

JERSEY / JUDGMENT

The Attorney General v Sean Michael Peter Smale

COURT

Royal Court

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[2011]JRC156A

Royal Court

(Samedi)

5

August 2011

Before : W. J. Bailhache, Q.C., Deputy Bailiff, and
Jurats Clapham and Milner.
The Attorney General
-v-
Sean Michael Peter Smale
Sentencing by the Inferior
Number of the Royal Court,

following guilty pleas to
the following charges: 1 count of:
Grave and criminal assault (Count 1).
1 count of:
Assault (Count 2).
Age: 29.
Plea: Guilty.

Details of Offence: This prosecution related to two
episodes of violence in January and February 2011 respectively.
On 22nd January 2011 Smale and his girlfriend went
drinking in St Helier. Prior to going out they had consumed two
bottles of wine between them. They
went to Tanguy's Bar where they consumed more alcohol, then went on to
Pure night club. At the nightclub
they had an argument.
Smale went outside and met his half
sister and her friends, who included an ex-girlfriend of his, Victim 1. Smale went
with this group to an address
at Liberation Court
where more drinks were consumed.
At about three o'clock that morning his girlfriend

attended at the address. Shortly after her arrival she and Smale started to argue again. Witnesses described Smale becoming aggressive and confrontational. The girlfriend locked herself in the bathroom and other members of the group, including Victim 1 had to physically hold Smale back from the bathroom door. Smale then turned his aggression on Victim 1. He struck her causing her to fall to the floor and proceeded to hit her with both kicks and punches for approximately two minutes whilst she struggled to get up. Whilst defending herself Victim 1 grabbed and squeezed Smale's testicles and bit his leg. During this assault Victim 1 sustained bruising all over her body.

On 28th of January Smale was charged with committing a Grave and Criminal Assault on Victim 1, he appeared in the Magistrates Court and was remanded in custody. On 14th February Smale was granted conditional bail. The second assault took place at around 22.15 hours on 25th February outside of a property at Les Cinq Chenes the home of Victim 2.

At that time Victim 2 was at home when he heard the sound of shouting coming from immediately outside. On looking out of the window he saw Smale. Victim 2 went outside and spoke with Smale asking him politely to move away as there were young children trying to sleep. Smale then assaulted Victim 2 by pushing him over and then swinging him around by his clothing causing him to fall to the floor and sustain a large cut to his forehead. Victim 2 and three other persons then managed to overpower Smale and hold him down until the arrival of the police.

Details of Mitigation:

Guilty plea. A child in Guernsey. Difficult childhood himself. Remorse. Positive recent developments. Drugs tests have proved negative. Hard working employee. Would welcome a mandatory treatment order. The girlfriend is happy for him to live with her. Regular contact with children will resume on release.

Previous Convictions:

Relevant convictions in both Jersey and Guernsey for assaults and public order. Convictions for both drugs and alcohol related offences.

Conclusions:

Count 1: 18 months' imprisonment.

Count 2:	6 months' imprisonment, consecutive. Total: 2 years' imprisonment. The two assaults took place on distinct occasions, the second whilst the defendant was on bail. Taking into account the totality principle, the Crown moved for both sentences to run consecutively.
Sentence and Observations of Court:	A Grave and Criminal assault on a woman is always serious. The Court accepted that there was an element of provocation and remorse but at the end of the day a custodial sentence was required. The second offence should be consecutive but having regard for the circumstances the court increased the amount on the

first charge and sentenced as follows:

Count 1:	21 months' imprisonment.
Count 2:	6 months' imprisonment, concurrent. Total: 1 year and 9 months' imprisonment. C. M. M. Yates, Esq., Crown Advocate. Advocate D. Gilbert for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: 1. Mr Smale, you are here to be sentenced on an Indictment containing two counts, one of grave and criminal assault and the other of assault. A grave and criminal assault is always serious, and a grave and criminal assault upon a woman involving the delivery of kicks and punches is extremely serious. We note that, according to the Crown's summary, 21 separate injuries were found on the victim, consistent with having been punched and kicked to the head, the face, the arms, the shoulders and the legs. And we note that the victim describes you as using all your strength and indeed, one of the other witnesses said that you were using all your force. Another witness says the level of violence was too high, it was crazy. 2. You have to be sentenced for what you have done. The Court notes all the problems that you have had to face and has taken particular regard of all the mitigation which you have. We accept that the situation at that time was perhaps confused and that there may have been an element of provocation. We accept that you are sorry for what has taken place and we note that you have pleaded guilty; we have taken into account all the matters in the social enquiry report and your good work record and indeed everything which your counsel has very fluently said on your behalf this morning. But at the end of the day an offence of grave and criminal assault of this kind requires that a custodial sentence is imposed upon you and we have approached the case in that way, having noted that community service has not been recommended. 3. It is clear that your various problems, particularly with drink, need to be addressed and the time that you spend in custody has given you, and will continue to give you, an opportunity to do that. The Court strenuously hopes that you will continue to take advantage of your time in custody so that when you come out you can draw a line under it and you will be able to start afresh and make a positive contribution in your lifetime. 4. The second count of common assault was a serious one as well, at the top end

of the level of common assaults. The victim had done nothing to deserve what you did to him and it was made worse by the fact that the assault took place while you were on bail already for the first offence. 5. Putting all these things together the Court thinks that the conclusions which have been moved for by the Crown could easily be justified as they stand; it is clear that in principle the second offence ought to carry a consecutive sentence because it is a different offence but what we propose to do, as I say having regard to everything your counsel have said, is to increase the sentence on Count 1 to 21 months' imprisonment and impose 6 months' imprisonment on Count 2. On the grounds of totality they will run concurrently and so that will make a total of 1 year and 9 months' imprisonment rather than the 2 years asked for by the Crown. 6. You are sentenced in total to 1 year and 9 months' imprisonment on Count 1 and 6 months on Count 2, concurrent. No Authorities Harrison -v- AG [2004] JLR 111. AG -v- Parry and Parry 1998/26.

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