

ROYAL COURT
(Samedi Division) 152.

25th July, 1994

Before: The Deputy Bailiff, and
Jurats Blampied and Herbert

POLICE COURT APPEAL
(The Magistrate)

William Creighton

- v -

The Attorney General

Appeal against a total sentence of 6 weeks' imprisonment with 3 years' disqualification from driving imposed on 21st June, 1994, following guilty pleas to:

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| 1 charge of | contravening Article 14 of the Road Traffic (Jersey) Law, 1956, as amended (charge 1, on which the appellant was sentenced to 6 weeks' imprisonment with 3 years' disqualification from driving). |
| 1 charge of | contravening Article 16A(1) of the said Law (charge 2, on which the appellant was sentenced to 6 weeks' imprisonment with 3 years' disqualification from driving, concurrent). |

Appeal allowed, sentences quashed. Sentence of 1 year's probation, with 60 hours' community service substituted.

S.C.K. Pallot, Esq., Crown Advocate.
Advocate D.M.C. Sowden for the Appellant.

JUDGMENT

5 THE DEPUTY BAILIFF: We turn now to the appeal of William Creighton against a sentence of 6 weeks' imprisonment and disqualification from driving of 3 years. The ground of the appeal advanced by Miss Sowden, on Creighton's behalf, was that the Magistrate gave an indication at the time when evidence had been heard as to what he proposed to do once a background report had been prepared by the Probation Service. The transcripts record the following passage:

5 *JUDGE SOWDEN: "Greffier, because I need a background report on you from the Probation Service; yes, please co-operate to the full with the Probation Service because even under the old régime, with that sort of level of intoxication you would be considered for a custodial sentence. Yes, but under the old régime more often than not, if there was a suitable background report, you could, in the alternative, have been sentenced to community service, right. So it's community service and your suitability for community service that I shall be looking at. Yes. Do you know what community service is?"*

DEFENDANT: "No, Sir".

15 *JUDGE SOWDEN: I see. Well, you do work for the community for so many hours."*

DEFENDANT: "Yes".

20 *JUDGE SOWDEN: "According to how you might otherwise have been imprisoned, yes, so an awful lot depends upon your help to the probation service and you'll be told what to do on a piece of paper that is going to be passed to you."*

25 Counsel referred us to a number of authorities based upon a principle set out in Current Sentencing Practice. In Current Sentencing Practice at paragraph L7 2c, there is the following principle outlined:

30 *"When a court postpones sentence to enable enquiries to be made as to the suitability of the offender for a particular non-custodial measure, or the availability of facilities suitable for him and the enquiries show that suitable arrangements can be made the court should not thereafter impose an immediate custodial sentence unless it has acted in such a way that no expectation of a non-custodial sentence has been created in the mind of the offender."*

40 We think we need cite only the judgment in the case of Gillham which was cited to us by Miss Sowden. In that case the appellant was sentenced to imprisonment for offences of burglary and reckless driving and Watkins LJ said this:

45 *"The appellant does not merit the beneficial consideration of this court at all. Burglary is a very serious offence. His record is in some respects quite appalling. He could not possibly have complained if the deputy circuit judge on the second day had sent him forthwith to prison and for a period well in excess of six months. However an important principle of sentencing is involved in this case. All the signs when the appellant first appeared*

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before the deputy circuit judge from whom we have had an explanation in writing of what he did pointed to the imposition of an immediate prison sentence. For reasons best known to himself he decided against that course but to request the production of a report with a view to considering whether or not this man should perform community service. There was therefore created in the appellant's mind an expectation, not unnaturally, of performing that service if the probation officer and others who were called upon to assist in the production of the report were disposed to recommend such a course to the court. It was recommended. When a judge in these circumstances purposely postpones sentence so that an alternative to prison can be examined and that alternative is found to be a satisfactory one in all respects the court ought to adopt the alternative. A feeling of injustice is otherwise aroused."

We agree with those observations of Watkins LJ. This was indeed a bad case of driving with excess alcohol in the body and it was combined with dangerous driving. We consider, however, that because of the remarks of the learned Magistrate the sentence cannot stand. But for those remarks we would have considered that the sentence imposed was entirely right. But we accept that the remarks of the learned Magistrate created in the mind of this appellant an expectation that he was not to be dealt with other than by way of a non-custodial sentence if he could satisfy the appropriate authorities that he was suitable to perform community service. He did so satisfy the appropriate authorities and it would therefore not in our judgment be right to maintain the sentence of imprisonment imposed upon him.

We therefore quash the sentences of 6 weeks' imprisonment imposed for both charges and we substitute a sentence on each charge of 1 year's probation with a condition that the appellant performs 60 hours of community service to the satisfaction of the community service organiser.

Authorities

Current Sentencing Practice: pp.110706-110717: Adjournment after conviction: 2c: Raising expectations of Community Service.