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ROYAL COURT
(Samedi Division)

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4th December, 1997

Before: Sir Philip Bailhache, Bailiff, and Jurats Le Ruez and Quérée

Between:	Attorney General	Plaintiff
And:	Paulo Sergio Gouveia Da Silva	Defendant

Attorney General appeared in person
Advocate S. E. Fitz for the defendant

Reasoned Judgment, reserved on 21st November, 1997
(see Jersey Unreported Judgment of that date)

JUDGMENT

THE BAILIFF: On the 21st November, 1997 the Court, having considered the conclusions of the Attorney General and the submissions of defence counsel, sentenced the defendant to a total of three years' imprisonment for a series of burglaries and stated that it would give its reasons at a later date. This we now proceed to do.

Da Silva pleaded guilty to twenty-five offences of breaking and entering and larceny, one offence of larceny, and one offence of possession of heroin. The offences were committed during a period of some ten weeks very shortly after the defendant's arrival in the Island. The offences were brazenly committed and on seven occasions when the defendant broke and entered premises the occupier was in the house or garden. On one of those occasions the householder was in the bath. On another the householder, a young woman, awoke to find the defendant in the room looking at her. On another the householder discovered the defendant under his bed. A total of £9,000 in cash or property was stolen of which only some £1,000 has been recovered. Not surprisingly some of the items stolen had great sentimental value to their owners. At the time when these offences were committed Da Silva was in breach of a binding over order imposed by the Magistrate on the 10th March, 1997 for an offence of acting in a manner likely to cause a breach of the public peace.

The Attorney General referred the Court to a number of authorities and invited the Court to adopt certain principles recently laid down by the Court of Appeal in England in relation to breaking and entering dwelling accommodation. Before dealing with those cases it is necessary to refer to such local authority as exists.

In Attorney General v. Allo and Collins, Ereaut, (1983) JJ 85 (C of A)Bailiff, in delivering the judgment of the Superior Number on applications for leave to appeal against sentence, stated:-

"It is common knowledge that breaking into a private dwelling has a most distressing effect invariably on the occupiers of the dwelling. Sometimes that effect takes a form of fear and in all cases it takes a form of distress. And we believe that that is an element of this offence which is not always sufficiently appreciated by some Courts but certainly it is appreciated by this Court, and this Court has always tried to make clear, and we make it clear again today, the distress element, which is an aggravating factor."

In Attorney General v. Aubin (14th May 1987) Jersey Unreported, the Superior Number laid down what was stated to be a bench-mark in cases of burglary but we think that that decision is really one which is confined to the facts of that case.

In Attorney General v. Gaffney (5th June, 1995) Jersey Unreported, the Court gave indications as to the appropriate level of sentences for breaking and entering commercial premises.

The Attorney General then referred to two cases which had recently come before the Court of Appeal in England. The first was R v. Edwards & Brandy (9th May,1996) Unreported Judgment of the Court of Appeal of England. The Court there reviewed a number of sentences for burglary of an unoccupied dwelling-house, each defendant featuring an appellant with a previous record for like offences, and concluded:

"There is a limit to the weight that can be attached to previous decisions of this Court in the field of sentencing (see observations in, inter alia, Sawyer (1984) 6 Cr.App.R.(S.) 459, at 461), but we think that we can infer that the bracket centres upon two years, with variations either way to reflect the particular circumstances of the case. Further, we would infer that upon conviction - that is, without the mitigation of a plea - the bracket would centre upon three years."

The Court then examined some reported decisions in relation to the burglary of occupied dwelling-houses and stated:

"In the light of this sparse guidance, we cautiously think that burglary of an occupied dwelling house at night, even if mitigated by a plea of guilty, would not normally attract a sentence of less than three years' imprisonment and, if not so mitigated, the bracket would start at four years."

The second was R v. Brewster & Others (2nd June,1997) Unreported Judgment of the Court of Appeal of England) where the Court, presided over by Lord Bingham considered a number of appeals and sentences for burglary. The Court made some general remarks about the offence itself which we set out below.

"Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have.

The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has be burgled."

The Court went on to emphasise that the seriousness of the offence could vary almost infinitely from case to case, and expressed some doubt as to the levels of sentence suggested in R v. Edwards & Brandy.

CE Whelan in Aspects of Sentencing in the Superior Courts of Jersey put the issue succinctly at page 28 of the May 1996 - May 1997 Noter-Up.

"Of course sentencing remains, as ever, a flexible and discretionary process. The scheme of guidance available in Gaffney and Edwards and Brandy does, though, offer valuable help in establishing a properly consistent range appropriate to the breaking and entry offences, and making the necessary gradations from commercial premises through unoccupied dwelling houses, to occupied dwelling houses.

It is worth emphasising that a system of this sort offers guidance - and no more. The offences are not susceptible to a rigid sentencing structure because they are so various in form. Lord Taylor C.J. said this, in Cole (1996) 1 Cr.App.R(S) 193:

> *"Burglaries vary in their gravity. It is one thing for one or two people who have had too much to drink on their way home to think of breaking into a shop. That is serious enough and may well involve a prison sentence. But where, (as in the instant case) one has a carefully planned and targeted offence, it is in a different league."*

It is true that the wide variety of circumstances relevant to a particular burglary makes it difficult to lay down specific guidelines.

In our judgment however the centre of the brackets identified in R v. Edwards & Brandy does provide useful guidance, in the context of the sort of case with which this Court often has to deal, as to the appropriate sentence. We emphasise that there are many aggravating factors which might lead the Court to impose a higher sentence. Such factors include, amongst others, previous convictions for this type of offence,

attendant violence or the threat of violence, the fact that a break-in was committed at night, evidence of planning, and accompanying vandalism. On the other hand mitigating circumstances may counterbalance any aggravating features and may even on occasion lead to the imposition of a non-custodial sentence. Nevertheless the distress almost invariably suffered by a householder as a result of the breaking and entering of a dwelling-house is a feature which ought to be reflected in the sentence imposed.

In this case the aggravating features have already been discussed. The offences were not committed at night but on several occasions the householder was confronted by the defendant in his or her own home. The defendant did however plead guilty to the indictment and was fully co-operative with the police once he had been arrested. He was aged 22 and was entitled to some credit for his youth and for the fact that, one minor offence aside, he had no previous convictions. Balancing all these considerations the Court sentenced Da Silva to a total of three years' imprisonment.

Authorities

CE Whelan: Aspects of Sentencing in the Superior Courts of Jersey: Noter-Up: May 1996-1997: pp: 25-29.

Allo, Collins -v- A.G. (1983) JJ 85 Cof A.

A.G. -v- Aubin (14th May, 1987) Jersey Unreported.

A.G.-v- Gaffney (5th June 1995) Jersey Unreported.

R. -v- Edwards, Brandy (9th May, 1996) Unreported Judgment of Court of Appeal of England.

R.-v- Brewster & Ors. (2nd June 1997) Unreported Judgment of Court of Appeal of England.