

**ROYAL COURT  
FULL COURT**

**17 January 2019**

**Before: Richard James McMahon, Esq., Deputy Bailiff and:  
Stephen Murray Jones OBE, David Percy Langley Hodgetts LVO, Jonathan Grenfell Hooley,  
Steven John Morris, David James Mortimer, Joanne Marie Wyatt, Alan Stevenson Boyle, Peter  
Francis Gill, David John Robilliard, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

- v -

**PAUL FOX**

**Advocate G S Perry appeared for the Crown**

**Advocate P Lockwood appeared for the Defendant**

**DEPUTY BAILIFF:**

**Background**

Paul Fox, you have pleaded guilty to an indictment containing seven Counts. The first five of those Counts relate to making indecent photographs of children contrary to section 3(1)(a) of the Protection of Children (Bailiwick of Guernsey) Law, 1985, as amended. To avoid any misunderstanding, the reference to “*making*” is used in this context in a technical sense, meaning downloading the images and storing them on your phone, not taking or producing them. The sixth Count relates to distributing an indecent image of a child contrary to paragraph (b) of that subsection. Each of the offences in these six Counts is punishable with a maximum sentence of 10 years’ imprisonment. The seventh and final Count relates to possessing an indecent photograph of a child contrary to section 3A(1) of the 1985 Law, for which the maximum sentence is five years’ imprisonment.

You are a local man, aged 36 at the time of committing these offences in August last year. At the time you were unemployed and living at St Julian’s Hostel. You have a number of previous convictions, but none for this type of offending.

Your mobile telephone was found in a garden where you had been working and accessed by someone who knew you and how to gain that access. Because a photograph of what appeared to be a naked young girl was found, the Police were called. A second mobile telephone was subsequently seized. Both devices were analysed and found to contain the images or, in relation to the Samsung, the means to access them, that form the subject of the seven Counts.

Whilst you were initially admitted to bail, it was suspected that you were planning to leave Guernsey and so you have been detained since 4 September 2018, but you were serving a custodial sentence of 2 months imposed on 19 September 2018 within the period since then.

## Sentencing Considerations

In 2012, the Court of Appeal gave guidelines in relation to sentencing in indecent images cases in *Wicks, Sharp and Towers*, to which this Court is obliged to have regard. We recognise that (as was emphasised in para. 52) they are only guidelines and “*are not designed to inhibit the Royal Court from passing an individualised sentence in any case where such a sentence would be justified, or to provide any sort of straightjacket*”.

There are five levels of seriousness that were expressly adopted by the Court of Appeal, to which reference was made in passing by Advocate Perry. They are:

- Level 1: images depicting erotic posing with no sexual activity;
- Level 2: non-penetrative sexual activity between children, or solo masturbation by a child;
- Level 3: non-penetrative sexual activity between adults and children;
- Level 4: penetrative sexual activity involving a child or children, or both children and adults; and
- Level 5: sadism or penetration of, or by, an animal.

The offences you have admitted cover Levels 1 to 4 but not Level 5. Further, each Count deals with a different category of offending as found on the two phones. There is no suggestion that you took or produced any of these photographs and so the three most serious Categories referred to in *Wicks* are not engaged. Accordingly, the first of the categories to which we have regard is Category 4, which covers making an image within Levels 4 or 5, or possessing such an image for distributing or showing, where an initial figure in the region of 3 years’ imprisonment is indicated. The fifth Count is such an offence. Category 5 is in respect of images within Levels 2 or 3, where an initial figure in the region of 18 months’ imprisonment is indicated. The third and fourth Counts are such offences. Category 6 covers images within Level 1, and so applies to the remaining Counts. In respect of Category 6, the guideline suggests “*a fine or community sentence preferably with a condition of treatment. If any relevant aggravating factor is present, the court may feel that the custody threshold is passed and may consider a sentence of up to 6 months’ imprisonment.*”

The aggravating factors listed in paragraphs 38 onwards are not present. The number of images involved are comparatively few. Count 6 relates to the distribution of an image, the analysis showing it stored as having been sent, but we find that a single act of distribution is not “*wide-scale distribution*”. We have further noted the comment in paragraph 55 that the Court of Appeal did “*not consider it appropriate to treat holding for “personal use”*” as a mitigating factor.

The most serious of these offences, therefore, relates to the fifth Count and the single Level 4 image. There were two Level 3 images and two Level 2 images, dealt with in the fourth and third Counts respectively. All the other images stored or, in respect of the seventh Count, viewed without being stored on the phone in question, were at Level 1. Clarification is given in paragraph 41 as to the premises on which the “*initial figure*” has been based, which we have followed.

Accordingly, before considering personal mitigation, the starting point we take for the fifth Count is 27 months’ imprisonment. This is below the initial figure of 3 years suggested because it was just a single image. We would similarly take starting points aligned to that approach for the third and fourth Counts, being 12 months’ imprisonment. Given the overall picture, we are further satisfied that the custody threshold is passed in respect of all the Level 1 Counts, because of the totality, as opposed to dealing with you for these by way of a distinct financial penalty or a community order. We will proceed on the basis of viewing the totality of your offending in light of the most serious elements of these photographs.

## **Mitigation**

We have had regard to everything that has been said about you and on your behalf by Advocate Lockwood.

We have also taken into account what is written about you in the Probation Report. In doing so, we note the assessment that there is a high likelihood of general re-offending and are particularly concerned about the assessment of there being a high risk of sexual harm to both pre- and post-pubescent children.

The probation report confirms that you recognise the inevitability of a custodial sentence today. Whilst we will afford you full credit for your early guilty pleas, there is no other mitigation we can find on your behalf.

## **Sentence**

This Court, along with any right-thinking person, regards these types of offences as abhorrent and revolting. Inevitably, for each photograph that does the rounds in online communities such as those in which you participated, a young person has been subjected to unnecessary degradation and abuse. We are satisfied that there should be an element of deterrence in the sentences given by this Court. We share the view of the probation officer that your explanation of how these images came to be on your phones is implausible. The analysis suggests positive steps taken by you. If you were, as you claim, disgusted at the images, you would not have saved them and any sensible person would immediately have stopped participating in the online community in which they were circulating and reported those circulating them to the relevant authorities. You choose not to take any such action.

We have adopted a totality approach, on the basis that all these offences are part and parcel of an overall pattern. Consequently, the inevitable custodial sentences will be made to run concurrently to each other.

We start with the most serious of the offences, Count 5, and impose a sentence of 18 months' imprisonment.

In respect of each of Counts 3 and 4, we impose a shorter sentence of 8 months' imprisonment, both sentences to run concurrent.

In respect of each of Counts 1, 2 and 6, we impose an even shorter sentence of 2 months' imprisonment, also in each case to run concurrently to the longest sentence.

In respect of Count 7, we impose what is effectively a nominal sentence of just one month's imprisonment, which will also run concurrently.

In total, therefore, the sentence will be 18 months' imprisonment. We will run that sentence from 31 October 2018 on the basis that you were first detained on 4 September in relation to these offences, but that for the two months' prison sentence we suspend the credit that you are entitled to in respect of being detained for the period on remand by six weeks, which is effectively allowing you remission in respect of that sentence.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the two mobile telephones (the black Vodafone and the white Samsung) is also granted. The Court notes that this was not resisted and in any event, the Court is satisfied that the phones were lawfully seized and have been used for the purpose of committing or facilitating the commission of these offences. The Court has, as required by subsection (5), had

regard to the value of the property and the likely financial and other effects on you of making the order before reaching that final decision.

### **Extended sentence**

The Court has carefully considered the recommendation in the Probation Report for an extended sentence under section 3 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004. We agree with the assessment of you that the usual period of supervision after sentence would not be adequate for the purpose of preventing the commission of further offences and securing your rehabilitation. Accordingly, the Court is imposing such an extended sentence. This has two elements: the custodial term of 18 months' imprisonment, followed by an extension period after your release throughout which you will be subject to an Extended Sentence Licence. The extension period shall be that recommended of 3 years, thereby enabling completion of what will have begun whilst you are a serving prisoner, as well as monitoring and addressing your progress after release. If upon your release from Prison you fail to comply with the conditions in the Extended Sentence Licence, or are convicted of a further imprisonable offence, the Court sentencing you or the Parole Review Committee, can revoke the licence, in which case you would be returned to custody for the remainder of your sentence.

The conditions of the extended sentence are the standard ones, namely:

- To be well behaved and not to commit any offence and not to do anything which could undermine the purposes of your supervision, which are to protect the public, prevent you from re-offending and help you to re-settle successfully into the community.
- To keep in touch with your supervising officer in accordance with any instructions you may be given.
- If required, to receive visits from your supervising officer at your home.
- Permanently to reside at an address approved by your supervising officer and notify him or her in advance of any proposed change of address or any proposed stay (even for one night) away from that approved address.
- To undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change.
- Not to travel outside Guernsey without prior permission of your supervising officer (which will be given in exceptional circumstances only).

In addition, the Court will add the further conditions recommended by the Probation Officer, which are:

- “1. *To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your sexual offending behaviour problems.*
2. *Not to have any contact directly or indirectly by any means, including electronic communication with any child under the age of sixteen years without prior permission of your supervising officer, other than such contact which is inadvertent and not reasonably avoidable in the course of lawful daily life; and*
3. *Not to possess or use a computer or other electronic device for the purpose of accessing the Internet or have access to instant messaging services or any other on-line message board or forum or community, without the prior approval of your supervising officer.”*

### **Notification**

Having been convicted of a relevant offence, you become subject to the notification requirements under Part II of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013.

We follow the recommendation of the probation officer that the notification period should be 10 years, which runs from the date of your guilty pleas to those relevant offences on 29 November 2018. This period is a precaution against any risk you may pose and can be further extended. You will be given a written notice setting out all the requirements of being a notifier, but in summary they are:

- You are now required by Law to notify the Police within 24 hours of your name, any other names that you use, your address, your date of birth, your social security number, your passport details, your bank account details and your employment details. If asked to do so, for verification purposes, you must allow your fingerprints, photograph and/or a DNA sample to be taken.
- You must notify the Police of any change of name or home address at least 24 hours in advance of the change occurring, or within 24 hours if you had no prior knowledge of the change occurring.
- You must notify the Police of any address where you reside or stay for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12-month period.
- You must notify the Police of your details every 12 months on the anniversary of your initial notification, even if there is no change in these details.
- You must notify the Police at least 7 days in advance of any plans to travel abroad.

In summary, therefore, Mr Fox, you are sentenced to a total of 18 months' imprisonment, running from 31 October 2018, we are making you subject to an extended sentence of 3 years, the forfeiture and destruction of the two mobile telephones on which the images were found is ordered and you are made subject to a notification period of 10 years.

**Richard McMahon**  
**Deputy Bailiff**

**17 January 2019**