

Judgment 2/2011

**John Flint – Royal Court (Criminal Appeal
No 12 of 2009) – 17th January, 2011**

Criminal appeal from the Magistrates’ Court - from sentence on two counts of assault – sentencing remarks – no addition to the sentence as a penalty for a not guilty plea – domestic violence – aggravating factors – totality of the sentence not manifestly excessive – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 17th day of January, 2011, before Richard John Collas, Esquire, Deputy Bailiff; present: Alan Cecil Bisson, Esquire, Barbara Jean Bartie, David Osmond Le Conte, John Ferguson, Peter Sean Trueman Girard, David Percy Langley Hodgetts LVO and Niall David McCathie, Esquires, Margaret Ann Spaargaren and David Allan Grut, Esquire, Jurats.

In the action of THE LAW OFFICERS OF THE CROWN against JOHN FLINT (“the Appellant”) to pursue the appeal of which the said Flint gave notice against the sentence imposed upon him by the Magistrate’s Court on the 3rd day of September, 2010 in the terms attached hereto;

THE COURT this day having heard Advocate A.J. Ayres for the Appellant and Advocate C. Dunford for the Crown, DISMISSED the Appeal.

Her Majesty’s Deputy Greffier

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY
ON APPEAL FROM THE MAGISTRATE’S COURT

John FLINT

Appellant

-v-

The Law Officers of the Crown

Respondent

Before Richard John Collas, Deputy Bailiff

**Jurats: A C Bisson, B Bartie, D Le Conte, J Ferguson, P Girard, D P L Hodgetts,
N D McCathie, M A Spaargaren, D A Grut**

Appeal Against Sentence Heard 17th January 2011

Advocate for the Appellant: Advocate A J Ayres

Advocate for the Respondent: Crown Advocate C G Dunford

1. John Flint is appealing against the sentences imposed on him by Judge J R Finch in the Magistrate’s Court on 3 September 2010 following a trial at the conclusion of which, on 13 August, the Judge found him guilty of two charges of assaulting Ann Thompson, on 7 December and 10 December 2009 respectively. In respect of each of those charges the Judge imposed a sentence of three months’ imprisonment, to be served consecutively and he activated in full an earlier suspended sentence of four months imprisonment, making a total term of ten months. The Judge directed that the sentences were to run from the day of sentencing, notwithstanding that the Appellant had been in custody since 4th June that is for three months less one day. Which the total length of sentence is 14½ months.
2. On the Appellant’s behalf, Advocate Ayres has put forward three grounds of appeal.
3. The first ground alleges that the Judge referred to sentencing principles that were wrong in law in that he said he would not add anything on to the Appellant’s sentence because he had pleaded not guilty. What the Judge said is at page 150C of the transcript:

“Mr Flint, I take all the circumstances into account today, including the points and suggestions made by your advocate in mitigation. In relation to the suspended sentence, as I said I will deal with that separately.

You pleaded Not Guilty at your trial, as you are entitled to do. I am not going to give you the discount I would have considered had you faced up to it, but I’m not adding anything on because you pleaded Not Guilty.”

4. Advocate Ayres has argued that adds to the strength of submissions he made as to the totality of sentence.

5. In the view of the Jurats, the words used by the Judge are unobjectionable. He made it clear that he was not giving the Appellant any discount to which he might have been entitled had he pleaded guilty and spared the need for the trial. On the other hand, he was not adding anything on to the sentence as a penalty for a not guilty plea. In our view, he was correct in what he said, the words in which he expressed himself are clear.
6. The second ground of appeal alleges that the Judge failed sufficiently, or at all, to take into account the totality of the criminal behaviour. We propose to deal with this together with the third ground of appeal that the Judge failed to give sufficient credit for the period of time spent on remand.
7. Before doing so, we will mention the second limb of the second ground of appeal that states the Judge failed to direct himself that he had to consider the Prosecution evidence in relation to each charge separately and find that the criminal standard of proof was met in each case. An appeal against the conviction has been withdrawn. Advocate Ayres says this adds to his submission that the Judge did not have sufficient regard to the separate facts of each offence. In his submission the respective seriousness of each of the offences against Ms Thompson, which would have justified a different period of imprisonment in respect of each.
8. The facts of the two assaults on Ms Thompson were that they had been in a relationship for some three years or so. Both incidents occurred in the premises in which they were living together. In his judgment at the conclusion of the trial, Judge Finch stated what he found to be the facts of each incident, at page 131E of the transcript.

“For the avoidance of doubt on the criminal standard of proof I find the facts to be and it is open to me on the evidence to find that:

1. *That the Defendant suddenly got agitated, one hand over the Complainant’s throat and pressed his thumb into her eye. I find his said words to the effect of “why do you do it, why do you wind me up”. This was not accidental. Afterwards the Defendant said he’d never do that again, “I’d rather punch the wall” which he actually did on the Wednesday.*
2. *That in respect of the other incident, he leapt up, lent over the Complainant and hit her four to five times. She sat there crying and he would not let her go to bed for a while. In relation to the Complainant I also accept the Defendant never lashed out at her previously whilst asleep.”*

He added, at page 132C:

“The Defendant is a man with a short temper and he felt that the Complainant was, as he put it, more than once, quote: “pressing his buttons” unquote, as he saw it in the condition he was in.”

9. The first assault caused reddening and swelling to the eye as well as pain and discomfort.
10. The blows in the second assault landed on the complainant’s head, forehead and eye, resulting in bruising.

11. The Judge was told that the suspended sentence, which had been imposed on 12th November 2009 was in respect of a charge of harassment and concerned another lady with whom the Appellant had had a relationship. The lady in question had contacted the Police who had warned the Appellant to stop contacting her and on 29 December 2008 he signed the Officer's note book to that effect but despite that warning he sent her approximately 100 text messages between 1 January and 30 April 2009, a significant number of which made threatening demands for money, apparently demanding money for work and materials he had carried out at the lady's home.
12. The Judge had the benefit of a Social Enquiry Report which stated that the Appellant is 51 years of age and from the UK. It disclosed that he had a disturbed childhood during which he was himself the victim of violence. He suffered a number of injuries including head injuries following a road accident in his teens that has left him in constant pain and led him to 'self-medicate' with alcohol and to alcohol abuse for many years that has rendered him an alcoholic.
13. The report also stated, and Judge Finch stressed the fact, that although he is an intelligent man, he has no victim empathy and does not accept responsibility for his offending behaviour.
14. The Judge said that he had noted an earlier conviction of June 2004 that resulted in an immediate custodial sentence of six months. The Probation Officer said it was for an assault on his then partner.
15. The Courts have said on many occasions that domestic violence is an evil that must not be tolerated. Offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context. Indeed, because an offence has been committed in a domestic context, there are likely to be aggravating factors present that make it more serious.
16. In many situations of domestic violence, the circumstances require the sentence to demonstrate clearly that the conduct is unacceptable. The victims of such violence are entitled to protection from the courts.
17. The aggravating factors in the present case are the Appellant's previous convictions in 2004 and 2009 as well as his abuse of alcohol. It was clear from the facts that the custody threshold had been crossed. A suspended sentence was not appropriate as he was already subject to such a sentence. Community Service was not considered by the Probation Service to be an option both because he was not local and because of his alcoholism. An immediate custodial sentence was therefore the appropriate disposal.
18. The Jurats have had regard to the totality of the sentence, effectively 14½ months. They do not regard that as manifestly excessive. It was a matter for Judge Finch as to how that should be broken down across the separate offences. Another judge might have done it differently but his sentencing remarks were clear. The Jurats are not persuaded that the total length of sentence is manifestly excessive and they unanimously dismiss the appeal.
19. Appeal dismissed.