

**Judgment 13/2005**

**Law Officers v. Martyn Steven Clarke –  
Royal Court – 3 March, 2005**

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**Criminal appeal – sentence imposed by Magistrates Court – power to increase sentence on appeal – appeal dismissed.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 3rd day of March, 2005 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:- Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Esquire, and Susan Mowbray, Jurats.

In the action of THE LAW OFFICERS OF THE CROWN against MARTYN STEVEN CLARKE (“the Appellant”) to pursue the appeal of which the said Clarke gave notice against sentence imposed upon him by the Magistrate’s Court on the 4<sup>th</sup> day of February, 2005;

THE COURT having heard Advocate M.G.A. Dunster for the Appellant and Advocate P. Robey for the Crown DISMISSED the Appeal.

S. M. SIMMONDS  
Her Majesty’s Deputy Greffier

Approved Text

## APPEAL AGAINST SENTENCE

Martyn Steven Clarke

Thursday 3<sup>rd</sup> March 2005

1. The Court has given most careful consideration to everything that has been submitted on your behalf by Advocate Dunster.

2. He has urged upon the Court every conceivable argument in order to assert your contention that a sentence of five months for the assault on Miss Bougourd was manifestly excessive. He has also argued that the totality of the overall time to be served was relevant.

### Starting Point

3. It has to be remembered that the maximum end point sentence which the Magistrate could have imposed for the assault was 12 months. Hence 12 months is not the maximum starting point before taking account of any discount for a guilty plea and any further discount for mitigation.

A starting point for a very serious offence can therefore be much higher than 12 months.

### Offence

4. So far as the starting point is concerned the Magistrate will take into account the seriousness of the offending. This Court has seen the photographs of your victim.

5. Unhappily your criminal record includes other convictions for assault committed in a domestic environment. This was the sixth assault for which you had been sentenced since September 2002.

6. In the circumstances the Magistrate could not be criticised if he had set a starting point for the assault close to or even as high as 12 months.

### Discount for a Guilty Plea

7. It has to be remembered that a full discount for a guilty plea will normally be accorded when there has been an early plea of not guilty. The Court emphasises that the plea must be an early one to benefit from a full discount.

8. You committed the offence on 31<sup>st</sup> December last. A not guilty plea was entered on 5<sup>th</sup> January. The trial was fixed for 28<sup>th</sup> January. It was only on that date that a guilty plea was entered. Following a further deferral you were sentenced on 4<sup>th</sup> February.

9. Defendants must understand that when a late plea is entered there is every likelihood that a full discount of one third will not be accorded. Law Enforcement Officers and prospective witnesses are put to much trouble in making the necessary arrangements to appear in Court to give evidence.

### Other Mitigation

10. The Court has found little other mitigation of which the Magistrate should have taken account. He was fully aware that you had spent 4 weeks in custody and that it was right

that he should take that into account. There is no reason to believe that the learned and experienced Magistrate would not have borne in mind that this was equivalent to 5½ weeks or 6 weeks if the remission factor is taken into account.

### **Conclusion**

11. Taking into account that a significant discount, but not a full one third discount, should be accorded for a guilty plea and taking into account the time spent in custody and the Appellant's appalling record the Court can find no fault with a sentence of 5 months for the assault.

12. The Court further considers that the Magistrate was right in ordering that a suspended sentence of 3 months be served on a consecutive basis.

13. The Court would remind defendants that this Court when hearing an appeal against sentence from the Magistrate's Court has a power to increase a sentence. Those who are minded to appeal should take note of this. The Court gave serious consideration to increasing the sentence of 5 months for the assault. [The Magistrate's Court (Criminal Appeals (Guernsey) Law, 1988 Sec. 6)

### **Costs**

14. The Court in the case of an unsuccessful appeal may well order that the appellant should pay for the cost of preparation of a transcript and also up to £75 to cover the true expenses incurred by the Law Officers in defending an appeal.

15. You and other defendants should also bear this in mind.

[The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 Sec 8]