

ROYAL COURT
(Samedi Division)

98,

16th May, 1994

Before: The Deputy Bailiff, and
Jurats Vint and Gruchy

Appeal for Police Court (The Magistrate)

Sebastian Joseph Richards

- v -

The Attorney General

Appeal against total sentence of 3 months' imprisonment passed on 5th April, 1994, following guilty pleas to:

- 1 charge of being drunk and disorderly (charge 1 of the charge sheet: 1 week's imprisonment).
- 1 charge of obstructing a Police Officer in the execution of his duty (charge 2: 1 week's imprisonment, consecutive).
- 1 charge of violently resisting Police Officers on the same occasion, in the execution of their duty (charge 3: 3 weeks' imprisonment, concurrent).
- 1 charge of assaulting a Police Officer, on the same occasion, in the execution of his duty (charge 4: 3 months' imprisonment, concurrent).

Appeal dismissed.

Advocate R.J.F. Pirie for the Appellant.
Advocate Mrs. S.A. Pearmain on behalf of the
Attorney General.

JUDGMENT

THE DEPUTY BAILIFF: Sebastian Joseph Richards appeals against a sentence of three months' imprisonment imposed upon him, amongst other sentences, for an assault upon Police Constable Vogel in the due execution of his duty, the sentence having been imposed by the learned Magistrate on 5th April, 1994.

There are two grounds for the appeal. The first ground is that the learned Magistrate misdirected himself in regard to the

nature of the assault committed by the appellant. This ground arises from the Judgment of the learned Magistrate, when passing sentence, when he made the following remarks:

5 *"The bundle..."* (and the Magistrate is referring to the
bundle with which he was supplied by prosecution and
defence) *"comprised firstly the statement of P.C. Vogel
10 who described the assaults to which he had been subjected.
These included the repeated punches and kicks to which the
Centenier referred in his outline. As to the nature and
extent of the injuries, P.C. Vogel also stated that he had
suffered several sore lumps and bumps to the top of his
head. The area of his left ear and side of his face was
15 painful as were his nose and forehead. He had grazes to
both elbows and knees, it concluded that he was sore all
over. In the bundle were also two medical reports on the
condition of P.C. Vogel, that of Dr. Taylor is the more
detailed, it supports the statement of P.C. Vogel.
20 Considering the violence of the assaults, it is
astonishing that P.C. Vogel did not sustain injuries of a
more serious nature. This appears to me to be the only
reason why Richards has avoided a charge of grave and
criminal assault which one would expect to follow from
repeated kicks to the body of a victim who was on the
25 ground."*

Counsel suggests that that passage which I have just read indicates that the Magistrate misdirected himself by assuming that the appellant was standing when he administered the kicks to P.C. Vogel on the ground. The Court cannot accept that submission. As the Magistrate made clear, he had seen in the bundle which had been supplied to him a number of papers, including the statement of P.C. Vogel. In his statement P.C. Vogel says: *"The male..."* (and he is referring to the appellant) *"then became suddenly and extremely violent. We wrestled and fell to the ground where I attempted to restrain him and calm him down. At this point I was aware of the first male (who was Banister) who had now jumped on my back. The second male managed to get away from my hold; he was repeatedly punching me with both fists to the face, ears and head; he was lashing out with his legs and I was aware that I was also being kicked in his attempts to overpower me. The male was now on top of me and repeatedly punching me in the face"*.

It seems clear to the Court that the Magistrate, having regard to that clear statement of P.C. Vogel, to which he (the Magistrate) actually refers in the summary judgment, cannot have been under any misapprehension as to what had taken place. We therefore consider that there is no substance in this ground of appeal.

The second ground is that there was undue disparity between the sentence imposed by the learned Magistrate on the appellant

when compared with the sentence imposed on his co-accused, Banister. It is said that the sentence on the appellant of three months' imprisonment was unduly harsh in comparison with the sentences of three weeks' imprisonment imposed concurrently for three assaults on different police officers. But the assaults committed by Banister on the police, were in our judgment, of an altogether different character. The assault by Banister on P.C. Vogel amounted to jumping on to the back of the officer. The assault on P.C. Coxshall amounted to placing the officer in a headlock and pushing his head against the glass front of a building. Finally, the assault on P.C. Hare amounted to placing that officer in a headlock and subsequently to throwing his fist around in the air.

We do not think that these assaults bear proper comparison with the savage assault committed on P.C. Vogel by the appellant. A proper distinction was made by the learned Magistrate between the aggression shown by Banister and the violence perpetrated by the appellant in the sentences imposed.

Taken in the round the Court considers that the police behaved with commendable restraint when provoked by the appellant and his associate. The fact that the appellant was undoubtedly drunk is an aggravating factor. The sentence of three months' imprisonment, in our judgment, took full account of the mitigating factors, including the apology tendered by the appellant to P.C. Vogel. Without those mitigating factors there is little doubt in our mind that a longer sentence than three months' imprisonment would have been fully justified. The appeal is therefore dismissed. Mr. Pirie, you shall have your legal aid costs.

Authorities

A.G. -v- Whiteford (3rd July, 1993) Jersey Unreported.