

Making indecent images of children.

[2021]GRC088

**ROYAL COURT
FULL COURT**

10th December 2021

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and Jurats:
Claire Helen Le Pelley, Jonathan Grenfell Hooley, Steven John Morris,
David James Mortimer, Joanne Marie Wyatt, Felicity Jane Quevâtre-Malcic,
Heather Reed, Simon Ernest Bodkin, James Robert Toynton.**

THE LAW OFFICERS OF THE CROWN

- v -

Davide ZIMOTTI

**Crown Advocate F M Russell appeared for the Crown
Advocate C J Green appeared for the Defendant
(An Interpreter was in attendance)**

LIEUTENANT BAILIFF:

Background

You are before the Court for sentencing on an Indictment consisting of 3 Counts of making indecent images of children between January and June of this year. There are 134 indecent images of children which the Prosecution have broken-down as follows: 59 of the images were unique, others were duplicates. The Prosecution have broken them down as follows:

- Count 1 - 71 images of Category A. Category A, under the classification, refers to images involving penetrative sexual activity, sadism, or sexual activity between children and animals (these were previously under the old classification SAP Categories 4 and 5).
- Count 2 - 36 images of Category B. This category refers to images involving non-penetrative sexual activity with children (the previously SAP Categories 2 and 3); and
- Count 3 - 27 images of Category C. Erotic posing with no sexual activity (previously SAP Category 1).

The maximum sentence on each Count is 10 years' imprisonment.

You were apprehended after complaints were made. Your mobile telephone revealed no indecent images, but disturbing search terms concerning children. Your laptop was seized at home and search terms were revealed about which we have heard e.g. "Film of children being hit", "Children Forced to have Sex in Guernsey", "Sex between children" and "Children forced to have sex in Guatemala". The majority of the indecent images were in cached data and were in videos. All were of male children. In interview you lied extensively to the Police, seeking to put the blame on others.

You were charged on 21.06.2021 and early 'guilty' pleas were indicated. You have been in custody since arrest on 16.06.2021. You are an Italian national aged 30 years. There are no convictions recorded.

Sentencing Considerations

We are bound by the guideline Court of Appeal case of Wicks (2012). The old classifications we have mentioned were in force then. The word "make" has a technical meaning in the legislation. Looking at the facts of this case there are 71 images of the highest and worst category. In addition, despite some duplication, a large number in total, i.e., above 100 - as the case of Wicks sets-out. Initial figures as a starting-point are given by the Court of Appeal. We have all three of the modern categories represented in this case. We need to consider all the facts and we select a combined starting-point of 4 years' imprisonment. We then look at any applicable mitigation.

Mitigation

To your credit is your previous good character and, despite lying to the Police in interview, early pleas of guilty. Accordingly, we need to apply this relevant mitigation. We have carefully noted what your Advocate has said, and a Probation report, which tells us that you are "not being honest" about the extent of your involvement in these offences. It is very familiar to us that persons in your situation frequently minimize their guilt. Your explanations to the Probation Officer are insulting to anyone's intelligence. These further lies do not help you. You appear not to be motivated to address your offending behaviour.

Our total discount is, on the circumstances of this particular case, in the region of just over one-third.

Sentence

We sentence concurrently to reflect your overall offending and on the charges before us and note the totality principle. Count 1 is the most serious offence.

The sentences imposed reflect what you have done, which is to exploit children, wherever they come from, and provide a market for images of their abuse and is a form of abuse of which these children are victims. We must also reflect the abhorrence which right-thinking people feel towards these type of offence, as your Advocate said. The sentences are:

<u>Count 1</u>	-	30 months' imprisonment
<u>Count 2</u>	-	18 months' imprisonment, <u>concurrent</u>
<u>Count 3</u>	-	4 months' imprisonment, <u>concurrent</u>
Total:	-	<u>30 months' imprisonment, with effect from 16th June 2021.</u>

Forfeiture and Destruction Orders, as requested.

Extended Sentence

We are very firmly of the view that we should recommend to the Lieutenant-Governor that you are deported. However, in the very unlikely event that you remain, we impose an Extended Sentence of 3 years, as recommended. For the purpose of managing, monitoring and rehabilitation. There are standard terms on that which will apply and your Advocate and yourself can discuss them with the interpreter. An Extended Sentence is an extended period of supervision after your release. If during that 3 year period you do not comply with all the recommendations, which we make as conditions, you will be locked up. However, I stress and repeat that the intention of this Court, so far as it is able to do so, is to see that you are deported from this jurisdiction.

In addition, there are other requirements which the Probation Officer has set out in paragraph 18 of the Report which we add, with these being proportionate in the circumstances of the case.

- I. To comply with any requirements specified by your Supervising Officer for the purpose of ensuring that you address your sexual offending behaviour problems;*
- II. Not to possess, or use any device capable of accessing the internet without the prior approval of your Supervising Officer;*
- III. Not to interfere with or surpass the normal running of any computer or device monitoring software;*
- IV. Not to use or activate any software which prevents a computer or device from notifying and/or displaying the history of internet or messaging use;*
- V. Not to use any "Cloud" or similar remote storage media capable of storing digital images or communications unless within 48 hours of the creation of an account for such storage you notify the Public Protection Unit and/or Probation Service of that activity and provide access to it;*
- VI. Not to possess any device capable of storing digital images or communications unless you provide access to such storage on request by the guernsey Police or Probation Service;*
- VII. Not to install any encryption or wiping software on any device other than that which is intrinsic to the operation of the device;*
- VIII. Not to have any contact directly or indirectly by any means with any child under the age of eighteen years without the prior permission of your Supervising Officer, other than such contact that is inadvertent and not reasonably avoidable in the course of lawful daily life."*

It is not a 'rubber stamp' by the Court, but if you remain in Guernsey we think these are the right conditions for you to be subject to, to stop you offending. You are also subject to Notification Requirements and you will receive a piece of paper telling you what those are. They apply for 3 years from the date you pleaded guilty to these offences i.e. 23.09.2021. I repeat on behalf of the Court and I emphasise strongly, these will only apply to you if our recommendation for Deportation is not acted upon and have to be added for completeness's sake. We will now deal with the question of Deportation.

Deportation

You are a 30 year old Italian national who came here in March, 2021, with UK granted Settled Status. You have no family, nor indeed, any ties here in Guernsey. We apply the legislation, noting as we must do, the balancing exercise required by the Court of Appeal.

We note the report of the Immigration Service and that you will not receive any more permission to work here in view of these convictions. Indeed, your original permission was cancelled when you were kept in custody.

It is plain that the public interest, in our view, justifies a recommendation due to the seriousness of these offences. There are, in short, no countervailing local or familial ties. We have no hesitation therefore in making the recommendation and this is not opposed by you.

So, the sentence is:

- 2 years 6 months' (30 months) imprisonment from your pleas of guilty.
- Extended Sentence and Notification Orders as applicable
- The Court respectfully recommends Deportation to the Lieutenant-Governor.

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

10th December 2021