

Judgment 67/2004

**Joe Willis de Garis – Court of Appeal
(Criminal appeal 323) – 8 July, 2004**

Grievous bodily harm – appeal against sentence – no general principle that a young person must necessarily receive a shorter sentence – appeal refused.

IN THE COURT OF APPEAL OF GUERNSEY

The 8th day of July, 2004 before The Honourable Michael Jacob Beloff Q.C., presiding, David Arthur John Vaughan Esq., Q.C. and Patrick Stewart Hodge Esq., Q.C.

THE LAW OFFICERS OF THE CROWN

V

JOE WILLIS DE GARIS

(Appellant)

In the appeal of the Appellant from the sentence imposed by the Royal Court on 29th April 2004;

THE COURT, having heard Advocate Miss S. L. Brehaut for its Appellant and Crown Advocate P. Robey, thereon, this day GAVE JUDGMENT in the terms attached hereto and REFUSED the appeal.

K. H. TOUGH
Registrar of the Court of Appeal.

Joe Willis de Garis

against

The Law Officers of the Crown

Case No 323

Judgment delivered by Hodge JA:-

1. This is the judgment of the Court.
2. On 2nd March 2004 Joe Willis de Garis (“the Appellant”), a young man born on 2nd June 1986, pleaded guilty to a number of charges arising out of his drunken and irresponsible behaviour on the night of 8 December 2003. In particular, the Appellant, when acting along with Steven Martin O’Connor, inflicted grievous bodily harm on a young Latvian woman, Sanita Prince, in an unprovoked and brutal attack on her when she was walking home at about 11.50 pm in Mill Street, St Peter Port. He pushed her against a shop window and then on to the ground. While she was on the ground, he and Steven O’Connor repeatedly kicked her on her head and body. In particular the Appellant directed numerous kicks at her head. As a result Miss Prince sustained a fractured forearm when she attempted to protect her head with her arms.
3. The Royal Court sentenced him to thirty-one months’ youth detention for the offence of unlawfully and maliciously inflicting grievous bodily harm on Miss Prince. The Appellant also pleaded guilty to the charge of affray in an incident earlier the same evening, the theft of Miss Prince’s handbag, resisting police officers in the execution of their duty and assaulting a police officer in the execution of his duty. The Appellant has not appealed against the sentences imposed on him for those other offences. We are concerned therefore only with the sentence for the assault on Miss Prince in which he inflicted grievous bodily harm on her. In fixing the sentence the Royal Court stated that it had taken as its starting point a sentence of four years’ youth detention and as a result of the guilty plea and mitigating factors such as the Appellant’s remorse and his youth reduced the sentence to thirty-one months.
4. The Bailiff on 1 July 2004 granted the Appellant leave to appeal against this sentence solely in view of the fact that he was seventeen years old when he committed the offences.
5. Advocate Brehaut, in presenting the appeal argued that the sentence was manifestly excessive. She submitted that the starting point was too high. She referred us to *Law Officers of the Crown v Blumson* (Guernsey Court of Appeal, 5 August 2002) in which a juvenile offender received a sentence of 10 months’ youth detention for unlawfully wounding another man in a pub by striking him in the face with a glass and causing several significant lacerations to his face which required stitches. In that case the Royal Court took three years as a starting point and reduced the sentence to the range of twelve to fifteen months by taking account of his guilty plea, his remorse, his youth and his good character. The sentence was

further reduced to ten months because of the delay in bringing on the hearing. Advocate Brehaut also referred us to *Law Officers of the Crown v Carter* (Royal Court, 19 September 2003). In that case a forty-two year old man was sentenced to two and a half years' imprisonment, on a starting point of three years, for stabbing another man with a knife inflicting two wounds, namely under his left arm and on the right side of his back. The victim's wounds required surgical intervention. The stabbing occurred after an altercation in a pub and after the victim had punched Mr Carter. In delivering its judgment the Royal Court ruled that in future the starting point for such offences would be four years.

6. Advocate Brehaut submitted that these cases could not be reconciled with the Appellant receiving a thirty-one month sentence and that the starting point in the Appellant's case was substantially too high for a juvenile. She suggested that *Law Officers of the Crown v Carter*, although concerned with stabbing, was a relevant guideline case for offences involving grievous bodily harm whether or not a weapon was involved. As in that case the four year starting point was appropriate for an adult it was clearly inappropriate for a youth because, as a matter of general principle, the starting point for a particular offence should be reduced if a defendant is a youth.
7. We do not agree. The Court is mindful that a young person's culpability is less than that of an adult because young people lack experience and have not developed their capacity to realise the full implications of their actions. Thus it is normally appropriate for the Court to pass a shorter sentence than it would on an adult for the same offence. But there is no general principle that a young person must necessarily receive a shorter sentence. The Court may legitimately have regard to the need to deter others from offending in a similar manner or other factors which outweigh any allowance made for a defendant's youth. See *Attorney General's Reference No 41 of 1996* [1997] 1 CR. APP. R. (S) 388; *Regina v Howells* [1999] 1 WLR 307 (CA).
8. While, in both of the cases which Advocate Brehaut cited, there were aggravating circumstances in the use respectively of a glass and a knife to inflict wounds, in neither case does it appear that the behaviour of the defendant was potentially life threatening. In our judgment the offence in which the Appellant was the leading participant was a particularly vicious and unpleasant assault. As the Deputy Bailiff said, "kicking a person whilst on the ground is a highly dangerous activity and ...can lead to very serious injury". Violence of that nature can easily cause brain damage or death. In this case the victim might have been killed or at least very seriously injured if a member of the public had not approached the scene of the attack. Innocent and vulnerable members of the public should not be exposed to this sort of violence which merits a significant custodial sentence, notwithstanding the Appellant's youth. We do not consider that the starting point was inappropriate in the circumstances.
9. Indeed, it is not correct to suggest that the Royal Court did not take account of the Appellant's youth. The Presiding Judge in his report to this Court stated:
"The Court fixed a starting point of four years. It would on the particular facts of this case have been higher for an act of grievous bodily harm committed by an adult."
This was because the Jurats of the Royal Court viewed the facts of the case as more serious than those in the *Carter* case. In our judgment the Jurats were fully entitled to adopt that view.
10. That determines the issues raised in the appeal. However, as the Appellant is a young man who only recently reached the age of eighteen, we have considered the whole circumstances of the case. We have noted that the only issue of fact which the Appellant sought to put

forward to this Court, which was inconsistent with the Crown's description of the offence to the Royal Court, was that before the assault Miss Prince had sworn at the Appellant or Mr O'Connor after one or other of them had touched her on her bottom. This response by Miss Prince, if it occurred, in no sense reduced the Appellant's culpability. Advocate Brehaut accepted that the Appellant had aimed kicks at Miss Prince's head after she had been pushed to the ground. We have noted that the Appellant has a bad criminal record although it has not involved crimes of violence in the past. On the other hand, we recognise that the attack on Miss Prince appears not to have been premeditated. We have taken account of the Appellant's three character references which were submitted to the Royal Court and also his remorse. Having regard to all the circumstances, we have concluded that the sentence of thirty-one months' youth detention for this brutal and dangerous attack is not manifestly excessive. We refuse the appeal.