

**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 -

MAXIMILLIAN SIMON RUPERT FAWCETT

Advocate C G Dunford appeared for the Crown

Advocate S E Steel appeared for the Defendant

DEPUTY BAILIFF:

Background

Maximillian Fawcett, you appear today for sentencing, having pleaded guilty to all three Counts on the Indictment. The pleas in respect of the first two Counts were changed from not guilty pleas on 25 October 2018 just five days before the trial on the Indictment was due to commence, at which time you also pleaded guilty to the third Count.

The first two Counts cover an incident at your home involving the complainant on 8 May 2018. You had been in an on-off intimate relationship with the complainant prior to these offences. The first Count relates to the blow to her forehead using a glass candle holder causing a wound requiring five stitches. The second Count relates to an assault, specifically involving two bites, which preceded that act of unlawful and malicious wounding. The third Count relates to doing an act tending or intending to pervert the course of justice, involving repeated contact you had between 15 May and 15 June 2018 trying to persuade the complainant to drop the charges of assault and malicious wounding that you were facing.

All of these are common law offences, meaning that sentencing is at large, so you face life imprisonment on each. In practice, however, this Court treats the maximum sentence for assault and malicious wounding as being five years, reserving higher sentences for more serious offences in which intention is charged.

You are a local man who, at the time these offences were committed, was 21 years old. You do not have any relevant previous convictions for violence or perverting the course of justice.

You have been in custody since 25 June 2018.

We also take into account, so far as is proper, the victim impact statement given by the complainant. We are satisfied that this was a nasty and vicious attack on her and that it has ongoing physical and mental consequences for her.

Sentencing Considerations

In relation to the first two Counts, Guernsey remains, in general terms, a less violent society than in many other places, including England. This Court's approach is to sentence in the light of Guernsey considerations, where deterrence is generally a significant factor often resulting in a robust, some may say severe, sentencing approach, but one which has been endorsed by the Court of Appeal, eg, in *Ryder* (2009). We pay due regard to the aggravating factors relating to the offences and any personal mitigating factors. Although not bound to engage in the same considerations as a Court in England and Wales must, the guidance given in the Assault Definitive Guideline (Crown Court) of the Sentencing Guidelines Council contains much helpful information about the approach to take.

We have approached these two Counts as reflecting two phases of a single incident, where the use of a weapon is an aggravating factor. In relation to the totality of what took place, use of teeth for the two bites is also an aggravating factor. Your efforts at concealing the candle holder you used as a weapon to inflict the nasty gash to the complainant's forehead is a further aggravating factor. Your attempts at avoiding the consequences by trying to divert attention as if it were the fault of the complainant is yet another aggravating factor.

Looking at these two offences alone, and focusing on the more serious Count of wounding, we are satisfied that the custody threshold is passed and choose a starting point of 3 years' imprisonment.

In relation to perverting the course of justice, we treat your attempt to avoid the consequences of what you had done quite distinctly from the attack. Cases of this nature are rare, but the approach we have taken is to adopt the factors mentioned in the English case of *Tunney* [2006] EWCA Crim 2066 and to have regard to the seriousness of the offence you were seeking to avoid leading to your conviction, the degree of persistence and the effect on the course of justice itself. We have already noted that the offence of wounding is serious enough to warrant a prison sentence and, had your efforts succeeded, you would have been able to defeat completely the course of justice as it has now played out, potentially leaving the complainant feeling that she had been in the wrong throughout. Making contact in this way with the complainant was a breach of the condition attached to your bail. Because there were multiple occasions on which you sought to exert influence over the complainant with a view to persuading her to withdraw her complaint, including making unpleasant threats against her, which we treat as a form of emotional blackmail and so as particularly nasty pressure, we are satisfied that this is a serious offence. At least, given the offences you were facing, you did not resort to threats of physical retribution. We note there were elements of the complainant initiating contact with you and speaking to you for long periods as a result of your previous relationship with her. Anyone who seeks to undermine the administration of justice in this way, which we feel we can categorise as witness intimidation, faces an immediate custodial sentence, which could easily be in a range from 12 months upwards, although each case will largely depend upon its own facts. In all these circumstances, we are again satisfied that this third Count passes the custody threshold and think that 15 months' imprisonment is the appropriate starting point.

Mitigation

We have listened carefully to everything that has been said about you and on your behalf by Advocate Steel. We have paid particular attention to the character references provided by your parents, grandparents, aunt and your godmother. Taking account of everything that we have read and that we have heard about you has left us with a real dilemma because the outcome sought for you is the chance of an immediate fresh start away from Guernsey, which would be an exceptional course for this Court to follow.

We always pay particular attention to the content of a social enquiry report from a probation officer. In your case, we have noted the assessment that you present a medium likelihood of general re-offending. Given these offences, the report concludes that you must be considered to present a direct risk of harm to intimate partners. There is detailed reference to the type of work that may be done with you to help you to address the problems arising from your condition and the way that it has not been addressed satisfactorily to date.

Those problems are more fully detailed in the psychological report on you prepared by Mr Jeff Hughes dated 13 January 2019. The probation officer quotes a short passage from Mr Hughes' report he regards as significant in the following terms:

“The descriptions of Max’s interactions with the complainant suggest that this relationship, between two apparently vulnerable and immature individuals, was characterised by inability to recognise its dysfunctional nature leading to repeated disruptions and separations. Max’s failure to acknowledge the dangers posed by wanting to maintain, and protect in some ways, what has been described as a “toxic” relationship, was, I feel, because of his rigid thinking and his limited perception of his needs. This seems to have led directly to what appear to be inappropriate decisions and actions.”

The Court further notes Mr Hughes' view that:

“I am sure that Max is not benefiting greatly from his present incarceration, especially in respect of his future behaviours. He does not have any realistic aspirations or plans for his future, other than to leave the prison, and Guernsey.”

Mr Hughes also comments that the Prison here “*appears to have a number of quite positive programmes appropriate for fostering the rehabilitation of many of the prison’s inmates. However, these seem unlikely to be appropriate to someone who has an Autism Spectrum Condition who prefers to work alone and is reluctant to participate in many day-to-day social contacts with his peers.*” The probation report gives the assurance that what you need by way of assistance can be provided in the Prison. It also states that since being remanded in custody “*there have been no concerns regarding any deterioration in [Mr Fawcett’s] mental health, nor has there been any evidence that he has been unable to manage the Prison regime.*” We find this assessment to be in sharp contrast to what is stated in the character references we have received indicating that you have been, and probably continue to be, lonely, vulnerable and depressed and not coping particularly well, with concerns being expressed that any extended stay in custody will lead to serious deterioration in your well-being.

This Court accepts that the steps you took to avoid the consequences of your actions were because you were scared about the outcome that would follow. We also accept that your condition and the difficulties associated with it, which is detailed in the reports, go a long way to explaining why you did not fully understand the inappropriateness of resuming contact with the complainant despite the bail condition that you should not.

You are, of course, entitled to some credit for your guilty pleas. However, those for Counts 1 and 2 were not entered at the earliest opportunity and were delayed until trial preparation had already begun. We note the impact this had on the complainant, but recognise that your pleas did ultimately save her from having the ordeal of giving evidence. In those circumstances, we are unable to give the full one-third discount, but especially having heard how soon the pleas changed following completion of disclosure, instead use 20%. However, in respect of Count 3, we will give you the full one-third discount for your plea.

Sentence

We have already referred to the dilemma that your case presents. In respect of almost anyone else, the level of violence meted out to the complainant would result in an immediate custodial sentence, to

which there would be added a further substantial sentence for perverting the course of justice to run consecutively. We have decided, however, to adopt an exceptional course in your case. We have carefully balanced the need to punish you as an offender. In that regard, we take into account that you have been in custody on remand since 25 June 2018, so for nearly seven months. We have borne in mind the need to protect the public. These are serious offences of violence and we are concerned that you need to address your reaction to such situations to reduce the likelihood of re-offending. We have balanced what you did to the complainant and what may be an appropriate outcome for her and, in that regard, have noted your stated intention to leave Guernsey for good when you are released from custody.

This has been a difficult case and it has troubled us considerably. Violence of this nature will not be tolerated in this Island, which is why a custodial sentence is appropriate. Undermining the administration of justice is also serious. Normally, this Court would have no hesitation in making the sentences consecutive. However, we have decided it is appropriate to deal with you as leniently as we can, repeating that we are conscious that you have already effectively served a custodial sentence for perverting the course of justice, and so we will make our sentences concurrent instead. In terms of overall mitigation, taking account of the personal mitigation advanced on your behalf and pleas, we regard one-third for the violence offences and one-half for Count 3 as appropriate reductions.

In respect of Count 1 (wounding), the sentence will be 2 years' imprisonment, however, being generous and lenient, we will suspend that sentence for the full period of 3 years.

In respect of Count 2 (assault), the sentence will be 6 months' imprisonment to run concurrently, and that sentence will also be suspended for 3 years.

In respect of Count 3 (perverting the course of justice), the sentence will be 7½ months' imprisonment, which exceptionally we will also make to run concurrently, and that sentence will also be suspended for 3 years.

The total sentence today, therefore, is one of 2 years' imprisonment, suspended for 3 years.

You will not have to serve these suspended sentences of imprisonment unless during the next three years you are convicted of an offence punishable with imprisonment. If you are convicted of such an offence, you are liable to serve all or part of the sentences.

We have decided to take this exceptional step on the assurance that you will immediately leave Guernsey and that you have no intention and you will not return to Guernsey. We trust that you will now be afforded the opportunities for assistance your parents say they will put in place for you and that you have learnt your lesson. We repeat that you have avoided an immediate custodial sentence by a hair's breadth and you should regard yourself as very fortunate.

Nothing has been said about any compensation and so that will be a matter to be resolved outside this hearing.

Richard McMahon
Deputy Bailiff

17 January 2019