

Judgment 43/2009

**Jason Lee Ryder – Court of Appeal (Criminal Appeal 396) –
16 September 2009**

Grievous bodily harm with intent – appeal against sentence – extent to which the Courts of Guernsey should have regard to the 'definitive guidelines' published by the Sentencing Guidelines Council in England and Wales – relevance of 'Guernsey-specific' considerations – starting point of eight years' imprisonment not inappropriate in this case – aggravating features and no personal mitigation – reduction of one quarter for the guilty plea was appropriate in this case – appeal dismissed

IN THE COURT OF APPEAL OF THE ISLAND OF GUERNSEY

Criminal 396

The 16th September, 2009 before John Vandeleur Martin, QC, presiding, Geoffrey Charles Vos, QC and Clare Patricia Montgomery, QC

JASON LEE RYDER

Appellant

-v-

THE LAW OFFICERS OF THE CROWN

Respondents

In the matter of the appeal, with leave, by the Appellant from the sentence of six years' imprisonment, imposed on him by the Royal Court on 1st May 2009;

THE COURT, having heard Advocate C J Green, for the Appellant and Advocate C Dunford, for the Crown, GAVE JUDGMENT this day in the attached terms and DISMISSED the appeal.

K H TOUGH

Registrar of the Court of Appeal

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

CRIMINAL DIVISION

Before: **John Martin Esq. QC, Presiding**
Geoffrey Vos Esq., QC
Clare Montgomery QC

Between: **JASON LEE RYDER**

Applicant

and

THE LAW OFFICERS OF THE CROWN

Respondent

Advocate C J Green represented the Applicant
Crown Advocate G McKerrell represented the
Respondent

Cases

Brender and Ceillam v AG unreported 7th April 2005

Paul Christopher Luke Walsh v AG (C.A.) unreported Judgment 55 of 2006

Pirito v. Law Officers (C.A.), 2007–08 GLR N [21]

JUDGMENT

Montgomery JA: 1. This is the judgment of the Court. The Applicant, Jason Lee Ryder is a 25 year old man born in Guernsey. Apart from two short periods when he lived with his mother in England, he was brought up by his father in Guernsey. His father had long term relationships with two women after he separated from the Applicant's mother. The Applicant had difficult relationships with both these women. After the Applicant left full time education he found employment in Guernsey with the Post Office. He lost that employment following his arrest for theft from the Post Office but found work as a roofer. His ability to perform his work and his relationships with his family appear to have been adversely affected by his abuse of cannabis and in recent times his abuse of alcohol.

2. Apart from the offence of theft from the Post Office for which the Applicant received a sentence of 4 months detention, he has been before the courts for minor offences only which have been dealt with by way of fine.

3. By November 2008 the Applicant had fallen out with his family in Guernsey and was living in the Le Coq de Nord Hotel. On Saturday 15 November 2008 he spent the day drinking with a friend and by the evening was so drunk that he was refused admittance to at least one nightclub in the St Peter

Port area. At approximately 2.00 am on the morning of Sunday 16 November 2008, the Applicant walked up behind the complainant, a 30 year old Latvian woman, who was making her way home alone in the dark along the Braye Road in the direction of the Crossways Junction, having been dropped by a taxi at the Vale Garage end of Braye Road. The Applicant has never revealed how long he spent following the complainant or how he happened across her. The Coq de Nord Hotel lay approximately 380 yards away and Advocate Green accepted that the Applicant was walking away from the Hotel when he attacked the complainant.

4. Whilst the complainant spoke on the phone to a friend, the Applicant grabbed her from behind, pushed her to the ground and began to rain punches on her. He forced his hand into her mouth while she was on her knees and bit her on the head. He struck her at least 10 times full in the face. She did not fight back but begged him to let her go home. His response, according to the complainant, was to say he wanted to kill her. He pulled her to her feet and dragged her with him away from Braye Road down the Les Mares Pellees Road, punching her as he dragged her.

5. The assault continued for some 80 metres, judged by the complainant's blood which marked the route along which she was dragged. The friend who had been talking to the complainant tried to call her back after the call disconnected. The Applicant attempted to dismantle the phone to stop it ringing. Eventually the battery fell out when the Applicant hurled the phone to the ground. At some point the Applicant had the presence of mind to pick up the phone which was found hidden in his room when he was arrested.

6. Once in Les Mares Pellees Road the Applicant continued to attack the complainant saying he was going to kill her, punching her, pulling her up by the hair and dragging her. Eventually she lay in the middle of road where the Applicant kicked her in the back and then punched her in the face 3 or 4 times. The complainant was crying and shouting for help. Fortunately for her, a taxi driver driving into the road heard her calls and saw the Applicant on top of her. When the taxi approached, the Applicant ran off towards Braye Road pursued by one of the taxi driver's passengers.

7. The attack left the complainant with extensive facial injuries. Two of her teeth were knocked out in the attack and she suffered cuts and bruises to her body as well as to her face. Apart from the damage to her teeth, her physical injuries healed mercifully quickly however, even 6 months after the attack, she was unable to go out on her own, constantly anxious and vigilant and unable to trust any males she does not know. She told the police that she could not understand why she had been attacked and that it had changed her life.

8. The Applicant was seen by witnesses in the public bar of Le Coq du Nord Hotel later on the

Sunday morning bearing signs of recent injury including a laceration to the back of his right hand caused when he struck the complainant. He told witnesses that he had been set upon by two men near the hotel. He said that he had seen a woman being insulted by two men opposite the Vale Garage and that when he remonstrated with them they had attacked him. This was, as the Applicant was later to admit, a barefaced lie designed to deflect suspicion from him. In due course the Police searched his room and discovered the phone belonging to the complainant.

9. The Applicant was arrested following the discovery of the phone as well as his blood stained clothing which he had also hidden in his room. He was interviewed. He claimed to have no recollection of the events of the night before. He explained that he had hidden the clothing and the phone because he had panicked. In the absence of any admissions the clothing was submitted for DNA analysis which revealed the presence of the complainant's DNA.

10. The Applicant pleaded guilty on his first appearance in the Royal Court. He continued to claim have no memory of the attack and although he challenged in the course of his interviews with the probation service and the psychiatrist the details of the attack (including whether he bit the complainant or threatened to kill her). Advocate Green confirmed that these denials were not based on any recollection of the events but rather the Applicant's own belief that he was incapable of this type of conduct.

11. The Applicant was sentenced to six years imprisonment. The Royal Court made it plain that it considered that a reduction of 25% in sentence was appropriate given that the Applicant "had little choice but to plead guilty on the facts." The Court observed this was "not only a serious offence but a despicable and cowardly assault on a lone woman attacked at random. ... As the facts stand you present a danger to women. We have a duty to protect the public from random violence and to demonstrate our disgust at this type of offence. Guernsey remains in many ways more safe than other jurisdictions and we will do what we properly can to maintain that."

12. Advocate Green submits that this sentence was manifestly excessive. He argues that the notional starting point of 8 years imprisonment was excessive and that, in any event, the Applicant should have received the maximum one third reduction in sentence, given the stage at which his plea was entered.

The notional starting point

13. The Royal Court did not explicitly state that it had identified the appropriate sentence on a not guilty plea as being eight years imprisonment. However, as a matter of logic, it is to be inferred that it must have done so. Advocate Green contends that the Royal Court should have had regard to the

definitive guidelines published by the Sentencing Guidelines Council in relation to offences against the person in England and Wales.

14. For our part, we doubt whether the definitive guidelines can or should be adopted wholesale by the courts in Guernsey given the different considerations that may inform the sentencing process in this Island. Indeed in relation to offences against the person, in this case as in others, the Royal Court had occasion to observe that there may be Guernsey-specific considerations that point to the imposition of heavier sentences in Guernsey for offences against the person than may be the case in England and Wales.

15. In *Brender and Ceillam v AG unreported 7th April 2005*, the Royal Court observed: “The Court has sentenced 13 defendants for offences involving serious violence since 1st January 2003. In the period 1st January 2000 – 31st December 2002 it had sentenced only 7 such defendants. Persons appearing in the Royal Court for sentencing cases involving violence will invariably receive a lengthy immediate custodial sentence unless there are most exceptional mitigating factors. In light of the substantial increase in offences appearing for sentences in the last 2¼ years the Court has resolved that the sentences, which the Court will hand down in future, will be more severe than in the past. This will be so in respect of all offences of violence committed from tomorrow. Sentences will include a substantial deterrent element. The loud and clear message from this Court is that violent conduct will not be tolerated and will be punished severely by the Courts of this Island.”

16. In *Paul Christopher Luke Walsh v AG, Court of Appeal unreported, 7th April 2006*, the Court of Appeal stated that the sentiments expressed in *Brender and Ceillam* were entirely justified and deserved the respect and support of the Court of Appeal. We agree with that approach. It may be appropriate for the Guernsey courts to seek to maintain the relative safety of Guernsey by imposing heavy sentences on those who endanger the safety of its inhabitants by violent assaults.

17. However, even applying the definitive guidelines published by the Sentencing Guidelines Council in relation to offences against the person in England and Wales without modification, we do not consider that a sentence of 8 years imprisonment was inappropriate as a sentence before any reduction for the guilty plea.

18. The Guidelines identify various starting points between 4 and 13 years imprisonment for offences contrary to section 18 of the Offences against the Person Act 1861 depending on the gravity of the injury, the element of premeditation and the use of weapons.

19. Once the starting point has been identified, the sentencing court is then required to consider

relevant aggravating factors, both general and specific. This may, as the Guidelines confirm; “result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.” The Court will then consider mitigating factors and personal mitigation and finally apply any reduction for a guilty plea. The court must then review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.

20. Advocate Green argues that the Applicant’s offence was a drunken attack that was not premeditated and that the injuries caused, although very serious, were not grave. Accordingly he submits that the starting point should have been 4 or 5 years rather than the period of 8 years that would be appropriate for an unpremeditated attack in which life-threatening or particularly grave injury was caused.

21. However the evidence on the issue of premeditation is far from clear. Advocate Green accepts that it is likely that the victim was selected because she was a woman (in part because the account given by the Applicant to the probation officer that he “just exploded” indicates that he chose his victim because of her gender).

22. In addition Advocate Green was unable to explain (because the Applicant claimed to have no memory of the events) how the Applicant came across the complainant, since she was dropped from her taxi some way from the Coq du Nord Hotel, and why the Applicant was walking away from the hotel when he followed the complainant immediately prior to launching his attack. In the circumstances, whilst it is impossible be sure that there was any long period of premeditation, it is equally impossible to be sure that this was as Advocate Green submits an attack involving “no pre-thought or pre-planning.”

23. In addition, Advocate Green’s submission as to the gravity of the complainant’s injuries appears to us to significantly undervalue the gravity of the psychological impact of the attack. Advocate Green accepts that the Court is entitled to have regard to that impact. The complainant describes the attack as having “completely changed my life.” In our judgment, although her physical injuries can be categorised as less than grave, coupled with the psychological impact, the overall injury can be regarded as grave.

24. In those circumstances, even applying the categorisation of offences in the Guidelines, it was not manifestly excessive to treat 8 years as the appropriate starting point. However in the event that such a high starting point applied, the totality principle might lead the Court to considering that it was not appropriate to add any further period of imprisonment to take account of any additional aggravating features.

25. However, if the appropriate starting point under the Guidelines was as Advocate Green argued, only 4 or 5 years imprisonment, that could only be the starting point under the decision making process prescribed in the Guidelines. As we have indicated, any starting point is liable to be adjusted upwards to take into account any significant aggravating features. In our judgment there were a number of seriously aggravating features that would have lead to a significantly higher sentencing level, in the region of 8 years, being established even if a lower starting point had been used.

26. These aggravating features were that:

1. the victim of the attack was a vulnerable lone woman;
2. the motivation for the attack was related to the victim's gender;
3. the attack was unprovoked;
4. the attack took place in the hours of darkness in an area of poor lighting;
5. the site of the attack was an isolated one;
6. the Applicant took steps to reduce his chances of discovery by dragging the victim into a side road and by dismantling and removing her telephone;
7. the attack was sustained and remorseless. Advocate Green pointed out the Applicant did not accept that he said that he intended to kill his victim, however this was not based on any explicit memory of the attack. Moreover Advocate Green accepted that the Applicant's intention may be assessed having regard to the fact that he appeared to have been determined to persist in his attack until interrupted by the taxi driver.
8. The attack consisted of punches directed at the victim's head rather than less vulnerable parts of her body. It also appears likely that at some stage the Applicant bit the victim.
9. It was the intervention of a third party rather than any voluntary cessation of violence by the Applicant that appears to have limited the degree of physical harm occasioned. The harm must, in accordance with the Guidelines (para 7), judged in the light of the high degree of culpability of the Applicant.

27. Set against these serious aggravating features, there was no personal mitigation. Advocate Green argued that the fact the Applicant had no previous convictions for violence gave rise to some personal mitigation, however this is not the case under the Guidelines. The suggested starting points and sentencing ranges in the Guidelines are based upon a first-time adult offender.

28. In the circumstances we do not consider a sentence level of 8 years imprisonment was manifestly excessive or wrong in principle, whether one applies the Sentencing Guidelines or the prevailing sentencing policy evidenced by the practice of the Guernsey courts. This was a very grave offence of its kind which was rightly visited by a condign punishment.

The credit for a guilty plea

29. It is submitted by Advocate Green that the Applicant was entitled to the usual one third reduction in sentence for having entered his plea at the earliest opportunity. Advocate Green accepted that in *Pirito v. Law Officers (C.A.), 2007–08 GLR N [21]* this Court held that there may be exceptions to the rule that a plea of guilty will normally lead to a reduction in sentence, for example “where an accused was caught red handed or where he had otherwise no real alternative but to plead guilty”. However it was argued that the case against the Applicant, whilst strong, was not overwhelming.

30. In our judgment, applying the test in *Pirito*, the Applicant had no real alternative but to plead guilty. He was found to be in possession of the phone belonging to the complainant. The presence of the complainant’s blood on his clothing was proved by DNA evidence. He had hidden the phone and the clothing in his room and told lies to the police and others. He had admitted lying in interview and said although he had no memory of the evening: “I don’t know, something must have happened” and “things just kept going over and over in my head thinking it must be me. And I don’t know why or what provoked it cos I’m not a violent person”.

31. The reduction in sentence of one quarter to take account of the Applicant’s guilty plea appears to us to be merciful, balanced and fully justified. It will be observed in *Pirito* the Court upheld a sentence that made no allowance for the guilty plea at all.

32. Advocate Green drew our attention to the revised definitive guidelines published by the Sentencing Guidelines Council in relation to Reduction in Sentence for a guilty plea. These Guidelines appear to us to provide limited assistance to the Applicant. In paragraphs 5.3-5.4 the Guidelines confirm that where the prosecution case is overwhelming, it may not be appropriate to give the full reduction that would otherwise be given. Whilst there is a presumption in favour of the

full reduction being given, where a plea has been indicated at the first reasonable opportunity, the fact that the prosecution case is overwhelming without relying on admissions from the defendant may be a reason justifying departure from the guideline. In such a case a reduction to 20% may be appropriate.

33. In addition the Guidelines suggest that the concept of entering a plea at the first reasonable opportunity may involve, in the case of an indictable offence, not merely entering a plea on indictment, but also making admissions or accepting guilt at the police station whilst under interview. Advocate Green argued that this was not the practice in Guernsey.

34. Since we are satisfied, applying the principle established in *Pirito*, that it was neither excessive or wrong in principle to accord the Applicant a reduction in sentence in the order of 25% to reflect the fact that the Applicant had no realistic alternative to entering a plea, it is not necessary for us to decide whether the Courts of Guernsey may in the future be entitled to adopt the approach suggested in the Guidelines of giving maximum credit for a guilty plea only where in appropriate cases an indication of a plea has been given in the course of police interviews.

Disposal

35. In the circumstances we propose to grant leave to appeal, but to dismiss the appeal.