

**Judgment 37/2011**

**William Anthony Collins v Law Officers of the  
Crown – Court of Appeal file no. 432  
- Court of Appeal  
- 14<sup>th</sup> December 2011**

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**Criminal appeal from the Royal Court – appeal against sentence – driving whilst having consumed excess alcohol – driving without third party insurance – failing to surrender to custody – appeal dismissed.**

**THE COURT OF APPEAL OF GUERNSEY**

**The** 14<sup>th</sup> day of December, 2011 before Dame Heather Ann Steel DBE, presiding, Michael Scott Jones QC and Nigel Peter Fleming QC

**WILLIAM ANTHONY COLLINS**

**(Appellant)**

**-v-**

**THE LAW OFFICERS OF THE CROWN**

**(Respondent)**

In the matter of the appeal, with leave, by the Appellant against the sentence of fourteen months' imprisonment, imposed by the Royal Court on 29<sup>th</sup> September 2011.

THE COURT, having on the 12<sup>th</sup> day of December 2011 heard Advocate C J Green for the Appellant and Advocate G D McKerrell for the Crown thereon, DISMISSED the appeal, and gave judgment in the attached terms.

**J TORODE**  
Registrar of the Court of Appeal

**IN THE COURT OF APPEAL OF THE ISLAND OF  
GUERNSEY**

**CRIMINAL DIVISION – APPEAL NO 432**

**Before:** Dame Heather Steel D.B.E., President  
Michael Scott Jones Q.C.,  
Nigel Fleming Q.C.

**14 December 2011**

**Between:** WILLIAM ANTHONY COLLINS (Appellant)

**V**

LAW OFFICERS OF THE CROWN (Respondent)

**Appeal from the sentences imposed by the Royal Court on 29<sup>th</sup> September, 2011 on the charges of:**

- 1 count of: Driving a motor vehicle having consumed excess alcohol; contrary to Section 2(2)(a) of the Road Traffic (Drink Driving) (Guernsey) Law 1989, as amended (Count 1 on the First Indictment).
- 1 count of: Driving a motor vehicle without third-party insurance; contrary to Article 2(1) of the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936, as amended (Count 2 on the First Indictment).
- 1 count of: Failing without reasonable excuse to surrender to custody as required contrary to section 10(1) of the Bail (Bailiwick of Guernsey) Law, 2003 (Single Count on the Second Indictment).

**Advocate C J Green appeared for the Appellant  
Crown Advocate G D McKerrell appeared for the Crown**

**THIS IS THE JUDGMENT OF THE COURT**

**PLEMING JA:**

***Introduction***

1. This is the judgment of the Court.
2. The Appellant is now 40 years of age. On 29<sup>th</sup> September 2011, before the Royal Court, the Judge of the Royal Court, and nine Jurats, he was sentenced as follows in respect of three offences contained in two indictments:

**First indictment**

First count – driving a motor vehicle having consumed excess alcohol, nine months imprisonment and disqualification from holding or obtaining a driving licence in all categories for a period of seven years;

Second count – driving a motor vehicle without Third Party Insurance, two months imprisonment consecutive, and disqualification from holding or obtaining a driving licence in all categories for three years concurrent.

The second indictment

Single Count – failure to surrender to custody, three months imprisonment consecutive.

3. The totality of the sentence, therefore, was a sentence of 14 months imprisonment, and disqualification for seven years.
4. The Appellant appeals, with leave of a single judge of the Court of Appeal, on three grounds:
  - (i) the sentence of nine months imprisonment for driving with excess alcohol was "manifestly excessive";
  - (ii) the sentence imposed for the offence of using a vehicle without insurance was "wrong in principle" as it should have been imposed concurrently with, not consecutively to, the other sentence;
  - (iii) therefore, the overall sentence of 14 months imprisonment was "manifestly excessive" and disproportionate to the overall level of the "total criminality".
5. The grounds of appeal are supported by an Amended Skeleton Argument, developed in oral submissions by Advocate Green.
6. The facts of the first indictment can be briefly stated. Late on 21<sup>st</sup> January this year, a police officer was on mobile patrol at Le Bourg when he saw a vehicle travelling towards him with headlights on full beam. This vehicle was observed to drive into the car park at the Happy Landings Hotel and the police officer followed. The officer approached the driver, the Appellant, and noted that upon speaking with him the Appellant's breath smelt strongly of alcohol and a roadside breath test was carried out, which the Appellant failed. After his arrest the Appellant was taken to the police station where he provided samples of breath for analysis and the lower of the two readings recorded 99 µg of alcohol in 100 mL of breath, the prescribed limit being 35 µg in 100 mL of breath. During the interview under caution the Appellant made a full admission to driving the vehicle whilst over the prescribed limit stating that he had consumed about five or six pints and two spirits prior to being stopped.
7. In relation to the second indictment, the Appellant failed to surrender to the Royal Court on 6<sup>th</sup> June this year, and an arrest warrant was duly issued. A disturbance took place in Weymouth on 5<sup>th</sup> July and routine police checks established that the Appellant, who was with a group of persons involved in an altercation, was subject to the Guernsey arrest warrant. He was therefore arrested and detained.
8. The Appellant has several previous convictions. Of particular relevance to the sentencing court were convictions in December 2002 for driving a motor vehicle with excess alcohol, failing to surrender to custody on 10<sup>th</sup> June 2005, driving a motor vehicle with excess alcohol in October 2005 and, finally, driving a motor vehicle with excess alcohol (two counts) and driving while uninsured (two counts) in May 2007. The last conviction resulted in a sentence of four months' imprisonment and disqualification from driving for three years.
9. The grounds of appeal set out in paragraph 4 above engage two long-standing general sentencing principles. The first principle is that consecutive terms should not normally be imposed for offences which arise out of the same incident or transaction. R v Noble [2003] 1 Cr.App.R(S) 312 provides a recent clear example of the application of this principle. In that case consecutive sentences for

causing several deaths by dangerous driving were quashed on the basis that notwithstanding the numerous deaths there was a single act of dangerous driving. From the Appellant's own previous convictions, it is to be noted that this principle was applied in 2007 in relation to additional offences of failing to stop, and using a vehicle while uninsured. Advocate Green also relied on R v Jones [1980] 2 Cr.App.R (S) 152.

10. It is also well recognised that there are exceptions to this principle. Advocate Green very properly brought to our attention R v Wheatley [1983] 5 Cr.App.R (S) 417 (a case of a driver driving whilst disqualified but after consuming excess alcohol), applied in R v Dillon [1983] 5 Cr.App.R (S) 439, R v Lawrence [1989] 11 Cr.App.R (S) 580, referred to by Crown Advocate McKerrell, and R v Hardy [2006] 2 Cr.App.R (S) 4. For a recent summary see R v Jameson and Jameson [2009] 2 Cr.App.R (S) 26, at paragraph 22:

“... a sentencing judge should pass a total sentence which properly reflects the overall criminality of the defendant and the course and nature of the criminal conduct disclosed by the offences for which he stands to be sentenced, while always having regard to the principle of totality. However, the imposition of concurrent sentences for like offences may not be appropriate where, as here, the statutory maximum sentence for an offence prevents the proper reflection of these matters”.

11. The second principle is totality: “The aggregate of the sentences must be appropriate to the offender's criminality in the context of the available mitigation.” - Attorney General's Reference No. 57 of 2009 (Peter Ralphs) [2010] 2 Cr.App.R. (S.) 30 at 190, Lord Judge C.J. Advocate Green also relied on R v Holderness, unreported, 1974 referred to in Archbold (2011) at paragraph 5-342. In R.E. O'Dette and F.D. O'Dette v. Law Officers of the Crown 2007-2008 GLR 16, this court, at [42], acknowledged that the totality principle applies in Guernsey.
12. The Appellant's Amended Skeleton Argument also raises a complaint that the sentences failed to give sufficient credit for the pleas of guilty and, in relation to failure to surrender to bail, the Judge had no power to sentence without the Jurats.
13. The various grounds and submissions are considered in the following paragraphs of this judgment.

#### ***Concurrent not consecutive***

14. We accept that the usual position is that consecutive sentences will not be imposed where more than one offence arises out of the same set of circumstances, or the same single incident. But there are exceptions to that principle – see R v Wheatley referred to above. Advocate Green submits that that decision can be distinguished on the basis, taken from the headnote of the report, that the defendant “persistently drove while disqualified, and he persistently drove when he had too much to drink”. But that description could equally be applied to this Appellant, who, as demonstrated by his record, repeatedly drives when he has had too much to drink and repeatedly drives without insurance.
15. In his sentencing remarks, the Judge of the Royal Court, made it clear that the court was well aware of the fact that the insurance offence was to be treated as a repeat offence. He said this:

*“We do not know why Guernsey should put up with you. We request the Guernsey Police to ascertain whether you have a housing licence and a right to work document. If it transpires you are here illegally, that is another offence. We do not think we have to put up with UK criminals coming to Guernsey and being a nuisance to everyone. To put it plainly you are not welcome here. We note your bad record and sentence for the protection of the public with a justifiable element of deterrence. We note that the insurance offence, which is also not your first, puts innocent people to further risk. The disqualifications need to be substantial for public protection in view of your bad record. We note the totality of the sentences here.”*

16. Although the practice of the court is generally to impose concurrent rather than consecutive sentences for offences arising out of the same facts, that principle does not apply in a case such as this because otherwise the Appellant may well conclude that he has, to use the words of the judgment in Wheatley, "a licence to drive with excess alcohol without any added penalty" if he also drives without insurance.
17. Advocate Green supported his submissions on this ground of appeal by pointing to the fact that although the sentence for the "no insurance" offence was consecutive, the disqualification (of 3 years) was concurrent. There is nothing in this point. We are grateful to Crown Advocate McKerrell and Advocate Green for submitting an agreed note on the relevant statutory provisions. The general power to disqualify in Guernsey in respect of motoring offences is to be found in section 8 of The Motor Taxation and Licensing (Guernsey) Law, 1987. For the offence of drink driving the minimum period of disqualification cannot be less than 12 months (see The Road Traffic (Drink-Driving) (Guernsey) Law, 1989), and there is a similar period in relation to having no insurance (see The Road Traffic (Compulsory Third Party Insurance) (Guernsey) Law, 1936, as amended). Counsel have been unable to discover a specific statutory provision in Guernsey which states that any period of disqualification must start forthwith, or that any additional period of disqualification imposed must run concurrently with a period imposed at the same hearing. But we are satisfied that must be the position. It makes no sense for a period of disqualification, as in this case, to be postponed for 7 years before it takes effect. We agree with the reasoning of the English Court of Appeal in R v Meese [1973] RTR 400, referring to several earlier decisions, that it requires express statutory authority to make a period of disqualification consecutive to another period of disqualification. It seems clear to us that a period of disqualification is intended to run as soon as it is ordered and, therefore, there is no power for the Court to impose consecutive orders of disqualification. The Judge was correct to rule that the 3 years disqualification "*has to be concurrent*", and this had no impact on the correctness of the decision ordering the period of 2 months imprisonment to be consecutive.
18. Overall, we do not see any error of approach by the Royal Court in this case in relation to the use of consecutive sentences.

### ***Insufficient discount***

19. Advocate Green submits that the Royal Court failed to give sufficient credit to the Appellant for the guilty pleas which were entered at an early stage and in circumstances where the offences in question did not involve any aggravating factors. The submission is that the Appellant should have received credit in the region of one third overall for both offences on the first indictment. This submission fails to recognise the earlier sentencing remarks by the Judge dealing with mitigation:

*"We have to say that a diligent search for mitigation has failed to produce anything worthy of note. The guilty pleas were inevitable. We take careful note of the probation report and your advocate's skilled submissions. As indicated the guilty pleas were inevitable."*

Whilst an early plea of guilty will normally lead to a reduction in sentence, there are circumstances in which the court will be justified in not allowing any discount, for example "*when an accused was caught red-handed, or where he had otherwise no real alternative but to plead guilty*" (Pirito v. Law Officers 2007–08 GLR N [21], transcript at paragraph 15). Having regard to the circumstances of this case, we consider that the sentencing court was perfectly entitled not to reduce the Appellant's sentence, and this ground of appeal also falls to be dismissed.

### ***Judge alone***

20. At the conclusion of the Crown's opening remarks, the Judge said "*the bail matter is for me isn't it?*", to which the reply from Crown Advocate McKerrell was "*yes Sir*". That conclusion was reflected

when it came to sentencing, the Judge stating again that breach of the bail conditions was "a matter for me".

21. We are satisfied, in agreement with the submissions made by Advocate Green and accepted by Crown Advocate McKerrell, that the offence of absconding by a person released on bail, contrary to Section 10(1) of the Bail (Bailiwick of Guernsey) Law, 2003, engages Section 8(1) of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950, so that the Jurats had to be involved in any decision as to the punishment to be imposed, even if the sentence is announced by the judge. It follows that there has been an error of law. However, both counsel also accepted that in those circumstances it would fall to this Court to determine the correct sentence – see section 25 (3) of The Court of Appeal (Guernsey) Law, 1961. In light of the very limited mitigation, and the Appellant's history of offending, we consider that a sentence of immediate imprisonment would, and should, have been imposed and that the sentence would, and should, have been consecutive. In those circumstances, although there is technical merit in this ground of appeal, we have decided that even if the sentence should be quashed we would pass a sentence of the same duration, 3 months imprisonment, to be run consecutively to the other sentences.

### **Totality**

22. Advocate Green submits that although the sentencing court referred to the totality of the sentences, it has failed to demonstrate that it "*discharged its duty to review the overall sentence with respect to the notion of totality*". We have looked again at the mitigation put before the court, and the detailed probation report. The Appellant is a repeat offender, with little awareness of the risk he causes to the citizens of Guernsey by continuing to drink and drive. It is unlikely that the Royal Court was impressed by the mitigation advanced that, on release from detention, the Appellant intended to continue his employment as a motor trader dealing in second-hand vehicles. As correctly anticipated by Advocate Green in his remarks to the Royal Court "*the court will obviously take somewhat of a dim view with regards to these offences particularly bearing in mind the fact that Mr Collins has relevant previous convictions for both drink driving and failing to comply with his bail...*".
23. These offences were committed only months after the Appellant's last period of disqualification ended and for the reasons already discussed, this is a case where no credit can be given for his inevitable guilty pleas. We are satisfied that the aggregate of the sentences is appropriate to the Appellant's criminality in the context of the available mitigation. As noted above, we also consider, in so far as we impose a sentence of consecutive terms of imprisonment in relation to the bail offence, that an overall period of 14 months does not offend the totality principle. We therefore reject this ground of appeal.

### **Conclusion**

24. For all these reasons the appeal against sentence is dismissed.

### **Authorities**

R v Meese [1973] RTR 400

R v Holderness, unreported, 1974

R v Jones [1980] 2 Cr.App.R (S) 152

R v Wheatley [1983] 5 Cr.App.R (S) 417

R v Dillon [1983] 5 Cr.App.R (S) 439

R v Lawrence [1989] 11 Cr.App.R (S) 580

R v Noble [2003] 1 Cr.App.R (S) 312

R v Hardy [2006] 2 Cr.App.R (S) 4

R.E. O'Dette and F.D. O'Dette v. Law Officers of the Crown 2008-2008 GLR 16

Pirito v. Law Officers 2007-08 GLR N 21

R v Jameson and Jameson [2009] 2 Cr.App.R (S) 26

Attorney General's Reference No. 57 of 2009 (Peter Ralphs) [2010] 2 Cr.App.R (S) 30