

**Judgment 26/2012**

**Michael Louis Ogier v The Law Officers  
of the Crown  
Royal Court  
7 June 2012**

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**Appeal against Magistrate’s Court sentence.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 7<sup>th</sup> June, 2012 before Richard James McMahon, Esquire, Deputy Bailiff

In the action of THE LAW OFFICERS OF THE CROWN against MICHAEL LOUIS OGIER (“the Appellant”) to pursue the appeal of which the said MICHAEL LOUIS OGIER gave notice against the sentence imposed by the Magistrate’s Court on the 23<sup>rd</sup> day of February, 2012 in the terms attached hereto.

WHEREAS on 30<sup>th</sup> May 2012 which comprised Richard James McMahon, Esquire, Deputy Bailiff, sitting with Jurats and UPON having sought confirmation from the Appellant that he was appealing the sentence relating to the first and second charges only, THE COURT, having heard Michael Louis Ogier, unrepresented and Crown Advocate R Calderwood for the Respondent 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.

**S M SIMMONDS**  
Her Majesty’s Deputy Greffier

**OFFICIAL TRANSCRIPT**

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Finalised per the Deputy Bailiff 7.6.12

**WEDNESDAY 30<sup>th</sup> MAY 2012**

**IN THE ROYAL COURT OF GUERNSEY**

**(COURT 1)**

**Before**

**Richard McMahon, Esq., Deputy Bailiff**  
**and 9 Jurats**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**MICHAEL LOUIS OGIER**

**APPEAL AGAINST MAGISTRATE'S COURT SENTENCE**

**DECISION GIVEN BY THE DEPUTY BAILIFF**

**Advocate R. Calderwood for the Prosecution**

**The Defendant appears in person**

THE DEPUTY BAILIFF: This is an appeal brought by Michael Louis Ogier against the sentence imposed in the Magistrate's Court on 23<sup>rd</sup> February this year in respect of two of three charges to which he had pleaded guilty on a prior occasion, namely, the sentence of 6 months imprisonment to be suspended for 2 years together with 18 months supervision by the Probation Service and 6 months imprisonment suspended for 2 years also with 18 months supervision by the Probation Service to run concurrently. The first sentence being in respect of what I would describe as simple criminal damage, contrary to Section 1(1) of the Criminal Damage (Bailiwick of Guernsey) Law 1983, as amended and the second sentence for threatening, abusive or insulting words or behaviour, contrary to Section 4(1)(a) of the Public Order (Bailiwick of Guernsey) Law 2006.

The appeal has been brought on a simple basis of the suggestion that the sentence was manifestly excessive. There is no appeal in respect of whether it is wrong in principle.

The function of the Royal Court on such an appeal, Mr. Ogier, is not to hear the matter afresh but to decide whether the sentence imposed was indeed either wrong in principle or manifestly excessive, so what the Court has done is have regard to the material that was before the Court on that occasion and had regard to the sentencing remarks in particular of the Judge, Judge Robey.

The first stage in that sentencing exercise was whether or not the sentences imposed of 6 months to run concurrently were appropriate sentences of imprisonment to impose. The second stage, as you understood, was whether or not those sentences should be immediate or suspended in accordance with the 1972 Law.

The basis on which the sentences were fixed was after giving full credit for the guilty plea and also in the knowledge, because Judge Robey had been involved throughout these proceedings that you had spent 19 days in custody on remand as a result of breaching the bail conditions that were attached to the original bail that had been granted. But the Court did not give a sentence of immediate imprisonment, it chose to suspend it and the 6 months, as it was put on that occasion, was because of the record that you, Mr. Ogier, had prior to that and in particular this Court has taken notice of the fact that there had been a previous incident involving you and the same woman in 2006 to which you pleaded guilty, albeit that there was an assault on that occasion, when there had been a 7 month totality imprisonment.

Now, the appeal that Mr. Ogier has brought is to say that the totality of the sentence was okay but that the 2 x 6 month terms might more properly have been 2 x 3 month terms to run consecutively. The Court is not minded to follow the suggestion that was given by Mr. Ogier (the Appellant in this case) because as a matter of principle when sentencing for a single incident the more appropriate approach is to consider the totality of the sentence for that incident and if 6 months was right, and this Court agrees with the sentencing Judge that 6 months was the right outcome for the incident on 30<sup>th</sup> December, which was a nasty incident fuelled by alcohol, then the totality of the sentence was right and that the Judge below cannot be faulted for his approach to the sentencing of 6 months in respect of each to be concurrent.

So for those reasons the appeal against the sentence will be dismissed.

I should add however that the Court has previously said that frivolous appeals should not be made and reminds appellants that the sentence can be increased on an appeal if they think it is appropriate. This is a case, Mr. Ogier, where the outcome is not that much different from what it could have been because you did not query the totality of the sentence, so to a certain extent the Court is troubled that such an appeal has been brought.

The sentencing Court has given you a chance by suspending the sentence and this Court will continue to give you that chance to work with the Probation Services because, as Judge Robey had said, it was a fairly close run thing as to whether that should be immediate custody or whether it should be suspended. He was minded to suspend the sentence to give you that chance because the Probation Officer who prepared the report in respect of you said that this was the right time to give you that chance. This Court would simply urge upon you to take the opportunity that you have been given and to make the most of it.

So if you do comply with the terms of the suspended sentence that was imposed of course there will be nothing further in relation to it but you were fortunate to have that opportunity so please don't waste it.

Are there any applications Mr. Calderwood?

ADVOCATE CALDERWOOD: No, sir.

THE DEPUTY BAILIFF: Alright, that will be everything then. So appeal dismissed, no other order.

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I, Suzanne Margaret O'Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill  
Thursday 7<sup>th</sup> June 2012