

JERSEY / JUDGMENT

The Attorney General v Neil MacBrayne

COURT

Royal Court

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Inferior Number Sentencing - domestic abuse - common assault**[2024]JRC120****Royal Court****(Samedi)****24 May 2024**

Before :

R. J. MacRae, Esq., Deputy Bailiff, and

Jurats Dulake and Cornish

The Attorney General

-v-

Neil MacBrayne

Sentencing by the Inferior

Number of the Royal Court, following a guilty plea to the following charges:

1 count of:

Domestic Abuse, contrary to Article 3(1) of
the Domestic Abuse (Jersey) Law 2022 (Count 1).

1 count of:

Common assault (Count 2).

Age: 23.

Plea: Guilty.

Details of Offence:

The Defendant and the Victim met in

February 2023. They started a

relationship in March 2023 and moved to Jersey on 29 July 2023. They lived in a flat
until December 2023

when the Defendant ended the relationship.

During this period, the Defendant

engaged in coercive and controlling behaviour towards the Victim, including
physical abuse and threats. He did

not allow her to see her friends unless he was there and would turn up

unannounced and uninvited if she went out without him. The Defendant would read
theVictim's phone messages and would become angry if she had messaged a male
friend.

On 18 September 2023, the Defendant

went out drinking. He returned home

at around midnight and had a disagreement with the Victim. The Defendant later

asked the Victim for a cuddle but she asked him to face away as he smelt of alcohol. The Defendant responded by punching the Victim to the face between five and ten times. The Victim wiped her face with a tissue and saw blood and locked herself in the bathroom. The Defendant apologised and told her he “meant to hit the pillow”. In October 2023, the Victim began therapy. The Defendant begged her not to tell her therapist about his behaviour towards her and that her going to therapy gave him anxiety. On 11 November 2023, the Defendant had been out drinking and returned home at around 4:30am. The Victim asked him to sleep on the sofa and said she saw he had been messaging other women and asked who they were. The Defendant began shouting at the Victim in response and tried to pick her up and roll her to the other side of the bed. The Victim moved to the sofa but the Defendant continued to try and pick her up, hurting her wrists in the process. He told her “if you don’t let me in the bed I will hurt you.” In early December 2023, the Defendant told the Victim that if she did not have sex with him, he would cheat on her. The Victim said she felt blackmailed into having sex with him and that he would make her feel guilty if they did not have sex for a while. The Defendant’s behaviour occurred in a broader context of unpleasant conduct towards the Victim. He would also make negative comments about her appearance and her weight.

Details of Mitigation: Guilty plea, remorse.

Previous Convictions: No previous convictions.

Conclusions:

Count 1: 3 months’ imprisonment.

Count 2: 12 months’ imprisonment, consecutive.
Total: 15 months’ imprisonment.
Restraining order sought for a period of 5 years in respect of the victim.

Sentence and Observations of Court:

Count 1: 120 hours’ Community Service Order (equivalent to 9 months’ imprisonment) together with an 18-month Probation Order.

Count 2: 120 hours' Community Service Order consecutive, (equivalent to 9 months' imprisonment), together with an 18-month Probation Order.
Total: 240 hours' Community Service Order (equivalent to 18 months' imprisonment), together with an 18-month Probation Order.
Restraining order made in terms sought with an addition that the Defendant be prohibited from going within 100 metres of any address he knows to be the work or home address of the Victim.
Compensation order made in the sum of £1,000, payable at a rate of £100 per month with the first payment to take place on 1 July 2024, with a default sentence of 4 weeks' imprisonment.
A. M. Harrison Esq., Crown Advocate.
Advocate C. R. Baglin for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: 1. Neil MacBrayne you are 23 years old and have pleaded guilty to domestic abuse and common assault of your former partner who is a year younger than you. You met her in England in February last year and you began a relationship together last March. Although she had concerns about your aggressive and controlling behaviours, including you damaging furniture in the property that you lived and behaving aggressively towards others particularly when in drink, you moved to Jersey together in July of last year and shared a flat for the following five months until the end of the relationship. 2. During this time you assaulted her, abused her and caused her physical and psychological harm. The offence of assault at Count 2 on the Indictment took place on 18 September 2023. That night you went out drinking, whilst the Victim stayed at home. You returned at midnight. Your Victim was concerned that you should not get drunk during the week when you had just started a new job. You attempted intimacy with her in bed and when she rejected you, you repeatedly punched her in the face. You accept you punched her at least five times. She shouted 'stop' repeatedly but you carried on assaulting her. 3. When you stopped assaulting your Victim, she wiped her face with a tissue, noting blood, and locked herself in the bathroom. She was in pain for three days but did not sustain bruising. She took photographs of her face as a record of what you had done and you tried to get her to delete those photographs. 4. As to the domestic abuse which you admitted, you are responsible for a pattern of behaviour during the course of your relationship with the Victim that consisted of controlling behaviour, in particular attempting to regulate or monitor your Victim's activities and to isolate her from friends and support. In addition, you threatened and physically abused her. 5. You would not allow her to see friends unless you were there so she began to adjust her lifestyle - seeing her friends when you were at work. She felt she could not do anything on her own. When her phone was unattended, you would look at her messages and became angry if she messaged another male. You were, in her words "obsessed with her messages". 6. She sought therapy to cope with your behaviour. You disliked her seeking help. You told her that seeing a therapist

made you anxious as you knew you would get into trouble if she told her therapist about your behaviour. When the Victim told some friends that she was going to therapy, you mocked her and said she was seeking attention. 7. On 11 November 2023, when you had again been drinking, you returned home at 4:30 in the morning and you were asked to sleep on the sofa. You were unpleasant to your Victim. You tried to pick her up and roll her on to the other side of the bed. When she moved to the sofa, you continued to try and pick her up hurting her wrist. When she asked you to leave her alone, you said “If you don’t let me in the bed, I will hurt you”. 8. On 7 December, you told your Victim that if she did not agree to have sex with you then you would cheat on her. You blackmailed her into sexual intercourse and made other unpleasant remarks at the time. 9. You made her feel used, worthless and in consequence she has suffered psychologically as we have read in her victim personal statements. You belittled and isolated her, telling her “Nobody likes you, you have got no friends, no wonder you got bullied”.

10. You made negative comments about her appearance and her weight and, in the view of the Court, this was shocking and unacceptable behaviour. We endorse your own counsel’s observation that this was nasty and spiteful conduct.
11. She ended the relationship with you on 12 December 2023 and you then tried to make your Victim feel guilty by saying that you were thinking of killing yourself. This led to your Victim reporting your abusive behaviour to the police. You were arrested on 14 December 2023 and accepted responsibility for some of what you did, and now accept responsibility for most of what you did.
12. You pleaded guilty at the first opportunity on 21 March 2024 and will receive full credit for your pleas. You are a young man of good character and you are in work.
13. These offences are so serious that plainly custody is warranted and the only question for the Court today is whether or not you can be spared an immediate custodial sentence.
14. Domestic abuse is a serious offence. Generally the Courts will impose a custodial sentence on an offender who has abused their partner in the very place that they are entitled to feel safest, namely their home.
15. The Royal Court, sitting as the Superior Number in the case of *Coelho v AG* [2020] JRC 216 approved Sentencing Council guidance which provides:- “The domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship.”
16. Custody will be the starting point in every case of domestic abuse which comes before the Royal Court.
17. We regard the Crown’s conclusions as too low in moving for a custodial sentence of only 3 months for the offence of domestic abuse in this case.

18. The right sentence for this offence of domestic abuse is in our judgment 9 months' imprisonment consecutive to a penalty of 9 months' imprisonment for the offence of common assault, yielding a sentence of 18 months' imprisonment.
19. The Jurats have had to consider whether, in view of your age, good character, guilty plea, remorse, insight into the effect of your offending, strong work record and the contents of the Pre-Sentence Report, whether the Court can impose a Community Service Order of 240 hours as a direct alternative to custody.
20. It needs to be understood that community service is not a soft option. It also needs to be understood and if possible communicated clearly to the public by this Court and generally, that under Jersey law, community service can only be imposed as a direct alternative to custody. That is made clear by the Criminal Justice (Community Service Orders) (Jersey) Law 2001. Article 2(3) of that law says, "A community service order may be made only where the court is considering passing a sentence of imprisonment or youth detention." Article 3(4) says "Where a community service order is made, it shall be made instead of passing a sentence of imprisonment or youth detention." And that is why, when making such an order the Court is required under Article 3(5) to state the sentence of imprisonment that it was considering passing.
21. It is not for us to tell the media how to report cases, but it might be helpful if the public understood that 240 hours' community service is a direct alternative to 18 months' imprisonment as that is what the law provides.
22. In this case, the Jurats have just been persuaded that as a direct alternative to 18 months' imprisonment you to be are ordered to perform 240 hours' community service. In addition you will be subjected to a Probation Order for 18 months concurrent on each count in order to address your offending behaviour and to ensure that there is no repetition of this conduct. In relation to the terms of the Probation Order we note that it will contain, amongst other things, a Building Healthy Relationships Program (formerly the Jersey Domestic Abuse Program) to explore your offending, tailored to your needs. Secondly your drinking will be considered and monitored and if it becomes a difficulty you will be referred to the Alcohol and Drugs Service. You will also be required to maintain contact with the relevant victim services to monitor any future relationships and to ensure that no contact is made with your victim pursuant to the restraining order that we are about to make.
23. Accordingly the sentence on Count 1 is 120 hours' Community Service, equivalent in these circumstances to 9 months; imprisonment. Count 2, 120 hours' Community Service, again equivalent in these circumstances to 9 months; imprisonment, running consecutively making a total of 240 hours equivalent to 18 months imprisonment.
24. In addition, you will be sentenced to 18 months' probation, on each count.

25. A Restraining Order will be made for the period of 5 years, as sought by the Crown in accordance with paragraph 28 of its conclusions. In addition you will be prevented from going within 100 metres of the Victim's home. If you breach any of the terms of the Restraining Order then you will be liable to prosecution as you will have committed a separate and further offence.
26. You are ordered to pay compensation in the sum of £1,000 at the rate of £100 per month. The first payment is due on 1 July. If you fail to make any payment the whole sum becomes payable and you will spend 4 weeks in prison in default of such payment. Any breaches of this order are reserved to the Royal Court. Authorities Coelho v AG [2020] JRC 216. Criminal Justice (Community Service Orders) (Jersey) Law 2001. Costs in Criminal Cases (Jersey) Law 1961 Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 Domestic Abuse Law (Jersey) 2022 AG v Horn [2010] JRC 104 AG v Crabtree [2017] JRC 143 Coelho v AG [2020] JRC 216 AG v Veloso [2024] JRC 094 Serious Crime Act 2015 Magistrate's Sentencing Guidelines – Public Order Offences Sentencing Council Guidelines – Controlling or coercive behaviour in an intimate or family relationship

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