

JERSEY / JUDGMENT

Hall v AG [2001] JRC 251 (17 December 2001)

[2001] JRC 251

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE BAILIFF: 1. This is an appeal by Christopher Henry Hall against a sentence of 4 months' imprisonment for common assault. The appellant had pleaded guilty to an assault upon his mother's partner by hitting him twice in the head, causing injuries which necessitated hospital treatment. When sentenced by the Assistant Magistrate, the appellant said "why don't you make it five, you prick". For this contempt in the face of the Court, the appellant was sentenced to a further one month's imprisonment, consecutive. 2. The appellant also appeals against the latter sentence on the ground that it and the sentence of four months' imprisonment for common assault were manifestly excessive in all the circumstances of the case. 3. Dealing first with the offence of assault, the appellant admitted two punches to the head, although the victim and his mother saw only one. That blow or blows caused a cut just over an inch long to the temple, but no more serious injury. The assault was preceded by an exchange of words, the appellant and his mother's partner not being on good terms, but there is no evidence before us as to precisely what was said. It was, as Mr. Preston for the appellant has submitted, an assault at the lower end of the scale. 4. Turning to the offence of contempt of Court, it appears from the transcript that after the appellant had made the offending remark, he was removed from the Court and the Assistant Magistrate retired. Some 30 minutes passed during which it appears from the transcript that the appellant was being noisy and making further use of foul language in the precincts of the Court. 5. The Assistant Magistrate returned to Court and, in the absence of the appellant, ordered that he should be sentenced to 1 month's imprisonment consecutive for the offence of contempt. The transcript records that there was an exchange between the Assistant Magistrate and counsel appearing for the appellant in the Magistrate's Court during which counsel stated that she had no instructions and was not therefore in a position to make any submissions in mitigation. 6. Counsel for the appellant in this appeal has submitted that the correct procedure was not followed by the learned Assistant Magistrate in particular in that no opportunity was given to him to apologise. Counsel referred us to the English case of R-v-Moran

(1985) 81 Cr. App. R. 51 CA, the facts of which appear from the following extract from the judgment of Lawton LJ: "We now turn to the transcript of September 11. When this man said he did not want to take the oath, the following interchange took place between him and the judge: "Judge Dean: You know you are in contempt of court by refusing to give

evidence? You had better go back and think about it. You are doing two and a half years and I can add to that." Thereupon the appellant said: "You can add to that if you like." Judge Dean: I will give you another six months. Take him down. That is consecutive to the present sentence, of course. No doubt it was this appellant's impertinence to the judge which led the judge to make the decision he did. The judge's first reaction to the situation which confronted him was a sensible one. It is one which judges should always follow, namely give the man who is refusing to take the oath or to answer a question time to think over what he has decided to do. If he still persists in refusing to give evidence, then the judge has to decide what further action to take. We have no hesitation at all in saying that the action he should not take is that which Judge Dean took, namely at once to say: "I will give you another six months." These situations are always difficult for judges to deal with. The trial judge is in a much better situation to assess what is required to be done than this court some months afterwards. The following principles should be borne in mind. First, a decision to imprison the man for contempt of court should never be taken too quickly. The judge should give himself time for reflection as to what is the best course to take. Secondly, he should consider whether that time for reflection should not extend to a different day because overnight thoughts are sometimes better than thoughts on the spur of the moment. Thirdly, the judge should consider whether the seeming contemnor should have some advice. We do not accept the proposition which was tentatively put forward on this appeal that this contemnor had a right to legal advice. Sometimes situations arise in court where the judge has to act quickly and to pass such sentence as he thinks appropriate at once; so there cannot be any right to legal advice. Justice does not require a contemnor in the face of the court to have a right to legal advice. But if the circumstances are such that it is possible for the contemnor to have advice, he should be given an opportunity of having it. In practice what usually happens is that somebody gives the contemnor advice. He takes it, apologises to the court and that is the end of the matter. Giving a contemnor an opportunity to apologise is one of the most important aspects of this summary procedure, which in many ways is Draconian. If there is a member of the Bar in court who could give advice, a wise judge would ask that member of the Bar if he would be willing to do so. The member of the Bar is entitled to say no, but in practice never does. On this occasion everything went wrong. The judge acted too precipitately. He did not in terms give the appellant an opportunity of apologising. He did not ask anyone in court to offer him advice. We are firmly of the opinion that this order of committal to prison for contempt of court must be quashed." 7. We do not under-rate the difficulty of dealing with an offender who is objectionable and contemptuous in the face of the court. We think, however, that in this case it would have been sensible for the matter to have been adjourned overnight. The appellant could then have taken legal advice and have been given the opportunity to consider whether he wished to withdraw his offensive remark and to apologise to the Assistant Magistrate. If he had refused to apologise there is no question but that a sentence of one month's imprisonment would have been entirely appropriate. But the appellant was not given that opportunity and to that extent we think that the Assistant Magistrate fell into error. 8. The appellant has now served the equivalent of some two months'

imprisonment. Taken in the round we think that that is a sufficient punishment for the offences which he has committed. We therefore allow the appeal, quash the sentences imposed by the learned Assistant Magistrate and substitute a sentence of imprisonment which will lead to the appellant's immediate release. Mr. Preston, you shall have your legal aid costs. Authorities Archbold (2001 Ed'n) paras. 28/108-122. R-v-Moran (1985) 81 Cr. App. R. 51 CA. Page Last Updated: 19 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2001/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/hall-v-ag-2001-jrc-251-17-december-2001>

Prepared on 25 October 2026 · Esheria