

JERSEY / JUDGMENT

Uddin v The Attorney General

COURT

Magistrate's Court Appeal against sentence

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Source record**Magistrate's Court Appeal against sentence****[2020]JRC221****Royal Court****(Samedi)****21 October 2020****Before :**

J. A. Clyde-Smith O.B.E., Commissioner, and

Jurats Blampied and Dulake

Almas Uddin

-v-

The Attorney General

The Appellant appeared on his own behalf.

Advocate M. P. Boothman (as Amicus curiae)

Ms L. B. Hallam, Crown Advocate.

JUDGMENT

THE COMMISSIONER: 1. This is an appeal against the sentence of 6 months imposed upon the appellant by the Magistrate on 5th August, 2020, for an assault upon a police officer. 2. The appellant who has an extensive record of previous convictions, many of which involve the police, is representing himself, but we have had the able assistance of Advocate Boothman as Amicus Curiae. The facts of the offence are that on 7 July 2020, the States of Jersey Police received a telephone call from Ms Frances Picot, a friend of the Appellant. Ms Picot reported having been assaulted by the Appellant stating that she was awoken by the Appellant biting her. Police Officers attended and upon their arrival noted that Ms Picot had an injury which was consistent with her allegation. Ms Picot told Police that she wanted to make a complaint but was not, at present, willing to provide a statement. During this time, it is clear that the Appellant was in a highly agitated and intoxicated state. He was arrested on suspicion of having assaulted Ms Picot. Following his arrest, he remained aggressive and was using multiple expletives to attending Officers. During the process of the Appellant being searched, before being placed inside the Police van, he turns slightly and spits in the direction of PC Gray. PC Gray states that some of the spit lands on his left forearm which was noted by another Officer. The Appellant was further

arrested for assaulting a Police Officer. Subsequent to his arrest. Ms Picot confirmed that she did not want to make a formal complaint and that matter was not proceeded with. 3. In *Graham v AG* [2013] (1) JLR 91 which concerned an appeal against conviction and sentence the Court held as follows:- “15 Article 17 does not itself give any indication as to the basis upon which an appeal from the decision of the Magistrate should be approached by the Royal Court. Nonetheless, it is clear that, if there has been some procedural defect before the Magistrate which is of sufficient significance, the Royal Court will interfere with the decision below; and it is also quite clear that the court occasionally directs that witnesses are heard before the Royal Court in relation to the appeal, as indeed we have done. Similarly, where there is an issue of law where the Royal Court is of the view that the Magistrate went wrong in a material way, the court will invariably interfere with the decision below.” 4. In *AG v Price* [2019] JRC 211 the Royal Court stated that, in relation to appeals against a sentence imposed by the Magistrate’s Court:- “19. The approach of the Court on a sentencing appeal is well established. The Court may only allow an appeal where the sentence is wrong in principle or manifestly excessive. It will not interfere merely because, if they had been sitting at first instance, the members of this Court would have passed a different sentence.” 5. We have the transcripts of the sentencing hearing before the Magistrate and the documents that were placed before her. We have also seen the body worn video of the incident. In terms of procedure, the appellant says this in his grounds of appeal:- “i. At the time of sentencing, a pre-sentencing report had not been prepared by a Probation Officer, which I believe may have affected my sentence given my personal circumstances. ii. With regard to the above point, I also have letters from Co-Operative Medical Care Practice and Health & Community Services showing that I suffer from depression & anxiety, which have been exacerbated by the current Covid crisis. This affected my behaviour at the time of arrest but couldn’t have been taken into account by the Magistrate at the time of sentencing, as these letters weren’t brought before the Court. iii. The same letters show that I was suffering an injury to my left hand at the time of arrest. This helps explain why I reacted so badly when the officers attempted to cuff me, as I was in pain. This was also not raised at the time of sentencing.” These grounds might be said to relate to procedure, namely an allegation that the Magistrate did not have enough information before her to properly sentence the appellant. 6. However, as Crown Advocate Hallam points out in her skeleton argument a review of the sentencing papers shows that the Magistrate did in fact have a great deal of information from the Probation Service. An “Information for Court” document was prepared by Ms Emma Luce for the sentencing hearing. This details the appellant’s contact with Probation since his release from his last custodial sentence on 13th March, 2020. Importantly, it also contains information provided by the Adult Mental Health Services following his attendance for assessment on 27th July, 2020 (eight days before the sentencing hearing). Ms Luce was able to confirm that the appellant’s remained at high risk of reconviction. She also stated that it was “difficult to recommend a community order”. 7. Annexed to the Information for Court was a Social Enquiry Report prepared for a sentencing hearing on 26th February, 2020. This included an analysis of the appellant’s background, his education, employment, substance misuse, and history of offending. He was assessed at that date as being at high risk of reconviction, with alcohol use being a major risk factor. 8. Also before the court was a letter from the appellant to PC Gray and a letter to the Court regarding the appellant from Ms Picot, stating her support for

him, including the setting up of a cleaning business for him. 9. Whilst it is correct that letters from the appellant's GP and from the consultant surgeon were not handed to the Magistrate the issues of the appellant's injury and his anxiety and depression were raised by Advocate Bell as part of his submissions and were therefore before the Magistrate.

10. It is clear from all of this that although there was no formal Social Enquiry Report before the Court, the Magistrate had ample information about the appellant. All of the information regarding his mental and physical health that he complained of, was before the Magistrate and was available to her. Furthermore, the appellant's anxiety and depression were drawn to the Magistrate's attention by Advocate Bell.
11. It is also clear that the Magistrate considered she has adequate information before her. In refusing a defence application to adjourn for a preparation of a Social Enquiry Report, she stated this:- "You've giving me information about the – Mr Uddin's recent steps. I have the Social Enquiry Report from February which gives me background, I have the update here that the Probation Service have provided, and a theme seems to run through that Mr Uddin can be capable of abstaining from alcohol and can be suitable but only if he abstains from alcohol and I don't think another report is going to take us very much further."
12. We conclude the Magistrate had ample evidence before her in order to properly sentence the appellant. In particular she was aware of all of the issues raised by the appellant in his grounds of appeal.
13. As Advocate Boothman says the only other ground of appeal realistically available to the appellant was that the sentence imposed was manifestly excessive. It cannot be said that for an assault of this kind upon a serving police officer the sentence was wrong in principle. All the authorities we were shown for this kind of offence attracted a custodial sentence, rightly in our view.
14. The Magistrate's Court Guidelines do not address this kind of assault, but they do state:- "An assault on a Police officer or other person carrying out a public duty is treated for these purposes as an aggravating factor rather than with a separate guideline."
15. It is worth in our view setting out in full what the Magistrate actually said in sentencing:- "I have taken into account the information provided by the Probation Service and the previous full report that they provided on you. I also have heard in great detail today from Mr Bell about the efforts you have made in recent days and the early guilty plea that you entered. However, an assault on the Police is a serious assault. It is serious because the police officers are public servants doing their job, and they often have to do this in difficult circumstances and they have no choice and now in the present time the risk of transmission of an incurable disease is greater than it was before. This is a specific risk that the police are aware of and that they take every day when they are doing their jobs to serve the public. I have seen the victim personal statement from the officer and this caused considerable anxiety to that officer because of course he could pick up any sort of infection from being spat at, it's quite a disgusting thing to do but at the moment there is particular concerns in

the public at large about this and it's understandable that the officer would be concerned. He doesn't know what your Covid status is. He doesn't know whether he could catch it from what you did. In any event what you did was clearly repulsive and the officer felt himself to be at particular risk. I have seen the body worn video and the police, I have to say were calm, patient and professional in dealing with you and there was absolutely no justification for the foul offence you committed. Mr Bell has asked me to consider Probation or Community Service. I have no doubt whatsoever that this offence is serious enough for custody. So Community Service is an option and also Probation. Mr Bell has drawn to my attention the efforts you have made in the run up to the Court hearing but, I have to say, that history shows that your efforts are usually short lived. The Probation Service do not have confidence in your ability to commit to either order and looking at all the information I have I do not have confidence either. You have a poor record of alcohol related offences, and a poor record of compliance with court orders. In my view custody is the only sentence which is appropriate today. People who come into contact with the police at any time and particularly at a time of a pandemic must realise that the risk of contracting a disease must be real and they must realise that assaults on the police and particularly spitting at the police will not be tolerated and anyone who engages in such behaviour can expect immediate custody, and Mr Uddin in my view that is the only sentence that I can pass in your case bearing everything in mind and the sentence will be 6 months' immediate custody."

16. We entirely endorse those sentencing remarks and observations of the Magistrate. As to the duration of the sentence, we were referred to the case of AG v Capuano [2013] JRC 084, in which Sir William Bailhache, then Deputy Bailiff, said this:- "The spitting offences are particularly disgusting offences and, certainly these days, they carry the risk of serious infection being transmitted and are potentially very serious indeed. One of the spitting offences was against a police officer and the other against an ambulance driver. In both cases these were men who were doing their job serving the public and the Court has said, on many occasions, that police officers and ambulance drivers are entitled to the Court's protection." In AG v Capuano the Court imposed a sentence of 6 months' imprisonment in relation to each spitting offence, albeit those sentences were to run concurrently, and of course it is to be noted that the Court in AG v Capuano was sitting long before the current pandemic and therefore the Court's comments in this regard are even more pertinent now.
17. The Amicus Curiae has expressed the view that there were few salient facts that could assist the appellant in his argument that the sentence was manifestly excessive, but in order to assist the Court he put forward the following:- (i) Only a very small amount of spittle landed on the Officer's arm. Accordingly, the risk of transmission of any infection must have been low; (ii) The Officer was behind him at the time and therefore there was no intention to spit directly in the Officer's face where it was likely to cause the highest risk of infection; (iii) No physical injury was caused to the Officer; and, (iv) The offence does not appear to have been premeditated and was carried out on the spur of the moment.

18. There are two other authorities which the Amicus said may give support to the appellant's appeal. In AG v Howard [2016] JRC 027, which concerned the defendant spitting through a hatch at the police station, he was sentenced to three months for the spitting offence. In AG v Bree and Binnie
- [2016] JRC 203A, the defendant spat at Police Officers and received a sentence of two months' imprisonment concurrent, for the two offences of spitting.
19. We do not find these authorities of any great assistance. In the first case the sentence was affected by the totality principle and in the second case there was no explanation given for the sentences imposed and both are of course pre Covid.
20. After extensive discussion between Advocate Boothman and the appellant, he asked for the following observations to be brought to the attention of the Court as follows:- (i) The appellant has expressed his sincere remorse for his actions. Such remorse was expressed during his interview and continued when he wrote a letter of apology to the Officer concerned. This letter was provided to Police Officers and was done of his own volition. As such, his remorse is clearly genuine. He accepts that his actions were appalling and disgusting and he is devastated by them; (ii) He had suffered a fracture to his hand which partly caused him to react in the manner that was when he was arrested; (iii) The original offence that the Police attended to investigate was never pursued; (iv) That at the time of the offending he had consumed a variety of prescription medication (including anti-anxiety medication, pain relief tablets, sleeping tablets and medication for depression) which, combined with the alcohol consumption, caused him to behave in the manner that he did;
- (v) He should receive full credit for an early guilty plea; (vi) He had employment opportunities available to him at the time of the sentencing hearing; (vii) Ms Picot continues to support him and will do so upon his release to establish a business outside of catering where the appellant struggles with the temptations of alcohol; (viii) He has private accommodation which would likely be lost by the imposition of a custodial sentence which could render him homeless on his release; (ix) He had taken considerable steps at the time of his sentencing to abstain from alcohol, clearly the key factor in his offending that evening ;
- (x) He suffers from mental health problems including anxiety and depression; (xi) He has taken steps at the time of his sentencing to reengage with his family members, particularly his daughter, who we understand lives in Jersey.
21. It is correct that the Magistrate did not indicate what discount she gave for the appellant's guilty plea, but she clearly took that guilty plea into account and as Crown Advocate Hallam points out the incident was filmed and we agree that the appellant really had no option other than to plead guilty. Intoxication is, of course, an aggravating feature of the offence and not a mitigating feature and as Crown Advocate Hallam says the appellant must have been aware of the consequences of the interaction between his consumption of alcohol and his taking of prescribed medication. Indeed we understand that he was taking more than the prescribed medication. The fact that the original alleged offence was not pursued is irrelevant. The

Magistrate was aware, in our view, and took into account most of the remaining matters, but in any event they are, in our view, the inevitable consequences of the appellant's offending and do not support the contention that the sentence imposed was manifestly excessive.

22. In our view the appellant in fact had very little mitigation available to him and the sentence was not manifestly excessive. The judgment of the Magistrate was thorough and balanced and we agree with it.
23. The appeal is therefore dismissed. Authorities *Graham v AG* [2013] (1) JLR 91. *AG v Price* [2019] JRC 211 *AG v Capuano* [2013] JRC 084. *AG v Howard* [2016] JRC 027. *AG v Bree and Binnie* [2016] JRC 203A
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Prepared on 24 October 2026 · Esheria