

Judgment 9/2012

**Anthony John Jones v Law Officers of the Crown
- Court of Appeal File No 420
- 13th March 2012**

Appeal against sentence – attempted murder – (see judgment No 4 of 2011) – appeal dismissed.

IN THE COURT OF APPEAL OF GUERNSEY

The 13th day of March, 2012 before Dame Heather Steel, DBE presiding, Sir de Vic Carey, and Jonathan Rupert Crow QC

ANTHONY JOHN JONES

(Appellant)

-v-

THE LAW OFFICERS OF THE CROWN

(Respondent)

In the matter of the appeal, with leave, by the Appellant against the sentence of 15 years imprisonment, imposed by the Royal Court on 8th day of April 2011.

WHEREAS on the 12th day of March 2012, having heard Advocate A M Merrien for the Appellant and Advocate C G Dunford for the Crown thereon;

THE COURT this day DISMISSED the appeal, and GAVE JUDGMENT in the attached terms.

J TORODE
Registrar of the Court of Appeal

IN THE COURT OF APPEAL OF GUERNSEY

CRIMINAL APPEAL NO 420

12 & 13 March 2012

Before:

**Dame Heather Steel DBE
Sir de Vic Carey
Jonathan Crow QC
Judges of Appeal**

Between:

ANTHONY JOHN JONES **Appellant**
-v-
THE LAW OFFICERS OF THE CROWN **Respondent**

**Decision delivered 13 March 2012
Judgment handed down 15 March 2012**

**Advocate A M Merrien appeared for the Appellant
Crown Advocate C G Dunford appeared for the Respondent**

Cases, Authorities & Texts referred to:

Law Officers of the Crown v Barnes 15th September 2004 CA

Law Officers of the Crown v Burton 13 December 2011 CA

Ryder v Law Officers of the Crown [2009 -10 GLR 288]

English Sentencing Council guidelines

Steel, JA

1. This is the Judgment of the Court. On 9th March 2011 the Appellant, Anthony John Jones, who was then aged 53, was convicted in the Royal Court before Judge Finch and 9 Jurats of the attempted murder of Richard William Wordsworth (the Complainant) on 3rd February 2010. On 8th April 2011 he was sentenced by the same Court to 15 years imprisonment with effect from 3rd February 2010.
2. On 20th February 2012 the single judge granted leave to appeal that sentence. The Appellant's ground of appeal is that the sentence was manifestly excessive and out of proportion to the gravity of the offence.

The offence

3. The trial concerned an offence which took place at the home of the Complainant in Guernsey on 3rd February 2010 in which the Appellant was found to have inflicted a potentially fatal knife wound to the upper abdomen of the Complainant.
4. The Court heard evidence of the background to the incident on the 3rd February and about the relationship that each of the two men had with a woman Sharon Ellis. For a period of about seven years before the offence the Appellant and Sharon Ellis had what he told the Court was a romantic, very intense, love and sexual relationship. They lived separately in England, and there were at least four periods of separation, including the months between July 2009 and late January 2010. During that time the Complainant met Sharon Ellis in Guernsey and formed what he described as a close sexual relationship with her. The Appellant told the Court that on 25th January 2010 he was contacted by Miss Ellis, who had returned to England, and they resumed their sexual relationship at his home and stayed together until 28th

January when she left. During that time the Appellant discovered text messages on Miss Ellis' mobile phone which indicated her sexual relationship with the Complainant and his name. The Appellant confronted her and she told him that she had had a relationship with someone and having regard to the content of the text messages, the Appellant understood that the relationship had not ended. The evidence established that the Appellant telephoned the Complainant on 28th January and three times on 31st January. The Appellant told the Court that the Complainant gave him his address at this time. On 31st January the Appellant booked a flight to Guernsey and made a hotel reservation for 2nd February.

5. The Appellant sent the Complainant two text messages on 1st February. The first included the words "*Richard you have ruined my life I love Sharon deeply, she was vulnerable when she met you. We slept together this week*", and the second "*So you might understand the emptiness I now feel*". On 1st February the Complainant texted Miss Ellis "*Sharon I love you but what's going on, please be truthful. I'm so upset and sad*".
6. On 2nd February the Appellant travelled on a Flybe flight from Southampton to Guernsey. His luggage comprised one suitcase hold baggage and hand baggage. There was a problem regarding the hire car he had booked and he was given a lift to the hotel arriving at approximately 7 pm. A hire car was delivered to the hotel the next day.
7. At about 11.45 am on 3rd February a man called at a house two doors away from the Complainant's home and asked to speak to Richard Wordsworth. The householder directed the man to the correct address and noted that the man was wearing a jacket and carrying a rucksack. The Complainant had come home from work for an early lunch, and was upstairs at his home when he answered a knock on his door. When he came down he checked both front and back doors and met the Appellant walking to the back door. His description of the Appellant included that he was fairly sure he was wearing a baseball cap, he was wearing a lightweight light green 'sort of coat' and that he had a 'sort of' shoulder bag. The Appellant started a conversation about diving equipment. The Complainant felt uneasy, and after about five minutes conversation asked how the Appellant knew he was selling diving equipment and the Appellant said he'd been told by Wesley (Sharon's son who lives in Guernsey) and Sharon.
8. The Appellant said something like '*Now you know who I am, I've got something for you*', he rummaged in his bag and pulled out a knife. The knife was described as having a blade of 5-6 inches, symmetrical and definitely not one of the Complainant's. The Appellant made some comment about having '*ruined his life*', lunged at the Complainant and stabbed him in the upper abdomen. The Complainant's evidence was that it looked as though it had gone all the way up to his hand before he pulled it out. He said there was blood everywhere, the Appellant came towards him waving the knife around and made at least one or two lunges at him. The Complainant, who was forced back into the kitchen, managed to grab the Appellant's wrist at one point to try to defend himself, and either the knife or the Appellant's hand caught his forehead. The Complainant described the Appellant having the knife in his right hand and bringing it down towards his head and face and he remembered grabbing his wrist with both hands to try to stop the knife contacting him again.
9. The Complainant grabbed the cordless phone next to the kitchen door to call for help and managed to call 999 before the Appellant lashed out, so that the phone was flung across the kitchen floor. The 999 call was recorded at 12 10 pm and was played several times during the trial. We have listened to that recording which demonstrates the aggression of the Appellant, the Complainant's distress and have read the transcript, which includes the following words:

Individual 1 (The Appellant) Don't phone

Individual 2 (The Complainant) Well who else am I going to call?

Individual 1 Don't call the police, think.

Individual 1/2 Unintelligible

Operator Emergency Which service? Hello

Individual 2 I have to go to hospital

Individual 1 I'll have to finish it (unintelligible)

Individual 1 I'll have to finish it if you're going to phone the pigs

Individual 2 I'm dying

Individual 1 No you're not

Heavy breathing

Individual 2 I'm dying

Operator unintelligible

Individual 2 Please just let me call an ambulance

Individual 1 You'll really get me done and I'll get years in prison

Individual 2 Well what else do I do?

Individual 1 Yeah but will you get me done for this?

Individual 2 I don't know what I'm going to do. I just want to live alright?

The conversation continues between the operators establishing the address and calling the ambulance.

10. The Complainant then ran from the house and flagged down a van. He asked the driver to take him to the hospital. En route he made three calls. He telephoned the police to report what had happened, Sharon Ellis and his place of work.
11. At the Princess Elizabeth Hospital Mr McMurray, Consultant Surgeon, described and treated a knife wound through the abdominal wall, into the abdomen and through the liver, to a depth of about 8-10 centimetres. His evidence was to the effect that if the Complainant's estimation of the size of the blade was correct it probably was fairly close to going in to the hilt, but it was impossible to say. His evidence was that a moderate amount of force would have been required to achieve such penetration. He described "*some degree of volition to push the knife into that area*" that is '*To go through skin, which is a fairly tough structure, the anterior rectus sheath, the muscle, the posterior rectus sheath, all tough structures... There may also have been some problems with clothing above that*'. He was shown the Complainant's exhibited clothing of T shirt, shirt, sweatshirt and jacket each garment bearing a knife hole and when shown the jacket described "*fairly tough material*" and said "*I think it certainly would hinder the knife going in*". No major damage was caused to the liver or the duodenum.
12. The Crown case was that the offence was a planned deliberate stabbing with the stated intent. The Appellant armed himself with a knife which he used as alleged. Thereafter, before his arrest, he disposed of the knife, bag and his coat.

13. The Appellant's case, in summary, was that the wound was inflicted accidentally during an incident in which the Complainant produced and brandished a knife, and that he did not intend to kill or cause serious harm to the Complainant.
14. He told the court that during the first telephone call to the Complainant on 28th January he established that he was talking to Richard, he identified himself as Tony and said that he wanted to talk regarding Sharon. During a call on 31st January to the Complainant, the Appellant said that he suggested a meeting and the Complainant said that he met every Wednesday at 9pm at a pub to do with his diving club and if the Appellant wanted to come along and talk to him there that would be perhaps the best thing to do. On that day the Complainant gave the Appellant a telephone number. He agreed that he sent the two text messages to the Complainant, and on that day he arranged to travel to Guernsey.
15. He denied that he brought a knife with him to Guernsey on 2nd February, or that he purchased a knife or took a knife from the hotel when, on Wednesday 3rd February he left the hotel in the hire car to visit the Complainant. He told the Court that he was wearing a short sleeved shirt, jeans and a black pair of shoes and did not have a knife or a bag with him. At the house he introduced himself to the Complainant and asked if they could talk. The Complainant was, he said, a little hesitant but showed him into the kitchen area. They talked and when the Appellant referred to having recently slept with Sharon the Complainant's demeanour changed. He became aggressive and 'lost the plot'.
16. He picked up something from the worktop and came at the Appellant. The Appellant backed away against a wall in the hallway, and the Complainant lunged at him. The Appellant managed to grab the Complainant's hand and disarm him. Whilst he held the knife, the Complainant lunged at him with force. At that time the Appellant did not realise that the Complainant had come into contact with the knife. He blocked a further attack by the Complainant who went into the kitchen where the Appellant saw him appear to be holding a phone which he dropped to the floor. The Appellant described a lot more blood on the kitchen floor than in the hallway. The Complainant left the house, and shortly afterwards the Appellant left taking with him the knife, which he said was to prevent further attack on him, and which he threw away, probably as he made his way to the parked hire car.
17. In cross examination he was asked about two emotional text messages he sent to Miss Ellis on the morning of 3rd February, before he visited the Complainant, in which he expressed very deep love for her. He denied that he was jealous of the Complainant or the lifestyle with him that Miss Ellis had described.
18. At 12.50pm the same day the Appellant was identified and arrested near to the hire car in a field opposite the Castel Hospital. When arrested he said "*How the Hell did you trace me to here*", and went on to say something like '*through the hire car company, I suppose*'. He was said to be very calm. He was wearing jeans and a T shirt. He was taken into custody and interviewed and provided the police with a handwritten statement setting out the background and his account. In the third interview he produced a further written statement. The Appellant was charged.
19. Despite extensive searches, and, after the Appellant had been charged, a car journey with the police during which the Appellant sought to assist by indicating where it might have been thrown, the knife was never recovered. The Appellant denied that he had disposed of a bag, jacket, and/or baseball cap and none was recovered.
20. On 9th March 2011 the Jurats rejected the Appellant's account and evidence and convicted him of attempted murder.
21. On 8th April 2011 in the Royal Court, Judge Finch and 9 Jurats, the Appellant was sentenced.

The Court considered a Victim Impact Statement from Richard Wordsworth, a letter from the Appellant, a Social Enquiry report from Kerry Tardif dated 3rd April 2011, Educational Reports from the Btec Sports tutor, the Head of Learning and Skills and a Lecturer in Mathematics at Guernsey Prison, a medical report and two character references, one from the Appellant's father. The Court referred to the English Sentencing Council Guidelines of 2009 and was addressed in mitigation by Advocate Eeles. The antecedent record of the Appellant disclosed five previous convictions in England between 1974 and 1983 when he was sentenced to 18 months imprisonment for robbery. At trial he was treated as a man of good character.

22. In sentencing the Court indicated that, since a murder involving a knife, Courts in Guernsey have been robust in dealing with any offences involving even the carrying of a knife and that the Court of Appeal have supported this stance. Judge Finch referred to the English Sentencing Guidelines, which, while not binding, offer assistance when assessing the relevant factors the Court can take into account when sentencing. He described the offence in these words:

“We consider this was a planned offence where you travelled from the UK to Guernsey either armed with a knife or obtained one locally and went to the aggrieved's house where you confronted him and stabbed him in the stomach intending to kill and occasioning a potentially deadly injury. The injury was treated by immediate surgery and the victim, in evidence the court found compelling, affected emotionally by this very serious incident. A facial injury was also caused. When the victim tried to ring 999 you knocked the telephone from his hand. The conversation which was then fortunately recorded was substantial evidence against you and demonstrates your alarming state of mind. You also disposed of evidence. We consider this a planned and premeditated attempt to kill where serious bodily harm was caused which is productive of understandable mental consequences for the victim.”

23. In sentencing the Appellant to 15 years imprisonment he said:

“No-one who listened, as we did many times, to the tape of the 999 call can fail to be shocked by your callousness and lack of concern for the victim. Motivated by obsessive and irrational jealousy over a woman, you deliberately travelled to Guernsey intending, we are satisfied, to confront the victim with a deadly weapon and which you used with an intent to kill. It is no thanks to you that the attack did not cause death.Even for this type of offence this was a bad case.”

The Appeal

24. We have been assisted in our consideration of the issues raised in this appeal by the written Grounds of Appeal submitted by Advocate Merrien, the written response from Crown Advocate Dunford and their oral submissions. The offence of attempted murder is rarely before the Royal Court and it is an offence where the proved intention to kill always involves, in principle, the most serious level of harm.
25. Advocate Merrien's submission is that the sentence was manifestly excessive and out of proportion to the gravity of the offence. He submits that whilst the sentence imposed was within the sentencing range suggested by the guidelines for attempted murder it was 'too high and so high that it was manifestly excessive.'
26. The appeal centres on the way in which the Royal Court applied the English Sentencing Council guidelines to the facts of this case. In mitigation Advocate Eeles suggested that as the offence is rare in Guernsey and there are no local authorities it would be pertinent to look to the UK for guidance. She referred the Court to the guidelines and submitted that this case

fell into level 2 where a sentencing range of 12-20 years custody is indicated with a starting point of 15 years. She submitted that in assessing the level of seriousness of this offence the Court should look at the list of aggravating and mitigating features, and that there must be great care not to double count. She invited the court to give due consideration to that sentencing range and starting point.

27. In sentencing, Judge Finch stated:

“We turn for guidance to the English Sentencing Council guidelines which, we emphasise are not binding upon us, but offer assistance especially in assessing the relevant factors which we can take into account when sentencing.”

He then considered the English minimum custodial terms on mandatory life sentences for murders involving a weapon or knife. He referred to the crucial differences between murder and attempted murder. He quoted from the English guidelines for attempted murder at A 3:

“The culpability of an offender is the initial factor in determining the seriousness of an offence. It is an essential ingredient of the offence of attempted murder that the offender had an intention to kill. Accordingly, an offender convicted of this offence will have demonstrated a high level of culpability. Even so the precise level of culpability will vary in line with the circumstances of the offence and whether the offence was planned or spontaneous. The use of a weapon may influence this assessment.”

From the guideline D 4 he quoted;

“The level of injury or harm sustained by the victim as well as any harm that the offence was intended to cause or might foreseeably have caused must be taken into account and reflected in the sentence imposed.”

Conclusion

28. Advocate Merrien accepts that, whilst not binding, the guidelines are persuasive authority in Guernsey. The Court of Appeal in the cases of Law Officers of the Crown v Barnes (15th September 2004) (*Barnes*), and more recently Law Officers of the Crown v Burton (13 December 2011) (*Burton*) acknowledged considerable assistance from the English experience. We acknowledge that the guidance of the Sentencing Council is relevant and pertinent to this case.

29. We emphasise, however, that the guidelines are persuasive, not binding and particularly note the Court of Appeal judgment in Ryder v Law Officers of the Crown [2009-10 GLR 288 (*Ryder*) at paragraph 14;

“We doubt whether the definitive guidelines can or should be adopted wholesale by the courts in Guernsey given the 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 has 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.”

30. We are satisfied that this is just such a case. This was a premeditated and serious violent offence. The Appellant travelled specifically to Guernsey to confront his victim. He armed himself with a knife and committed the offence against the victim in his home. The seriousness of this offence is aggravated by the fact that it was deliberately planned and a weapon was used. From the English suggested starting point of 15 years, and accepting the fact that the offence fell within the English level 2, the Royal Court did not err in taking the

interests of this small community and the need for a deterrent element into account, nor in factoring the planning and use of the knife into the sentence passed, which was well within the appropriate range.

31. We cannot accept Advocate Merrien's first submission that the Court took the sentences and guidelines for murder offences and then adapted those for use in attempted murder cases. The transcript clearly indicates that the judge was starting by considering the question of culpability, and that his reference to the significance of a knife in a murder case, was simply by way of analogy with culpability in attempted murder cases. The Judge was clearly not confusing murder with attempted murder. Having acknowledged the crucial differences, he specifically quoted from the Attempted Murder guidelines.
32. The fact that the Judge did not specify an exact starting point is irrelevant since there can be little dispute that the offence was within level 2 (a planned attempt to kill) and in the middle bracket of that range (some physical or psychological harm) giving a starting point of 15 years. It is apparent from the sentencing remarks that the Court slightly increased that starting point to reflect the significant aggravating features before allowing some small discount for the limited mitigation.
33. Advocate Merrien submits that the Court erred in referring to the planning of the offence and the fact that the Appellant was armed as significant aggravating features, when those matters were already taken into account in determining the level 2 classification. Therefore he says that the Court was double counting to increase the sentence beyond that justified by the circumstances.
34. We are not persuaded that there is any factual basis for the submission that the sentence passed by the Royal Court demonstrated double counting in relation to the planning or the knife. The fact that there was an element of planning is sufficient to put the case in level 2. Level 2 provides a broad range of sentences. The nature and scale of the planning and the fact that a knife was brought by the Appellant with him to the Complainant's home were relevant in deciding where the offence lay in the broad range of gravity encompassed by level 2, and are thus capable of being taken into account as aggravating factors for that purpose. That is not double counting. On any view a sentence of 15 years imprisonment is no more than a suggested starting point in the English guidelines and the Royal Court in Guernsey did not err in its approach to this sentence by selecting a slightly increased starting point for the reasons stated.
35. In any event, even if the sentence did not adhere absolutely to the English guidelines, that would not of itself be a ground of appeal unless the resultant sentence was manifestly excessive. In our judgment this sentence was not.
36. We accept the Crown submission that in this case the Court was justified in adopting a higher starting point due to the stated aggravating features and in accordance with the words set out at page 7 of the guidelines, "*The presence of one or more aggravating features will indicate a more severe sentence within the suggested range*".
37. In Ryder at paragraph 19 the Court stated:

"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 (ibid at 11), "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."

At paragraph 25 the Court stated;

“....As we have indicated, any starting point, is liable to be adjusted upwards to take into account any significant aggravating features....”

38. In the present case the Court demonstrably followed this process. The aggravating features were clearly set out and were relevant to a starting point higher than 15 years for this offence.
39. We stress that guidelines are no more than that. Sentencing is not a mathematical exercise and in this case the Jurats who tried the case and heard the evidence were very well placed to assess all the circumstances of the offence and the culpability of the Appellant. Their reaction to the evidence was described by the Judge in sentencing. The mitigation available to the Appellant was minimal but was nevertheless taken into account. The Court also, properly, took into account the physical and mental consequences for the victim. The Court very carefully and correctly considered every relevant sentencing requirement and passed an appropriate sentence.
40. However calculated, for this serious offence involving the use of a knife and a proved intention to kill, the sentence of 15 years imprisonment cannot be regarded as manifestly excessive and the appeal is dismissed.