

JERSEY / JUDGMENT

Baudains v AG [2002] JRC 224 (28 November 2002)

[2002] JRC 224

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Judgment

the deputy Bailiff: 1. This is an appeal by James Baudains against a total sentence imposed by the Magistrate on 7 th November, 2002 of four months' imprisonment. The history is somewhat complicated. 2. On the 9 th March, 2001 the appellant was bound over for one year for one offence of possession of cannabis. He breached that binding over order by committing further offences, namely being disorderly on licensed premises and assault. He came before the Court on 19 th December, 2001 to be dealt with for those offences. The binding over order was discharged and a one year probation order was imposed for all three offences, together with an exclusion order of six months. 3. On 27 th March 2002 the appellant appeared again before the Magistrate's Court, having breached the probation order. He had done so by committing three further offences, namely breach of the exclusion order, reckless or dangerous driving and driving without insurance. The original probation order was discharged and a new probation order of one year was made, together with a community service order of 90 hours. He was also disqualified from driving for six months. The defendant breached both the probation order and the community service order by leaving the island. He came back on 10 th October and the matter was adjourned until 31 st October and then to the 7 th November. 4. It turned out that he had also breached the orders by committing further offences on 19 th August, 2002. These offences were charged on 7 th November and they were as follows: driving whilst disqualified, driving without insurance, driving whilst unfit through drink or drugs and failing to stop and report an accident. The appellant appeared before the Court on 7 th November, as we have said. The Magistrate imposed a sentence of 2 months' imprisonment for the four offences committed on 19 th August. So far as the offences for which he was in breach, the Magistrate discharged the community service order and the probation order and imposed a sentence of 2 months' imprisonment, concurrent on all the offences, but consecutive to the sentences for the offences committed on 19 th August. In other words a total of four months'. 5. The facts of the offences can be shortly stated: Those of being disorderly on licensed premises and assault occurred on 21 st August, 2001. The appellant was in the Warehouse public house. There was an argument and he was asked to leave by a doorman. He was escorted out, but during an altercation he spat at the doorman twice. That gave rise to the count of assault; he was drunk at the time and his behaviour gave rise to the charge of being disorderly on licensed premises. 6. As to the next group of

offences, namely breach of the exclusion order, reckless or dangerous driving and driving without insurance, these occurred as follows: On 20 th February, 2002, he was seen in the Folies d'Amour, which are licensed premises, and was arrested for being in breach of the exclusion order. On 4 th June, 2002, he was seen driving at speeds of up to 60 miles an hour along St. Peter's valley; he crossed the central white lines to negotiate the bends; he was stopped by the police. It turned out that although driving with the permission of the owner, the insurance policy was restricted to the owner. Accordingly, he was driving without insurance, as well as driving recklessly or dangerously. 7. The final offences took place on 19 th August. The appellant was observed driving a mini from Snow Hill. Near the Weighbridge, by the Southampton Hotel, he mounted a pavement and drove over three bollards. He then hit the kerb; he was stopped near the entrance to the tunnel. He appeared to be intoxicated and sleepy. Subsequent tests showed that he had an alcohol content of 25 micrograms in the breath, but he also had diazepam in the bloodstream. He was, of course, already disqualified from driving and had no insurance as a result. 8. Miss Martin says that the overall sentence of four months' was manifestly excessive. She submits that the correct sentence should be two months'. First, she relies upon the fact that the Magistrate was given wrong information concerning the amount of community service carried out by the appellant. The Magistrate was informed that the appellant had only carried out 30 of the 90 hours' to which he had been earlier sentenced. The Magistrate deemed the 90 hour community service equivalent to a three month sentence. He therefore knocked off one month for the one third of community service that had been carried out and imposed a sentence of two months' imprisonment for the breach offences. 9. In fact, it transpires that the appellant had carried out 45 hours' community service, i.e. one half of the sentence. Accordingly, applying the same principle as the Magistrate, it would seem clear that the correct sentence should have been one and a half months', rather than two. 10. Secondly, Miss Martin refers to the failure to provide legal representation for the appellant. That arose in unusual circumstances. The appellant was, in fact, legally represented under legal aid by Messrs Maurant Du Feu and Jeune. They had appeared for him at the October hearing and were ready to appear at 2.30 p.m on 7 th November, to which time and date the case had been adjourned on 31 st October. 11. For some reason, which has not been explained to the Court, the Centenier charged the appellant with the four new offences on th November and presented the appellant to the Court that morning. No one told Maurant du Feu and Jeune that the appellant had been presented at 10 a.m , rather than at 2.30 p.m and no one told the Magistrate that the appellant had previously been legally represented, or that the case had, in fact, been fixed for 2.30 and not ten o'clock. 12. We agree that in those circumstances the system failed the appellant. He had asked for and been granted legal aid and he was expecting legal representation when these matters were dealt with. He was clearly at risk of a prison sentence and legal representation was appropriate. 13. The fact that a person is not legally represented does not, of course, of itself mean that a sentence is wrong and should be reduced. In some cases the right course is to send it back to the Magistrate; but this is a short sentence and we think the right thing is to deal with the matter ourselves. 14. Normally, an appeal will only be upheld if the sentence is manifestly excessive. An appeal court is not sitting to decide what sentence it would itself have passed. However, given that the appellant was deprived of legal representation through no fault of his own, and that, as a result, some elements of mitigation

were not put to the Magistrate, or not put as strongly as they might have been, we think that the right course is for us to consider the matter afresh and decide on the correct sentence, rather than confine ourselves to deciding whether the sentence below was manifestly excessive. 15. On that basis Miss Martin has put forward all the mitigation available to the appellant. She has referred to his youth; he was twenty-one at the time of the offences; to his plea of guilty; to the fact that he has never previously served a prison sentence, albeit it that he has a poor record, including a number of previous offences of similar type to those for which he is now before the Court. She mentioned that the assault was at the lower end of the scale; that the appellant is remorseful. She points out that he came back voluntarily from England 'to face the music' and wishes to start a new life in the United Kingdom once he is released. She has referred us, carefully, to the social enquiry report, which deals with the appellant's state of mental health. It is clear that he suffers from a persistent delusional disorder; in particular he is convinced that a particular individual is out to assault him and generally do him harm. 16. As to the group of new offences which were committed on 19 th August, she explained that the appellant lived near Snow Hill, where the offences took place and only took a car because of his fear of going out. His mental condition was particularly acute that day and he was fearful of walking in the street. She points out that the erratic driving was caused by the combination of a modest intake of alcohol, below the limit, coupled with some drugs which he was legitimately taking for his condition. 17. She next refers to the fact that, whilst in prison, the appellant has been in the V. P. U. That is because of his belief that he is liable to be assaulted if in the main prison, although the person, whom he believes has it in for him, is not currently in prison. He is concerned that acquaintances of that person might assault him. We have been referred to the relevant authorities set out in Thomas' Current Sentencing by Miss Martin. It is clear to us that the general principle is a matter such as this is not taken into account when deciding on the correct length of a sentence. See, for example, R -v- Kirby (1979) Cr. App (S) 214. It appears that exceptionally the Court may take it into account as in R -v- Parker , but we are satisfied that this is nowhere near being an exceptional case. 18. Finally, she submits that the sentences for the breach offences and for the new offences should have been made concurrent rather than consecutive. We do not agree. The general principle is that, where a person is in breach of probation and then commits new offences the sentences will be consecutive; otherwise, in effect, there is no real punishment for being in breach of probation. That is particularly so in this case where the appellant had had numerous chances given to him and the Courts have regularly not imposed custodial sentences, despite his being in breach of probation or binding over orders. 19. We have taken careful account of all the points which Miss Martin has put forward, but, in our judgment, the correct sentence in this case is a total, taking into account the totality principle, of three and a half months'. We are, however going to convert that to weeks, as we do not think it is convenient to impose sentences as proportions of calendar months. Therefore, we will allow the appeal to this extent and vary the sentences as follows: For all those offences for which the appellant was in breach of probation we impose concurrent sentences of six weeks', that is to take account of the increased time of community service that he had done. As to the new offences, which were on the charge sheet of 7 th November, we vary the sentence to one of eight weeks' imprisonment, concurrent. However, the eight week period and the six week period are consecutive, making a total of fourteen weeks'.

To that extent only we allow the appeal. Authorities Pipon -v-AG (16 th August, 1999) Jersey Unreported; [1999/143]. Veloso-v-AG (18 th March, 1996) Jersey Unreported. Ashford-v-AG (5 th December, 1994) Jersey Unreported. AG-v-Cabot (31 st March, 2000) Jersey Unreported; [2000/55B]. Draft Human Rights (Jersey) Law: Schedule 1; Part 1; Article 6. C. S. P.: R.36 (June, 1998): C5-2C: R-v-Kirby; R-v-Parker; R-v-Nell Cain. C. S. P.: R.41 (October, 2000): C7-2A: R-v-Ford; A3-2B: R-v-Oliver. C. S. P.: R.43 (August, 2001): A5-2E: R-v-Cooper; A5-3F: R-v-Smith. Archbold (2000 Ed'n): pp.531-533; 1512. Page Last Updated: 20 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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