.

Mr. Livingstone has asked us to distinguish between what he calls, and is commonly called, a "glassing" attack and one with a boot. We are unable to do so, each is a grave and criminal assault, but we accept that we have to take into account the four matters referred to in Professor Thomas' book at p.95.

We consider that by running across the road towards the victim, as the evidence showed, the accused exhibited a degree of intent as he believed - quite wrongly - that earlier on the

victim had assaulted one or more of his fellow "bikers". In this regard, we do not accept that a misplaced sense of loyalty to them comes before the duty of every citizen to act in an orderly manner towards his fellow citizens. The Queen's subjects are entitled to expect to be able to walk in St. Helier at night without fear of attack.

We accept that some others appear to have taken part, but we have no doubt that the serious injuries to the victim, which we have had described to us, were caused by the accused's forceful kick.

As regards the Jersey cases referred to by Mr. Livingstone, Aubert, (25th July, 1988) Jersey Unreported, was in fact one of "glassing" and we have dealt with the distinction Mr. Livingstone would invite us to find. Lelliott, (11th March, 1991) Jersey Unreported, was an appeal from the Police Court which cannot be an authority for a benchmark for sentencing policy in this Court, and in that case, moreover, the accused was much younger. Mandel, (4th July, 1989) Jersey Unreported, was also a "glassing" case but we were informed that the glass was thrown whole and unbroken in a pub. Ramsey, (17th September, 1991) Jersey Unreported, was more of a family feud and in Nozedar, (1985-86) JLR N.20; (25th October, 1985) Jersey Unreported, the English cases do not appear to have been referred to, at least not in the judgment.

In cases of this nature where there is an unprovoked attack on somebody on the public streets of this Island, we think that we can do no more than quote, and indeed adopt, the words of Griffiths LJ in R. -v- Ivey (1981) 3 Cr. App. R(S) 195 where he said:

"The time has come when these courts..." (those are the English Courts, but we accept that) **"must do all in their power by exemplary sentences to deter such behaviour".**

We therefore find that the benchmark for this case should properly be one of four years' imprisonment, but we also find that the Crown has taken fully into account certain of the matters referred to in the Probation Report which we have felt able to do as well, not least the letter from Mrs. Norris. But we cannot find, under the circumstances of this case and having regard to the principles which I have endeavoured to enunciate, that a sentence of three years and six months is wrong and accordingly, Norris, you are sentenced to three years and six months' imprisonment. It will, of course, be consecutive to your existing sentence.

Authorities

AG -v- Langford (1985-86) JLR N.20; (10th April, 1985) Jersey Unreported.

AG -v- Mandel (4th July, 1989) Jersey Unreported.

AG -v- Lelliott (11th March, 1991) Jersey Unreported.

AG -v- Aubert (25th July, 1988) Jersey Unreported.

AG -v- Heuzé (24th October, 1988) Jersey Unreported.

AG -v- Ramsey (17th September, 1991) Jersey Unreported.

AG -v- Nozedar (1985-86) JLR N.20; (25th October, 1985) Jersey Unreported.

Thomas: Criminal Sentencing Practice: pp. 2105-2106;
Ivey (1981) 3 Cr. App. R(S) 195.
Rijkebusch (1982) 4 Cr. App. R(S) 402.

Thomas: Principles of Sentencing (2nd Ed.): pp. 93-9.