

Failure to disclose certain information within seven days as required by a Notice, served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 and the offence of unlawfully and maliciously inflicting grievous bodily harm on another.

[2021]GRC068

**ROYAL COURT
FULL COURT**

23 November, 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Stephen Murray Jones OBE, Claire Helen Le Pelley,
Steven John Morris, Stuart Michael Crisp, Marilyn Jasmine King, Tina Jane Le Poidevin,
Paul Martin Burnard, Heather Reed, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

TYLER DAVID RONALD COWENS

**Advocate J D McVeigh appeared for the Crown
Advocate S J Maindonald appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Cowens you have pleaded guilty to 2 Counts on 2 Indictments.

Count 1, Indictment 1, is what we call a RIPL offence, namely between the 6th May 2021 and the 15th May 2021, failing to disclose certain information within seven days as required by a Notice, served under section 46 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, as amended. The maximum sentence for this offence is 2 years' imprisonment or a fine up to Level 5, or both.

The facts are that on 20th March 2021, you were one of four persons in a car stopped by the police. Controlled drugs were found in the car. During the search you were seen by officers attempting to use your mobile telephone, which you were repeatedly asked not to do. Your phone, an Apple iPhone was seized. You have not provided the pass code despite being asked for it at interview on the day of your arrest and by a Notice served upon you on the 7th of May 2021.

Count 1, Indictment 2, is that on the 31st July 2021 at Les Folies D'amour nightclub, North Plantation, St. Peter Port, you unlawfully and maliciously inflicted grievous bodily harm on Toby Le Ray, with intent to do him grievous bodily harm. This is a Common Law offence which has no maximum penalty.

The facts are that the victim of the assault, not known to you, was out with friends at the nightclub known as Folies. He became aware that his friends were having an altercation with others. The victim attempted to diffuse the situation and was then struck hard on the left hand side of his face by you with a glass. The glass smashed. The blow caused the victim to suffer immense pain and the extent of the injuries can clearly be seen in the photographs supplied to the Court.

A witness described you as “*gritting your teeth and using full force to administer the blow*”. That witness was showered in glass which even landed inside her mouth; she suffered cuts to her arms. The victim was taken to A & E where he is recorded as having treatment to remove the glass, 29 stitches and glue to seal other cuts. There are further photographs from last month in the bundle showing the extent of the scarring and a Victim Impact Statement was read to the Court. The Court was shown CCTV of the attack which reinforced the description of the force of the blow.

At police interview, in relation to the GBH matter, you exercised your right to silence. You told the Probation Officer that you had drunk a huge quantity of alcohol and had gone into the altercation to check on your friend and lashed out without realising that you had a glass in your hand. We note that the CCTV shows you drinking from the glass moments before you struck the victim.

You are a local man of just 20 years of age. You were working as a carpenter until you were arrested on 31st July and then remanded in custody in Court, from 2nd August 2021, when you first appeared in the Magistrate’s Court for Indictment 2 - GBH.

You have previous convictions as follows:

- When you were aged 17 years, in 2018, for assault on a police officer, for which you received and have completed Community Service.
- A RIPL offence, committed in May 2020 and sentenced on 3rd September 2020, again in the Magistrate’s Court, in respect of which you received 3 months’ Youth Detention, suspended for 18 months (i.e. to March 2022), so you have breached that by both matters for which you appear to be sentenced today.
- Thirdly, a DIC matter on 7th April, 2021, sentenced in August 2021, for which you were fined and disqualified from driving. That offence was also committed whilst the suspended sentence was active.

You are also facing a further matter of GBH in the Magistrate’s Court - the date of that offence is 15th November, 2020 and you were bailed in the Magistrate’s Court in relation to that offence on 29th March 2021, so you also committed both offences on the Indictments whilst on Court bail for that matter.

Sentencing Considerations

As you are facing two different offences, the Court will set two separate starting points and fix two sentences and then look at the totality at the end when it will also decide what to do about the suspended sentence.

The RIPL Offence

Dealing first with the RIPL offence, the Guernsey Court of Appeal in Barras, Watt and Orchard earlier this year, considered sentencing in respect of RIPL offences. It made four observations:

- First, failing to make the disclosure required by a Notice issued under section 46 of RIPL is a serious matter; it will almost invariably call for an immediate custodial sentence.
- Second, the sentencing court is entitled to proceed on the basis that the failure to provide access is motivated by a desire to hide something, either to protect others involved in criminal activity or to conceal the accused’s own more extensive criminality.
- Third, deterrence is an important aspect of sentencing in this context.
- Fourth, the appropriate sentence will, of course, depend on the particular circumstances of the case.

The custody threshold in respect of the RIPL offence is clearly passed and the starting point, before consideration of any aggravating factors will be 12 months.

In your case there are the aggravating factors:

- You have a previous conviction for the same offence, only one year previously (May 2020).
- You have committed this second RIPL offence while on bail for the GBH matter in November 2020 and in breach of the suspended sentence imposed for the first RIPL offence.

There are no particular mitigating factors relating to this offence .

The revised starting point will therefore be 15 months.

The GBH Offence

Turning to the GBH offence, this Court treats all offences of violence as serious and this offence being the intentional causing of serious injury to another, with a glass, is viewed as particularly serious. There are no Guernsey guidelines for sentencing GBH with intent. This Court looks to the English cases for guidance, especially on aggravating and mitigating factors, but we sentence on Guernsey principles. Guernsey is generally a safe place to live in and we want it to remain so, and an element of deterrence and protection of the public are appropriate and required.

The custody threshold is clearly passed and in view of the seriousness of the offence, the starting point will be 6 years.

In your case there are also serious aggravating factors:

- There was a serious injury with permanent scarring both physical and mental.
- Another was injured in the committing of the offence.
- There was the use of a weapon – here a glass.
- The offence was also aggravated by alcohol – by your own admission you had consumed a vast quantity of alcohol and mixed your drinks.
- Additionally, the offence has been committed in breach of a Suspended Sentence and Court Bail and while awaiting sentence for the GBH committed in November 2020 and the above RIPL offence.
- You also have a previous conviction for an offence of violence in 2018.

Therefore, the revised Starting Point before mitigation is 18 months i.e. 6 years and 8 months.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence. We can only afford you 20% credit for your guilty pleas to both offences as you were caught ‘red handed’ in relation to the GBH matter and the RIPL offence speaks for itself.

Mitigation

The Court has considered carefully the helpful, if bleak, Probation Report prepared in respect of you.

We have also listened to the sensible submissions of your Advocate.

We have read the email from your mother, who describes a completely different person from the one we saw on the CCTV. In drink, you are a dangerous and violent person.

You are just 20 years old (19 when the offences were committed) which is a factor the Court must take into account and the Court has applied a discount in respect of your age.

The Probation Officer is concerned about you and the risk that you pose. You are assessed as a person who is willing to become involved in violence. It is said, in that report, that you have shown only limited remorse for the harm you have caused to your victim and that you understand that he has a physical scar, but you do not understand the other harm (psychological) that you have caused him. Your Advocate says that you have accepted responsibility and are remorseful.

The Probation Officer says that you knew that you were committing an offence when you failed to provide your pass-code. You felt that you had been falsely accused of a crime. If you had nothing to hide you could and should have produced your pass-code. The fact that you did not means that the Court believes that you did have something to hide.

While you had some difficulties at school, you had been working as an apprentice Carpenter. You lost that job because you were remanded in custody in August of this year. It is very much to your credit that you found and held-down your apprenticeship and that you are now looking to finish it while in custody. It is also to your credit that you have passed qualifications and have tried a different career whilst in custody.

The Court recognises that you too have seen and recognise that you have a serious problem with alcohol and that you have been using alcohol wrongly to deal with personal trauma you experienced earlier this year. Alcohol though is not mitigation.

Whilst you completed your sessions with the Probation Officer as part of sentence for the RIPL offence, you do not seem to have learned from them, because you 'held back' at those sessions and did not enter properly into the spirit of them.

The Court was pleased that your girlfriend and family are supportive. You will need that support. We also note your impending fatherhood and the Court has considered carefully, the impact of any sentence of Youth Detention on the child and on you as a parent, but here the offences are so serious that interference with family life is entirely proportionate.

You are assessed as having a high likelihood of re-offending and as posing a risk of serious physical harm to the public which we must take into account.

You have been in custody since 31st July, some 3½ months, which we do take into account.

The Breach of Suspended Sentence

In relation to the breach of the Suspended Sentence, the Court has to decide what to do about it - the period of 3 months' Youth Detention, suspended for 18 months, which you have breached by both matters for which you appear for sentence today. Section 2 of the Criminal Justice (Power To Suspend Sentence) (Bailiwick of Guernsey) Law 1972, as amended, gives the Court the following options:

- 1 to activate the suspended sentence unaltered so you would serve 3 months;
- 2 to activate it but reduce the term of Youth Detention, so you would serve less than 3 months;
- 3 not to activate it, but to extend the period of suspension or

4 to make 'no order' in respect of the Suspended Sentence i.e. leave it running.

There is a request for compensation in this case, namely the sum of £661 medical expenses.

Sentence

The Court has no hesitation in being satisfied that the custody threshold has been passed in respect of both offences.

In view of the seriousness of the offending and the fact that you have previously received alternatives to Youth Detention, but have carried on offending, alternatives to immediate custody cannot be considered. We note that the Probation Officer feels unable to recommend them.

The Court shares the concerns of the Probation Officer that you have continued offending whilst on bail and in breach of a Suspended Sentence. It also shares the concerns about your attack on the victim, the fact that you are not showing sufficient remorse, your willingness to be involved in offences of violence, your alcohol misuse and the fact that when you consume alcohol, you have no ability to control your actions.

The Court has to balance these concerns with the fact that you are a young man and that a sentence of Youth Detention should only be as long as is necessary. We are satisfied that a custodial sentence is necessary because you are unable or unwilling to respond to non-custodial penalties and it is necessary for the protection of the public, and the offences were so serious that a non-custodial sentence cannot be justified. Those considerations arise because of your age under the Criminal Justice Youth Detention (Bailiwick of Guernsey) Law, 1990.

The Court has also taken into account the totality principle which is not simply a case of setting a sentence for each of the offences and then adding the Suspended Sentence to the total, if it is to be activated, which I can tell you now – it is. The overall sentence must be just and proportionate to the offending behaviour.

You know that you are appearing here today because you did not take the chance that was given to you by the Magistrate when you committed the first RIPL offence. You were warned that you would go to prison if you breached the Suspended Sentence and that is what is going to happen. The fact that you committed exactly the same offence shows that you did not treat the sentence of the Court with respect.

Your attack on your victim was wholly unprovoked, the victim is scarred for life and has to live with the anxiety of those scars and his fear when out. Hitting someone in the face with a glass and with such force is incredibly dangerous. The photographs show that you missed his eye only by a fraction. This behaviour will not be tolerated.

You know that alcohol makes you violent and unless and until you do something about it you will continue to appear in this Court and keep being sent to prison as the public has to be protected from such behaviour.

You were right when you told the Probation Officer that it is time for you to 'grow up'. You are a young man with all of your life ahead of you and the Court hopes that you will take the help which is offered to you properly this time, so that you can make a fresh start when you come out of prison and to make good your hope of being the best father you can be.

Taking into account all of the above and applying discounts and taking into account the totality principle, the sentences will be as follows:

- For the GBH – 4 years immediate Youth Detention with effect from 31 July 2021.

- For the RIPL offence – 9 months' Youth Detention with effect from the same date but taking into account the totality principle and your age, the Court will run that sentence concurrently with the GBH sentence.

The Suspended Sentence in respect of the first RIPL offence is activated, so this means that you will receive a total of 4 years and 3 months' Youth Detention with effect from 31 July 2021.

There are some other things I have to read out to you.

Youth Detention (offender under 21) and Extended Sentence Licence

There is usually a period of supervision under the Youth Detention Law, and in this case that will be replaced by the use of an Extended Sentence Licence, as recommended by the Probation Officer. The Court agrees, with that recommendation because the usual period of supervision will not be adequate for the purpose of preventing the commission of further offences and securing your rehabilitation.

Consequently, the Court is imposing an extended period of imprisonment. This has two elements – a custodial term (of 4 years), followed by an extension period after your release, throughout which you will be subject to the Extended Sentence Licence. The extension period shall be for the period recommended by the Probation Officer of 3 years, thereby enabling completion of the work begun whilst you are in prison, as well as monitoring and addressing your progress after release. Your Advocate will explain these terms to you in more detail and it is important that you understand them and you should ask for a copy if you need one.

If, upon release, you fail to comply with the conditions of the Extended Sentence Licence, or you are convicted of a further imprisonable offence, the Court sentencing you, or the Parole Review Committee, can revoke the Licence, in which case you could be returned to custody for the remainder of the sentence. There are some standard conditions in relation to the Extended Sentence Licence 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 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 to 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) as is 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).

Additional conditions are added, as recommended in the Probation Report, which the Court, adopting guidance from the English case of Smith 2011 EWCA 1772, considers necessary, not oppressive and proportionate. Those conditions are as follows:

1. Not to seek to approach or communicate directly or indirectly with the victim named in the Indictment without the prior approval of your supervising officer.
2. To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your alcohol issues, including attending the Criminal Justice

Substance Service as directed, and complying with alcohol testing and treatment as required.

Forfeiture s3 Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006 as amended

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the iPhone is also granted. This has not been resisted. The Court is satisfied that this item was lawfully seized and that it can reasonably be inferred that it was used for the purpose of committing or facilitating the commission of an offence, as evidenced by your plea. The Court has, as required by subsection (5), had regard to the value of the property (£100-£200) and the likely financial and other effects on you of making the Order before deciding to grant the Crown's application.

Compensation

Finally, there is the matter of compensation. Having consulted with members of the Court, the Court still considers it is appropriate to make the Compensation Order in the amount claimed of £661 which will have to be paid up at some point.

I repeat, that the total sentence is as follows:

- 1 total term of Youth Detention – 4 years and 3 months with effect from 31 July, 2021;
- 2 an Extended Sentence of 3 years, subject to the conditions I read out;
- 3 forfeiture and destruction of the iPhone;
- 4 compensation in the sum of £661.

You may now go with the officers.

Catherine Maureen Fooks
Judge of the Royal Court

23 November 2021