

JERSEY / JUDGMENT

The Attorney General v Kyle Thomas James Walker

COURT

Royal Court

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[2011]JRC164

Royal Court

(Samedi)

19

August 2011

Before :

M. C. St. J. Birt, Esq., Bailiff, and Jurats
Morgan and Crill.
The Attorney General
-v-
Kyle Thomas James Walker
Sentencing by the Inferior
Number of the Royal Court,

following a guilty plea to
the following charge:

1 count of:
Malicious damage (Count 1).
Breaches of Community Service Order and Probation Order imposed 2nd March
2011.
First Indictment
1 count of:
Affray (Count 1).
1 count of:
Grave and criminal assault (Count 2).
Second Indictment
1 count of:
Taking a motor vehicle without the
owner's consent or other lawful authority, contrary to Article 53(1) of
the Road Traffic (Jersey) Law 1956 (Count
1).
1 count of:
Failing to stop and report an accident,
contrary to Article 52 of the Road Traffic (Jersey) Law 1956 (Count
2).
1 count of:
Driving without a licence, contrary to

Article 4(1) of the Road Traffic (Jersey)
Law 1956 (Count 3).
1 count of:
Using a motor vehicle uninsured against
third party risks, contrary to Article 2(1) of the Motor Traffic (Third
Party Insurance)(Jersey) Law 1948 (Count 4).
1 count of:
Being drunk and disorderly (Count 5).
1 count of:
Malicious damage (Count 6).
1 count of:
Affray (Count 7).
Age: 19.
Plea: Guilty.

Details of Offence:

The defendant, who had been arguing
with his girlfriend all day and after consuming alcohol, smashed a window at
the FB Fields Pavilion by punching the same. The cost of repair: £175. The defendant
stated he was angry and
frustrated and had intended to punch the wall but hit the window instead. The
Crown accepted that his action was
one of recklessness. In so far as
concerns the Probation and Community Service Orders, his attendance had been
poor and he had been abusive and obstructive, particularly on the community
service
aspect of the Orders. He had
completed 25 hours, leaving a balance outstanding of 215 hours. The Crown
contended that sub paragraphs
4(a) and (c) of the Criminal Justice (Young Offenders)(Jersey)
Law 1994 were satisfied and that there was no alternative other than a
period of youth detention.

Details of Mitigation:

The Crown
Guilty plea entered on the
original Indictment. Guilty plea on
the new Indictment.
Youth, remorse and apology. Offered to pay for the malicious
damage. The Court on the previous
occasions had given allowance for the time spent on remand when fixing its
sentence.
The Defence
Original guilty pleas and
youth. Remorse and apology –
a letter provided from the defendant.
Had taken the view that his new job opportunity was more important than
doing community service. Using time
in custody constructively.
Substantial time (7 months) spent on remand. Accepted no alternative other than
custody.

Previous Convictions:	Three convictions for a total of 21 offences including supply/possession/producing controlled drug, affray x 2, grave and criminal assault, drunk and disorderly, malicious damage and motoring including no insurance.
Conclusions:	
Count 1:	1 months' youth detention, consecutive to the First and Second indictments of March 2011. Probation and Community Service Orders imposed 2nd March, 2011, to be discharged and in their place:- First Indictment
Count 1:	9 months' youth detention.
Count 2:	15 months' youth detention, concurrent. Second Indictment
Count 1:	1 month's youth detention.
Count 2:	No separate penalty.
Count 3:	No separate penalty.
Count 4:	No separate penalty.
Count 5:	1 week's youth detention, concurrent.
Count 6:	1 month's youth detention, concurrent.
Count 7:	3 months' youth detention, concurrent. Total: 16 months' youth detention.
Sentence and Observations of Court:	On 2nd March, 2011, you were given a chance by the Royal Court and this despite the fact that you had committed a serious attack on a café owner who had simply asked you to pick up some litter that you had left on the beach. He sustained a black eye and a broken nose. There was another assault when you had attacked a deliver driver. You have previously breached a Community Service Order. The Court gave you a chance and imposed a further Community Service Order and a Probation Order. The Deputy Bailiff, on the last occasion, made it quite clear that you had come within a whisker of youth detention. He also gave you a clear warning of the consequences were you to breach the Court's Orders. You have breached the Court's Orders compounded by the further offence of malicious damage. You have realistically accepted that there is no alternative but youth detention. We think the Crown's conclusions are correct and they have given you a generous credit for the 25 hours' community service which you have completed. On the original offences you spent some

5 months or so on remand, equivalent to an actual sentence of some 7 months. The law is clear that the Court is not obliged to take into account time spent on remand but it does at its discretion. The Court is going to give you some additional credit for that time spent on remand and adjust the Crown's conclusions accordingly.

Count 1: 1 month's youth detention, consecutive to the First and Second Indictments of March 2011. Probation and Community Service Orders discharged and replaced by the following:-
First Indictment

Count 1: 9 months' youth detention.

Count 2: 13 months' youth detention, concurrent.
Second Indictment

Count 1: 1 month's youth detention, concurrent to the First Indictment.

Count 2: No separate penalty.

Count 3: No separate penalty.

Count 4: No separate penalty.

Count 5: 1 week's youth detention, concurrent.

Count 6: 1 month's youth detention, concurrent.

Count 7: 3 months' youth detention, concurrent.
Total: 14 months' youth detention and liable to supervision upon release.
J. C. Gollop, Esq., Crown Advocate.
Advocate J. W. R. Bell for the Defendant.

JUDGMENT

THE BAILIFF: 1. Mr Walker, on the 2nd March you were given a chance by this Court. Despite the fact that you had committed a serious attack on a café owner just because he asked you and your friends to pick up some rubbish which you had left behind on the beach, causing him to sustain a black eye and a broken nose and the fact that you had then carried out other offences including another assault which involved threatening, with a fork, a delivery driver who delivered a takeaway meal to you, and despite also the fact that you had previously breached a Community Service Order, the Court gave you a chance and imposed a further Community Service Order and a Probation Order. But when passing sentence the Deputy Bailiff made it clear that you had come within a whisker of youth detention and he warned you of the consequences of not complying with the order. Despite this you have breached the Order and failed to comply with it. 2. The report from the Community Service organiser says this:- "Mr Walker has treated the Order with

little respect since his initial contact and is considered to have demonstrated an unwillingness to comply with the terms of the Order. He is one of a cohort of offenders who at this time are choosing to refuse to work as directed or are verbally abusing either my colleagues or myself, thus compromising the discipline of the work party, safety of others and the credibility of the Community Service Scheme. Accordingly Mr Walker is no longer considered a suitable candidate for the scheme at this time and I must recommend that this Order be revoked.” And in fact you were due to be brought back to Court in July for this Court to re-sentence you but you then compounded matters by carrying out the malicious damage of which we have heard when you broke the window of the FB Fields Pavilion. 3. You have very realistically accepted that there is no alternative today but to youth detention. We have listened very carefully to what your advocate has said as to the length. We have to say that, subject to one point which we are going to mention, we think the Crown’s conclusions were correct. They made a generous allowance for the community service you had carried out. But there is one other matter which is relevant. When you were on remand for the offences back in March, you spent, altogether, some 5 months or so on remand which is the equivalent of just over a 7 month sentence. Now the law is quite clear; that is not taken into account in the time that you will spend now, unlike the time you have just spent on remand which will be deducted. Nevertheless the Court can, when appropriate, have regard to the fact that you did spend time on remand on that earlier occasion, but we do not have to, because you were given a chance by a non-custodial sentence and you have chosen to ignore that chance. Nevertheless we are going to make some allowance. 4. The sentence of the Court is as follows. On Count 1; 9 months, on Count 2; 13 months; on the Second Indictment, Count 1; 1 month, Count 2-4 we note there was no penalty, we can understand that in relation to Counts 2 and 3 but it is somewhat surprising in relation to Count 4 which is driving without insurance which is a serious offence. However we note that for some reason the Crown did not ask the Court in March to impose a penalty for this offence. Count 5; 1 week, Count 6; 1 month and Count 7; 3 months’ youth detention. All of these to be concurrent so that makes 13 months. Then on the new Indictment a sentence of 1 month’s youth detention but that to be consecutive. So a total of 14 months’ youth detention and I must warn you that you may be liable to supervision when you are released. Authorities AG-v-Walker & Others [2011] JRC 046. Criminal Justice(Young Offenders) (Jersey) Law 1994.

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