

JERSEY / JUDGMENT

Marett v AG [2004] JRC 221 (21 December 2004)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application for leave to appeal against sentences passed by the Inferior Number on 17 th September, 2004. On that occasion the applicant was sentenced as follows: Count 1, taking a motor vehicle without consent, 12 months' imprisonment. Count 2, driving whilst disqualified, 9 months' imprisonment. Count 3, driving uninsured, 12 months' imprisonment. Count 4, dangerous driving, 9 months' imprisonment. Count 5, failing to produce a specimen of breath, 3 months' imprisonment. Count 6, breaking and entering and larceny, 18 months' imprisonment. Counts 1 - 5 were concurrent, but Count 6 was consecutive and the total was, therefore, 30 months' imprisonment. 2. The factual background giving rise to the offences was as follows. Sometime during the evening of 21 st January, 2004, Marett and his co-accused, Dale Riddell, and two un-named men were in the area of Liberation Court in St. Helier. There Marett hot-wired an unlocked Vauxhall Nova and the four of them then left in it with Marett driving. 3. In due course they came to St Lawrence, and there the two other men suggested that they break into the St Lawrence Spar Supermarket. Marett stopped the car; the others broke in by breaking a window with a brick, but at their request Marett went to the shop and put a leg through the broken window and took hold of a case of beer, which was handed to him and put it in the car. The others carried a number of sacks of goods out of the property. 4. He received some drink and some cigarettes out of the total haul. At about 3.45 a.m. that morning sometime after the break-in Marett and Riddell were seen by police officers in the Vauxhall Nova at Great Union Road. They noticed that the lights of the car were not on and accordingly followed them and flashed them to stop. 5. There then followed a chase as Marett tried to escape. He drove at speed up New St John's Road, weaving from side to side often on the wrong side of the road. He turned left into Tower Road at about 30 mph. He continued at speed, swerving violently. The police officers thought that the car was going to crash. They followed it down Tower Road. Marett drove at approximately 50 mph straight across the junction of Tower Road and Bellozanne Road. At the bottom of Tower Road he mounted the pavement and drove across a grass area. The traffic lights at the junction with St Aubin's Inner Road were red but he drove straight through them and headed off towards Millbrook. 6. Eventually he was stopped and arrested as he tried to run away. He smelt of alcohol. At the police station he continued to shout and swear and demanded that a doctor be called. He refused to produce the required breath sample. He was interviewed about

the break-in, which the police had by then discovered but essentially he made no comment in relation to that matter. He did admit to his part in taking the car; and on 29 th March, some time later, he made a statement admitting his part in the break-in but seeking to say that Riddell had nothing to do with it, although Riddell later pleaded guilty to being involved. 7. Mr Haines brings this application on a number of grounds. First, he says that the Inferior Number proceeded on a wrong basis of fact. This relates to Marett's assertion that he found the Vauxhall Nova unlocked. Mr Haines submits that the court below misunderstood the position because it started its judgment by referring to the "breaking into and taking away of a car". 8. We have to say we regard this as a wholly misconceived point. In the first place, when read in context, it is not at all clear that the Court was saying that the car was locked; on the contrary the Crown's summary had been amended at the defence request to say that although the owners thought they had locked it, it may have been unlocked. 9. Secondly, even if the Court was under the impression that the car was locked, this is a wholly irrelevant detail. Whether the car was locked or unlocked could not possibly have affected the sentence in this case. 10. Mr Haines' second ground refers to totality. He says that the court below incorrectly applied the totality principle. He asserts that a Court must state what figure it has in mind for each of the various individual sentences before saying to what level they are to be reduced in order to take account of the totality principle. He says that the court below did not do that on this occasion and that is correct. 11. He sought to draw this requirement from a passage in the judgment of Clarke JA in *Harris -v- Attorney General* [2001]JLR362, which reads as follows: "Advocate Gollop also submitted that the Royal Court was in error in adding the concurrent sentences for drug possession to the sentence for manslaughter and that the sentence overall offended the totality principle. That principle means, in essence, no more and no less than that a court must, before reaching a final decision, look at the total sentence that is produced by adding up the individual sentences that it is minded to impose on each count, in order to see whether the total is too high in the light of the circumstances of the offences and the offender." 12. We have to say that we cannot possibly draw from those words the requirement which Mr Haines would have us draw. On the contrary we think that the requirements of the totality principle were intended by Clarke JA to be consistent with the position as described by the Court of Appeal in *A. G. -v- McIntyre* (21 st January 1999) Jersey Unreported; [1999/11] [1999]JLR N.16 which is also quoted in *Harris* as follows: "The principle is no more than a statement of the obvious commonsense proposition that the sentencer has a duty to look at the totality of the consecutive sentences and be satisfied that the cumulative effect of those sentences is not excessive in relation to the conduct of the accused or his particular circumstances." 13. In other words the Court simply has to stand back and look at the individual sentences to see whether the aggregate is too high or not. There is no requirement for the Court first to decide what it might have passed and articulate that and then reduce them in accordance with the principle. 14. Thirdly, Mr Haines submitted that it was wrong to pass consecutive sentences; they should have been concurrent. We do not agree. It is often a matter of judgment as to whether, where there are a number of separate offences, one passes concurrent sentences which may have to be made slightly longer than the individual sentence requires, or consecutive sentences with their sometimes being shortened to below what they would otherwise have been, in order to take account of the totality principle. 15. Certainly sentences should not be

consecutive if they are all extremely closely related, but in our judgment the breaking and entering in this case was separate to the driving offences and no criticism can be made of the court below for passing a consecutive sentence in respect of that offence. 16. Mr Haines raised a number of other grounds but in essence they were all part of his argument that the aggregate sentence as passed was manifestly excessive and we will deal with them therefore in the round. 17. We would summarise, however, those arguments as follows. First, he said that 18 months was too much for the breaking and entering having regard to the limited rôle which the applicant had played. 18. Secondly, he submitted that 12 months was too much for Counts 1 and 3, and 9 months was too much for Count 2. In this regard he referred us - as he had the court below - to the average level of sentences passed previously on this accused for similar offences and he also referred to the Magistrate's Court guidelines. 19. Thirdly, he said that the court below had placed too much weight upon the applicant's previous record. It is a very poor record as Mr Haines conceded. The applicant has 10 previous convictions for breaking and entering and theft, although the last was in 1994; 15 for taking motor vehicles without consent; 8 for driving whilst disqualified and 12 for driving without insurance. Mr Haines referred in particular to the comment in the judgment of the court below that it was because of the previous record that the court was acceding to the Crown's conclusions. 20. Fourthly, he submitted that insufficient weight had been given to the explanation put forward by the applicant for the commission of the offences. This explanation was found in the reports and in the mitigation put forward by Mr Haines to the court below; in essence the applicant had only been released from a prison sentence some 3 weeks earlier. Originally he had had an address to go to but that fell through in unfortunate circumstances through no fault of his own. He was, therefore, left with no home to go to, no job and no money. He had tried to remedy the situation by approaching various agencies, but had been unsuccessful. He was therefore homeless at the time these offences were committed and he had begun drinking again because of his lack of success in dealing with these various issues. It was in those circumstances that he re-offended. 21. Fifthly, Mr Haines referred to the delay: the offences were committed in January but sentence was not passed until September. In particular, it had been put off at least twice when due to come up before the Royal Court. 22. Sixthly, he said that the court below was wrong to say in its judgment that the applicant was not remorseful and had not been co-operative. That point we can deal with separately. We do not accept it. The Social Enquiry Report made it clear that the applicant was not remorseful. Furthermore, when arrested he had shouted and sworn at officers and at interview he had made 'no comment' about the breaking and entering, although he did plead guilty subsequently. In the circumstances we cannot criticise the Court's description. 23. Taking the remaining grounds in the round, we have considered them carefully when deciding whether a total sentence of 30 months is manifestly excessive. We have considered the nature of the explanation for the reasons puts forward, and we do agree that it is often very unfortunate that prisoners come out of prison with so little assistance, and we hope in due course that arrangements for this can be improved. We agree also with Mr Haines that, as is said for example in the case of R -v- Queen

- (1981) 3 Cr. App. R (S) 245, to which he referred us, the court must not go above the appropriate level of sentence for the offence in question because of a bad previous record. However bad the record, the court must only pass the sentence which is appropriate for the offences for which the offender is before the court. 24. We note and take account of the degree of involvement in the breaking and entry namely, that he was the driver and assisted in the way that he has described. We take note of the delay, although it is fair to say, that this was mentioned by the court below; furthermore it was contributed to partly by the fact that the applicant's co-accused pleaded "not guilty" originally, no doubt partly because the applicant had made a statement which said that the co-accused had nothing to do with it. This clearly caused a delay in sentencing. Nevertheless, it is unfortunate that it had to be put off on two occasions but we do not think that the delay was in all the circumstances excessive. 25. Taking account of all these matters and the arguments put forward by Mr Haines and the mitigation which appears from all the papers, had we been sitting originally we think we would probably have passed a sentence of 15 months' for the breaking and entry, particularly to make allowance for the fact that he had not committed any such offence since 1994, when he was, of course, was very much younger. But conversely we think that for the various motoring offences a total of 15 months rather than 12 months would have been appropriate. The applicant has a very poor record. He had only just come out of prison for motoring offences and the driving in this case was extremely bad. 26. Therefore had we been sitting at first instance we would have passed an aggregate sentence which would have been the same, albeit made up slightly differently. Our task here today is to decide whether the overall sentence is manifestly excessive. For the reasons which we have given we do not consider that it was. In the circumstances we grant leave to appeal, but we dismiss the appeal. Authorities Road Traffic (Jersey) Law 1956 (as amended): Articles 9, 14, 14A, 14B, 16C and 28. Motor Traffic (Third Party Insurance) (Jersey) Law, 1948 (as amended): Article 2. A. G. -v- Stevenson [2004]JRC121. A. G. -v- Newell (4 th August, 2000) Jersey Unreported; [2000/157]. A. G. -v- Gaffney (5 th June, 1995) Jersey Unreported; [1995/101]. A. G. -v- McDonough et al (25 th October, 1991) Jersey Unreported; [1991/156]. A. G. -v- Lynch (24 th July, 1991) Jersey Unreported; [1991/105]. A. G. -v- Marett et al [2004]JRC166. Magistrate's Court Guidelines pp. 6, 7, 11 and 16. Whelan: Aspects of Sentencing in the Superior Courts of Jersey (2 nd Ed'n): pp. 153 - 165, 199 - 201. D A Thomas: Principles of Sentencing (2 nd Ed'n) pp. 56 -61. Doyle -v- A. G. [1977]JJ141. Mandel -v- A. G. [1989]JLR N.1. Hughes -v- A. G. [1987-88]JLR N.19. Harris -v- A. G. [2001]JLR362. Thomas Current Sentencing Practice
- Consecutive Sentences Section: A5 pp. 10501 - 10512/2. R. -v- Queen (1981) 3 Cr. App. R (S)245. A. G. -v- McIntyre (21 st January 1999) Jersey Unreported; [1999/11] [1999]JLR N.16.
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Prepared on 23 October 2026 · Esheria