

Making indecent images of children contrary to section 3(1)(a) of the Protection of Children (Bailiwick of Guernsey) Law, 1985.

[2022]GRC051

**ROYAL COURT
FULL COURT**

14 July 2022

**Before: Graeme Dewar McKerrell Esq., Lieutenant Bailiff and Jurats:
Stephen Murray Jones OBE, Terry John Ferbrache, Jonathan Grenfell Hooley,
David Percy Langley Hodgetts LVO, Steven John Morris, Stuart Michael Crisp,
Marilyn Jasmine King, Felicity Jane Quevâtre-Malcic, Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

KYLE LE LERRE

**Crown Advocate F M Russell appeared for the Crown
Advocate C J Green appeared for the Defendant**

LIEUTENANT BAILIFF:

Background

Kyle Le Lerre, you are a 33 year old local male who appears in this Court to be sentenced in respect of an Indictment that contains three Counts of making indecent images of children. You have pleaded guilty to each of them. At the conclusion of this case I will sit alone in my capacity as a Judge of the Magistrate's Court to sentence you for three offences of 'obtaining by false representation' that were committed after the date of the offences for which you are being sentenced by this Court. Although the Jurats will take no part in that process, it is right they know the existence of the other offences and that you are awaiting sentence in respect of them.

The matters to be sentenced in this Court are firstly, that between 3 June 2019 and 19 November 2019, you made 170 indecent photographs of children of Category A. The second Count is that between the same dates you made 169 such images of Category B and the final and third Count is that you made 608 images of Category C. In this context 'making' means downloading the images causing them to be stored on your device. As I have indicated, using the Child Abuse Image Database system, images are classified into the three Categories: A is the most serious, normally involving penetrative sexual activity; Category B involves non-penetrative sexual activity and Category C constitutes indecent images not falling within Categories A and B.

Irrespective of the category, the maximum penalty for each offence is 10 years' imprisonment. There is a description of sample images contained within each category in the Prosecution bundle which all relate to young boys in various poses and includes images of mutual oral sex and masturbation. We have been additionally told the boys are believed to be aged in the region of 10 to 13 years.

Apart from the matters just referred to by me and which I am dealing with in a moment, you have no other convictions and were therefore of previous good character at the time these offences were committed.

We are told that in November 2019, after receipt of information about indecent images of children being uploaded onto social media, officers arrested you at your home, on suspicion of being in possession of such images. A number of electronic devices were seized and for a number of reasons it took a considerable period of time for it to be ascertained that on one of them, (a Samsung mobile phone), was a total of 947 images divided between the three categories I have just mentioned. They were found in the standard ‘gallery’ application and so were stored as thumbnail cached copies. The path indicated the images had been downloaded and viewed and although the original images had been discarded, the copies remained viewable and accessible on that device.

You were interviewed by the Police on two occasions: the first time was after your arrest and the second was after the forensic examination of the Samsung device. On both occasions you elected to make ‘no comment’ as is your right.

Sentencing Considerations

For the avoidance of doubt, although it was information about images being uploaded to social media that led to you being arrested, you are being sentenced only on the basis of making images. Although the categorisation of images has changed, this Court is still guided by the Court of Appeal decision in Wicks, Sharp and Towers, Guernsey judgment 14/2012 and in particular, by the list of aggravating factors helpfully provided. Specifically in this case, the large number of images is important, which the Court of Appeal set at any number above three figures (in other words above 100) and here we have a number approaching four figures; in other words, 947 images. This is also relevant with regard to what the Court of Appeal described in paragraph 41 of their judgment as the “initial figure” in terms of the sentencing tariff, which they set in Wicks at being “low” whereas that is not the case here, although we do emphasise that 947 images is not the highest number by any means that this Court has had to deal with.

We have also noted the span of images across the three categories and that in Category A, being the most serious, the number is 170, which in itself is a high number under the Wicks guidelines. The Category C images are the greatest in number overall and although the lowest in terms of categorisation the descriptions in the Prosecution bundle seem to us to be at the higher end of seriousness within that category.

Mitigation

The Court recognises your previous good character, that you have pleaded ‘guilty’ and the need for a contested trial was obviated as a consequence of that. We also take into account the delay and we have noted all that has been said about your mental health issues, vulnerability and learning difficulties. Nevertheless, we are bound to say that we have considered the content of the Probation report and the mitigation put forward on your behalf this morning and express the view that we are sceptical about your explanation as to how you came to be in possession of the images, your motivation generally and your actions – or perhaps more accurately – inactions thereafter.

Sentence

The Court repeats what it has said in previous cases regarding these types of offences as being 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 of no consequence. The number of images on which we sentence is far from low and does include a significant number of images in the most serious category. Again, it has been stated in previous cases, each photograph that is created means that a young person has been subjected to unnecessary degradation and abuse. Your willingness to involve yourself has contributed to that.

We take into account totality and as I have said, your guilty plea, all that has been said on your behalf in mitigation and we have noted carefully the content of the Probation report and pay particular regard

to your previous good character and we take into account all the other information that has been provided to us.

We take as a starting-point overall a period of 3 years but after taking into account all that has been said, emphasising your medical history and other matters, we overall generously afford a total discount of around 50% and have arrived at a headline figure of 18 months' imprisonment, which will be immediate imprisonment. We have considered other sentencing options that do not involve immediate imprisonment and have rejected them as not being appropriate. As I say, we take into account totality and therefore have arrived at the specific sentences as follows:

- For Count 1 in respect of the Category A images - 18 months' imprisonment
- For Count 2 in respect of the Category B images - 12 months' imprisonment, to run concurrently
- For Count 3 in respect of the Category C images - 9 months' imprisonment to run concurrently
- Making overall a **total sentence of 18 months' imprisonment and that will run from today.**

Additional parts of the sentence

Having considered the recommendation in the Probation report, with which this Court agrees, we consider that the usual period of supervision, if any, after sentence would not be adequate for the purpose of preventing the commission of further offences and securing your rehabilitation. We note that you do not oppose an Extended Sentence and indeed, it would seem that you welcome the monitoring and rehabilitation that such a sentence will provide, along with Notification. Consequently, the Court is going to impose an extended period of imprisonment. This has two elements: the custodial term followed by an extension period after your release throughout which you will be subject to an Extended Sentence Licence. The extension period shall be for the period recommended of 3 years, thereby enabling the completion of any work begun with you whilst you are in Prison, as well as monitoring and addressing your progress after release. So the custodial term passed is, as I have said, **18 months' imprisonment** and the **Extension Period shall be for 3 years** thereafter. If upon release you fail to comply with the conditions of the Extended Sentence Licence or are convicted of further imprisonable offences, the Court sentencing you or the Parole Review Commitment can revoke the Licence, in which case you could be returned to custody for the remainder of the sentence.

The Extended Sentence standard conditions 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 Notification, 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).

Additional conditions are added, as recommended in the Probation report, and adopting guidance from the English case of Smith [2011] EWCA 1772, the Court considers it necessary, not oppressive and not disproportionate to impose them. The additional conditions are as follows:

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 any device capable of accessing the internet without the prior approval of your supervising officer.
3. Not to delete the usage history of any internet enabled device or computer used and to allow such items to be inspected as required by the Police or your supervising officer.
4. Not to have any contact, directly or indirectly, by any means, with any child under the age of 18 years, without the prior permission of your supervising officer, other than such contact that has been advertent and not reasonable avoidable in the course of lawful daily life.

In addition to which, there is Notification to consider. Having been convicted of a relevant offence, you became subject to the Notification requirements under Part 2 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013. Again, we follow the recommendation of the Probation officer that the notification period should be 5 years, which we will run from today, rather than from the date of your guilty pleas, so the relevant date for the 5 year period is from today. 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.

Lastly, we make a Forfeiture and Destruction Order in respect of the phone.

**G D McKerrell,
Lieutenant Bailiff**

14 July 2022