

Offences concerning: taking a vehicle without consent, driving without insurance, driving with no licence, attempted arson, criminal damage and refusal to provide a breath specimen

[2019]GRC047

**ROYAL COURT  
FULL COURT**

**15 August 2019**

**Before: Judge J R Finch OBE, Judge of the Royal Court and:  
Barbara Jean Bartie, Stephen Murray Jones OBE, Steven John Morris,  
Alan Stevenson Boyle, Peter Francis Gill, David John Robilliard, Stuart Michael Crisp,  
Marilyn Jasmine King, Tina Jane Le Poidevin, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

- v -

**Ian Stewart TOSTEVIN**

**Advocate R J Calderwood appeared for the Crown**

**Advocate P F Cobb appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Background**

You appear here today for sentence on an Indictment containing 9 Counts, representing two sets of offences. These can be summarized in the following way:

1. Between 31<sup>st</sup> March and 3<sup>rd</sup> April:
  - (a) Taking without consent – Count 1 - maximum 3 years' imprisonment;
  - (b) Using it with no insurance – Count 2 - maximum 3 months' imprisonment;
  - (c) Using it with no driving-licence – Count 3 - maximum 3 years' imprisonment;
  - (d) Attempted arson by fire – Count 4 - maximum life imprisonment.
  
2. Then secondly, on 28<sup>th</sup> May, going back again to the elderly victim's address:
  - (a) Criminal damage of a window – Count 5 - maximum 10 years' imprisonment;
  - (b) Taking another vehicle without consent – Count 6 - maximum 3 years' imprisonment;
  - (c) Using it without insurance – Count 7 - maximum 3 months' imprisonment;
  - (d) Using it without a driving licence – Count 8 - maximum 3 years' imprisonment;
  - (e) Refusing to provide a specimen of breath – Count 9 - maximum 6 months' imprisonment.

The victim is an 88 year old lady who lives alone, and who knows you and has been kind to you. You used to rent her spare room and she would give you lifts.

You are a 32 year old local person. You have never held a driving-licence. You have numerous previous convictions and have previously served custodial sentences for dishonesty, an indecent assault etc., and we note various previous Community Service Orders has resulted in breaches.

You committed the second lot of offences whilst on Police bail and have been in custody since 29<sup>th</sup> May, despite having made a misplaced bail application which, of course, failed.

The second batch also related to the same elderly lady, as we said.

The attempted arson relates to an attempt to burn the vehicle, always potentially very serious, on the first set of offences. The lady possessed two cars – the Daihatsu which was the subject of the first set of offences, and the Ford, which you took for the second set of offences.

You also recklessly damaged the lady's window on the 28<sup>th</sup> May and she was, naturally, frightened by your unlawful presence in her house.

Your attitude was made clear by your observations to the Police when apprehended in May. The Prosecution have referred to them.

You were aggressive and spat whilst the breath test procedure was initiated and refused to co-operate. It is all recorded, we are told, on CCTV.

The victim of your criminal behaviour did not return home then for two days after the incident. She expresses disappointment and concern about your situation and would not provide a victim impact statement. This is very charitable on her part.

This is a complicated set of facts, but we have had a full and helpful account from the Prosecution. At the root, there is a history of very excessive alcohol consumption.

### **Sentencing Considerations**

These cases have to be decided on their own facts. It is right that the matter comes before the Royal Court and the aggravating factors, by any yardstick, are considerable. Repeat offending on bail, age of the victim and the effects on her, your previous bad record and insulting rudeness to the officers. We think the most sensible way of dealing with your behaviour is to get concurrent sentences on each group of offences and then make them consecutive, bearing the totality in mind.

We start as follows:

- On Counts 1-4, noting especially the seriousness of Count 4, a total of 3½ years.
- On Counts 5-9, noting the repeat offending and the same victim – 3 years.
- There is no arson type offence here, which went to increase the total on Counts 1-4, but the starting-point goes up due to the aggravating factors mentioned before.

Your attitude did not improve when questioned in May and we have heard your callous remarks to the Police – this is from the Prosecution Outline at pages 21 to 23.

### **Mitigation**

We have carefully considered the submissions of your capable Advocate and read a full Probation report, plus the letters. You fall within a population of people who present as at a very high likelihood of re-offending. Alcohol was a factor and the report very properly explains how other people were put at risk.

You did enter timely guilty pleas. That, in our judgment, is the only effective mitigation in the case. Although the evidence in the case can be described as strong, we still give a discount in the region of one quarter which is generous.

It is also necessary to impose an appropriate disqualification, which in law starts from now, to try to protect other road-users in future. For this there is of course, in respect of Count 9, a minimum of 12

months' and also 12 months' in respect of Counts 2 and 7, but they have to be concurrent – but substantial disqualification is called for. We do note that you went to the Police station and confessed to the first set of offences, and, as stated, were admitted to bail. We consider a substantial period of custody, without alcohol will help you and the community.

## **Sentence**

This type of offending, especially considering the victim's age and what she was subjected to, will be disapproved of very firmly by Guernsey people. We need to do what we properly can to protect the public and repudiate predatory and frightening behaviour. So we sentence as follows:

### 1<sup>st</sup> Set of Offences:

- Count 1 - 21 months' imprisonment and 10 years' disqualification.
- Count 2 - 3 months' imprisonment and 10 years' disqualification concurrent.
- Count 3 - 3 months' imprisonment and 10 years' disqualification concurrent.
- Count 4 - 3 years' imprisonment concurrent.

All these sentences are concurrent (including the disqualifications) with a total of 3 years' imprisonment with a 10 year disqualification.

### 2<sup>nd</sup> Set of Offences:

- Count 5 - 12 months' imprisonment
- Count 6 - 2 years' imprisonment and 10 years' disqualification
- Count 7 - 3 months' imprisonment and 10 years' disqualification
- Count 8 - 3 months' imprisonment and 10 years' disqualification
- Count 9 - 3 months' imprisonment and 10 years' disqualification

All these sentences total of 2 years' imprisonment but consecutive to Counts 1-4. So the Grand Total: 5 years' imprisonment, with effect from 29<sup>th</sup> May, 2019 and 10 years' disqualification which by law has to start from today.

Compensation - we make no Order in view of the substantial custodial sentence – it would be, in our view, impractical to enforce it.

Compulsory Supervision for one quarter of the total sentence on release.

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

**15 August 2019**