

ROYAL COURT
(Samedi Division)

14th November, 1994

228.

Before: The Deputy Bailiff, and
Jurats Gruchy and Herbert

Police Court Appeal
(The Relief Magistrate, R.A. Short, Esq.,)

Lee Albert de Moulpied

- v -

The Attorney General

Appeal against a sentence of 6 weeks' Youth Detention, passed on 14th October, 1994, following conviction on 17th August, 1994, on:

1 count of causing malicious damage.

The said sentence to follow consecutively a total sentence of 4 months' Youth Detention, passed on 15th September, 1994, following guilty pleas to:

1 count of taking and driving away a motor vehicle without consent, contrary to Article 28(1) of the Road Traffic (Jersey) Law, 1956, on which count a sentence of 1 month's Youth Detention, with 2 years' disqualification from driving, was imposed (count 1).

1 count of driving whilst disqualified, contrary to Article 9(4) (as amended) of the said Law, on which count a sentence of 1 month's Youth Detention, consecutive, with 2 years' disqualification from driving (concurrent) was imposed (count 2);

1 count of driving whilst uninsured, contrary to Article 2 (as amended) of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948, on which count a sentence of 1 month's Youth Detention, with 2 years' disqualification from driving (concurrent) was imposed (count 3);

1 count of failing to stop a motor vehicle, when ordered to do so by a Police Officer, contrary to Article 26(1) of the Road Traffic (Jersey) Law, 1956, on which count a 1 year binding over order was imposed (count 4);

1 count of driving above the speed limit, contrary to Article 13A of the said Law, on which count a 1 year concurrent binding over order was imposed (count 5);

1 count of reckless driving, contrary to Article 14 (as amended) of the said Law, on which count a sentence of 1 month's Youth Detention, consecutive, with 2 years' disqualification from driving (concurrent) was imposed (count 6);

- 1 count of failing to report an accident, contrary to Article 27 (as amended) of the said Law, on which count a 1 year binding over order, concurrent with those imposed on counts 4 & 5, with 2 years' disqualification from driving (concurrent) was imposed (count 7);
- 1 count of causing malicious damage, on which count a sentence of 1 month's Youth Detention, concurrent, was imposed (count 8).

On 15th September, 1994, Probation Orders imposed on 29th September, 1993, 23rd December, 1993, and 6th September, 1994, in respect of other offences, were discharged, and a 1 month Youth Detention sentence substituted, to follow consecutively the sentences of Youth Detention passed on counts 1, 2, 3, 6 & 8.

Appeal allowed; sentence of 3 months' Youth Detention substituted, to run concurrently with sentences imposed on 15th September, 1994.

Advocate A.D. Robinson on behalf of the
Attorney General.
Advocate R.J. Renouf for the Appellant.

JUDGMENT

THE DEPUTY BAILIFF: Lee Albert de Mouilpied appeals against a sentence of 6 weeks' Youth Detention imposed by the Police Court on 14th October, 1994, for an offence of causing malicious damage to furniture and fittings at premises in James Road in the Parish of St. Helier.

There was substantial damage caused to the furniture and furnishings of a flat which he had occupied from a landlord who had taken him in and who had been, in the words of the appellant "very kind" to him. It was wanton and unpleasant damage of the most malicious kind.

The offence was committed on 9th July, 1994, and the appellant appeared before the Police Court on 17th August, 1994. He was then tried and convicted and remanded for the preparation of a background report to 14th September and then subsequently to 14th October, when he was sentenced.

Counsel for the appellant puts the appeal on the ground not that the sentence was *per se* manifestly excessive but that it should have been made concurrent with sentences totalling 4 months' Youth Detention for different offences, imposed by a different Magistrate, on 15th September. In fact, the Magistrate who imposed the sentence under appeal ordered that the sentence should follow consecutively those sentences which had been imposed on 15th September.

5 It is, therefore, necessary to examine the history of offending by this appellant, going back to 27th May, 1994. We may say that we are indebted to counsel for the appellant for the care which he has taken in submitting this appeal to the Court and for the tables, in particular, which he has laid before us which have made our understanding of what has taken place much easier.

10 On 27th May, the appellant committed other offences - motoring offences and suchlike - for which he appeared before the Court on 20th July, and was subsequently remanded until 6th September, when he was sentenced to a year's probation with 40 hours community service.

15 Very shortly after the imposition of that sentence, the appellant committed a further series of offences, including motoring offences and one offence of malicious damage, for which he appeared before the Court on 13th September. He entered guilty pleas to those charges and he was remanded to 15th September for sentencing.

20 On 15th September he was sentenced to a total of 4 months' Youth Detention. It will be noted, therefore, that those sentences were imposed about 1 month before the imposition of the sentence which is now under appeal at a time when a background report was in course of preparation.

25 Counsel for the appellant submits that all the charges laid against the appellant should have been co-ordinated and dealt with together.

30 Counsel for the Crown replies that that is not the current practice in the Police Court and that it would be administratively difficult to achieve.

35 In our judgment those are not sufficient reasons for failing to achieve a system which is fair to an accused person. Generally speaking, it is undesirable that an accused, who has committed a series of offences, should be sentenced in respect of different offences on separate occasions. If sentencing does take place on separate occasions there is no opportunity for the sentencing Magistrate to obtain the whole picture of wrongdoing and against that background to impose the appropriate sentence.

40 Mr. Robinson, for the Crown, went on to submit that the real question for the Court was whether the system of dealing with different offences separately was one which caused prejudice to an accused person. We agree that that is the appropriate test and we consider that there is a risk of prejudice to an accused person where sentencing takes place on a piecemeal basis.

45 We have had to ask ourselves whether the Magistrate who imposed the sentences of 4 months' Youth Detention on the 15th

September would have imposed an additional consecutive sentence for the offence now under appeal, had the offences all been dealt with together. We cannot say, with confidence, that he would have imposed an additional 6 weeks' Youth Detention over and above the 4 months' Youth Detention which had been imposed on 15th September.

On the other hand the Court does regard this as being a particularly unpleasant offence, in view of the help which the appellant had received from his landlord. We propose to mark our displeasure at the offence by increasing the sentence of 6 weeks to one of 3 months' Youth Detention.

Our decision therefore is this: we allow the appeal; we quash the sentence of 6 weeks' Youth Detention imposed by the Magistrate on 14th October; and we substitute therefor a sentence of 3 months' Youth Detention. We order, however, that this sentence will be served concurrently with the sentence imposed by the Magistrate on 15th September so that the end result for the appellant is that he serves a sentence of 4 months' Youth Detention instead of 5½ months.

It is necessary for me to add some words to the appellant, having regard to the provisions of the Criminal Justice (Young Offenders) (Jersey) Law, 1994. The Court, as you have heard, has allowed the appeal, but has substituted a different sentence which you will serve concurrently with the sentences which you were ordered to serve on 15th September. I have to explain to you why we are imposing a sentence of Youth Detention. The reason is that you have failed to respond to non-custodial penalties which have been imposed upon you - that is to say probation orders - and furthermore we consider that the totality of the offending is so serious that a non-custodial sentence cannot be justified. I also have to explain to you that, because a sentence of 4 months' Youth Detention has been imposed upon you, you will be subject to supervision by an officer of the Education Committee, or more probably a Probation Officer, for a period after you have been released from your Youth Detention.

There is one further matter which the Court wishes to say and that is, Mr. Robinson, that we would ask the Attorney General to take up with the Police, both the Centeniers and the States of Jersey Police, the necessary organisational changes to bring about a system in the Police Court which ensures that offenders are, in general, sentenced for different outstanding offences at the same time.