

JERSEY / JUDGMENT

Nicolle -v- AG [2005] JCA 084A (20 June 2005) [2005] JCA 084A

COURT

Court of Appeal

BEFORE

M. C. St. J. Birt, Esq., Deputy Bailiff, and
Jurats Le Brocq, Bullen, Georgelin, Clapham, King and Morgan.
John Sebastian Nicolle

-v-

The Attorney General

Application for leave

to appeal against a sentence of 12 months' imprisonment passed on him by
the Inferior Number of the Royal

Court, on 1

st

April, 2005, following a breach of a two
year probation order made in the Royal

Court on 26

th

March, 2004, relating to the following

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Court of Appeal

(Jersey) Law 1961

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June 2005

Before: M. C. St. J. Birt, Esq., Deputy Bailiff, and
Jurats Le Brocq, Bullen, Georgelin, Clapham, King and Morgan.
John Sebastian Nicolle
-v-
The Attorney General
Application for leave
to appeal against a sentence of 12 months' imprisonment passed on him by
the Inferior Number of the Royal
Court, on 1
st
April, 2005, following a breach of a two
year probation order made in the Royal
Court on 26
th
March, 2004, relating to the following

guilty pleas: 1 count of:
Possession of a controlled drug, contrary to
Article 6 (1) of the
Misuse of Drugs (Jersey)
Law 1978.
(Count 1).
1 count of:
Aided, assisted or participated in the
attempted breaking and entry with intent. (Count 2).
1 count of:
Having in a public place a prohibited weapon
contrary to Article 33 (1)(b) of the
Firearms (Jersey)
Law, 2000.
(Count 3).
The application for leave to
appeal placed directly before the plenary Court, without first being submitted
to a Single Judge for determination.
Advocate M. Preston for the Appellant.
C. M. M. Yates, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application by John Sebastian Nicolle for leave to appeal against total sentences of 12 months' imprisonment imposed by the Inferior Number on 1 st April. 2. The background is as follows. On 26 th March, 2004, the applicant appeared for sentence for three offences, aiding and assisting a breaking and entry, possession of cannabis and having a prohibited weapon in a public place. 3. The main offence was the aiding and assisting the breaking and entering. He and an accomplice tried to break into turf accountants at Gorey at about 4 a.m. in the morning. The other man played the lead role during which a re-enforced glass panel was struck several times with an implement. The neighbours awoke and the applicant and his accomplice fled. 4. He pleaded not guilty, but he was convicted. The prohibited weapon was a

CS gas canister and on another occasion he had a small amount of cannabis. 5. The Royal Court placed him on probation for 2 years. He had a very poor record with a very difficult background, but it was clear from the report that he was trying to make efforts to change his life. The Court warned him of the risk of imprisonment if he broke any part of the Probation Order and also said, in passing, that it regarded the Crown's conclusions of 20 months' imprisonment as reasonable. 6. In May 2004, the appellant appeared on a charge of being drunk and disorderly in the Magistrate's Court and was bound over. In July 2004, he appeared at the same court charged with possession of a reefer of cannabis and was fined. In neither case was the matter referred back to the Inferior Number, the Attorney General exercising his discretion on such matters. 7. However, on 27th October 2004, the applicant appeared before the Royal Court because he had again been charged with further offences, this time a breach of the peace and resisting arrest. The Royal Court received reports as to the progress he had been making and decided to exercise mercy. It did not impose a prison sentence for the breach of probation but imposed a community service order of 70 hours and ordered that the probation order continue. Thereafter the applicant carried out 25½ hours community service, but he began to miss appointments with probation officers and he missed a total of four, of which three he admits were entirely without excuse. 8. Accordingly the probation service referred him back to the Royal Court, and as we have already indicated, he appeared before the Court on 1st April to be sentenced for the original offences. The Court took note of what had occurred since the probation order was imposed and imposed a sentence of 12 months' imprisonment for the breaking and entering and 1 month concurrent on the other two charges. 9. The applicant now applies for leave to appeal against that sentence. Mr Preston first raises two matters which have arisen since the matter was before the Inferior Number and were therefore not before that Court. 10. First, whilst in prison the applicant has suffered injury which is to his disadvantage, and secondly it has been established that his girlfriend is expecting a child. He wishes to be in a position to provide a home for them at the earliest opportunity. 11. The Inferior Number cannot be criticised for not having taken account of these matters and we do not consider that they bear much influence on the appeal. 12. Mr Preston's main point is that the applicant had a terrible beginning to his life and it appears from the various reports that, as a result, he has a very poor record. But it really does seem as if he is determined to try and turn his life around if he can. Most significantly whilst on probation the reports have been broadly very supportive. He has clearly been trying hard, both in relation to the matters which the probation office have required of him and also in relation to his drug problem. 13. Mr Preston says that in the light of this, and in the light of the fact that the breaches were minor as he was only being referred back for failure to comply, we should allow the probation order to continue and allow him to finish the community service. 14. We wish first of all to comment on the submission that these were minor breaches. In our judgment it is most definitely not a minor breach for a probationer not to turn up as directed. For its success probation depends upon offenders complying with the directions of probation officers. It depends for its success upon offenders turning up and thereby benefiting from either courses or meetings with probation officers. If offenders do not turn up it brings the system into disrepute and means almost certainly that the probation order will be unsuccessful. 15. It is vital for probation officers to feel that they have the court's backing when they seek to enforce their

authority over offenders by ensuring that they comply with directions and this Court will give its support wherever that is necessary. On this occasion the applicant has had numerous opportunities. The Court has been very patient with him and it was hopeless for Mr Preston to suggest that there would be any alternative to imprisonment on this occasion. The applicant has only himself to blame for the situation in which he finds himself. 16. However, we must then consider the length of the sentence which the Inferior Number imposed. It seems to us that the Crown took as its starting point the 20 months it had moved for originally and then made various allowances, as did the Court, in order to arrive at a total sentence of 12 months. 17. In our judgment the 20 months would have been manifestly excessive for the offences bearing in mind the offences themselves and the mitigation then available. In our judgment that 'knock on effect' leads us to the conclusion that the 12 months imposed is too long and can be categorised as manifestly excessive. 18. Taking into account the seriousness of the original offences and equally taking into account the very substantial progress the applicant has made, we think that the correct sentence for the offences is one of 6 months' imprisonment. 19. Two matters we would add. First, we urge the applicant when he comes out to continue to work with the Drug and Alcohol Service. If, when he comes out, the applicant reverts to his drug habits it will be a very short time before he is back before this Court again. So we urge Mr Nicolle to work with the Drug and Alcohol Service to make sure that the progress on his drug addiction is continued. 20. The second point we would like to ask, if we may, is to the probation service and it is this. Whenever he comes out, whether it is at the conclusion of the Inferior Number sentence or the earlier period now mandated by this Court, Mr Nicolle is going to need support. Either way, of course, there would be no probation order in force because that has been discharged because he has breached it and been sent to prison. We are conscious of the burdens on the Probation Office, but we do ask the Probation Office to do anything it can with the assistance of mentors or the other staff, to see what it can do to help Mr Nicolle re-establish himself when he comes out. 21. So leave to appeal is granted, the appeal is allowed and a sentence of 6 months in total substituted being 6 months' imprisonment on the main charge, 1 month concurrent on the others. Authorities A. G. - v- Nicolle [2004]JRC057. Page Last Updated: 14 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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