

Judgment 10/2005

**John James Babbé – Royal Court –
2 February, 2005**

Criminal appeal from the Magistrates Court – sentence – burglary, theft, etc., - exceptional mitigating circumstances – immediate custodial sentences replaced by probation order.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 2nd day of February 2005 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present David Charles Lowe, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael John Wilson, Michael Henry De La Mare, Esquires, Susan Mowbray, Jurats.

Magistrate’s Court Appeal No.1 of 2005

In the action of THE LAW OFFICERS OF THE CROWN against JOHN JAMES BABBE to pursue the Appeal of which the said Babbe gave notice against sentence imposed upon him by the Magistrate’s Court on the 13th day of January 2005;

THE COURT having heard Advocate C.J. Green, Counsel for the Appellant, David Speers, Probation Officer, and Advocate P. Robey for the Crown, and having considered a Social Enquiry Report prepared by R. Bigland, and a Psychological Report prepared by Dr. S. Fall, ALLOWED the Appeal as respects the immediate sentences of imprisonment imposed by the Magistrate on Counts 1, 2, 6 and 7, and substituted therefore a Probation Order for a period of two years’ duration, thereby securing this day a conditional discharge, upon the Appellant taking an oath to come up for sentence if called upon to do so within that two year period and upon the following conditions:-

1. That he shall be of good behaviour
2. That he shall inform the Probation Officer under whose supervision he has been placed at once of any change of residence or employment
3. That he shall keep in touch with the Probation Officer in accordance with such instructions as he may give him from time to time and in particular he shall, if the Probation Officer so requires, receive visits at his home from the said Probation Officer
4. He shall be under the supervision and direction of Mr. C. Ellyatt, the Senior Manager Acute Services, Mental Health.

S. M. SIMMONDS
Her Majesty’s Deputy Greffier

APPEAL AGAINST SENTENCE

John James Babbe

Wednesday 2nd February 2005

1. This Court has given most careful consideration to the submissions made by Mr Green on behalf of the Appellant.

The Offending

2. The Court focused on Charge 1 (burglary from a boat) Charge 2 (taking a motor vehicle without consent), Charge 6 (attempted theft from a road side stall) and Charge 7 (theft of tools from a motor car).

3. The Court noted that the offences were not all committed on the same day. Charges 1 and 2 were committed on 21st August 2004, Charge 5 on 23rd August, Charge 6 on 21st September, Charge 7 on 23rd October and Charge 8 on 18th November that same year. The offences in September, October and November were committed after the Appellant had been charged with the first two offences.

4. This Court has noted that the Appellant's offending embraced a range of different criminal acts over a period of 3 months. The offending was both deliberate and persistent and cannot be attributed to a brief moment of youthful foolishness.

The Magistrate's Sentencing Remarks

5. The Magistrate noted that the Appellant was only 18 years of age and did not prior to the commission of these offences have a criminal record.

6. He had satisfied himself by virtue of the seriousness of the offences that a sentence of Youth Detention was appropriate.

7. It is evident that the Magistrate had taken into account what was contained in the Social Enquiry and Psychologist's Reports.

8. Although the Magistrate did not state that he had taken into account the early guilty plea and that he had as a consequence accorded an appropriate discount or that he had taken into account the totality of the offending, this Court is mindful that the Magistrate is an experienced Magistrate and the Court is sure that he had taken both factors into account. It is noteworthy that in his Sentencing Remarks he said that he was

"keeping the sentences to a minimum consistent with my duty to protect the public and punish crime."

Consideration of offending by the Royal Court

9. This Court analysed with great care the admitted offending under each of Counts 1, 2, 6 and 7. It has taken into account the seriousness of the persistent offending, the entitlement to a full discount for an early guilty plea and the totality principle. It also took into account all relevant points of mitigation submitted to the Magistrate including everything contained in the two reports.

10. On the manifestly excessive submission the Court would not have found fault with the sentences imposed.

A Probation Order? An issue of principle.

11. This Court gave most careful consideration to the Social Enquiry and Psychologist's Reports and particularly the recommendation that a Probation Order would be appropriate.

12. The Court noted that the Magistrate stated that the interests of the Appellant were not the only interest that he had to take into account. It is right that the Courts in this Island should, as he stated, take into account the public interest.

13. It is this Court's view that in the case of persistent offending spanning a range of offences over a period of months when some offences were committed by a defendant after he had already been charged with an offence a Probation Order is unlikely to be the correct disposal. It will be a most exceptional case that the combination of such circumstances would result in a Probation Order.

14. However there are many exceptional mitigating factors which emerge from the two reports. This Court considers in this very exceptional case that a Probation Order is the correct way of dealing with the Appellant.

Decision

15. The Appeal against the Sentences imposed by the Magistrate is therefore allowed only to the extent that in place of the immediate sentences of imprisonment on Counts 1,2,6 and 7 a Probation Order is substituted.

16. Mr Babbe the sentence of the Court in respect of the offences with which you were convicted on Counts 1,2,6 and 7 is that you will be discharged conditionally upon taking an oath to be of good behaviour for 2 years and to appear for sentence when called on to do so at any time during that period.

17. In addition, it is ordered that you be placed upon probation under the supervision of the Probation Officer for the same period of 2 years.

18. Are you prepared to take an oath?

19. Administer Oath: "You swear upon the faith and truth that you owe to God that you will be of good behaviour for 2 years and that you will come up for sentence if called upon to do so within that period. So help you God."

20. The conditions of your probation are as follows:

1. You shall be of good behaviour.
2. You shall inform the Probation Officer at once of any change of residence or employment.
3. You shall keep in touch with the Probation Officer in accordance with such instructions as he may give you from time to time and in particular you shall, if the Probation Officer so requires, receive visits at your home from the Probation Officer.
4. You shall be under the supervision and direction of Mr C. Ellyatt, the Senior Manager Acute Services, Mental Health.

21. If you fail to comply with any of these conditions or if you commit other offence within the next 2 years, you are liable to be brought back to this Court to be sentenced for the offences in respect of which this Order is made.

The Future

22. It is imperative that you should receive the full support of your mother and that you are assisted in finding employment.

23. The Court is mindful that you will for a significant period be under the supervision of a Probation Officer. It is most important that you engage with your Probation Officer and should approach supervision in a positive way. It will be for you to demonstrate that this will be a turning point for the better in your life.