

ROYAL COURT
(Samedi Division)

16th May, 1994

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Before: The Deputy Bailiff, and
Jurats Vint and Gruchy.

Appeal from the Police Court (the Magistrate).

Harold Alfred Hefford

- v -

The Attorney General.

Appeal against sentence of 4 months' imprisonment imposed on 21st April, 1994, following a guilty plea to:

1 charge of being drunk and disorderly.

Appeal allowed; sentence quashed; sentence that will allow immediate release from custody of the appellant substituted.

Advocate S.A. Meiklejohn for the Appellant.
S.C.K. Pallot, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: This is an appeal by Harold Alfred Hefford who was sentenced to four months' imprisonment in the Police Court on 21st April, 1994, having pleaded guilty to an offence of being drunk and incapable.

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Mr. Meiklejohn on his behalf raises essentially two points by way of appeal. The first point is that the appellant was given no opportunity to speak in mitigation before the learned Magistrate imposed sentence. The second point is that the sentence of four months' imprisonment represents too big a jump in the sentence, having regard to the fact that he was sentenced to two weeks' imprisonment in February, 1994, for a similar offence. It must be said that this appellant has a deplorable record. We were told that he had offended over 100 times since 1974.

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As to the first ground of appeal it is true that upon analysis of the transcript, the appellant was not given the opportunity to speak in mitigation. The hearing took place in two parts. On 7th April, the learned Magistrate heard evidence as to what had taken place and as to how the appellant had been found asleep in Parade Gardens. He then adjourned the hearing for the preparation of a background report by the Probation Service and the hearing continued on 21st April. We think that that is probably the reason why the learned Magistrate fell into the error of believing that he had given the appellant the opportunity to speak in mitigation, whereas that was not in fact the case.

The opportunity to defend oneself, or to speak in mitigation, is a fundamental right in criminal proceedings which is not cured by the ordering of a Probation Report. Whether or not all the matters raised by the appellant's advocate in this Court had been covered in the background report and as a matter of fact we do not think that they were, that would not, in any event, save the fundamental defect that the appellant was not given the opportunity to defend himself. That is sufficient in our Judgment to dispose of this appeal.

We therefore allow the appeal and we quash the sentence of four months' imprisonment and we substitute such a sentence as will allow the immediate release of this appellant.

Authorities

Thomas: Principles of Sentencing (2nd Ed'n): pp.20-25:
The Intermediate Recidivist; The Inadequate Recidivist.

A.G. -v- O'Rourke (19th April, 1991) Jersey Unreported.

McGregor -v- A.G. (9th December, 1991) Jersey Unreported.

Barbet -v- A.G. (28th September, 1993) Jersey Unreported C.of.A.