Judgment 41/2007 **Billy James Truffitt – Court of Appeal (Criminal Appeal 365) – 25 September 2007**

Grievous bodily harm with intent – application for leave to appeal against sentence – application completely without merit - refused

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

Criminal 365

The 25th day of September, 2007 before Jonathan Philip Chadwick Sumption, O.B.E, Q.C., presiding, Dame Heather Steel, D.B.E., and James Walker McNeill, Q.C.

THE LAW OFFICERS OF THE CROWN

- v -

BILLY JAMES TRUFFITT

(The Applicant)

On the application of the above Applicant for leave to appeal from the sentence imposed on him by the Royal Court on the 20th day of February, 2007;

THE COURT, having on the 24th day of September, 2007 heard Advocate Miss S. Mallett for the Applicant, and Crown Advocate G.D. McKerrell, respectively, thereon, this day GAVE JUDGMENT and:-

1. GRANTED legal aid;

2. REFUSED the application for leave to appeal; and

3. DIRECTED, for the purposes of the Proviso to Section 37(3) of the Court of Appeal (Guernsey) Law, 1961, that no part of the time during which the Applicant, when in custody, was specially treated as such, shall be disregarded in computing the sentence to which the Applicant is subject.

K H TOUGH
Registrar of the Court of Appeal.

Final Approved Text
3 December 2007

IN THE COURT OF APPEAL
OF THE ISLAND OF GUERNSEY

CRIMINAL DIVISION

Tuesday 25 September 2007

Before: **Jonathan Philip Sumption., Esq., QC President**
Dame Anne Heather Steel DBE
James Walker McNeill., Esq., QC

In the matter of an Application to the Court for leave to appeal sentence by

Between:

BILLY JAMES TRUFFITT — **Applicant**

v

THE LAW OFFICERS OF THE CROWN — **Respondent**

Advocate S Mallett for the Applicant
Crown Advocate G D McKerrell for the Crown

THE PRESIDENT:

1. On 16 November 2006, Billy James Truffitt pleaded guilty in the Royal Court on an indictment charging two counts, one of inflicting grievous bodily harm with intent, and of failing to surrender to bail in respect of an unrelated charge. He was sentenced to four years and six months' youth detention on the first count, and to one month's youth detention on the second, the sentences to be served consecutively. There is no complaint against his sentence for the bail offence. He was refused leave to appeal against the sentence on the count of assault and has renewed his application to the full court. This is the judgment of the Court on that application.

2. The facts are that at about 9.00 p.m. on 12 April 2006 Truffitt and a man called Mark Brender were walking along a dark lane by St. Martin's Parish School when Romans Zvirisins, a Latvian house painter working on the island approached him from behind and asked him for a light. Truffitt and Brender looked at each other, and then one of them struck him a hard blow to his head. He fell to the ground. Truffitt and Brender then began to kick him on the ground, landing kicks all over his face and upper body. A witness recorded that Mr. Zvirisins was 'kicked more times than I could count. He was kicked as if you were kicking a football, with power behind the kicks.' One of the assailants pulled him very hard by the ear, causing extreme pain. Both assailants then ran off. Mr. Zvirisins was subsequently treated for

surface wounds, a dislocated right shoulder and a ear which had partly been torn away from the side of his head with what must have been considerable force. The torn ear has been reattached surgically, but will be permanently deformed.

3. The Royal Court sentenced Truffitt and Brender together of the basis that this was a joint enterprise for which both were equally responsible. The Court took account of their youth (Truffitt was 19 at the time of the offence), and of their contrition. It applied a discount for their plea of guilty, but said that it should be limited because the compelling nature of the case against them had in reality left them with little alternative. On the other side, the Court noted that both men had criminal records, and that it was necessary to pass deterrent sentences in cases of gratuitous violence like this one.

4. In our judgment, this application is completely without merit. In spite of his youth, Truffitt has a bad record of offences of violence and dishonesty extending from 1999 to 2005, and was on bail at the time of this offence. The probation report describes a young man with a personal culture of violence. The attack on Mr. Zvirisins was a particularly violent, unprovoked assault, which must have been a traumatic experience for the victim and has resulted in minor but permanent disfigurement. There is no room in a case like this for fine distinctions between the two assailants. Certainly, the plea of guilty warranted some discount, which it got. But the fact that the assault was witnessed by several people, and that there was DNA evidence linking Truffitt with the victim meant that the Royal Court was fully entitled to limit the scale of that discount.

5. The Royal Court did not identify their starting point, but a starting point of six years would have been entirely appropriate having regard to the nature of the injuries and the vicious and unprovoked character of the attack. Indeed, we would not have been surprised if the starting point had been higher. In the result, Truffitt's plea has been fully reflected in the resulting sentence of four years and six months. There is no other mitigation of any real significance.

6. Aggressive young men who start laying into innocent members of the public in this island must expect to receive long sentences of imprisonment. Leave to appeal is refused.

