

JERSEY / JUDGMENT

Charlie Hackett Robinson v The Attorney General

COURT

Royal Court

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Superior Number Appeal - grave and criminal assault**[2019]JRC226****Royal Court****(Samedi)****21 November 2019**

Before :

J. A. Clyde-Smith O.B.E., Commissioner, and
Jurats Olsen, Blampied, Pitman, Christensen and Dulake
Charlie Hackett Robinson
-v-
The Attorney General
Advocate H. J. Heath for the Appellant.
C. R. Baglin Esq., Crown Advocate.

JUDGMENT

THE COMMISSIONER: 1. This is an application for leave to appeal against the sentence of 2½ years Youth Detention imposed on the appellant by the Inferior Number of the Royal Court on 13th September, 2019, for a grave an criminal assault committed by the appellant in Liberation Square on 22nd April, 2019 (AG v Robinson [2019] JRC 179). 2. The sentencing court was shown the CCTV footage of the assault and this court has also seen that footage. The judgment of the sentencing court describes the incident in our view succinctly and accurately in this way:- “2. The victim has little recollection of what happened that evening and the Crown has set out in its statement of facts what eye witnesses say but we have had, of course, the benefit of seeing the CCTV footage and the ability therefore to form our own view of what happened.

3. We think it shows this: You started this altercation, you pushed your victim. He then struck you one blow and backed off. You pursued him and there was an exchange of blows characterised by you advancing on him and him retreating.

4. A witness sought to pull you away from him and there was a pause in which you apparently spoke to her but then you turned back to the altercation. The victim was on his knees with his arms around your legs. You reached down, picked him up by the waist and drove his body head first into the ground beneath you.
5. A number of people witnessed this and it was described as horrible, horrific, disgusting and we fully understand those descriptions. An experienced doorman described it as the worst assault he had ever seen and it appeared, as we saw it at its conclusion, to be sickening. You then immediately telephoned your mother and did not come off the telephone when the police sought to arrest you.” 3. The sentencing court then went on to describe the injuries suffered by the victim at paragraph 6:- “6. The injuries suffered by your victim were unsurprisingly severe and indeed you are fortunate that they were not much more severe than they were. As it was he was hospitalised, transferred to the United Kingdom, had to undergo a craniotomy to remove a blood clot from his brain and a vertebrae was fractured. We do not know what the full effects will be but we have read his personal statement and we have seen the most recent communication which suggests that there will at least be medium term consequences for him as a result of this assault.” 4. The judgment then continues at paragraphs 7 to 10 in this way:- “7. We agree with the Crown’s assessment of the assault in general against the criteria set out in the case of *Harrison v AG* [2004] JLR 111. It was drink fuelled. It appears to us that it was done deliberately. However, we do not think it was done in cold blood. We think that blood was up but we do not accept that there was, in the sequence that we have seen, any significant provocation.
8. You have the benefit of a guilty plea and we note your expressions of remorse which we accept as being genuine if limited. Your references speak well of you. You also, of course have the benefit of your youth and we therefore consider the provisions of the Criminal Justice Young Offenders (Jersey) Law 2014 which under Article 4 indicates that we should only impose a sentence of Youth Detention if amongst other things the offence or the totality of the offending is otherwise so serious that a non-custodial sentence cannot be justified. That is the basis on which the Crown has moved for a custodial sentence.
9. In our view, what we have seen in the CCTV leaves us inevitably to conclude that this was too serious to deal with by a non-custodial disposal. We do not demur from the conclusions of the Crown but we believe we should make a slight adjustment better to reflect your youth.
10. You are sentenced to 2½ years Youth Detention.” 5. The appeal is brought on two grounds, firstly that the sentencing court erred in its application of the Criminal Justice (Young Offenders)(Jersey) Law 2014 (“Young Offenders Law”) and secondly the sentencing court erred in concluding that the appellant’s remorse was limited and therefore sentenced on the wrong factual basis. 6. Taking the Young Offenders Law first this provides that a court shall not pass a sentence of Youth Detention upon a person under 21 unless it considers that no other method of dealing with the person is appropriate because it appears to the court that:- “(i) the person has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them, (ii) only a custodial sentence would be adequate to protect the

public from serious harm from the person, or (iii) the offence or the totality of the offending is otherwise so serious that a non-custodial sentence cannot be justified” And we are, of course, here dealing with the third of those. 7. The sentencing court concluded that this assault was too serious to deal with by way of a non-custodial sentence, and in doing so the appellant argues that the sentencing court failed to sufficiently take into account firstly the non-custodial alternatives, including the possibility of Community Service in conjunction with a restorative justice alluded to at paragraph 27 of the Social Enquiry Report, and secondly the whole of the mitigation available to the appellant including but not limited to:- (i) His lack of previous convictions. (ii) That he was at low risk of reconviction. (iii) That he did not intend the consequences of the assault but fully accepted responsibility for his behaviour and the significant injuries. (iv) That the offending was out of character, and

(v) The appellant’s remorse. 8. Turning to the second ground the sentencing court has said the remorse of the appellant was limited, whereas the appellant argues the evidence of remorse before the court was neither limited in duration nor extent. That evidence was said to be his instructions to his Advocate, his conversations with his Probation Officer and his conversations with his parents. 9. Advocate Heath for the appellant concluded in her written submissions to the court at paragraphs 11 and 12 in this way:- “11. The Appellant is an 18 year old man previously unknown to the police facing the terrible consequences of his behaviour. The shame associated with the Appellant's actions and the horror at their potential consequence would be difficult for many adult offenders to contemplate and to process.

12. The Appellant had expressed remorse and concern from the outset, both to his Advocate and to his parents: he continued to communicate that remorse and regret to the Probation Officer. He remains extremely remorseful to this day.”

10. Turning to the law, Advocate Baglin has reminded us of the test on an appeal, which is set out in *Harrioso v AG*

[2004] JLR 111, and accordingly this court will not normally interfere unless the sentence is (a) is not justified in law; (b) was passed on a mistaken factual basis; (c) was passed taking some matter improperly into account or should now be reassessed as there was now some fresh matter to be taken into account; or (d) the sentence was so manifestly excessive or inadequate that it is wrong in the circumstances of the case or is wrong in principle.

11. It is established that the appellate courts of this island will not interfere with sentences that are not manifestly excessive and are within the powers of the sentencing court. In *Morgan v AG* [2001] JLR 225 the Court of Appeal said at paragraph 11:- “11. It is not the function of this court to tinker with sentences which were well within the range open to the sentencing court simply because we might ourselves have fixed a lower term of imprisonment.” That principle was reiterated by the Court of Appeal in *Barrett v AG* [2011] JCA 105 at paragraph 10.

12. Advocate Heath does not argue that the sentence passed was manifestly excessive, but in terms of the Young Offenders Law she does argue that the sentence was wrong in principle and in terms of remorse she argues that the sentence was passed on a mistaken factual basis.
13. Turning to the Attorney General's response, Crown Advocate Baglin referred us to the sentencing Conclusions at paragraph 19 which sets out the relevant provisions of the Young Offenders Law, and at paragraph 20 which expresses the Crown's view that this offence was too serious to justify a non-custodial sentence. The Young Offenders Law features prominently in the plea and mitigation as one would expect. In Crown Advocate Baglin's view the sentencing court clearly addressed the Young Offenders Law and was aware of the alternatives to Youth Detention, but agreed with the conclusions of the Crown.
14. As to remorse, Crown Advocate Baglin submits that the appellant is in error in that he does not identify any of the facts of the offence upon which the sentencing court was mistaken. He points out that the information before the court was that the appellant's remorse was not apparent in the early stages and that at paragraph 17 of the Social Enquiry Report he sort to minimise his actions by maintaining that he only dropped the victim. The Probation Officer commented that having viewed the CCTV himself the victim was dropped with some force. The sentencing court was entitled therefore, Crown Advocate submitted, to conclude that his remorse was genuine but limited. Decision
15. Taking first the Young Offenders Law, this did feature prominently as Crown Advocate Baglin has said, in the Crown's conclusions. It featured in the Social Enquiry Report and in the plea in mitigation. It was specifically referred to in the judgment of the sentencing court at paragraph 8 and the issue before it was whether the assault was so serious that a non-custodial sentence could not be justified. It agreed with the Crown that it could not. It is manifest that in addressing that issue, the sentencing court was fully aware of the non-custodial alternatives of Community Service and indeed of the mitigation available to the appellant to which the sentencing court referred.
16. The sentencing court was properly considering the issue before it, namely whether the offending was so serious as not to justify a non-custodial sentence, and it reached the conclusion that it was so serious. That decision in our view was both justified in law and correct in principle and is not one with which this court will interfere. Indeed, this court would have reached the same conclusion.
17. As to the issue of remorse, the appellant did not express or show remorse in the early stages and he did try to minimise what he had done with the Probation Officer. He did show remorse later both to his parents and to his Advocate, which the sentencing court was clear it found to be genuine, but the court was entitled, on the information before it, to conclude that whilst genuine it was limited.

18. It was not sentencing in our view on the basis of a mistake of fact. In any event, having concluded that a non-custodial sentence could not be justified the court reduced the sentence asked for by the Crown from 3 years to 2½ years and in our view the sentence imposed properly reflected all of the mitigation available to the appellant.
19. The application for leave is refused. Authorities Criminal Justice (Young Offenders)(Jersey) Law 2014. AG v Robinson [2019] JRC 179. Harriosn v AG [2004] JLR 111. Barrett v AG [2011] JCA 105.

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