

JERSEY / JUDGMENT

Gillingham v AG [2002] JRC 236 (11 December 2002)

[2002] JRC 236

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JUDGMENT

THE DEPUTY BAILIFF: 1. On the 18 th November this appellant was sentenced to six months' imprisonment by the Assistant Magistrate for one offence of assault and one of malicious damage. The existing probation orders and binding over orders were discharged. 2. The brief history is as follows. The appellant appeared on 12 th March, 2002 before the Magistrate's Court when he was dealt with for two offences of grave and criminal assault and one of resisting arrest. In essence, he had, on two successive days in February, assaulted his partner. On the first occasion he had, after an argument when he had been drinking, punched her and subsequently hit her with a sink plunger causing her bruising. The next day, again when he been out drinking, he returned home and there was an argument; he punched her and throttled her; she called the police and when they arrived there was difficulty in arresting him, which led to the charge of resisting arrest. For these offences he was placed on probation for two years and a community service order of 90 hours was also imposed, together with an exclusion order of 6 months. 3. He breached that probation order, when, on 19 th June, he was dealt with for a breach of the peace and was fined. The probation order and the community service order were allowed to continue. We have heard the facts of that breach and they certainly do not appear to be too serious. But, on 1 st July he appeared for another offence, namely being drunk and incapable. On this occasion he was bound over for three months and again the probation order and the community service order were continued. He has now completed the community service. 4. On 15 th August he committed the offences for which he was dealt with on the 18 th November. The victim and his girlfriend were in a car near the Odeon cinema at about 1 a.m. The defendant came past; he apparently asked for some cannabis; the victim said he was unable to supply it. There then may have been a remark from the victim which led to the defendant punching the half opened car window next to the driver's seat, causing it to smash. The victim then got out of the car and there was a struggle, during which the defendant punched the victim. He also head butted him in the mouth. The victim called the police and the defendant was arrested shortly afterwards. As we say, the Assistant Magistrate imposed a sentence of six months for those two offences and imposed no separate penalty for the offences of 12 th March or 1 st July. 5. Mrs Pearmain says that the Assistant Magistrate's decision was wrong in principle and that he should not have imposed a prison sentence. She refers to the social enquiry report, which was available for the Assistant

Magistrate. This showed that the appellant had made considerable progress since the offences for which he had been dealt with in March. 6. She also referred to the fact that the 'Change' course, which had been recommended as one of the courses which he should undertake when the probation order was imposed, had not yet commenced. This was through no fault of the appellant, but it meant that the courses, which hopefully would assist his behaviour, had not yet taken place. He had, on the other hand, done his community service. 7. She sought support from the fact that he was making good progress and the letter from his partner and mother of his child - that we have read carefully - makes it clear that he has been drinking less and behaving responsibly as a father. We have also seen a letter from his employer which makes it clear that he was a responsible employee and suggests that there remains an opportunity for employment with that firm. 8. We have also read the letter from the appellant himself. It is clear that prison has come as a shock to him and that it has made him realise the error of his ways, particularly because of the effect which it is having on his partner and, indirectly, therefore his son. 9. We remind ourselves, however, that we are sitting as a Court of Appeal. It is not for us to substitute our own decision for that of the Assistant Magistrate. We are not entitled to pass the sentence that we think we might have passed, had we been sitting at first instance. We are only entitled to intervene if the sentence of the Assistant Magistrate was outside the band of reasonable options available to him; in other words, it was either manifestly excessive or wrong in principle. 10. Despite the mitigation which Mrs Pearmain has put forward we are quite unable to categorise the Assistant's Magistrate's decision as being outside the band of reasonable options. This was an unprovoked attack on a member of the public at night in the streets of St. Helier. It was committed by a man who has a record for assaults and who was on probation for grave and criminal assault. It was the third time that he had breached the probation order. 11. In those circumstances we cannot possibly categorise the Magistrate's decision as being wrong in principle. The appellant had been given several opportunities and he had failed to take advantage of them. Although it was not put at the forefront of Mrs Pearmain's submissions we have also considered whether the six months was excessive but in view of his previous record we do not consider that it was. It follows that the appeal is dismissed. No Authorities Page Last Updated: 22 Sep 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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