

Judgment 5/2005

**Daniel Luke Bougourd – Royal Court –
18 January, 2005**

Criminal appeal from the Magistrate Court – sentence – burglary of post office – six months’ youth detention – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 18th day of January 2005 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present David Charles Lowe, Laurence Lenfestey Guille, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael John Wilson, Michael Henry De La Mare, Esquires, Susan Mowbray, Jurats.

Magistrate’s Court Appeal No.33 of 2004

In the action of THE LAW OFFICERS OF THE CROWN against DANIEL LUKE BOUGOURD (“the Appellant”) to pursue the appeal of which the said Bougourd gave notice against sentence imposed upon him by the Magistrate’s Court on the 20th day of December 2004 in the terms attached hereto;

THE COURT, having heard Advocates S. Mallett and P. Robey for the Appellant and Crown respectively DISMISSED the Appeal.

S. M. SIMMONDS
Her Majesty’s Deputy Greffier

**IN THE ROYAL COURT OF GUERNSEY
SITTING AS A FULL COURT**

Before the Deputy Bailiff and Jurats

Daniel Luke Bougourd

Appeal against Sentence

1. The Court has given most careful consideration to everything that has been urged by Miss Mallett.
2. On 3rd December 2004 the Appellant who is 17 years old was the subject of a Suspended Sentence Supervision Order imposed on 30th September 2004 that is to say only 9 weeks before the burglary on 3rd December 2004. The Suspended Sentence was for 2 years and the Supervision Order for 1 year.

By then the Appellant had already accumulated an unfortunate criminal record.

3. On 28th October he had entered a not guilty plea to a charge of behaving in a disorderly manner and obstructing a police officer in the execution of his duty.
4. On 3rd December he was the subject of a Curfew Order imposed by the Magistrate's Court pending trial on those charges. The Curfew Order required him not to be out after 11.00 p.m.
5. He had also failed to attend meetings with his Probation Officer and had received one warning notice. Another was sent on the day of the burglary, as he was still not attending meetings.
6. On Saturday 3rd December the Appellant was apparently in a drunken state when together with the 27 year old man he burgled the St Peters Post office at about 3.00 a.m. The Appellant kicked open the front door of the premises.

Two males were seen on CCTV inside the St Peters Post Office. When the Appellant was arrested he was recognised on the CCTV footage as having been involved in the burglary.

Between them a quantity of cigarettes and lottery tickets, a £10 pound note and two charity collection boxes containing unknown sums of money were stolen. The Appellant pleaded guilty to the charge.

7. The Appellant admitted that he had taken boxes of cigarettes and a £10 note from the till. He claimed that he did not personally take the charity boxes and was upset that they had been taken. He was to admit that he knew where the money from the boxes had been placed. It was in a bottle at his home. There stolen cigarettes and lottery tickets were also found.
8. In the event that his sentence should be appealed, the Magistrate had clarified with Counsel that the offending had been charged as a joint enterprise.

We have noted today that a 19-year-old girl named in the Probation Report pleaded guilty to assisting in the removal and retention of the goods and on 6th January was sentenced to 24 hours at the Attendance Centre. The case of the 27-year-old male has been adjourned.

9. It was reasonable for the Appellant to recall that if whilst serving the suspended sentence he committed any serious imprisonable offence then there was every likelihood that he would be sentenced to a custodial sentence. Furthermore that it would not be suspended and that the Suspended Sentence itself would be activated.

10. Although the value of the stolen goods was not substantial the Court noted the comment of the Magistrate: –

“Small post offices and shops in the country are vulnerable to attack and need the protection of the Court.”
11. This Court concurs with the Magistrate’s comment.
12. It is evident that the Magistrate took account of the guilty plea, the time spent by the Appellant on remand in custody, the Social Enquiry and Psychiatric Report. The Magistrate concluded that the offence was so serious that a custodial sentence ought to be imposed. The Court concurs with his conclusion.
13. Although the experienced Magistrate did not expressly state that he had taken the Appellant’s youth into account the Court is satisfied that it would have been in the forefront of his mind when imposing a sentence of Youth Detention.
14. Given the Appellant’s previous criminal record, that the offence was committed whilst under a Suspended Sentence Supervision Order and that it was committed whilst in breach of a Curfew Order the Court cannot find fault with the sentence of 6 months Youth Detention imposed by the Magistrate. The Court has so concluded even though it was the first custodial sentence that the Appellant would serve and was to reckon from the sentencing hearing date when the Appellant had already spent 24 days in custody.
15. The Magistrate rightly in the view of the Court did not suspend the six-month sentence.
16. The Appeal is therefore dismissed.