

Making indecent photographs of children, contrary to section 3(1)(a) of the Protection of Children (Bailiwick of Guernsey) Law, 1985, as amended; distributing indecent images of children contrary to section 3(1)(b) and possessing indecent images of children contrary to section 3A(1) of the aforementioned law.

[2021]GRC015

**ROYAL COURT
FULL COURT**

19 February 2021

**Before: Richard James McMahon, Esq., Bailiff and:
Stephen Murray Jones OBE, Jonathan Grenfell Hooley,
Steven John Morris, Alan Stevenson Boyle, David John Robilliard,
Stuart Michael Crisp, Tina Jane Le Poidevin, Paul Martin Burnard,
Felicity Jane Quevâtre-Malcic, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

**JOHN EDWARD JAMES DOHERTY
(D.O.B. 15.07.1988)**

**Advocate J D McVeigh appeared for the Crown
Advocate S E Steel appeared for the Defendant**

BAILIFF:

Background

John Doherty, you have pleaded guilty to an indictment containing seven Counts. The first two Counts relate to making indecent photographs of children contrary to section 3(1)(a) of the Protection of Children (Bailiwick of Guernsey) Law, 1985, as amended. By way of explanation, this reference to “*making*” is used here in a technical sense, meaning downloading the images and storing them on your devices, and does not refer to taking or producing them. The fifth Count relates to distributing indecent photographs of children contrary to paragraph (b) of that subsection. Each of the offences in these three Counts is punishable by a maximum sentence of 10 years’ imprisonment. Counts 3, 4, 6 and 7 relate to possessing indecent photographs of children contrary to section 3A(1) of the 1985 Law, for which the maximum sentence is five years’ imprisonment.

These images found on the mobile phone and laptop that have been analysed have been graded by reference to the Child Abuse Images Database. The most serious is Category A, which includes penetrative sexual activity, sadism or sexual activity between children and animals. Category C covers all other indecent images not in Category A or involving non-penetrative sexual activity. The two Counts relating to making involve 6 images of Category A and 2 of Category C respectively. The distribution Count concerns 1 Category A and 8 Category C images. The four possession Counts involve a total of 13 Category A and 16 Category C images across both devices. The Court has heard how the images were found on the devices and the applications that appear to have been used, making them easily accessible to the user.

You are a single local man, now aged 32, although the offences of making and distribution were committed when you were 31. The possession offences arise from when you were arrested on 30 July 2020. Having read theology at university, you have been working in the finance sector. You have no previous convictions.

At your first appearance before the Magistrate's Court on 23 October 2020, you were remanded in custody where you have remained since. Guilty pleas were indicated when you were committed to this Court and subsequently entered at what we accept has been the earliest opportunity.

Sentencing Considerations

In 2012, in *Wicks, Sharp and Towers*, the Court of Appeal gave guidelines in relation to sentencing in indecent images cases to which this Court has regard.

At that time, reference was made to five levels of seriousness. Levels 4 and 5 were the most serious and are now reflected by reference to Category A from CAID, whereas old level 1 corresponds to Category C.

Paragraph 22 explains that the guidance extends to the other limbs of section 3(1) and not just making, which in this context relates to the distribution Count 5. When referring to the premises on which the "initial figure" has been based, we have taken fully into account what is set out in paragraph 41.

The first of the bands of sentences set out in paragraph 37 in *Wicks* to which we have regard is Category 4, which now covers making an image within CAID Category A, where an initial figure in the region of 3 years' imprisonment is indicated. Count 1 is such an offence and part of Count 5 relating to distribution also falls into this category. Count 2 covers images within Category C, where the guideline suggests "*a fine or community sentence preferably with a condition of treatment. If any relevant aggravating factor is present, the court may feel that the custody threshold is passed and may consider a sentence of up to 6 months' imprisonment.*" The Court is satisfied that the custody threshold is clearly passed in relation in particular to Count 1.

When considering the aggravating factors mentioned in paragraph 38, we accept that the numbers of images involved are not large. As regards the distribution of images, we have also noted that this relates to a single recipient and so does not amount to "*wide-scale distribution*". Accordingly, having regard to the totality principle and viewing this episode of offending in the round, we are satisfied that the initial figure given properly reflects an appropriate starting point for the most serious of these offences, Count 1, namely 3 years' imprisonment, before considering mitigation. In respect of Count 5, where there was a single Category A image only, we are satisfied that the starting point should also be 3 years' imprisonment. In respect of Count 2, we adopt a starting point of 6 months' imprisonment (that is of Category C images) and for the possession Counts, recognising that there is a lower applicable maximum sentence, we take starting points appropriately scaled down, but these are largely academic because we are satisfied that the sentences imposed should be concurrent in any event.

Mitigation

We have had regard to everything that has been said about you and on your behalf by Advocate Steel. We have also carefully read what others have written about you and the detailed letter you have chosen to write to the Court.

We have also taken into account what is written about you in the Probation Report. It is good that the assessment of you is that there is a very low likelihood of general re-offending, but perhaps not so good that more work is apparently needed to understand whether you pose a risk of committing contact sex offences, although the author of it states that there is no evidence of that at this stage.

You will be given full credit for the guilty pleas you indicated at the earliest opportunity. We recognise that you are of previously good character and that this is your first appearance before the Courts and that further, you were gainfully employed until you were remanded for these offences. We appreciate that you have cooperated with the investigation, volunteering the PIN to your mobile telephone, although you chose, as is your right, not to answer questions in interview. You have expressed your remorse.

The root of your offending remains not entirely clear, despite the way you explain your actions in your letter. We accept that curiosity got the better of you and that thereafter you started down a slippery slope. We generally have an open mind, similar to that expressed by the probation officer, as to whether your denial of any sexual interest in children is entirely convincing, but that is something that will, we hope, now be addressed through interaction with the appropriate support services. It also seems clear you knew the dangers of what you were doing but you did not stop. You now appreciate that you have participated in the cycle of abuse and are disgusted with yourself. But however much you loathed what you were doing, you did not have the courage to stop it and were only prevented from continuing when your Twitter account was closed down.

We do not regard your ignorance of how devices work as being any form of mitigation. As you have pointed out, you should not have had these images in the first place, so the fact that they were still capable of being detected when you had tried to delete them is not something that can affect the punishment applicable to this offending.

Sentence

John Doherty, the Court repeats what it said just last week about regarding these types of offences as truly abhorrent and revolting, and for which there really can be no excuse. The ease with which such images can be found, be that on social media or through some other application, is no excuse because they are only found by those, like you, who look for them. The number of images on which we sentence is comparatively low, but it does include images of the most serious Category A type. As you now appear to realise, for each photograph that is created and then circulated, a young person has been subjected to unnecessary degradation and abuse. Your willingness to involve yourself, for whatever end you had in mind, has contributed to that. To your credit, you have belatedly recognised just how wrong what you engaged in was and have started to take responsibility for this. If, as we find, you are genuine about re-building your life after this experience, then that is one positive to look forward to. We continue to be satisfied that there should be an element of deterrence in the sentences given by this Court.

We have adopted a totality approach, on the basis that all these offences are part and parcel of a connected series of actions. We are satisfied that you have learnt your lesson now and taken into account that you have already spent almost four months in custody on remand. In those circumstances, whilst what you have done could result in a longer period of imprisonment, which might have been considered for suspension, but for the contrary recommendation of the probation officer, we have decided instead to make you the subject of a period of community service coupled with a probation order so as to ensure that you both give something back to the community and have the benefit of the support that a probation order brings. In doing so, we sincerely trust that the Courts will not see you again.

In respect of Count 1, the sentence is that you perform 210 hours of unpaid work under a Community Service Order. This Order is made because of the seriousness of the offence of which you have been convicted.

In respect of Count 2, the sentence imposed is for 50 hours of unpaid work and these hours will run concurrently with the hours in respect of Count 1.

Similarly, for Count 5 (the distribution), the sentence will also be concurrent and this time for 210 hours.

Turning to the possession Counts, for each of Counts 3 and 6, because they involve Category A images, the sentence is 100 hours each time and, in respect of Counts 4 and 7, it will be 40 hours, being the lowest figure available each time, but they will all be concurrent. That means that the total number of hours being ordered is 210.

The Court notes that you have signed a form stating that you understand the nature and effect of a Community Service Order, the power of the Court to review the Order and the consequences that may follow if you fail to comply with any of the requirements of the Order, or if you are convicted of a further offence while the Order is in force.

Each of these Orders is imposed as a direct alternative to a sentence of imprisonment. The alternative sentence that the Court was considering passing in respect of Count 1 was one of 18 months' imprisonment and the corresponding hours have been adjusted to reflect the time you have already spent on remand. In respect of the other six Counts, similarly, the sentences of imprisonment to run concurrently each time that the Court was considering passing, are 3 months, 9 months, 2 months, 18 months, 9 months and 2 months respectively.

As already mentioned, in addition to a Community Service Order in respect of each Count the Court is satisfied that it is appropriate to add a Probation Order and will do so for the period recommended in the report of the 3 years which will run from today. As set out therein, over this period of time there will be an opportunity to get a fuller understanding of your offending behaviour and respond appropriately. It will also enable your use of internet enabled devices to be monitored. Such an order is imposed for the purpose of your rehabilitation, to prevent you offending further and to protect the public. We are satisfied that you have had explained to you the purpose and effect of the order and the powers that follow if it is breached, including the consequences thereof, but in brief summary, it means that you must keep in contact with your supervisor in accordance with the instructions you will be given from time to time, notify your supervisor of any change of address or working arrangement, not to do anything to undermine the purposes already mentioned for which the order is made and further, to comply with the additional requirements, which we are satisfied should (as recommended) be attached to the order, namely:

- “1. *To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your sexual offending behaviour problems.*
2. *Not to possess or use a computer or other electronic device for the purpose of accessing the Internet or have access to instant messaging services or any other on-line message board or forum or community, without the prior approval of your supervising officer.*
3. *Not to delete the usage history of any internet enabled device or computer and to allow such items to be inspected and removed as required by the police or your supervising officer.*
4. *Not to have any contact directly or indirectly by any means (including electronic communication) with any child under the age of 18 years without prior permission of your supervising officer, other than such contact which is inadvertent and not reasonably avoidable in the course of lawful daily life.”*

If you were to fail to comply with any requirement, you would be liable to be returned to Court, which has powers to continue the order, with or without variation, to fine you or even to revoke the order and re-sentence you.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the mobile telephone and the Samsung laptop is also granted and the Court notes that this was not resisted. On your behalf, the Court is satisfied that these items were lawfully seized and that the analysis of them shows they have been used for the purpose of committing or facilitating the commission of an offence, which is evidenced by your pleas to the Courts. The Court has, as required by subsection (5), had regard to the general value of the property and the likely financial and other effects on you of making the order before deciding to grant the Crown's application.

Notification

Having been convicted of a relevant offence, you become subject to the notification requirements under Part II of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013.

We follow the recommendation of the probation officer that the notification period should be 7 years, which runs from the date of your guilty pleas to those relevant offences on 14 January 2021. This period is a precaution against any risk you may pose and can be further extended. You will be given a written notice setting out all the requirements of being a notifier, but in summary they are:

- You are now required by Law to notify the Police within 24 hours 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.

In summary therefore Mr Doherty, we do sincerely hope that this is the last time you will trouble the Courts and the sentence today is one for 210 hours under a Community Service Order plus a Probation Order for 3 years with those additional conditions. We are ordering the Forfeiture and Destruction of the mobile and the laptop because the images were found on there and we make you the subject of a Notification Period of 7 years. Once the formalities are done you will be free to leave.

Richard J McMahon
Bailiff

19 February 2021