

**Judgment 30/2005**

**Keith Reginald Brooker – Royal  
Court – 19 May, 2005**

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**Appeal against sentence imposed by the Court of Alderney – assault – uncertainty as to the facts on which the Court of Alderney sentenced – appeal allowed to the extent that the sentence of one month’s imprisonment, suspended for one year, was set aside.**

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

The 19th day of May, 2005 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:- David Charles Lowe, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, O.B.E., Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, and Susan Mowbray, Jurats.

In the action of THE LAW OFFICERS OF THE CROWN against KEITH REGINALD BROOKER (“the Appellant”) to pursue the Appeal of which the said Brooker gave notice against the sentence imposed upon him by the Court of Alderney on the 22nd day of June, 2004;

WHEREAS on the 19<sup>th</sup> day of May, 2005 the Accused Brooker appeared before the Deputy Bailiff alone and sought the leave of the Court to appeal out of time, and THE COURT heard Advocate A.M. Merrien for the Accused and Advocate G.D. McKerrell for the Crown thereon and GRANTED such leave;

THE COURT sitting with Jurats on the said 19<sup>th</sup> day of May, 2005 having heard Advocate A.M. Merrien for the Accused and Advocate G.D. McKerrell for the Crown ALLOWED the Appeal insofar as the custodial sentence of one month’s imprisonment was concerned thereby quashing such sentence.

S. M. SIMMONDS  
Her Majesty’s Deputy Greffier

**Approved Text**

**Appeal Against Sentence**

**Keith Reginald Brooker**

**19<sup>th</sup> May 2005**

1. The Court has given most careful consideration to the appeal against sentence.
2. It has noted the points made by Crown Advocate McKerrell on behalf of the Law Officers and in particular the uncertainty as to the facts on which the Court of Alderney sentenced. The Court could not sentence on the basis that the full extent of the injuries manifested by Miss Mace resulted from the assault which had been perpetrated on her. She had not made a complaint. The Appellant had not admitted causing those injuries.
3. This sentencing problem resulted from the way in which the Hearing developed on 22<sup>nd</sup> June 2004.
4. This Court concurs with Crown Advocate McKerrell and Advocate Merrien that the sentence imposed by the Court of Alderney should have been based on the admitted facts and the inference which can properly be drawn from those admitted facts. It was admitted that the Appellant had pushed his partner out of the kitchen using some force. At one point he had held her by her upper arms. He admitted that the Appellant had “pushed her a bit too hard”. Indeed he also said – “she went flying into the lounge”.
5. The Court has noted that it was not a premeditated assault. The fact that he had consumed some alcohol cannot be an excuse for his actions but it may provide some explanation coupled with other facts made known by you to the Court of Alderney.
6. This Court has noted that Miss Mace did not pursue a complaint with the Police. The facts on which the Court was able to sentence resulted from the Appellant’s own admissions.
7. The maximum sentence which the Court of Alderney could have imposed for this offence is 3 months imprisonment and/or a £5,000 fine.
8. This was not the most serious case of its kind. The Appellant would have been entitled to a reduction of one third off sentence which would have been imposed had he been sentenced after a not guilty plea trial.
9. This Court considered the length of sentence which would be appropriate on the proper factual sentencing basis.
10. Had the Court been able to sentence on the basis of the injuries to which reference had been made then a sentence of one months imprisonment would have been wholly appropriate.

However with regard to the sentence of one months imprisonment imposed by the Court of Alderney this Court has concluded that a custodial sentence was not appropriate on the evidence on which it could properly sentence.

11. The Appeal is therefore allowed in part.

**Note:** Leave to appeal out of time had been granted.