

JERSEY / JUDGMENT

The Attorney General v James Christopher Power

COURT
ROYAL COURT

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[2011]JRC065
ROYAL COURT
(Samedi Division)
25th March 2011

Before : W. J. Bailhache, Q.C., Deputy Bailiff, and
Jurats Liddiard and Nicolle.
The Attorney General
-v-
James Christopher Power
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
2).
Age: 25.
Plea: Guilty.

Details of Offence: Count 1
Damage caused to the front door to
gain entry to a flat during the day when it was unoccupied and goods to the
value of approximately £1,400 were stolen. An untidy search conducted of the
flat. Items included a home
computer and the cables had been cut.
It contained a large quantity of personal material including thousands
of photographs which the owner had stored as part of his hobby as an amateur
photographer, which he also taught part-time. The photographs and other material
were
irreplaceable. The offence had
impacted upon the owner and a Victim Personal Statement was provided to the
Court.
Count 2
Three weeks after the first offence
the defendant broke into his mother's home by smashing a window to gain
entry. He stole US\$29 which was

recovered on him at the time of arrest.
When interviewed for the above offences he had little recollection of breaking and entry into his mother's home but thought she would not mind. He was going to use the dollars to buy alcohol/drugs. Denied all involvement in the first offence but was unable to explain how his fingerprints had been found on a camera box located at that address. The camera was one of the items stolen.

The Crown relied upon the case of AG-v-Da Silva and AG-v-Moreira and considered that there were a number of aggravating factors justifying an increased sentence. Those aggravating factors were:-

- (1) Serial offences.
- (2) None of the property recovered in relation to Count 1.
- (3) Defendant had previous convictions.
- (4) Violence and vandalism used to gain entry.
- (5) Distress caused to victim on Count 1.

Details of Mitigation:

The Crown
Only factor of substance was his guilty plea entered on second occasion before the Magistrate's Court. Did not have the benefit of youth or good character; had a total of twelve convictions for thirty-five offences of which nineteen were offences of dishonesty. Had been given opportunities by the Court in the past. Assessed as being at high risk of re-offending.
Defence
Still a young person whose life had been blighted by drugs. Had spent a fifth of his life in prison. He had not been able to take advantage of the chances previously given. Mother remained supportive. He was a talented artist. Letter of apology. Significant change in his life was the relationship with his fiancée. He claimed he had been involved in the first offence to clear off a drug debt. Early guilty pleas.

Previous Convictions:

Twelve convictions for thirty-five offences including nineteen for dishonesty including five for breaking and entry and larceny, possession of controlled drugs x 3, robbery and motoring offences.

Conclusions:

Count 1: 3 years' imprisonment.
Count 2: 3 years' imprisonment, concurrent.
Total: 3 years' imprisonment.

**Sentence and
Observations of Court:**

The defendant to be sentenced for two counts of breaking and entry and larceny. Stole a quantity of equipment from the first property which had not been recovered and second offence involved the breaking and entry into the mother's home and the stealing of US\$29 which was recovered. It has been said before by this Court many times before that burglary/breaking and entry into a property was considered to be a very serious offence. The Court repeated the approval of the Bailiff Ereaut in AG-v-Allo and Collins: "It is common knowledge that breaking into a private dwelling has a most distressing effect invariably on the occupiers of the dwelling. Sometimes that effect takes a form of fear and in all cases it takes a form of distress". The Court had viewed the Victim Personal Statement of the victim of Count 1 and it is clear that he does feel distressed and a sense of violation in consequence of this offence. The view of the Court is clear: such offending must result in a custodial sentence. The start position is 2 years for such offending as was clearly stated in the case of AG-v-Moreira. The Court had regard to his early guilty pleas, his efforts in prison and a good letter of remorse provided by him. The Court also had regard to his change of personal circumstances. He needed to focus on change in his lifestyle whilst in prison. In terms of aggravating factors the Court did not consider these to be serial offences but the offences did involve forced entries in which violence was used, the effect on the victim and the bad record of the defendant. In all the circumstances the Court concluded that the correct sentence was one of 2 years' imprisonment, concurrent on each count.

Count 1: 2 years' imprisonment.

Count 2: 2 years' imprisonment, concurrent.
Total: 2 years' imprisonment.
J. C. Gollop, Esq., Crown Advocate.
Advocate D. P. Le Maistre for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: 1. Mr Power, you are here to be sentenced on two counts of breaking and entering and larceny on different occasions last November. In relation to the first of those, you broke into premises at Roseville Street and stole an amount of equipment and on the second occasion you broke into your mother's premises where you stole US\$29. 2. It has been said by the courts many times before that burglary, breaking into people's houses, is a very serious offence. As long ago as 1983 the then Bailiff in the case of AG-v-Allo and Collins (1983) JJ 85 said:- "It is common knowledge that breaking into a private dwelling has a most distressing effect invariably on the occupiers of the dwelling". And when one looks at the victim personal statement, which

has been signed by the victim of Count 1, it is clear that he does indeed feel that sense of violation. 3. The Court is clear that these offences must be marked by a custodial sentence and following the case of AG-v-Moreira [2003] JRC 083A, we have taken a start point of 2 years' imprisonment as being the right approach to take. 4. We have taken into account your early guilty plea and the efforts that have been made in prison and we have read carefully and taken into account your letter of remorse, which is a good letter. The Court also has had regard to your changed personal circumstances as described by your Counsel, and it is very much a matter on which you should inarguably be focusing while you are in prison because you will need support when you come out. 5. As to whether there are aggravating circumstances, the Court does not consider that these were serial offences in the same way as have occurred on other occasions, but we do take into account that the forced entry into Mr McCann's property was a very violent assault on the door to gain access and the effect that that has on the victim as well, and we take into account your bad record. 6. Putting all these things in the round, we think the right sentence is that of 2 years' imprisonment and the conclusions are thereby reduced by one year and that is the sentence. Authorities AG-v-Power [2009] JRC 059. AG-v-Power [2009] JRC 247. AG-v-Da Silva 1997/218. AG-v-Allo and Collins (1983) JJ 85. AG-v-Moreira [2003] JRC 083A.

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