

Making threats to kill contrary to section 1(2) of the Criminal Justice Miscellaneous Provisions (Bailiwick of Guernsey) Law 2006.

[2021]GRC069

**ROYAL COURT
FULL COURT**

17 December 2021

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Claire Helen Le Pelley, Jonathan Grenfell Hooley,
Steven John Morris, Joanne Marie Wyatt, Stuart Michael Crisp, Paul Martin Burnard,
Heather Reed, Simon Ernest Bodkin, James Robert Toynton.**

THE LAW OFFICERS OF THE CROWN

- v -

BENJAMIN WILLIAM PATON

**Crown Advocate C G Dunford appeared for the Crown
Advocate C J Green appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Paton you have pleaded guilty to 4 counts on 1 indictment each of making threats to kill, contrary to section 1(2) of the Criminal Justice Miscellaneous Provisions (Bailiwick of Guernsey) Law 2006. The maximum sentence for each offence is 10 years' imprisonment.

The facts are that while you were serving a sentence in Guernsey prison having been recalled there in December 2020, you slipped a number of letters under your cell door which were collected by several Prison Officers. Crown Advocate Dunford has set out the content of the letters in detail in his outline and I will only summarise the content here.

The first count concerns a letter slipped under your door on the 14th of December 2020 and dated 12th December 2020, addressed to a third person, in which there contained a threat to kill a fellow inmate with your bare hands. At the time you had had a falling out with that inmate over some vape capsules.

The second count concerns a further undated letter slipped under your door by you, on 14th December 2020. It repeats the threat to kill that inmate and is particularly graphic as to how he would be killed.

Following these incidents, you were placed in the secure care and progression unit and that inmate was moved to a different wing to avoid further confrontation.

The third count concerns a letter slipped under your door by you on the 1st January 2021 dated that day, in which you threaten to kill that inmate and two other fellow inmates. You make reference to having weapons. You admitted to the Probation Officer having made a weapon, but then having destroyed it.

The fourth count concerns 6 letters slipped by you under your door on 12th March 2021 in which you threatened to kill your offender supervisor, your Probation Officer (since November 2016) and the

manager of the Offender Management unit at the prison and their families and to rape and kill their children because you held them responsible for your not having been transferred from Guernsey.

The threats contain graphic and grotesque details of how you would kill your victims and do vile things to their bodies, sometimes while they watched. There is reference to you laughing while one victim dies. Some of the letters contain reference to there being no way of stopping you from carrying out your threats. There is reference to your need for psychiatric help and your wish to be transferred from the Guernsey prison to a UK unit or to Jersey.

The inmates did not make victim impact statements but there will have been an impact on them nonetheless which this Court takes into account and which you yourself acknowledged.

The three professionals were surprised to receive threats as two had directly been trying to help you with your arrangements post release from prison and the third had not been dealing with you directly at all. They described the threats variously as “upsetting”, “worrying”, especially the threats to family, “disgusting”, “disturbing”, and “menacing”. They took the threats seriously as they thought you capable of carrying them out if you were here in the community. One of them filed a more comprehensive statement and describes the impact of your threats on her working practices and her anger at the threats to families.

You were arrested on 25th March 2021 and interviewed. You exercised your right to silence.

You are a Jersey man now 24 years of age but 23 at the time of the offences.

For a young man you have a large number of previous convictions which start in the Jersey Youth Court when you were just 16 years old and which include, in the early years, offences like larceny and breaching various court orders. You appeared before the Royal Court of Guernsey on the 14th of November 2016 and were sentenced on four counts of indecent assault and one offence of making a threat to kill the victim of the indecent assault, for which you received in total 2 years and 10 months’ Youth Detention, a 10-year Notification Requirement and an Extended Sentence Licence of 3 years.

You were subsequently sentenced in the Royal Court of Jersey on the 29th of June 2018, to 2 years’ imprisonment for eight counts of breaching a restraint order in April 2018. Your last appearance before the Royal Court of Jersey was on 20th June 2019 for assault in Jersey prison, at which time you received 18 months’ imprisonment.

You were transferred from the Jersey prison to the Guernsey prison on 20th December 2020 because on 2nd October 2020 you breached your Extended Sentence Licence by contacting the victim of your 2016 indecent assault convictions. You have remained in the Guernsey prison until now. You were due to be released on 27th March 2021, the end of your Extended Sentence Licence, at which time the plan was that you would be transported back to Jersey.

Sentencing Considerations

There is no guideline sentencing case for this offence. This Court looks to the English sentencing guidelines which are useful in identifying aggravating and mitigating factors but sentencing has to be on Guernsey principles. Threats such as these are viewed as very serious indeed so the starting point has to be immediate custody, a point which you rightly conceded. You are being sentenced only on the threats to kill.

The threats form a course of conduct from the 14th December 2020 to March 2021. We set a starting point of 4 years for all four counts which will be sentenced concurrently.

As your Advocate stated, there are aggravating factors in your case:

- Multiple threats and repeated threats against some of the victims, for example the first inmate.
- A previous conviction for threatening to kill the 14 year old victim of your indecent assault.
- The graphic and serious nature of the threats.
- The fact that some of the threats were against professionals in the public sector doing their jobs.
- That there were threats also to harm those professionals' families, as well as the professionals themselves.
- The threat to use a weapon and the making of one.
- That you have previously assaulted a cellmate whilst in prison in Jersey with a weapon made three or four days earlier.

Taking all these matters into account, the revised starting point before mitigation is 5 years.

Mitigation

Plea

The court must first consider the impact of your guilty pleas on sentence. We afford you full credit for your guilty pleas to all offences, acknowledging that you have not wasted any of the Court's time in taking legal points which might have been open to you.

Reports

The Court has carefully considered the comprehensive Probation Report prepared in respect of you. In view of your threats against Guernsey Probation and Prison Officers, the report was prepared by Mr Taylor of the Jersey Probation Service. The Court also had a psychiatric report prepared by Dr Rahman, Consultant Psychiatrist, employed by the States of Guernsey. Both Mr Taylor and Dr Rahman kindly attended Court yesterday and were able to give the Court valuable assistance for which it is most grateful. A representative from the Guernsey Probation Service also attended Court to assist on the topics of Extended Sentences and Probation Orders and again the Court records its gratitude. There was also a written report from the Prison Psychotherapist Ms Craske which assisted the Court as to therapy you have undertaken since the time of the offences.

The reports all reference your sad and traumatic childhood and early history of behavioural problems, including a lack of empathy and emotional understanding.

You were a successful student and left school with GCSE qualifications and you are fluent in Spanish but you have never had any sustained employment.

It is striking that you have only spent two periods out of custody since 2016 of 10 days and 8 weeks during which time you lived with your partner but you developed agoraphobia.

Dr Rahman assessed you as having ADHD and various personality disorders. That report was ordered because it was necessary to explore your state of mind at the time you committed the offences and whether you needed any form of Treatment Order to address your issues. Dr Rahman's view is that you were experiencing a stress response, triggering expression of aggression to others when you wrote the letters and that you were not able to have rational thoughts at that time but it is not said that you were unable to form the necessary intent to commit the offences.

Dr Rahman clarified for the Court, that although in June when he met you, you said initially that you still had thoughts of wanting to kill people, at his October interview with you, he observed a significant improvement in both your mental health and your behaviour. On advice, you have largely stopped taking medication. He considers that you are engaging with your treatment appropriately. He does not assess you as meeting the threshold to be placed in either a forensic or psychiatric unit.

Ms Craske reported that your childhood history offers an explanation but not an excuse for your behaviour and she described some work which has been done with you to help control your impulsivity and to help you, for example, with your relationship with your partner. It is her view that you have been very willing to engage with the therapy and that you are making some progress. She recommends further treatment for the complex trauma you have suffered. It was encouraging to hear from Dr Rahman that the impact of your disorders is likely to diminish as you age and mature.

Dr Rahman assessed you as posing a low risk of harm to others and this appeared to conflict with the assessment of harm by Mr Taylor which is that you have a very high risk of reconviction and a high risk of further violent conviction. Both expanded on their assessments yesterday. Dr Rahman's was very much a snapshot of your presentation when he saw you. He explained that risk is dynamic and that his assessment on that day did not remove the risk you pose at times of stress or anger when you would likely revert to maladaptive coping strategies. Risk can be assessed in different ways. Mr Taylor's assessment was a more involved assessment using standard tools with which the Court is familiar. For sentencing purposes, the Court proceeds on the basis of Mr Taylor's assessment which is that you pose a high risk of harm to others. Protection of others is a key part of sentencing you.

Both Dr Rahman and Mr Taylor recorded that you had expressed remorse. Mr Taylor observed that you showed very little remorse in his first few meetings with you. He was concerned at your lack of emotion in relation to the threats against the other inmates and remaining hostility towards them. You told him at that time, that you could not guarantee, not to do the same thing again if similar circumstances occurred.

He also assessed you as expressing limited remorse for the threats made against the three professionals who were trying to secure travel for you back to Jersey during a covid lockdown. He found this lack of empathy as disturbing. The Court notes that he has a good knowledge of you having supervised you previously. He does acknowledge that you are showing more remorse now and he was very impressed with your address to the Court, but less so with your letter of apology.

His view is that that you are minimalizing the seriousness of the offences and avoiding taking responsibility by relying on the fact that you were feeling anxious.

Dr Rahman, Mr Taylor and Ms Craske all agree that you are making progress, taking small steps. Dr Rahman said that you would need therapy for a long time. You have made a start. The Court considers this important and positive as it shows that you have taken steps to make changes since you committed the offences.

Mr Taylor describes your previous offending as diverse and frequent involving violent and sexual crime and breaches of numerous orders which we must take into account.

Mitigation

We have also listened to the carefully made submissions of your Advocate. He made an important point that you are a relatively young man. He reminded us that the admission about the weapon you made in prison came from you. You had instructed him not to make any excuses which was absolutely right. He explained how your deteriorating mental health and your response to events led to the commission of the offences. He said that you were not in your right mind (though you retained capacity). He echoed the concern of others that you are institutionalised.

The Court welcomes your letter of apology though it treats it with caution. It is a step forward. You asked to address the Court and you spoke well.

There were emails also filed by your partner and stepfather which were dated March 2021 but which your Advocate told us remain valid. Your partner records that your mental health had improved once you had changed your medication. She wants to offer the right support network for you, together with

your stepfather, and to help you get yourself into employment. You stepfather said that he also wants to be part of your support network and to assist financially.

The Court understands that it is your wish to be transferred to Jersey as that is where you see your future lying. It appears that this is possible and it would be likely to help you as you would have the support of your partner, your stepfather and various professionals. You are subject to Jersey notification and restraining orders and so will be subject to this statutory involvement after release. Mr Taylor says that ongoing mental health and healthcare support within and outside custody will be crucial in managing the risk that you pose to yourself as well as others. It is very positive that you want to work with the Jersey probation service after release and complete a skills course currently being run by that Jersey Service.

Sentence

In view of the seriousness of the offences, your offending history, especially breaching of orders, and your high risk of harm to others, only a sentence of immediate custody is appropriate and alternatives to immediate custody cannot be considered. There is a need to protect others and to deter others from making such threats.

In sentencing you we have taken into account the totality principle which is that the total sentence must be just and proportionate to the offending behaviour.

The Court has determined that the length of your sentence, after applying discounts for plea and mitigation should be 3 years. It is concerned that the Statutory Supervision period after release would not be long enough to ensure your rehabilitation. An Extended Sentence would have been beneficial and was the recommendation of Mr Taylor, but this option is not available to the Court where the custodial sentence is below 4 years. It also appears that a Probation Order is not a viable option in this particular case and in these circumstances.

It is to be hoped that those working with you while you are in custody and on your release can make sufficient progress with you to enable you to live safely within the Community.

Mr Paton, you know that the Court has no alternative other than to send you to prison for making such graphic and terrible threats to kill others. No-one whether an inmate or professional or anyone else should have to read letters like yours. They are truly shocking.

You told the Court that you are sorry and that you understand the impact on others. You said that you dislike yourself for what you have done and that you are really trying to change your behaviour. The Court hopes so and that you will continue to do all the work that you can to make sure that when you are next released, you can, as you put it, have a life outside prison.

Taking into account all the above the sentences will be as follows:

- Count 1 - 3 years from 28th March 2021
- Counts 2, 3 and 4 - also 3 years from 28th March 2021, to run concurrently

This means that in total the sentence will be 3 years' imprisonment from 28th March, 2021.

All of these sentences are to run concurrently, meaning that, in total, the sentence will be 3 years' imprisonment.

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 the shorter. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine, or both.

Advocate Green then read out a short statement as instructed and on behalf of the defendant Mr Benjamin Paton:

“I accept the sentence the Court has decided and I would like to say to the Court that I will use the time wisely to keep improving myself and my mental health and I will work hard with prison agencies to achieve rehabilitation so I can change the path I have been on for a long while.”

Catherine Maureen Fooks
Judge of the Royal Court

17 December 2021