

ROYAL COURT
(Samedi Division)

220.

22nd November, 1996

Before: F.C. Hamon, Esq., The Deputy Bailiff, and
Jurats Myles and Herbert

The Attorney General

- v -

Neil Anthony Davey
Edward Marsh

W

NEIL ANTHONY DAVEY

- 2 counts of malicious damage (counts 1, 5).
1 count of obtaining a service by false pretences (count 4).

Age: 20.

Plea: Guilty.

Details of Offences:

- (a) In concert and complicity with Edward Marsh and W set fire to a car at the Bagot Inn Car Park, St. Saviour.
- (b) Fraudulently hired a taxi to the value of £11.60.
- (c) Caused malicious damage to a shed door at his father's premises.

Details of Mitigation:

- (a) Youth, guilty pleas. Defence counsel also said that although equal culpability was accepted a co-accused, Watson, had admitted setting fire to the car. The value of damage was only just over £100.00.
- (b) In relation to the second count the taxi driver had been repaid.
- (c) In relation to the third count of malicious damage Davey had repaid his father and his parents were willing to take him back home.

Previous Convictions:

Numerous since 1993 including assaults and malicious damage and many motoring including taking and driving away.

Conclusions:

Count 1 : 9 months' Youth Detention.
Count 4 : 1 month's Youth Detention, consecutive.
Count 5 : 1 month's Youth Detention, consecutive.
TOTAL : 11 months' Youth Detention.

Sentence and Observations of the Court:

Serious offences. Satisfied that custodial sentence required - Article 4 of the Criminal Justice (Youth Offenders) (Jersey) Law 1996.

Count 1 : 6 months' Youth Detention.
Count 4 : 1 month's Youth Detention, consecutive.
Count 5 : 1 month's Youth Detention, consecutive.
TOTAL : 8 months' Youth Detention.

EDWARD MARSH

1 count of malicious damage (count 1).
1 count of attempted robbery (count 2).
1 count of conduct likely to cause a breach of the peace (count 3).

Plea: Guilty.

Age: 21.

Details of Offences:

- (a) In concert and complicity with Neil Anthony Davey and ^W set fire to a car at the Bagot Inn Car Park, St. Saviour.
- (b) Attempted to rob La Motte Stores, St. James Street, St. Heller. Had a concealed pint glass which could have been used as a weapon.
- (c) Committed a breach of the peace by swearing at a traffic warden.

Details of Mitigation:

Guilty plea. Relative youth. Damage to the motor vehicle was quite slight. Danger of disparity as co-accused were young offenders. Co-operative in relation to the attempted robbery and virtually wrote his own indictment. Had been in custody since May, 1996, subject to sporadic bail. Had been unemployed since leaving school and had indulged in 'nuisance' type offences. Needed help rather than punishment.

Previous Convictions:

Four in total, possession of cannabis, acted in a manner likely to cause a breach of the peace, failed to quit licensed premises and was disorderly, causing malicious damage and latest offences breaking and entering and larceny of a hammer and malicious damage and related relatively minor offences plus resisting police in the execution of their duties.

Conclusions:

Count 1 : 9 months' imprisonment.
Count 2 : 15 months' imprisonment, consecutive.
Count 3 : £100, or 14 days' imprisonment, consecutive.

TOTAL : 2 years' imprisonment; £100 fine or 14 days' imprisonment, consecutive, in default of payment.

Sentence and Observations of the Court:

Count 1 : 6 months' imprisonment.

Count 2 : 12 months' imprisonment, consecutive.

Count 3 : £100 fine, or 14 days' imprisonment, consecutive.

TOTAL: 18 months' imprisonment; £100 fine or 14 days' imprisonment, consecutive, in default of payment.

W

1 count of malicious damage (count 1).

Age: 16.

Plea: Guilty.

Details of Offences:

In concert and complicity with Neil Anthony Davey and Edward Marsh, caused malicious damage by setting fire to a car in the Bagot Inn Car Park.

Details of Mitigation:

A single count which could and should have been dealt with in the Police Court. Misled by the company he was keeping. Alcohol played its part. Limited damage caused. Willing to pay the cost of the damage. Youth and guilty plea for which he deserves full credit.

Previous Convictions: Only one previous conviction which was not significant.

Conclusions: Nine months' Youth Detention.

Sentences and Observations of the Court:

1 year's Probation, with 120 hours' Community Service; youth deserved individualised treatment.

J.G.P. Wheeler, Esq., Crown Advocate.
Advocate J.C. Gollop for N.A. Davey.
Advocate M.D.H. Taylor for E. Marsh.
Advocate J. Martin for W

JUDGMENT

5 THE DEPUTY BAILIFF: Davey, Marsh and W are charged with offences of malicious damage, Marsh is charged in addition with attempted robbery and conduct likely to cause a breach of the peace. Davey is charged in addition with obtaining a service by false pretences. The first offence concerned the deliberate setting fire to a motor vehicle in a private car park behind the 'Bagot Inn'. This was an act of attempted wanton destruction.

10 The seriousness of the offence with which Marsh was involved concerned a bungled attempt to rob a grocer's shop in La Motte

Street at 7.25 in the evening of 8th April, 1996. That is as far as we are concerned anti-social behaviour of the worst kind. Shopkeepers in St. Helier - despite the fact that there was no violence in this case - are entitled to run their businesses without being threatened in this way. The other offences are serious in themselves but not exceptional - Davey attempted to cheat a taxi driver out of his fare; Marsh used obscene words to a traffic warden in public; Davey attempted to set fire to a family van and damaged a garden shed at his father's property. That was under the influence of alcohol and temper.

We have found this case very difficult to assess. W is 16 with one offence behind him; he was placed on probation for two years in England and is in breach of the Probation Order whereas Davey has a truly appalling record and is in breach of a binding over order; one of the offences he committed after being charged with the others. Davey is 20, he has a bad record and has consistently failed to respond to non-custodial penalties. The offence of setting fire to a vehicle is more than just anti-social; it is dangerously anti-social. However, he seems to be showing some signs of maturity which may well mean a change of heart. Further, Davey has repaid the taxi driver.

Stand up please, Davey. We are sentencing you - for these reasons which I have just outlined - to six months' Youth Detention on count 1; you are sentenced to one month's Youth Detention, consecutive, on count 4; you are sentenced to one month's Youth Detention, consecutive, on count 5, because we are prepared to take into account the time which you have spent on remand.

W stand up, please. At 16 you have only one offence on your record but you are in breach of that, although I understand that it is not going to be pursued. However, your age, despite the seriousness of the offence, allows an individualised sentence. We are sentencing you, therefore, to one year's Probation with 120 hours' Community Service, which you must make sure you fulfil properly.

Stand up, please, Marsh. We have said all that has to be said about the arson. Your attempt to rob an innocent shopkeeper was inept but the public must be protected. Again, we are going to take into account the amount of time which you have spent on remand. Therefore, you are sentenced to six months' imprisonment on count 1; twelve months' imprisonment, consecutive, on count 2; you are fined £100 on count 3, or 14 days' imprisonment, consecutive, in default of payment.

Authorities

Thomas: Principles of Sentencing (2nd Ed'n):
pp.56-61: The Totality Principle.
pp.64-71: Disparity of Sentence.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp.74-75.

AG -v- Le Cocq (5th July, 1991) Jersey Unreported.

AG -v- McLaughlin (1st May, 1991) Jersey Unreported.

AG -v- Longsdan, Channing (10th July, 1991) Jersey Unreported.

AG -v- O'Driscoll (19th November, 1992) Jersey Unreported.

AG -v- Bellos (2nd December, 1992) Jersey Unreported.

Tidiman (1991) 12 Cr.App.R.(S) 702.

Attorney General's Reference No. 3 of 1994 (Dacres) (1995) 16
Cr.App.R.(S) 176.

Attorney General's Reference Nos. 60 & 61 of 1995 (Sunderland &
Collier) (1996) 2 Cr.App.R(S) 243.