

Indecent assault.

[2020]GRC087

**ROYAL COURT
FULL COURT**

21 December 2020

Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and:

**Claire Helen Le Pelley,
Steven John Morris, David James Mortimer, Joanne Marie Wyatt, Alan Stevenson
Boyle, Peter Francis Gill, Stuart Michael Crisp, Marilyn Jasmine King,
Felicity Jane Quevâtre-Malcic, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

Jose Alberto Barros ANDRADE

**Advocate J D McVeigh appeared for the Crown
Advocate L C Roffey appeared for the Defendant
(Translator Mr Oliveira was assisting Mr Andrade)**

LIEUTENANT BAILIFF:

Background

You appear for sentence on an Indictment containing 3 Counts: Count 1 and 2 are indecent assaults on females; Count 3, an indecent assault on a male. The maximum penalties are life on Counts 1 and 2 and 10 years on Count 3.

You are a 29 year old Portuguese national with no previous convictions. You first came here in 2016 and since 27 October 2019 you were unlawfully resident. You were bailed with conditions from 29 June 2020, but on 25 August 2020 breaching of two of these conditions led to your being remanded in custody since that date. Pleas were entered on the 1 October 2020. We have heard the full details behind these very troubling offences. We summarize them now. They took place at a party.

Victim B was then aged 16. As soon as you arrived you forcibly slapped her bottom in front of others. She, understandably, slapped you in the face and you apologized. After an incident involving your taking her crash helmet, she retrieved it from you and went into the bedroom to put it back. You followed her, grabbed her bottom with both hands, so as to forcibly lift her off the floor. She challenged you, saying she was 16 and you replied: "I'd have five minutes of pleasure and do time for you". When talking to the Police, Victim B became tearful and asked officers if she could write it down, as she did not want to say it out loud. Victim B was very frightened. You grabbed her by the throat and forcibly threw her on the bed, laying on top of her. She punched you in the face so she was able to get away; you again grabbed her, pulling her back saying: "you know you want to". She managed to open the door and her friend's father, the tenant, was in the hall. She explained what had taken place and he told you to apologize. You said "sorry" repeating it was a joke. You then again smacked her bottom. Victim B then saw you walk towards the bathroom.

Victim C, an 18 year old male, had just used the toilet. Victim B and others were in this room. You asked Victim C if he was gay, adding you had once worked as an escort and would “do things for the right money”. Victim C was not interested, and you then asked him if he wanted to see your penis. He said no. You then took it out of your trousers and exposed yourself, saying “come on then, get yours out”. C again said no. You suggested C had a small penis, adding he should “see his when it gets hard as he’s Portuguese and they have big ones”. You then smacked Victim C’s penis through his trousers before walking off. Understandably Victim C felt sick and uncomfortable at the time.

Victim A is 20. She knew you and you had been in contact via social media. She saw you in the bathroom, you were not wearing a top at this point. You asked others to leave the bathroom as you wanted, you said, to talk to her about your girlfriend. You had closed and locked the door. Victim A went to leave, but you stood in the way. You then commenced a most serious indecent assault upon this victim, and what follows is extremely concerning. You said you had looked at her photos on social media and she was “sexy”. You pulled her towards you and kissed her mouth. Then you put your hand down her dress, pulled her bra down and started sucking her nipple. You refused to stop. She unsuccessfully attempted to push you away. You said it was “fine”; you were no longer in a relationship. You placed your left hand firmly around the victim’s neck; she was able to breath, but described that she felt you were in control of her. She repeatedly told you to stop. She couldn’t say this anymore and added, “I thought if I was being nice he will like leave it, but obviously not”. Still holding the victim’s neck you moved your right hand down and inserted 3-4 fingers into her vagina. You pushed your fingers so high that they caused her to scream in pain. “It’s a pain I have never had before”, she said. “The fingers felt so deep inside that all my body was just not moving at all”. You then asked Victim A to take your penis out of your jeans and tried to force her hand there, towards your erect penis. Others had heard her scream and forced their way in. They physically removed you from the bathroom and the flat, at which you threatened to kill the victim. Shortly afterwards, Victim A noticed she was bleeding from the vagina. We have heard the medical evidence showing bruising on her neck, diffuse superficial bleeding, bruising and soft tissue swelling, in and around the lower aspect of her vulva and labia. Also injuries to her thighs, associated with blunt trauma.

You were interviewed by the Police and told them a lot of lies, which do not help you one little bit.

We have set out these details in some length to show just how unpleasant these offences were, particularly the penetration of Victim A and her injuries.

Sentencing Considerations

We note that in England, sexual assaults by penetration are now a separate offence under the Sexual Offences Act, 2003 - in Count 1, all the features of such offending are present. Here there are three separate victims and each suffered different indecent assaults from you in a shortish period of time. We have noted Victim A and Victim B’s Victim Impact Statements and the enduring harm these offences caused. There were three separate offences, we will sentence consecutively, but we observe the totality principle and the results would be the same whether concurrent or consecutive sentences were imposed.

These offences vary on their facts. The violence used, particularly in relation to Victims A and B is an aggravating factor, especially so in relation to Victim A. We regard the offence in relation to A as very near the top of the range of seriousness, for indecent assaults. We will select what we consider are appropriate starting-points before looking at applicable mitigation.

In relation to Victim A, as stated, we are horrified by what took place and the physical and mental effects on her. We start here at 5 years.

B is a young person, which also adds to the seriousness. This was also a deeply disturbing offence. We start here at 3 years. In relation to C, although unpleasant and upsetting, the assault was less serious and less protracted. We start here at 18 months. Aggregating this, we come to a total starting point of 9 years and 6 months. This, in our view, is right, in order to reflect the severity of these incidents.

Mitigation

We have noted what your Advocate has told us and read the Probation report. This behaviour was sexual violence which gives the Probation officer “serious concern”. You were reticent in describing the details to her. What took place raises significant concerns in terms of re-offending.

Your previous good character is an effective piece of mitigation on which you are entitled to credit, also your guilty pleas, despite the strength of a lot of the evidence against you. All this combines to give a discount in the region of one-third.

Sentence

We need not add to what has been set-out at length. You were a violent, repeat, sexual predator, inflicting significant violence on two of the victims and an unpleasant assault on Victim C. An element of deterrence has to be factored-in as such offences, fortunately, are still relatively uncommon in this jurisdiction.

- In respect of Count 1 (Victim A) – the sentence is 3 years and 6 months’ imprisonment.
- In respect of Count 2 (Victim B) – the sentence is 2 years’ imprisonment; consecutive.
- In respect of Count 3 (Victim C) – the sentence is 12 months’ imprisonment; consecutive.
- **Total: 6 years and 6 months’ imprisonment, with effect from 25 August 2020.**

Sexual Offences Notification Order

We make a Sexual Offences Notification Order for 10 years from 1 October 2020. We agree with the Probation officer’s recommendation here, if you remain in this jurisdiction. We note carefully your Advocate’s submissions, but this is right on all the facts. I point out that we are never a ‘rubber stamp’ but look carefully at the individual circumstances of the case. Should you remain in the jurisdiction for a period of 10 years from that date – and you will get a Notice which your Advocate and Mr Oliveira will explain to you if you don’t understand it:

- 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.

As stated Mr Andrade, that is a summary of it and you will receive a written Notice and both your very astute and learned Advocate and Mr Oliveira can assist you on that if you do not understand it.

Extended Sentence

Having considered the Probation report and bearing closely in mind the facts of this case, the Court is satisfied that the normal period of supervision, should you remain in the jurisdiction after your release, would be insufficient to fulfil the purposes of securing your rehabilitation and protecting the public. Hence, the Court is imposing an Extended Sentence. The sentence imposed today has two elements: the custodial period of 6 years and 6 months and an Extended Sentence of 3 years on Counts 1 and 2. During that period you will be subject to conditions and compulsory supervision and if you fail to comply you can be returned to Prison, either by the Parole Review Board or the Court.

We accept the recommendations in the report for the reasons given. We are wholly satisfied the grounds are met. Indeed, listening to your Advocate, we were struck by the fact you were resisting Orders, designed to protect the public and proportionate to the concerns raised by your offending. We do, however, as stated, make them only in respect of Counts 1 and 2. The conditions are merited. Your needs are less important than those of potential victims. We keep the extra condition referred to at the age of 18, having very carefully considered this, as in Guernsey persons under that age are still, in law, children and young persons, so this too is proportionate to the facts of the case which we have carefully examined.

I will now deal with the question of the Extended Sentence. The standard conditions, and again you will receive a Notice of this, so if you do not understand it, Mr Oliveira and Advocate Roffey will be only too happy to explain it to you, particularly any query on the wording.

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

Again, these may be academic, depending on the further Order we are recommending and again, I stress, we have considered these carefully and on the facts of the case which we have heard in detail and considering also the observations of your Advocate, we are satisfied that they are proportionate, reasonable, necessary and desirable for the protection of the public, and, hopefully to secure some measure of rehabilitation should you stay here.

Deportation

We stress, the Order just given will only apply should you remain in the jurisdiction. We propose to recommend to His Excellency the Lieutenant-Governor, whose decision it is, that you are deported from Guernsey.

In making this recommendation we consider that the seriousness of the offences individually and taken together means that in the public interest you should not remain here. We have carefully considered the balancing exercise that we are obliged to undertake following the decision of the Court of Appeal in the case of O'Dette. We note that you do not oppose the Order and that your local ties are not substantial. Indeed, given the gravity and nature of these offences, we would make such a recommendation, even if you had closer ties to the Island, as these offences outweigh, in the balancing act, any rights to family life.

That is the Order of the Court. However, before these things come in there is still a sentence which we have imposed totalling 6 years and 6 months' imprisonment from the date given (25 August 2020).

**John Russell Finch, Esq., O.B.E.,
Lieutenant Bailiff**

21 December 2020