

Possession of indecent images and videos of children, contrary to section 3(1)(A) of the Protection of Children (Bailiwick of Guernsey) Law, 1985 and the making of such images contrary to section 3(1)(a) of the same Law.

[2020]GRC031

**ROYAL COURT
FULL COURT**

29 May 2020

**Before: Gary Perry, Esq., Lieutenant Bailiff and:
Terry John Ferbrache, Jonathan Grenfell Hooley,
Steven John Morris, David James Mortimer, Peter Francis Gill, Marilyn Jasmine King,
Felicity Jane Quevatre-Malcic Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Philip Alan LIHOU

Advocate J D McVeigh appeared for the Crown

Advocate S Maindonald appeared for the Defendant

LIEUTENANT BAILIFF:

Background

You appear before us having pleaded guilty to an Indictment containing 9 counts. Counts 1 to 3 cover the possession of indecent images and videos of children, contrary to section 3(1)(A) of the Protection of Children (Bailiwick of Guernsey) Law, 1985. The remaining 6 counts cover the making of such images contrary to section 3(1)(a) of the same Law. The term ‘making’ in this case is used in its technical sense to reflect the act of downloading or viewing on line, the relevant photographs or videos. All the images recovered are reflected in the counts of the Indictment, even if there are some roll-up counts.

The maximum penalty in respect of the possession offences is one of 5 years’ imprisonment and 10 years’ imprisonment in respect of the ‘making’ offences. As is the current best practice, we have viewed a schedule of the descriptions of a sample of the images. The images have been classified under the CAID classification as follows:

- Category A - SAP category images 4 and 5 - 123 images and videos
- Category B – SAP category images 2 and 3 - 119 images and
- Category B – SAP 1 - 212 images

The new CAID categories may be helpful, but we are bound by the Court of Appeal decision in the case of Wicks to follow the SAP categories when sentencing, but I emphasise to you that this puts you in no better or worse position in this regard.

You are a 31 year old unemployed local man with no previous convictions and you have been on bail throughout these proceedings. Turning briefly to the facts, the circumstances are that as a result of information from the UK National Crime Agency, police in Guernsey were alerted to the fact that it was believed you were accessing indecent images of children over the internet. You were arrested on the 6 September of last year and a number of devices, including in particular a Samsung mobile phone, were seized and subsequently analysed. To your credit, you admitted a substantial part of your activity before this analysis took place. As well as the images subject to the Indictment, the analysis showed that you had used bittorrent software, internet searches and other applications to obtain, view and download images. You also obtained some images from likeminded people via 'chat' applications. Some of the links that you were using had been accessed many times and you used search terms such as 'jail bait', 'teen underage' and 'pthc' or 'pre-teen hardcore'. This indicates to us the type of images you were searching out, despite what you now claim.

Sentencing Considerations

As already referred to, we are bound to follow the guideline case of Wicks. In accordance with those guidelines, the 123 SAP 4 and 5 images place you firmly within the fourth category set out in that judgment, with a starting point of 3 years' imprisonment in respect of those counts alone. Any number of images over 100 is considered by us a large number. Taking account therefore of the images covered in the other counts, the overall starting point will be higher. The Court of Appeal did however emphasise that the guidelines "are not a straightjacket" but we can find no good reason to depart from them in your case.

We approach sentencing by selecting a starting point reflecting all of the circumstances before then looking at any applicable mitigation. Another factor in this case is that all categories of indecent images are present and the number of images and the various methods you used to obtain and view them, show in our view, a high level of personal interest in such images which, according to the pre-sentence report, you have held for a number of years. The activity covered by the Indictment concerns a period of months rather than years, but the search terms we are told of run over a longer period and are in the many thousands. None of the other aggravating factors set out in Wicks apply to this case. We therefore select an overall starting point of 3½ years' imprisonment. Whatever you claim your interests may be, we were particularly concerned that some of these images and videos seem to have involved very young children and it seems to us by the search terms, you had searched for such images.

Mitigation

We have given careful consideration to the words of your experienced advocate and the contents of the pre-sentence report. We have also read carefully the letter you have written to us and the numerous letters and references from friends, family and others that speak very highly of you. We give you full credit for your early guilty plea and as I have already touched upon, we note in particular your co-operation with the investigators and your admissions to activities prior to the examination of your devices. Importantly, we note you are a man of previous good character, but that is not a totally unusual feature in cases of this nature. We also note you were assessed as having a low likelihood of general reoffending, but a moderate likelihood of further sexual offending.

Sentence

This type of offending is a blight on our small community and leads to the exploitation of children across the globe, let alone those the subject of the images and videos in your possession. People like you who view these images perpetuate that exploitation and create an unwanted and despicable industry. The Court has expressed the fact that it deplores such offending on numerous occasions so

we shall say no more about that here. Whether arrived at consecutively or concurrently, the end result would be the same and we have had regard to the totality principle when sentencing.

- In respect of the category 4 and 5 images, Counts 1, 4 and 5 - the sentence is one of 2 years and 4 months' imprisonment.
- In respect of the SAP 2 and 3 images, Counts 2, 6 and 7 - the sentence is 18 months' imprisonment to run concurrently.
- The remaining Counts covering the SAP 1 images - the sentence is 3 months' imprisonment, again to run concurrently.
- Making a total of **2 years and 4 months' imprisonment**.

We also agree with the recommendation of the pre-sentence report writer, that an Extended Sentence under section 3 of the Criminal Justice (Supervision of Offenders) Law, 2004 is appropriate in this case. The Extended Sentence has two elements, the custodial term of 2 years and 4 months, followed by an extension after your release, during which you will be subject to an Extended Sentence Licence. The extension period we have decided upon is that recommended by the Probation service of 5 years. If upon your release you fail to comply with the conditions of the Extended Sentence Licence or are convicted of a further imprisonable offence, your licence can be revoked and you can be returned to serve the remainder of your sentence. The standard conditions apply which are as follows:

1. To be well behaved and not commit any offence and not to do anything which could undermine the purposes of your supervision, which is 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 his or her instructions.
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. To undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change.
6. Not to travel outside Guernsey without the prior permission of your supervising officer (which we would expect will only be given in exceptional circumstances).

We also agree that the following further conditions are both necessary and proportionate in your case:

1. To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your sexual offending behaviour.
2. Not to possess or use any device capable of accessing the internet without the prior approval of your supervising officer.
3. Not to delete the usage history on any internet enabled device or computer and to allow such items to be removed and inspected as required by the police or your supervising officer and to allow the installation of monitoring software on any such device.
4. Not to have any contact directly or indirectly by any means with a child under 18 years, without the prior permission of your supervising officer, other than such contact that is inadvertent and not reasonably avoidable in the course of lawful daily life.

Turning to the Notification Requirements, you are subject to the Notification Requirements under Part 2 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013. We have chosen to follow the recommendation of the Probation officer so the notification period will be for 7 years, which runs from the date you entered your guilty plea which was the 13 February this year. You will be given a written notice of the requirements which I would advise you to read carefully, but in summary they are as follows:

- 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.

Finally, we order the Forfeiture and Destruction Application in accordance with the Prosecution's opening.

Gary Perry
Lieutenant Bailiff

29 May 2020