

Judgment 22/2012

**Aston Hamon v Law Officers of the
Crown & Jessica Francesca Jennings v
Law Officers of the Crown
Royal Court
11th May 2012**

Appeal against sentence imposed for assault.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 11th day of May, 2012 before Richard John Collas, Esquire, Deputy Bailiff

In the matter of ASTON HAMON (“the Appellant”)
and the LAW OFFICERS OF THE CROWN (“the Respondent”) in the terms attached hereto;

WHEREAS on the 22nd day of February, 2012 THE COURT, which comprised Richard John Collas, Esquire, Deputy Bailiff, sitting with Jurats, heard Advocate R.G. Morris for the Appellant and Crown Advocate G.S. Perry for the Respondent and unanimously DISMISSED the Appeal and ADJOURNED the matter for written Judgment to be handed down in due course;

THE COURT this day handed down a written Judgment for the said decision in the terms attached hereto.

A J Nicolle
Her Majesty’s Deputy Greffier

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 11th day of May, 2012 before Richard John Collas, Esquire, Deputy Bailiff

In the matter of JESSICA FRANCESCA CRYSTAL JENNINGS (“the Appellant”) and the LAW OFFICERS OF THE CROWN (“the Respondent”) in the terms attached hereto;

WHEREAS on the 22nd day of February, 2012 THE COURT, which comprised Richard John Collas, Esquire, Deputy Bailiff, sitting with Jurats, heard Advocate C.A. Barrett for the Appellant and Crown Advocate G.S. Perry for the Respondent and ALLOWED the Appeal in respect of the sentence imposed on her by the Magistrate’s Court on the 24th day of November, 2011 in respect of the first charge and substituted therefor a sentence of six months’ Youth Detention and ADJOURNED the matter for written Judgment to be handed down in due course;

THE COURT this day handed down a written Judgment for the said decision in the terms attached hereto.

A J Nicolle
Her Majesty’s Deputy Greffier

Approved Text
11.05.2012

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY
ON APPEAL FROM THE MAGISTRATE'S COURT

Between: **ASTON HAMON** **Appellant**

-v-

LAW OFFICERS OF THE CROWN **Respondent**

AND

JESSICA FRANCESCA JENNINGS **Appellant**

-v-

LAW OFFICERS OF THE CROWN **Respondent**

Appeal against Sentence imposed by the Magistrate's Court on 24th November 2011

Hearing date: 22nd February 2012

Judgment handed down: 11th May 2012

Before: Richard John Collas, Esq., Deputy Bailiff

**Jurats: S E F Le Poidevin, S Mowbray, D O Le Conte, P S T Girard, T G Snell,
D P L Hodgetts, LVO, N D McCathie, T J Ferbrache, J G Hooley**

Advocate for the First Appellant: Advocate R Morris
Advocate for the Second Appellant: Advocate C Barrett
Advocate for the Respondent: Crown Advocate G Perry

Background

1. This judgment concerns appeals by Aston Hamon and Jessica Francesca Crystal Jennings in respect of sentences imposed on them by Judge J R Finch in the Magistrate's Court on 24th November 2011. Hamon was sentenced in relation to six charges and Jennings on four charges. Both were concerned together with two others, Lucy Gallienne and Nikita Margaret Carré, in an assault that took place on 6th May 2010 on Richard Henderson at Mill Street, St Peter Port. All of them except Gallienne were sentenced separately for a number of additional offences but the Mill Street assault was the most serious of the charges faced by each of the Appellants and was the main focus of these two appeals.
2. Hamon was sentenced in the following manner: charge 1, to undergo youth detention for a period of ten months for the Mill Street assault; charge 2, to a period of one month's youth detention on a charge of resisting Police Officers in the due execution of their duty on the 6th May 2010; charge 3, to a period of one month's youth detention for a charge of threatening behaviour towards another person on 5th November 2010 at Lefebvre Street, St Peter Port; charge 5, to a period of one month's youth detention for assaulting a Police Officer at Cambridge Park, St Peter Port on 17th April 2011; and charge 6, to a period of fourteen days' youth detention on a charge of breaching his bail conditions on 13th October 2011. All periods of youth detention were ordered to be served concurrently so that the total sentence

imposed was ten months' youth detention. No order was made in relation to charge 4 which concerned having intoxicating liquor in his possession in a public place on 15th April 2011.

3. Jennings was sentenced as follows: charge 1, to a period of nine months' youth detention for the Mill Street assault; charge 2, to one month's youth detention for assaulting a police officer at Police Headquarters on 6th May 2010; and charge 4, to fourteen days' youth detention for obstructing a Police Officer in the course of her duty on 19th June 2011 at Le Pollet, St Peter Port. The sentences were all to be served concurrently so the total period of youth detention was nine months. The third charge against her was dismissed, no evidence having been offered.
4. Hamon and Jennings were both ordered to pay compensation and no appeal has been entered in respect of such orders.

The Mill Street Assault

5. Both Appellants appealed against the sentences imposed on them for the Mill Street assault only. In each case they claimed that the sentences were manifestly excessive and that there was disparity between their sentence and the sentences imposed on their co-defendants.
6. The facts of the Mill Street assault were established at trial after the three girl co-defendants pleaded not guilty and Hamon entered a guilty plea but declined to accept the factual version put forward by the prosecution.
7. The assault involved an unprovoked attack on the complainant who was walking home sometime after 1 a.m. on the morning of Thursday 6th May 2010. He was unknown to most of the defendants but recognised Gallienne because he knew her parents. The incident began with some verbal exchanges and after one of the defendants may have asked the complainant for a cigarette.
8. Mr Finch found that without any reason or provocation Hamon struck the first blow when he brought the complainant to the ground either with a blow to the head or, more likely, with a head-butt. Once he was on the ground, he was punched and kicked by the defendants. The latter part of the incident was observed by a neighbour who watched from the window of her upstairs flat after she had been disturbed by the shouting from the group. She said she saw all four defendants kick the complainant when he was on the ground and she heard a girl say that she had kicked him in the head. Her evidence was decisive. It was accepted by Mr Finch who said he found her to be honest and truthful. Mr Finch concluded that it was a joint attack, a joint enterprise, on the part of all four defendants.
9. The complainant suffered a number of injuries. He described them as a large gash to his knee, a broken nose, bruising on his upper body and he said his face was covered in blood. He had to take a week off work to recover.
10. Two police officers arrived promptly on the scene. They found the defendants in the area and managed to arrest them nearby. Hamon, who was arrested after a short chase, initially claimed that he was the one who had been assaulted. All three female defendants protested their innocence when they were detained.
11. It took a long time for the case to come for trial in the Magistrate's Court for a number of reasons, none of which were the fault of the Appellants, the Royal Court was told.

Hamon's Appeal – Ground One

12. The Appellant Hamon's first ground of appeal was that there was disparity between the sentence handed down to him and the sentences handed down to the two adult co-defendants who were 19 and 20 years old at the time of the offence whereas he was then 16 years of age.
13. He said that Mr Finch had also failed to take account of a number of other factors that should have weighed in his favour. The factors he identified were that the Probation Report assessed him as not posing a significant risk of harm to the public; the Probation Report highlighted a number of family factors that may have affected his conduct; he entered an early guilty plea whereas the adult offenders maintained a not guilty plea up until conviction; he had only one relevant prior conviction; and the complainant suffered only minor injuries.
14. His second ground of appeal was that the sentence was out of line with the sentences recommended by the English Sentencing Guidelines Council in its guidelines. His Advocate suggested that a starting point of six months imprisonment would have been appropriate if proper account had been taken of factors such as the Appellant's age at the time of the offence and the lapse of time before the case came to trial which were significant and should have mitigated against any increase in the starting point for sentencing.
15. Advocate Morris, appearing for Hamon, suggested that after taking account of mitigation an appropriate sentence would have been in the region of 4 to 5 months.
16. At the sentencing hearing, after hearing from counsel, Judge Finch retired for nearly fifty minutes to consider the sentences to impose before he returned to hand them down. When he returned, Mr Finch explained the matters he had taken into consideration. Immediately before handing down the sentences, he said the following:

"I note the age of the accused at the time of the offence. Mitigation was put forward well by your Advocates. Guilty pleas where appropriate amount to mitigation and I (sic) are taken into account – so are ages. I have carefully noted the very full and helpful reports. I also note the main charge so far as Hamon is concerned was a so called Newton hearing where I did not find in his favour.

In sentencing I have looked at what I think is the correct total and adjusted the individual sentences accordingly. Other mitigation in your favour is afforded by the length of time it has taken for this matter to be finally disposed of. I take that into account for all of you whatever the causes. It is not just your welfare that I have to look at, I have a duty to prevent and punish crime. Public disorder and violence are a problem that cause legitimate and public concern in Guernsey and I must act appropriately. You were all well out of order. Under the Youth Detention Law the grounds are the seriousness of the offences and the need to prevent crime.

Aston Hamon, will you stand first, please.

You took a lead role in the main offence for someone with your abilities which come across clearly from the report; you are fouling up your life."
17. On the ground of disparity of the sentences, it is necessary for us to explain the sentences imposed on the two co-defendants who chose not to appeal.
18. Nikita Carré received a sentence of nine months youth detention for the assault in Mill Street. She received concurrent sentences of one month on a charge of resisting the Police, one month for theft and one month on another charge of resisting the Police. She was also given a further sentence of one month for a theft charge which was to be served consecutively for the reason that the offence was committed whilst she was on bail, making a total period of ten months youth detention.

19. Lucy Gallienne faced only the assault charge and was sentenced to six months youth detention. Mr Finch told her he had reduced her sentence because of the mitigation and personal circumstances he had taken into account. He did not explain the nature of the mitigation and personal circumstances. However, the transcript records that her Advocate had produced a letter from a doctor who expressed the view that a custodial sentence would impact upon her physical health and that it would exacerbate the management of her severe asthma. Her Advocate also said that she was working hard to abstain from substances and that a custodial sentence would put her back in the company of people and in an environment from which she had been working to distance herself.
20. Although the Appellants have not appealed the sentences imposed for the charges other than the Mill Street assault, it is not possible to review their sentences without looking at the totality of the sentencing.
21. We agree that it was right for Judge Finch to have regarded the Mill Street assault as the most serious of the offences for which they were all to be sentenced, to have had regard to the correct total length of the sentence to be served and to have adjusted the individual sentences accordingly. He then imposed concurrent sentences and therefore increased the sentence for the Mill Street assault in an attempt to ensure the total length of sentence was appropriate in all the circumstances.
22. It is clear from Mr Finch's remarks that Hamon would have received a shorter period of youth detention if he had only been charged with the Mill Street assault. The third, fifth and sixth charges faced by Hamon all involved separate incidents on separate days and hence each of them could have merited a consecutive, as opposed to a concurrent, sentence. Furthermore, the later offences were committed when Hamon was on bail. As we observed above, the co-defendant Carré received a consecutive sentence for an offence committed when she was on bail. It is right to treat the commission of offences whilst on bail as an aggravating factor meriting a heavier sentence.
23. In assessing Hamon's culpability, Judge Finch was right to take account of the fact that Hamon took a lead role in the assault and the fact that it was his blow to the head that brought the victim to the ground.
24. To summarise, there were a number of factors that Judge Finch had to take into account, which differentiated Hamon from the other defendants. Each factor justified the imposition of a longer sentence of detention than he would otherwise have received.
25. Advocate Morris placed emphasis on the comparative youthfulness of Hamon compared with the other defendants. Hamon was born on the 19th July 1993 and so he was 16 years old on the day of the assault in Mill Street. Jennings who was born on 3rd July 1993 was also 16. Gallienne was born on 27th February 1990 and was 20. Carré who was born on the 26th January 1991 was 19 on the day of the assault.
26. The Court agrees with counsel's submission that the culpability of an offender is to be judged by reference to his age on the date of the offence notwithstanding that he may have had a birthday and attained an older age by the time he comes to be sentenced (see, for example, R v Bowker [2008] 1 Cr. App. R. (S) 412).
27. In the present case, Hamon and Jennings are the youngest of the co-defendants but the four of them were all broadly similar in age. In our view, the allowance that Hamon might have received for his comparative youthfulness was more than offset by the other factors to which we have referred, even after taking into account the mitigating factors such as that he had only one relevant previous conviction, the family circumstances identified in the Social Enquiry Report and the assessment in that Report that he did not pose a significant risk of harm to the general public. He was not entitled to much credit for the fact that the complainant suffered

only minor injuries because it was a violent assault that could easily have resulted in serious injury, in the view of the Royal Court.

28. Any opportunity to allow Hamon a substantial discount for an early plea was lost by him when he decided not to accept the prosecution's view of the facts and instead to require a Newton Hearing at which Mr Finch rejected his evidence and accepted the evidence of the prosecution witnesses.
29. For the reasons we have given, we do not see any merit in Hamon's first ground of appeal.

Hamon's Appeal Ground Two

30. In the second ground of appeal, Advocate Morris placed great reliance upon the guidelines issued by the English Sentencing Guidelines Council and the decision of the Guernsey Court of Appeal in Gunter v Law Officers of the Crown (12 July 2011). In Gunter the Court of Appeal held (at paragraph 5) that:

“Decisions of the Court of Appeal in England on sentencing practice are not as such binding in Guernsey. But the Guernsey courts will normally look to them as persuasive authority in a case where (i) the elements of the offence are comparable in the two jurisdictions, (ii) the statutory maximum sentence for the offence is comparable, and (iii) there are no significant differences between the social or other conditions in Guernsey and those in England which justify a different approach.”
31. Gunter was a case of child pornography. The Defendant had pleaded guilty to counts of making and possessing indecent images of children. In their judgment, the Court of Appeal made no mention of offences of violence. The earlier Court of Appeal decision in Ryder v Law Officers of the Crown [2009-2010 GLR 288] was not cited. It was a case of causing grievous bodily harm with intent. In the present appeal, the Jurats were directed that, as a matter of law, Gunter did not override or repeal Ryder in which the Court of Appeal had expressly rejected a submission that Guernsey should follow the English guidelines laid down by the SGC. It held that:
 - “14. For our part, we doubt whether the definitive [SGC] 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 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.
 15. In Brender v Law Officers, the Royal Court observed:

“The court has sentenced 13 defendants for offences involving serious violence since January 1st, 2003. In the period January 1st, 2000-December 31st, 2002 it had sentenced only 7 such defendants. Persons appearing in the Royal Court for sentencing in 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 Walsh v Law Officers, the Court of Appeal stated that the sentiments expressed in Brender 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.”

32. In the present appeal, the Court is unanimously of the view that the reasons and sentiments expressed in Ryder and the cases cited above remain valid today. There is still a need to include a deterrent element in sentences for violent and threatening conduct and for offences of public disorder. The assault in Mill Street committed by the Appellants and their co-defendants is unfortunately typical of the type of unprovoked assault the Court had in mind when it resolved that it was necessary to impose harsher sentences. There remains a need to deal severely with persons who threaten the peace and tranquillity of this Island and of its inhabitants as they go about their lawful business. The level of violence and unsociable behaviour in the streets of the Town late at night continues to be a source of concern to residents and visitors alike. The courts are fully justified in imposing heavy sentences with an element of deterrence.
33. The remarks of the Court of Appeal in Ryder remain valid. There is nothing in the Gunter judgment that would require the Royal Court, or indeed the Magistrate's Court to depart from sentencing policies that are now well established. When sentencing the Appellants, it would have been wrong for Judge Finch to have strictly applied the English Sentencing Guidelines and he was correct not to have done so. We therefore dismiss the second ground of Hamon's appeal.

Jennings' Appeal

34. The Appellant Jennings relied upon her age as one of the grounds on which she based her appeal. She is 16 days older than Hamon and, like him, she was 16 years of age on the day of the Mill Street assault. As with Hamon, Mr Finch said in his sentencing remarks that he had taken account of the defendants' ages at the time of the assault.
35. As we have noted, Jennings faced two additional charges, the first was assaulting a police officer on the same night as the Mill Street assault for which she received a concurrent sentence of one month. Such an assault committed against an arresting police officer is a factor which will invariably lead to a more severe penalty. Mr Finch handed down 14 days concurrent youth detention on a charge of having obstructed a police officer on a later occasion when Jennings was on bail. As we have said, the commission of further offences whilst on bail is always likely to be treated as an aggravating factor. Mr Finch also activated, concurrently, two previously suspended sentences for obstructing and resisting police officers.
36. A report prepared by a Student Social Worker, Youth Justice Officer at the Health and Social Services Department in respect of Jennings revealed she had some very difficult personal circumstances.
37. In the opinion of the Royal Court, the decisive fact in relation to the appeal by Jennings is that she was pregnant and the "due date" for the baby was 17 April 2012. It was almost certain that Jennings would give birth whilst serving her sentence. If the sentence were not varied on appeal and if the Appellant were to receive remission of one-third of her sentence, her earliest release date would be 24th May 2011. Information was presented to the Royal Court explaining the limitations at the prison that dictated that mother and baby could not be adequately accommodated for such period.
38. Jennings became pregnant a year or so after the Mill Street assault but several months before the case came on for trial. The pregnancy was mentioned in the HSSD report but the Magistrate's Court was not told about limitations in the care facilities available within the Guernsey prison. The Operations Governor of the States of Guernsey prison explained to the Royal Court that the facilities at the prison were adequate to cope with a pregnant prisoner but not a mother and baby. The limitations were identified by H M Chief Inspector of Prisons who, in a Report dated March 2009, wrote that "*babies should not be held in Guernsey prison*

unless a purpose built unit with appropriate facilities, policies, skilled staff and care plans equivalent to those in the community can be provided.”

39. The Royal Court was informed that if a long-serving prisoner was due to give birth arrangements would be made for her to be transferred to a mainland prison with the facilities needed to accommodate a mother and her baby. In Jennings’ case, the proximity of her release date made it impractical for her to be relocated. Discussions had been held between the relevant States of Guernsey Departments and it had been agreed that if she was not able to be released prior to the arrival of the baby, she would be transferred to the maternity ward at the Princess Elizabeth Hospital where she could remain for up to ten days on a temporary licence issued by the Prison Governor. Thereafter, if she had to return to the prison, the facilities on the general wings are wholly inappropriate for a baby. The only other option within the prison would be to place mother and baby in the segregation unit where they would almost totally isolated. Such a situation would not be satisfactory, as H M Inspector had concluded.
40. The Royal Court was told that if the sentence to be served by Jennings continued for more than ten days after the birth of her baby, the likelihood was that mother and baby would be separated with the baby being taken into foster care, provided a suitable carer was available.
41. The Royal Court accepts the submission made by Advocate Barrett that a sentencing court may take account of the effect of a sentence on persons other than the offender especially when sentencing the mother of a young child and in circumstances where the sentence would deprive children of the offender from parental care. Advocate Barrett relied upon passages from Current Sentencing Practice Part C4 and the cases cited therein including R v Haleth (1982) 4 Cr. App.R.(S.) 178, R v Franklyn (1981) 3 Cr. App.R.(S.) 65, R v Vaughan (1982) 4 Cr. App.R.(S.) 83 and R v Whitehead (1996) 1 Cr.App.R.(S.) 111.

Conclusion

42. The Court is of the view that if Jennings had not been heavily pregnant, there would have been no grounds to interfere with the sentence imposed on her by the Magistrate’s Court. However, having been told about the Prison’s lack of facilities to cope with a newly-born baby, the Royal Court was persuaded that consideration of the baby’s welfare justified an exercise of leniency on the part of the Court.
43. The Court advised the Appellant of its decision to reduce the sentence imposed on the first count with which Jennings was charged to six months. The other sentences imposed were unchanged and hence were to be served concurrently so that the total sentence to be served by Jennings was reduced to six months, a term that was almost certain to have been served before the baby was born, thereby ensuring that, in all likelihood, the mother would be in the community at the time of the birth and could be cared for in the community with any assistance needed from the relevant authorities.
44. As for Hamon, in the opinion of the Court, the sentence imposed on him was not manifestly excessive, for the reasons given in this judgement and hence his appeal was rejected.
45. Both Appellants were advised of the Court’s decision at the conclusion of the appeal hearing. The Bailiff apologises that it has taken longer than he would have liked to prepare the written reasons for the Court’s decision.