

JERSEY / JUDGMENT

The Attorney General v Artur Adam Pinkowski

COURT
ROYAL COURT

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[2007]JRC208
ROYAL COURT
(Samedi Division)
9th November 2007

Before : J. A. Clyde-Smith, Esq., Commissioner and
Jurats Tibbo and Clapham.
The Attorney General
-v-
Artur Adam Pinkowski
Sentencing by the Inferior
Number of the Royal Court,

following a guilty plea to
the following charges:

2 counts of:
Breaking and entry and larceny (Counts 1 and
3).
1 count of:
Attempted breaking and entry with intent to
commit a crime (Count 2).
1 count of:
Breaking and entry with intent to commit a crime
(Count 4).
Age: 40.
Plea: Guilty.

Details of Offence:

Over a period of six weeks the defendant committed three offences of breaking and entry and one attempted breaking and entry. The first breaking and entry concerned a room in a lodging house from which a wedding ring, 200 cigarettes and £1,000 was stolen. The defendant's fingerprint was subsequently identified on the envelope which had contained the cash. The second offence concerned an attempted breaking and entry to which the owner of the property returned and as she entered she heard the rear door of the flat rattle. She noted the smell of cigarette smoke and the door had been damaged. Entry had, however, not been gained. A witness saw two males running from the building at or about the time of the offence and one of the males fitted the description of the defendant. A witness was also able to provide the Police with the first two digits of the registration number of the red vehicle which the two males were seen to drive off in. The third Count involved breaking and entry and the larceny of a jewellery box valued at £66, a quantity of jewellery valued at £4,500, and £25 in cash. An attempt had been made to remove a safe from the property but the safe had not been opened. Damage had been done to the patio door so as to gain entry and an untidy search had been undertaken in the rooms of the property. On the same day as this offence was committed a breaking and entry was committed when the defendant opened the front door and stepped into the property which was near the property broken into being the subject of Count 3. The owner was sitting watching TV. The male spoke in German asking her if it was a lodging house and then walked out. The owner of the property saw this man join another male. She was able to subsequently positively identify the defendant as being the male who entered her home. Police Officers subsequently saw a male fitting the description of the defendant driving a red vehicle with the same two first digits and the vehicle was followed and the defendant subsequently arrested. He was found to be in possession of a quantity of jewellery which was subsequently identified as being the jewellery from the breaking and entry in Count 3. Of the 25 items of jewellery stolen, 23 were recovered. In interview he denied any involvement in the offences and could provide no explanation as to how his fingerprint came to be on the envelope in relation to Count 1 and although he admitted being near to the other properties he denied any involvement in the offences.

Details of Mitigation:	The Crown's approach to sentencing was to look at matters in the round. The offences have been committed in broad daylight and one of the offences has been committed when the occupant was inside the property. Another occupant had a near miss encounter with the defendant. The victim of Count 3 spoke of her distress caused by the breaking and entry and the loss of her jewellery. The Crown viewed these as aggravating factors. In terms of mitigation he had the benefit of his guilty plea. He was not co-operative at interview and his attempts via the Social Enquiry Report to minimise his involvement in the offences did him no credit. He claimed to having been taught by his father to be the "best thief in Poland". He did not have the benefit of good character having committed similar offences in two different jurisdictions. He was a mature man. The Defence contended that insufficient credit had been given by the Crown for the guilty pleas and the other available mitigation. The Crown categorised the defendant's offending as a "crime spree". This was disputed by the Defence. It was explained that these were not premeditated actions but rather opportunistic offences. The reference to the "best thief in Poland" was a reference to his father and not to himself. He had a poor record but had been out of trouble for some five years. He had come to Jersey to work and had a number of employment opportunities but had become involved in these offences because he was having an affair with somebody in Jersey and one of his fellow workmen was threatening to use this information against him as he had a long term girlfriend in Germany. These were not sophisticated breaking and entries but rather inept. None of the aggravating factors recognised in the authorities were present. He did not wish to be deported as he had business opportunities in Jersey.
Previous Convictions:	Previous convictions for a total of fifteen offences including eleven for theft/burglary, DIC x 2 and motor offences.
Conclusions:	
Count 1:	3 years' imprisonment.
Count 2:	3 years' imprisonment, concurrent.
Count 3:	3 years' imprisonment, concurrent.

Count 4:	3 years' imprisonment, concurrent. Total 3 years' imprisonment. The Crown also sought a recommendation from the Royal Court to the Lt Governor that the defendant be deported at the end of the prison sentence.
Sentence and Observations of Court:	Conclusions granted. The Court said that the defendant had committed two breakings and entries and two attempted breakings over a six week period. The defendant had been taught to steal by his father who claimed to be the "best thief in Poland". He had an extensive record of dishonesty for burglary and theft in Poland and Germany. The offences were committed in daylight on residential properties. The occupant was present in one of the properties and another occupant had a near miss encounter. The Court quoted relevant extracts from the work of the Crown Advocate Whelan, and the cases of Allo and Collins and the case of Brewster. The Court reiterated that it had always had regard to the effect that such offences had on the victims. The Court referred to the case AG v Da Silva. This was a serious offence. The Crown had suggested that the defendant was a professional burglar but the Court would not go as far as that but said he clearly was an experienced one. The Court had given due credit for the guilty plea and had regard to the matters contained within the Social Enquiry Report and Psychiatric Report. It had considered all the mitigation as set out on the documents. I have considered that the Crown's conclusions were appropriate and they were granted. The Court then dealt with the issue of deportation. The Court agreed with the Crown's assessment that the continued presence of the defendant was detrimental to the community not only because these offences were serious ones but he also had a bad record and that the assessment from the Probation Officer was that he was at high risk of re-offending. In considering the second limb of the test there were no innocent parties who would be affected by his deportation but in accordance with the case of AG v Camacho [2007] the Court also had regard to any effect upon the defendant. The defendant wanted to remain in Jersey because his situation had changed and it may well be that he had something to offer in his skills. The Court was in no doubt whatsoever that it was in the interests of the community that he be deported and the Court made the recommendation. J. C. Gollop, Esq., Crown Advocate. Advocate L. J. Buckley for the Defendant.

JUDGMENT

THE COMMISSIONER: 1. This case involves two offences of breaking and entry, and two offences of attempted breaking and entry committed over six weeks. The defendant has described himself as having been ‘taught to thief’ by his father, apparently one of the best thieves in Poland. He has an extensive record of previous convictions in both Poland and Germany of theft and burglary. The offences were committed in the day time and involved residential properties. In one of the attempted break-ins the occupant was inside her property (Count 4), and the occupant involved in another, had a near miss encounter (Count 2). 2. We have been referred to Whelan: Aspects of Sentencing in the Superior Courts of Jersey (2nd Ed’n) where he in turn refers to the following passage from the case of AG v Allo and Collins

[1983] JJ 85. “It is common knowledge that breaking into a private dwelling has the most distressing effect invariably on the occupiers of the dwelling. Sometimes that effect takes the form of fear and in all cases it takes the form of distress. We believe it is an element of the offence which is not always sufficiently appreciated by some Courts, but certainly it is appreciated by this Court. The distress element is an aggravating factor. This Court will always take into account when sentencing for breaking or illegally entering into a private dwelling house, where the occupier knows someone unauthorised has been inside in order to steal.” 3. We also quote from the case of R. v Brewster and Ors [1998] 1 Cr.App.R. (S): “The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. Certainly this Court has no doubt about the effects that a burglary can have on the lives of innocent people. 4. In AG v Da Silva 1997/218, the Royal Court indicated that the proper sentence for a burglary of an unoccupied dwelling house where there had been a guilty plea was 2 years’ imprisonment, and for an occupied dwelling house not less than 3 years’ imprisonment. It was made clear in that case, however, that these bench marks were for guidance only. Each case must be judged on its merits since the seriousness of the events varies so widely. This is not, of course, one offence but a series of similar offences, one of which was attempted when the house was occupied. 5. We would not go so far as to say that the defendant is a professional burglar but clearly he is a very experienced burglar. We have listened very carefully to the mitigation put forward by counsel. We have taken full account of the plea of guilty and we have looked carefully at the Social Enquiry Report and the medical reports. We have also listened carefully to the

personal mitigation that has been put forward. We accept that there was no evidence of the soiling of these premises or of violence to the occupants or indeed any evidence of repeated visits. 6. Having considered all the mitigation that has been properly put forward and all the documentation in our possession it is our view that the conclusions of the Crown are appropriate and we are therefore going to grant them. 7. On the first count you are sentenced to 3 years' imprisonment, on the second count you are sentenced to 3 years' imprisonment, concurrent, on the third count you are sentenced to 3 years' imprisonment, concurrent, and on the fourth count you are sentenced to 3 years' imprisonment, concurrent, making a total of 3 years. 8. Moving on to the issue of deportation we have been made aware of the two tests which are familiar to the Court, the first of which is whether the offender's continued presence will be detrimental to the community. We agree with the Crown that the continued presence of this defendant would be detrimental not just because of the serious offences that he has undertaken, but also because of his very bad record and the assessment that he is of high risk of re-offending. 9. Turning to the second test, we have to take into consideration the effect a deportation would have on any innocent persons not before the Court, which following the Court of Appeal decision in AG v Camacho [2007] 045, also includes the effect upon the defendant personally. We have listened to what counsel have told us in relation to the personal effect upon the defendant, his wish to reside here, the business opportunities that he says he will have in Jersey, the fact that he will have no where to go, his relationship with his long term girlfriend in Germany having broken down and his business in Germany having come to an end. We note that he feels he has something to offer in terms of skills to the Island, but notwithstanding this we have no doubt that the interests of the community over-ride the personal interests of the defendant and as there are no other innocent parties in the Island who could possibly be affected we do therefore recommend to the Lieutenant Governor that the Defendant be deported at the end of his prison sentence. Authorities Whelan: Aspects of Sentencing in the Superior Courts of Jersey (2nd Ed'n). AG v Allo and Collins [1983] JJ 85. R. v Brewster and Ors [1998] 1 Cr.App.R. (S). AG v Da Silva 1997/218. AG v Camacho [2007] JRC 045.

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