

**Judgement 12/2008      Giuseppe Cataldo Pirito – Court of Appeal (Criminal Appeal 381) – 2 April 2008**

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**Assault – Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 – possession of offensive weapon – matter transferred from the Court of Alderney to the Royal Court – appeal against sentence – appropriateness of immediate imprisonment where a knife or other similar bladed instrument is involved – consecutive sentences and the totality principle – no real alternative but to plead guilty to the knife offence – therefore appropriate to allow no discount for that plea – due discount had been allowed on the charge of assault, allowing for plea of guilty and mitigation – appeal dismissed**

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

No 381

Criminal

**The**      2<sup>nd</sup> day of April, 2008 before Sir Philip Bailhache, presiding, David Arthur John Vaughan CBE, QC and Dame Heather Steel, DBE

**THE LAW OFFICERS OF THE CROWN**

**v**

**GIUSEPPE CATALDO PIRITO**

In the matter of the appeal, with leave, by the Appellant, from the sentences imposed on him by the Royal Court on 14 January 2008 in respect of the offences of assault and possession of an offensive weapon;

THE COURT, having on 31 March 2008 heard Advocate Miss R B Eeles and Crown Advocate G D McKerrell thereon and having DISMISSED the said appeal, this day GAVE JUDGMENT in the terms attached hereto.

**K H TOUGH**

Registrar of the Court of Appeal.

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

**CRIMINAL DIVISION**

**Wednesday 2 April 2008**

**GUISEPPE CATALDO PIRITO**

**V**

**THE LAW OFFICERS OF THE CROWN**

**Before**

**Sir Philip Bailhache, President  
David Arthur John Vaughan, CBE QC  
Dame Anne Heather Steel, DBE**

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**JUDGMENT**

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**Vaughan, D A J**

1. This is the Judgment of the Court on an Appeal against the sentence imposed on the Appellant Guiseppe Piritto by the Royal Court on 14<sup>th</sup> January 2008, leave having already been given on 5<sup>th</sup> March 2008.
2. Guiseppe Piritto originally appeared in the Court of Alderney on 20<sup>th</sup> September 2007. He was charged with one offence of assaulting Allan O'Connor contrary to common law and one offence of being in possession of an offensive weapon on the same date contrary to Section 4(1) of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2006. The matter was transferred to Guernsey because the Court of Alderney decided it had insufficient sentencing powers to deal with these offences. Guiseppe Piritto appeared before the Ordinary Court on 30<sup>th</sup> October 2007 when it was decided that the matter was suitable for trial in the Royal Court. He pleaded guilty to the offensive weapon offence at the Plea and Directions Hearing on the 15<sup>th</sup> November 2007. He subsequently entered a guilty plea to the assault charge at a later Plea and Directions Hearing on 14<sup>th</sup> December 2007.
3. The charges arose out of an incident which occurred on 3<sup>rd</sup> September 2007 in High Street Alderney and the neighbouring areas. Mr. Piritto is the father of

Alan O'Connor's partner. There had been bad blood between Guiseppe Pirito and Alan O'Connor for some time. Apparently there had been long standing disputes over property rights between the two men. The incident in question started when Mr. O'Connor was cleaning windows at Jean's Stores. Mr. Pirito drove up in a car, Mr. O'Connor's partner and his two children were there nearby. Mr. Pirito got out of car and threatened Mr. O'Connor. Mr. Pirito shouted "You're dead. Your family is dead." Mr. Pirito got back into the car and produced a wrench. His daughter went to her father and calmed him down and he drove away.

4. Later that day Mr. O'Connor was cleaning windows in High Street. Again his partner and children were nearby. He was up a ladder cleaning first floor windows. He saw a car being driven on the pavement towards the ladder. Mr. Pirito was driving the car. The car struck the ladder causing Mr. O'Connor to jump to the pavement, fortunately without injury. Mr. Pirito was seen to be holding a knife in his hand. He flung open the door and got out of the car still holding the knife. The knife was some 10 inches long and slightly curved. It had a yellow handle and a point at the end. His hand was raised and he shouted "I'm going to kill you". Mr. O'Connor ran to the nearby cemetery. Mr. Pirito chased him still holding the knife. When Mr. O'Connor got to the cemetery he turned around and saw Mr. Pirito was chasing him still holding the knife. Mr. O'Connor tried to remove the knife but in so doing he lost his balance and fell backwards. A tussle ensued on the ground. Mr. O'Connor was still holding Mr. Pirito's wrist in which he held the knife. It was clear that Mr. Pirito was intending to use the knife on Mr. O'Connor.
5. Mr. O'Connor regained his feet and still had hold of Mr. Pirito's wrists. Mr. Pirito's daughter joined the struggle and tried to get the knife away from him. Mr. O'Connor got away and then Mr. Pirito chased him through the cemetery and to the far gates still holding the knife. The chase continued through Connaught Square when Mr. Pirito threw the knife into some bushes.
6. The police were called. An officer saw Mr. Pirito in his car and stopped him. On being questioned Mr. Pirito said that he had been attacked by Mr. O'Connor and he knew nothing about a knife. The knife was found and Mr. Pirito admitted it was his. On being formally questioned Mr. Pirito said "no comment" in answer to all questions.

7. Mr. Pirito was sentenced by the Lieutenant Bailiff and 10 Jurats on 14<sup>th</sup> January 2008. The Lieutenant Bailiff made it clear that the Court was not concerned with past disagreements but with only with the offences that happened that day. He stated that the most significant factor was the use of the knife as a way of threatening Mr. O'Connor in a public place and in view of members of the public including his grandchildren and putting Mr. O'Connor in fear of his safety. He said that the best mitigation lay in the plea of guilty. The Court allowed a one third reduction for the plea of guilty on the assault charge but none in relation to the offensive weapon because there was no real alternative to such a plea.

8. The Lieutenant Bailiff made clear the attitude of the Royal Court to offences concerning knives in the following way:

“Nothing can justify this type of bad behaviour which has real risks of escalating into something worse when a potentially deadly weapon is involved. The Royal Court has had enough concern on knives in the past year. We stress that we take account of the period spent on remand in fixing our sentences today. As a general principle we would wish to stress our concern at offensive weapon cases. .... In such cases it is our view that the public interest will more often than not require an immediate custodial sentence especially when a bladed or other dangerous item is involved. The Court of Alderney and the Guernsey Magistrates Court take a firm view of such matters and we underwrite it. The carrying or flourishing of offensive weapons is dangerous and unacceptable and has to be rigorously punished whether in Guernsey or Alderney. We have looked at what should be a total sentence for this incident and we make this total out of consecutive sentences for the two different offences applying the mitigation we referred to.”

9. We wholly endorse these remarks. It will be seldom that a sentence of immediate imprisonment will not be appropriate where a knife or other similar bladed instrument is involved, particularly when it is exposed or used in an aggressive manner.

10. The sentence imposed was six months imprisonment for the assault and six months consecutive for the offensive weapon offence making a total of twelve months imprisonment from the date of the sentence which total took into account the period already spent in custody. He was ordered to undergo supervision for one quarter of the sentence on release and disposal of the knife was ordered.

11. To arrive at this sentence of twelve months imprisonment, it would seem clear that the Royal Court started from a sentence of nine months for the assault

(reduced to six months to allow for the plea of guilty and mitigation), a sentence of six months for the offensive weapon offence (with no reduction for the plea of guilty or other mitigation) and two and a half months for the period Mr Pirito spent on remand before he was granted bail which the Royal Court said they had taken into account. This makes a total starting point of seventeen and a half months before taking into account any mitigation, reduced to fourteen and a half months to allow for the reduction for the plea of guilty to the assault charge, and to 12 months to allow for the period on remand.

12. The application for leave to appeal concentrates on three matters:

- (1) The sentences should have been concurrent and not consecutive, or if consecutive should have been reduced in accordance with the principle of totality,
- (2) The Royal Court gave insufficient credit to Mr. Pirito for his plea of guilty to the offensive weapon offence.
- (3) The Royal Court gave insufficient credit to Mr. Pirito in respect of his mitigation.

(i) Concurrent or Consecutive?

13. It is certainly correct that in the ordinary event, the sentence for the assault and the related offence connected with the assault would have been concurrent (see for example R v Skinner (1986) Crim. App. R (S)), but that case also decides that there may well be exceptional cases where consecutive sentences will be appropriate even if the offences arose out of the same incident. We consider that this case, involving as it does the added factor of the flourishing of a knife such as the one in question in the way it was done, is wholly appropriate for a separate and consecutive sentence being imposed, for this will show a clear determination by the courts of Guernsey and Alderney that the use of knives in this way must be punished and discouraged. The damage that these knives can cause is obvious and their use can ruin the lives not only of the targets of these weapons, but also of those connected with those involved in the offence. Indeed the sentence for the knife offence could be said to be too lenient. This would apply whether or not the weapon was used to wound.

14. It was said that we should look at the question of totality, and indeed we entirely agree that that is the appropriate method and this seems to be the way in which the Royal Court approached this matter. In the case of R v Lawrence (1989) 11 Cr.App.R.(S) 580 the English Court of Appeal made it very clear that the main objective was to secure that justice was done, and that it does not make any real difference whether this is done by imposing shorter sentences to run consecutively, or longer sentences to run concurrently. We certainly do not consider that the total sentence of fourteen and a half months imprisonment could be said to be manifestly excessive in the case of these two serious offences.

(ii) Plea Of Guilty to Offensive Weapon Offence

15. It is well established that in the ordinary event a plea of guilty will lead to a substantial reduction in the sentence (R v Scarley [2001] 1 Cr.App.R.(S)). However it always has been accepted that an exception to that rule may be where the defendant is caught “red handed” or where the defendant had no real alternative but to plead guilty. Here we consider that exception will apply. Mr Pirito had the knife in his hand when he got out of the car, he flourished it and threatened Mr O’Connor with it and he threw it away when giving chase to Mr O’Connor. It was almost immediately that he was arrested by the Police and when the knife was found he admitted that it was his. We consider he had no real alternative but to plead guilty and therefore we consider that the Royal Court was correct in not allowing any reduction for the plea of guilty.

(iii) Other Mitigation

16. It was contended that a reduction should be allowed for other mitigation and reliance be placed upon the matters advanced in the Probation Report. However, with regard to the assault count offence, the Royal Court did take that into account in imposing a sentence of six months. With regard to the offence relating to the offensive weapon, we do not consider that anything advanced on behalf of Mr Pirito would reduce the sentence in relation to the offensive weapon.

Conclusion

17. Taking all these matters into consideration, we consider that the appeal by Mr Pirito against the sentences imposed by the Royal Court for these two offences should be dismissed.