

**ROYAL COURT
FULL COURT**

21 May 2019

**Before: Judge J R Finch OBE, Judge of the Royal Court and:
Barbara Jean Bartie, Claire Helen Le Pelley, David Percy Langley Hodgetts LVO,
David James Mortimer, Alan Stevenson Boyle, Peter Francis Gill, David John Robilliard,
Stuart Michael Crisp, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Robert LEONCZUK

**Advocate R J Calderwood appeared for the Crown
Advocate S E Steel appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Introduction

On the 4th April of this year, after a contested trial, you were unanimously convicted of an offence of indecent assault. You had earlier admitted an offence of failing to answer bail.

The indecent assault comprised digital penetration of a young woman, whom you had seen in a night-club and who had no interest in you, who was seeking to obtain a taxi. It is to be noted that she was a visitor to the Island, as a wedding-guest. She set out the circumstances fully in her evidence and we also take appropriate note of the Victim Impact Statement.

You denied the offence, putting-up a story that was both highly implausible and highly unlikely, that the victim was offering you sexual services for a small amount of money and had demanded more and nothing illegal apart from her assaulting you, took place. The court emphatically rejected this account.

You chose not to return to answer your bail and were apprehended in England and brought back. You totally disregarded your legal obligation to return and we have heard all the details.

The maximum sentences are life for the indecent assault and 12 months' for the bail matter.

You are a 36 year old Polish National who was here working. You have a conviction that occurred after these offences – one day for battery in England. We therefore treat you as of previously good character, so that we can find one aspect of the case in your favour.

You have been in custody since the 19th September, 2018.

Sentencing Considerations

We note that sexual assault by penetration is now a specific statutory offence in England, due to its seriousness. We also note the English Sentencing Council Guidelines, particularly the detail they give on mitigating and/or aggravating factors, but they are not binding on us, but simply a help. As has been said many times in this Court, it is necessary for us to sentence on local considerations.

Foremost in these is the comparative scarcity of this type of offence here. It is a concern that a woman who came over here for a happy social event will forever have her recollection marred by this sexual assault. She also had to be cross-examined, which she chose bravely to do in open court, on your offensive and insulting version of events, even though your able Advocate did so as courteously as one could in the circumstances. That fact goes to reducing the mitigation, rather than enhancing or increasing our starting-point.

All in all, the main offence, and we return to the Victim Impact Statement, must have been a terrifying and long-lasting experience in its effects. We are sadly only too familiar with the ongoing impact of sexual offending on victims. The victim was a stranger to you and you exploited her situation.

We place this well towards the higher end of indecent assault offences. Penetration is penetration whether digital or by another means; it is serious.

Therefore we start at 5 years, for the reasons given, on that offence, plus 3 months' for the bail offence, also for the reasons given. The primary aggravating factor is this brazen digital penetration of a victim's vagina in a public place.

Mitigation

We are prepared, erring on the side of leniency, to treat you as of previous good character. We are also encouraged to give credit for shortening the case by agreeing non-essential evidence and the admissions. You are also, on what we have heard, a hard-working person. We afford a limited discount on the main offence. We do not add anything on for your not-guilty plea, but had you pleaded guilty there would have been at least a one-third discount, plus the other factors we mentioned.

It is difficult to see any mitigation beyond your inevitable guilty plea on the bail offence. We give you a one-third discount, mercifully, for that, as we are obliged to give credit for guilty pleas, even when the evidence is strong, and also considering the totality of the sentence principle here.

Our starting-point then, prior to applying mitigation, was 5 years and 3 months in total.

We stress that each case depends on its own individual facts, and that we avoid making sentencing a mathematical exercise and we stress that the members of the sentencing Court saw you and the victim give evidence and heard the different accounts. We note the contents of the letter you submitted.

Sentence

We are wholly unimpressed by your continued denials of this serious offence, which fly in the face of the compelling evidence which the Court heard. The purported character assassination of the victim is a really unpleasant feature of this matter. Your attitude to judicial proceedings is shown by your failure to return and answer bail; but you came to notice in England and were caught. We wish to emphatically state that we consider there is no word of truth in your defence. The facts are as alleged by the victim. It was also your fault that by running away, the case had to be delayed from 2016.

- In respect of the first Count, the sentence is 4 years' imprisonment.
- On the second Count 2 months' imprisonment, consecutive.
- The total sentence is 4 years and 2 months' with effect from 19th September, 2018.

Extended Sentence

We concur in the Probation Officer's recommendation for the reasons given, that should you remain in the jurisdiction, an Extended Sentence is necessary and proportionate. We accept the case for this Order, being as we are, familiar with the facts.

The Extended Sentence Licence consists of two elements, and is imposed in respect of Count 1, a custodial term, which you have heard and a period after your release, during which you will be subject to the Licence.

We impose this on the basis that the custodial term, in our view, is insufficient to protect others or ensure your rehabilitation.

The standard terms will apply and you will be given a notice of this so I shall summarise them:

1. *To be well behaved and not 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 reoffending and help you to resettle successfully into the community.*
2. *To keep in touch with your supervising officer in accordance with any instructions you may be given.*
3. *If required to receive visits from your supervising officer at your home.*

And these will apply if you remain in the jurisdiction:

4. *Permanently to live 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.*
5. *Undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change.*

That is a summary of the standard conditions. We have carefully considered the suggestions made by the Advocate for the Prosecution on the proposed terms should the Deportation Order be made.

The additional terms start with:

- (a) *To comply with any requirements specified by your supervising officer for the purpose of addressing your sexual offending behaviour problems. And,*
- (b) *Not to approach or communicate with the named complainant, the victim, without the prior approval of your supervising officer.*

In the event that the Lieutenant-Governor orders your deportation from Guernsey, in accordance with the Royal Court's recommendation today, then the following conditions apply to your Extended Sentence Licence:

- (a) You will not be subject to the conditions specified above unless and until you travel to the United Kingdom or the Channel Islands within the period of the Extended Sentence Licence.
- (b) You may only travel to the United Kingdom or the Channel Islands after the following:
 - (1) You have contacted the Guernsey Probation Office and discussed those plans.
 - (2) The Guernsey Probation Service have indicated to you in writing that they are satisfied with your resettlement plan.
 - (3) In the case of you residing in the United Kingdom or Jersey, the Guernsey Probation Service have provided you with written confirmation that they have made suitable transfer arrangements with the Probation Service in that other jurisdiction to enable you to comply with the conditions set out above in that other jurisdiction.

Finally, for the avoidance of doubt, nothing just said alters the terms of any Deportation Order made by the Lieutenant-Governor and in particular, does not create any right to enter a jurisdiction in contravention of that Deportation Order.

Deportation

We have to consider in all the circumstances whether we should make the recommendation to His Excellency the Lieutenant-Governor that you should be deported at the conclusion of your sentence. You are an EU National and we must carefully assess the nature and seriousness of the offending, plus any ties you may have in Guernsey. Our conclusion is a clear one based on the serious nature of your offending: the public order of Guernsey justifies the recommendation. Your links here are non-existent. There is no interference with your or any other persons' right to family life. You do not oppose the Order. It is therefore just and proportionate that we make the recommendation. Serious offenders from other jurisdictions are not welcome in Guernsey and we make the recommendation firmly to His Excellency. It is his decision to make.

The Notification Requirement was added from the date of conviction. You will be handed a Notice, specifying all the terms and conditions. We consider it should be for a period of 10 years from the date of your conviction carefully weighing the nature of the offence and the contents of the Probation report. Such an Order is based on the particular circumstances of the offence with which we are fully familiar.

So in total:

- 4 years and 2 months' imprisonment from the 19th September 2018;
- a 2-year Extended Sentence Licence.
- a 10-year Notification Requirement from the date of your conviction.
- a recommendation to the Lieutenant-Governor for deportation.

Judge J R Finch OBE
Judge of the Royal Court

21 May 2019