

**ROYAL COURT  
FULL COURT**

**13 July 2020**

**Before: Richard James McMahon, Esq., Bailiff and:  
Stephen Murray Jones OBE, Claire Helen Le Pelley, Steven John Morris,  
David James Mortimer, Joanne Marie Wyatt, David John Robilliard,  
Stuart Michael Crisp, Marilyn Jasmine King, Felicity Jane Quevâtre-Malcic, Jurats.**

**THE LAW OFFICERS OF THE CROWN**

- v -

**Benjamin Peter Shea RIVE**

**Advocate J D McVeigh appeared for the Crown**

**Advocate L Roffey appeared for the Defendant**

**BAILIFF:**

**Background**

Benjamin Rive, you appear today for sentencing in respect of a single Count on the Indictment relating to unlawful wounding, to which you pleaded guilty. Although sentence is at large, the approach this Court generally takes to this offence is to treat it as if a maximum sentence of five years' imprisonment is available.

The facts of this offence can be summarised briefly as arising from your attendance on 26 November 2019 at St Jacques Tavern. The victim was known to you and there was some interaction, not always pleasant, during the evening. You consumed a considerable amount of alcohol. At closing time, when Mr Guille went to leave the pub, you lunged towards him holding a pint glass, which you smashed into the side of his face. He attended at the hospital and the main wound needed stitching.

You are a 22-year-old locally born man. You have generally been in employment, although there was a period when you were signed off sick, and you had begun work some weeks before committing this offence. You have a young child with your partner.

On 14 March 2019, the Magistrate's Court imposed a sentence of five months' imprisonment suspended for two years on you in respect of an assault that took place in June 2018, which we have heard involved a punch to the jaw and kicking your victim's head whilst on the floor. This puts you in breach of that suspended sentence, so we have to decide what to do about that offence as well.

You have been on conditional bail throughout these proceedings.

**Sentencing Considerations**

Guernsey remains, in general terms, a less violent society than in many other places, for example England. We must approach sentencing in the light of Guernsey considerations, where deterrence

continues to be a significant factor resulting in a robust, and some may say severe, sentencing approach, but one which has been endorsed by the Court of Appeal, eg, in *Ryder* (2009). Although not bound to engage in the same considerations as a Court in England and Wales must, the guidance given in the Sentencing Council's Definitive Guideline on Assault contains much helpful information about the approach to take.

There are several factors that this Court considers places what you did in the higher range of culpability. Using a glass as a form of weapon is always regarded as a significant aggravating factor. The consumption of so much alcohol that you had no ability to exercise any form of self-control is wholly unacceptable. When combined with the fact that you were only about one-third of the way through a suspended sentence for an offence of violence indicates to us that the spectre of that sentence being activated did not cross your mind. The ongoing impact of the injuries, whatever they are, caused to your victim is a further consideration we have borne in mind.

In respect of the 5-month suspended sentence, under the Criminal Justice (Power to Suspend Sentence) (Bailiwick of Guernsey) Law, 1972, as amended, this Court can activate that sentence, can activate it with a reduced term, can re-suspend it from today for a period not exceeding three years, or make no order, meaning it continues in place as originally imposed. If choosing to activate it and send you to prison, we are conscious of the need for the total term of imprisonment imposed to reflect the totality of your offending.

Having regard to these factors, and before considering any mitigation, we are satisfied that the custody threshold is clearly met and take as our starting point for the offence of wounding a sentence of 3½ years' imprisonment.

### **Mitigation**

This Court gives you full credit for the guilty plea entered at the earliest opportunity.

As the realistic Probation Report records, being in breach of a suspended sentence for an earlier assault is likely to result in a prison sentence, but alternative disposals, such as a community service order, are mentioned as being available. What is apparent is how remorseful you are. The fact that you have a supportive circle of family and friends will assist and you appear to be aware of just how much you have let them down. You have not had the easiest of childhoods and have turned to alcohol and unlawful drugs as a means of trying to cope with more recent mental health issues. If nothing else, there is now an appreciation that these forms of self-medication for the problems you face are no substitute for seeking proper medical assistance. We have noted the assessment that there is a moderate likelihood of you re-offending and that these offences demonstrate that you do present a risk of harm to others through violence.

These points have been elaborated upon by Advocate Roffey and in the letters submitted on your behalf, which we have also read carefully. We are impressed that there appears to be a thoughtful and mature man underneath what otherwise appears as uncontrolled thuggish behaviour when you are the worse for wear through drink. We believe this nasty offence has served as a wake-up call to you. We have taken into account the impact any sentence will have on others and have given you as much credit for your personal mitigation as we feel able.

### **Sentence**

Benjamin Rive, in a comparatively short space of time you have proved that settling scores by resorting to violence is not the answer because it leads to imprisonment. Such appalling behaviour, however wronged you feel you were, simply will not be tolerated by any Court. You were fortunate last year in the Magistrate's Court to be given a chance to mend your ways, but sadly it is clear to this

Court that it fell on deaf ears, probably as a result of the amount of alcohol you chose to drink, including on the evening in question. Where you lose control in such a manner, you are realistic enough to know that you have to face the consequences. We do hope you now realise how terrifying and unacceptable such violent behaviour is and will not get into any situation where it could be repeated. This Court regularly sends out the message that we want everyone here, residents and visitors alike, to enjoy a low crime environment where they can feel safe. Alcohol-fuelled actions adversely impact on people's sense of safety and so an element of deterrence in the sentences imposed is, in our view, appropriate.

The offence of wounding – in reality a drunken “glassing” of your victim – being the single Count on the Indictment can, in our opinion, only be dealt with by a sentence of immediate imprisonment. In the light of your guilty plea and other personal mitigation, the sentence today for that offence is one of 2 years' imprisonment, running from today.

In relation to the suspended sentence imposed for the earlier assault, we are satisfied that that sentence should be activated in full because it relates to an offence of a similar type. Reflecting that it was committed on a separate occasion, in accordance with the powers conferred by section 2(2) of the 1972 Law, we consider that this term of imprisonment should be made to run consecutively to the sentence just imposed for the wounding.

In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any parole period if applicable), you will be subject to supervision by the Probation Service for a period equal to one quarter of the total sentence or the period you would have served had you not received remission, whichever is less. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine, or both.

In summary, therefore, the total sentence imposed today is one of 2 years and 5 months' imprisonment and that is made up of the 2 years for the unlawful wounding plus the 5 months of the suspended sentence being activated, to run consecutively, all from today.

**Richard J McMahon**  
**Bailiff**

**13 July 2020**