

**ROYAL COURT  
FULL COURT**

**23 July 2019**

**Before: Judge J R Finch OBE, Judge of the Royal Court and:  
Claire Helen Le Pelley, Terry John Ferbrache, Jonathan Grenfell Hooley,  
David James Mortimer, Alan Stevenson Boyle, Peter Francis Gill,  
David John Robilliard, Marilyn Jasmine King, Tina Jane Le Poidevin, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

- v -

**Flean BARBOSA**

**Advocate C G Dunford appeared for the Crown  
Advocate A J Ayres appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Background**

You appear here today for sentence on six counts of making indecent images of children. You admit this activity for at least a 5 year period prior to your arrest in March this year.

The maximum sentence is 10 years on each count. You are a 40 year old who was working in the hospitality industry and we treat you as having no previous convictions.

You have been in custody since March 15<sup>th</sup> 2019 and indicated early guilty pleas.

You were arrested by chance; a fellow employee who was, he said, “nosey”, accessed your phone and found indecent images. He reported to his boss and they reported the matter to the Guernsey Police. We are grateful to them.

Upon examination of your living quarters, two of the devices found also revealed indecent images. So of course did your mobile phone and a laptop in your room.

In accordance with normal charging practice, a single sample image of each category forms the basis of Counts 1, 3 and 5.

- Count 2 refers to 2,467 images; all in CAID category A (we will deal with the classification later).
- Count 4 refers to 2,875 CAID category B images.
- Count 6 is a sweep-up with 20,048 category C images.

We have heard the details of your Police interviews, in which admissions were made.

**CAID Classification**

CAID stands for Child Abuse Image Database. Under the previous system, images were graded on a scale of 1 to 5, depending on what was shown in them. We have had the new classification explained

carefully to us. But the previous 1-5 classification still applies. This is because we are bound by the 7-Judge decision in the case of Wicks. Until such time as the matter is re-visited by the Court of Appeal, under our system this Court is bound by Wicks and has to apply the guidelines set out in detail in that case. Even if the CAID system is used, it will still be necessary to detail the SAP, the previous classification categories 1-5 when a case is presented in the Royal Court.

We have been given the following equivalences with new CAID:

- Category A is SAP levels 4 and 5 plus non-penetrative sexual activity with animals.
- Category B is SAP levels 2 and 3
- Category C is SAP level 1 and any images not covered in CAID categories A and B.

The fact that this new classification may be welcome and workable is one thing, but this Court has to operate on binding precedent, which is very clearly set-out in the Wicks case.

Again, helpfully, the different devices used have listed categories relating to SAP 1-5. We repeat, that is what presently binds us and whatever changes the Prosecuting or investigating authorities have made, our duty, at present, is to apply Wicks.

### **Sentencing Considerations**

Under the binding case of Wicks, SAP levels 4 and 5 offences have an initial starting-point of 3 years. The aggravating factors here are the young ages of the children, the victims, and the large numbers of SAP 4-5 images. Any number over 100 is a large number. This case falls squarely into what the Court of Appeal said:

*“Where the number of images is large, indicating a high level of personal interest in such images and/or a significant period of time over which the images have been collected.”*

The case of Wicks is at pains to state that these are guidelines, not a strait-jacket.

- Totalling the SAP 4-5, CAID Category A images, we find on the four devices looked at, a total of 2,468 images.
- SAP 2-3, CAID Category B, 2878 images.
- SAP 1, CAID Category C, 20,049 images.

We note the written descriptions provided of a representative sample of these images. The large number is, according to binding authority, an aggravating factor, which we consider on the facts of this case significant.

We approach sentencing by selecting a combined starting-point, reflecting all the circumstances; before we look at applicable mitigation. Another factor is that all categories of indecent child pornography were present.

We select an overall starting-point of 5 years, 6 months'. The number of images, especially of the worst type weighs heavily upon us in considering this case and, as stated, the ages of the victims.

### **Mitigation**

This can be shortly expressed, and we have noted the observations of your very experienced Advocate and the Probation report. We, as stated, treat you as of previous good character and note the early co-operation and guilty pleas. Further in-depth assessment of your case is indicated in the report to find out what intervention is necessary.

Taking the mitigation fairly into account, mainly previous good character, but still noting you have been involved in this disgusting activity for 5 years or so, we afford you a discount of just over one-third. We note that there is no evidence of sharing here and that you did not dispute the CAID system.

## **Sentence**

Whether arrived at consecutively or concurrently, the end-result would be the same. We reflect the feelings of right-minded people who abhor this conduct and the sad effect on these young children can only be surmised. It is far from a victim-less crime.

- In respect of Count 2, the sentence is 3 years and 6 months' imprisonment
- In respect of Count 4, 2 years' concurrent
- In respect of Count 6, 2 years' concurrent

And on the sample counts, which are 1, 3 and 5, 2 years on each concurrent, all concurrent to the total. The combined total is therefore: 3 years and 6 months' imprisonment with effect from the 15<sup>th</sup> March of this year (2019).

Confiscation and forfeiture Orders as requested.

## **Deportation**

We next deal with this question. We have a report from the Immigration Officer. Because of the case of O'Dette we need to undertake a balancing exercise, looking at your local ties (if any) against the seriousness of the offending. We note you do not oppose an Order being made. You have been here since 2000; you will not, it seems, get another Right to Work document in the circumstances of this case. You have no family here and you have parents in Madeira. There are, in short, no local family ties.

The offences are troubling and serious. They make your continued presence in Guernsey highly undesirable in the public interest. Hence, we have no hesitation in recommending to His Excellency the Lieutenant-Governor that you be deported when considered appropriate. It will be his decision to make. We consider this a clear-cut matter in the light of your offences and their extent.

## **Extended Sentence**

We accept this may well be an academic exercise if the Deportation Order is made, but nevertheless for completeness sake we will deal with it. If not deported, with great respect this does appear unlikely, an Extended Sentence is necessary for the protection of the public and to achieve your rehabilitation.

This has the custodial element of 3 years and 6 months' just imposed and also we are making a 2-year extension period as recommended in the report, for reasons set out there which we have considered and agree with.

The standard conditions apply which in summary are:

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 satisfactorily into the community you find yourself in.
2. To keep in touch with your supervising officer in accordance with any instructions that may be given.

3. If required, to receive visits from your supervising officer at your home.
4. 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.
5. Undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change.

As I said in the, hopefully unlikely event, of a Deportation Order not being made, these conditions would apply, including:

6. Not to travel outside Guernsey without prior permission of your supervising officer (which will be given in exceptional circumstances only).

You are also subject to a Notification Requirement of 5 years under the Law of 2013, which starts from the 27<sup>th</sup> June when it had to be imposed when you pleaded guilty. You will receive a Notice, both of the Extended Sentence Order I just mentioned and the Notification Requirement. I will summarise that again, if you are released and you are not subject to deportation:

- You are now required by Law to notify the Police within 24 hours; or within 24 hours of release if you are in Prison or otherwise detained, 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.

I also mention for completeness sake that we agree with the recommendations set out carefully in the Probation report regarding additional conditions on the Extended Sentence Order. Should you not be deported, you may only travel to the United Kingdom or the Channel Islands after the following:

- Notifying the Guernsey Probation office to discuss those plans.
- That they have indicated to you in writing that they are satisfied with your resettlement plans.
- In the case of you living in the United Kingdom or Jersey, the Guernsey Probation Service have provided you with written confirmation that they have made suitable transfer arrangements with a Probation Service in that other jurisdiction to enable you to comply with the conditions in the paragraph above in that other jurisdiction.

I repeat that the Extended Sentence and the Notification Requirements may well be only academic because if His Excellency accepts our recommendation you will be deported from this jurisdiction and they will no longer apply.

That is the Order of the Court - 3½ years imprisonment, 2 years Extended Sentence as set out and a recommendation to the Lieutenant-Governor for deportation and we agree with the Forfeiture and confiscation of the items mentioned by the Prosecution.

**Judge J R Finch OBE**  
**Judge of the Royal Court**

**23 July 2019**