

**ROYAL COURT
FULL COURT**

21 February 2022

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and Jurats:
Claire Helen Le Pelley, Terry John Ferbrache, Jonathan Grenfell Hooley,
David Percy Langley Hodgetts LVO (OStJ),
David John Robilliard, Marilyn Jasmine King, Tina Jane Le Poidevin, Paul Martin Burnard,
Felicity Jane Quevâtre-Malcic.**

THE LAW OFFICERS OF THE CROWN

- v -

JOHN VICTOR McCALLUM

**Advocate J D McVeigh appeared for the Crown
Advocate L C Roffey appeared for the Defendant**

LIEUTENANT BAILIFF:

Background

You appear here for sentence on one count of inflicting grievous bodily harm.

You are a 48 year old local man with a number of previous convictions. You came to Court often when you were younger in the period 1989-2003, indeed we are likely to have met during that period. Since then, the offences have somewhat tailed-off, but in 2006 you got a suspended sentence for assault and resisting Police. In 2014, 2 months for common assault, threats to kill and harassment; in September 2015, a fine of £400 for possession of drugs.

The Magistrate's Court sent this case up and early notification of a guilty plea was given. You have been on conditional bail throughout.

The offence took place on 31st May 2021. It arose from a dispute as to money owed when working with the victim, aged 68 and it was witnessed by members of the public.

It was an unprovoked blow to the left side of the victim's face, occasioning an un-displaced fracture of the left ramus of the mandible, the jaw. Surgery was not needed. You swung your right arm with a clenched fist. The victim fell to the ground and was seen to be very disorientated, taken off by ambulance and after treatment, was required to eat soft food for 6-weeks. One of the witnesses describes hearing the thud.

As stated, you are 48 and work as a plasterer.

Sentencing Considerations

We treat the offence, which has a maximum sentence of life, very much the same way as the English section 20 Offences Against the Person Act, 1861 (“OAPA”), which is essentially the same. There, there is a statutory maximum of 5 years, which we accept in the Royal Court as a maximum, reserving the life maximum for offences of GBH/wounding with intent, the same as Section 18 of the OAPA in England.

But this certainly was Grievous Bodily Harm. It was committed against a significantly older man, without any question of self-defence. It could have been a lot worse. Experience shows that a single blow can cause much worse injury, even death. The Royal Court has dealt with such cases.

Our starting-point, before we go on to consider any applicable and relevant mitigation, is 30 months. This reflects the circumstances we have set-out, notably the lack of provocation, no self-defence, the age of the victim, the injury caused, and all in all, your far from insignificant record.

Mitigation

We have already alluded to your early guilty plea. This was in practical terms, inevitable on the evidence, but you are still entitled to credit. We note you, in effect, handed yourself in, despite initial evasion in your interviews. We also note it was, however nasty and risky, a single blow, not a sustained assault.

We take account of everything put forward so well on your behalf by your able Advocate and, the helpful and detailed Probation Report.

We have also considered your good work record and the letters on your behalf. We also note your ongoing problem with alcohol.

The aggrieved was a friend of yours. It appears he still is, which makes you regret this offence. We have looked at his letter, but have to say that sentencing is not a matter for the victim. As the Court of Appeal in England has wisely said, more than once, sentences cannot depend on the wishes of those most affected by the crime. The responsibility rests with the Sentencing Court. Fulsome forgiveness does not render what would be the correct sentence, inappropriate. It is the accused, you, who is solely responsible.

Whilst stressing that very clearly, we do give credit for your remorse and note your domestic circumstances, we also stress the care you provide as an important factor.

All in all, when we assess the mitigation, we enhance the discount to fairly reflect these factors.

Sentence

Despite all that has been urged on your behalf, this still amounts to a nasty, potentially even more serious assault, on an older person, committed in view of the public. Your financial grievance, whether right or not, is no excuse. What if the victim had banged his head? You took that risk of more serious or permanent injury. Your record isn’t encouraging, although it has tailed-off. You are too old yourself and mature to act like an immature teenager.

This was a nasty assault, not something people wish to see in Guernsey and caused a significant injury, but in the unusual circumstances of this offence, and on its own facts, so it is not a precedent or sentencing case, but depends entirely on what we have heard today, we impose the maximum Community Service Order of 240 hours of unpaid work in the next 12 months, as a direct alternative to 18 months’ imprisonment from today. 18 months, had we passed that sentence today would have been the correct sentence, it would have been very difficult to

appeal, you couldn't have complained about it as it would have been fair and if you manage to do your 240 hours, and the only excuse for not doing them is a medical certificate, you won't get your 18 months. But, if you foul-up, if you get boozed up and don't turn up, or you turn up and you are too boozed-up to do anything, then you will be back here and we will be waiting and I have a long memory and an unforgiving nature and you will almost certainly get your full 18 months, down the steps and no excuse. You are urged, (it may be a bit late, but there is always hope), to try and address your ongoing alcohol problem which has landed you in it so often.

We award the compensation because it is substantiated by invoices of £575 which HM Sheriff will collect.

So the sentence is: 240 hours of unpaid work and no excuses if you don't do it unless you are genuinely ill with a certificate. Any foul-ups at all, no excuses, it doesn't matter what your circumstances are, and your Advocate will tell you the same, then it will be 18 months down the steps.

**J R Finch, O.B.E.
Lieutenant Bailiff**

21 February 2022