

Possession of indecent images of children under, or apparently under, the age of 16 years in contravention of s.3A(1) of the Protection of Children (Bailiwick of Guernsey) Law, 1985, as amended. All three categories of indecent images were found, A, B and C.

[2022]GRC097

**ROYAL COURT
FULL COURT**

17th October, 2022

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and Jurats:
Stephen Murray Jones OBE, Terry John Ferbrache, David James Mortimer,
Joanne Marie Wyatt, Heather Reed, Simon Ernest Bodkin, James Robert Toynton.**

THE LAW OFFICERS OF THE CROWN

- v -

JOHN SEMENOWICZ

Advocate C G Dunford appeared for the Crown

Advocate S Mallet appeared for the Defendant

LIEUTENANT BAILIFF:

These are the sentencing remarks in the case of the Law Officers of the Crown against John Semenowicz.

Background

On the 4th & 5th April, 2022, you were tried in respect of six offences of possessing indecent images of children. You pleaded not guilty, raised a statutory defence that failed, and were convicted on all counts. Because of your medical condition, an intermediary, to whom we are grateful was found to assist you. You had also been shown to be fit to plead by the medical expert. On the 5th April, you were, as required made subject to Notification Order. A date was vacated for your sentence due to your Covid and the present date was found. You have been on conditional bail, but you were arrested on the 21st of May, 2020 and initially remanded in custody for your own protection, at your request until the 2nd June when you were bailed. Delays in the process were largely caused due to ensuring you had a fair trial and were fit to plead.

All three categories of indecent images were found, A, B and C. Category A is penetrative sexual activity, sadism, sexual activity between children and animals. Category B images non-penetrative sexual activity with children. Category C all other indecent images. A, B and C as stated, were found 146 in all in an external hard drive. There were 109 images of the worst type. The images involved children of both sexes some apparently 3 years' old. Other undesirable, but at the time legal, but now illegal, material was also found, not part of any charges involved extreme pornography, such as bestiality and pseudo-images of children. 159 deleted indecent images were retained, of which 132 are so-called extreme pornography. You put forward the statutory defence that the indecent images, the subject of the charges were unintended and you did not keep them for a reasonable time. The Probation

officer notes that you used the word “chtp”, when naming the files, a well-known phrase in the world of internet sexual activity “Pre-teen hardcore” backwards. As stated, after hearing your evidence and all the other matters adduced at your trial, you were convicted on all accounts. You deny a sexual interest in children, which is not an unusual stance in offending of this type. You did describe yourself as a “sexual animal”, who has “dipped his toe” in many things that were not illegal. However, you are now aged 63; resident in Guernsey for some years, and of previously good character.

Sentencing Considerations

This case has the aggravating factor of a substantial number of images, most of the worst classification and a not guilty plea. Looking at Court of Appeal cases and following the consistent practice of the Royal Court, a custodial sentence is merited. We start at a combined total, representing all the facts of 3 years’ imprisonment. We next consider appropriate mitigation in the case, noting the maximum sentence is 5 years.

Mitigation

You are a man of previously good character and as stated, now 63. You had a career in Guernsey lecturing at the College of F.E. You have the condition of Parkinson’s disease, which is marked in your case, with noticeable symptoms. You do not have an acute or enduring mental illness.

We note what your capable advocate has said and the various references, which though to your credit do not really grapple with the serious offences for which you are being sentenced today. But you are of good character over many years’, we repeat and that is certainly in your favour. Also, the defence accepted the Prosecution evidence at your trial, thus saving valuable time.

Had you been in good physical health, you would receive an immediate custodial sentence which would give full credit for your personal mitigation, but the evidence as to your Parkinson’s is clear. Because of your, frankly poor, physical condition and for no over reason , we will, exceptionally suspend the sentences. This is not a precedent for anything. Physically you are not a well person, and incarceration would necessitate a lot of medical care and treatment. You have, as the Doctor reported an incurable, progressive medical condition. That is the reason for the course we are taking today and why you are not here in the dock and you have had a helpful intermediary. We point out that a lesser sentence would be most inappropriate. Our mitigation reduces the total by 1/3.

Sentence

We have given our reasons; we re-emphasise that this exceptional course is taken purely on the accepted facts in this case. It is a new strand of sentencing but the poor physical health of a person being sentenced is always a material consideration.

For the reasons given, the sentence on each Count is 2 years’ imprisonment, suspended for 3 years, concurrent. We sentence on the totality principle, representing all the offending disclosed and there will be Forfeiture and Destruction Orders, as requested.

Notification Requirements

You were subject to this, as required by the law since conviction. We have carefully considered the facts and the recommendation by the Probation officer. The 5 year period is a suggested minimum, allowing for appropriate monitoring by the Multi-Agency Public Protection mechanism. On the facts found we agree the 5 year period as a minimum is proportionate and affords a level of public protection. It can be enhanced if possible, and if needed. This began as stated, on the 5th July, 2022. You will, Mr Semenowicz, receive a written notice which you can go over with your advocate, which explains everything in full detail, but for the benefit of the record and those following the case, I will summarise the requirements:

- You are now required by law to notify the Police within 24 hours, or within 24 hours of release if you are in prison or otherwise detained, of your name, any other names you use, your address, your date of birth, your Social Security number, your passport details, your bank account details and your employment details.
- If asked to do so, for verification purposes, you must allow your fingerprints, photographs and/or a DNA sample to be taken.
- You must notify the Police of any change of name, or home address at least 24 hours in advance of the change occurring, or within 24 hours if you had no prior knowledge of the change occurring.
- You must notify the Police of any address where you reside, or stay for 7 days or longer, this means either 7 days at a time or a total of 7 days, in any 12 month period.
- You must notify the Police of your details every 12 months, on the anniversary of your official notification, even if there is no change to those details.
- You must notify the Police at least 7 days in advance, of any plans to travel abroad. You must do so by going in person to the Guernsey Police station, unless otherwise informed in writing by the Guernsey Police.

These, as stated, come from the date of conviction. If you fail to comply with the requirements without a reasonable excuse or give false or misleading information you will be liable to prosecution and end up in Prison. As stated, Mr Semenowicz you will receive the full written notice, which has everything in detail.

Sexual Offences Prevention Order (SOPO)

H.M. Procurer also applies for an order under Section 18 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, as amended. We note the submissions of counsel, in this matter.

The application is in accord with the Probation officer's recommendation for a period of 3 years. You have been convicted of relevant offences under the Law of 2013. On the facts, you pose a risk of sexual harm to children. We note the specific grounds in the application and find they are plainly met out. You filed the indecent images under the acronym "pthc", written backwards as already explained. You filed some images as "FAV", as your favourites and your explanation this was "film animation and video", is rejected as false; there were no animated videos or images and we repeat a substantial number of the matters for which you have been convicted were of the worst category.

We have considered the proposed conditions set out in the Probation report and in the application, more importantly by the Crown. We are not simply a rubber-stamp of applications, and have considered all the relevant circumstances. We do find the application is proportionate and, importantly, provides a level of public protection. The conditions are appropriate and meet the needs covered in the legislation. We are satisfied of this on the balance of probabilities. We find a total of lack of remorse here, this is not a victimless crime, but a form of child abuse. On considering the facts, we make the order for an enhanced period, looking at the individual circumstances of the case, for 5 years' from today.

The conditions will be given to you in an order, which the Crown will draft for signature, in due course, therefore you can have recourse to that, but they amount to the following:

- Not to have any unsupervised contact with any child under 16, otherwise as is unavoidable in the ordinary course of daily life.
- Not to use any computer or device capable of accessing the internet, unless:

1. You have the prior approval of your supervisor.
 2. It has the capacity to retain and display the history of internet use and does not delete such history and any communications that are exchanged.
 3. You make the device immediately available upon request for inspection by a Police officer, or employee or a Probation office and you allow such persons, to install risk managements monitoring software, if they so choose.
- This prohibition does not apply to a computer at your place of work, or any other computer which the public, or a specific category of the public can use.
 - Provided that, within 48 hours of you commencing use of such a computer, you notify the Public Protection Unit and/or the Probation Service.
 - Not to interfere with or surpass the normal running of any computer monitoring software.
 - Not to use or activate any software which prevents a computer or device from notifying and/or displaying the history of internet or message use.
 - 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.
 - 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 the Probation Service.
 - Not to install any encryption or wiping software on any device, other than that which is intrinsic in the operation of the device.

As stated, we have carefully considered all the facts in this case and the submissions of Counsel and we make the order for a period of 5 years. Those are the orders of the Court; 2 years' suspended sentence, a notification requirement for a 5 year period and the SOPO for a 5 year period. If you fail to comply with the SOPO, that will also result in a Court appearance. I order, as I indicated earlier setting all the conditions in the SOPO will be given to you once it is approved and signed by myself. I mention, as well the Confiscation Destruction and Forfeiture Orders. That is the total sentence of the Court and concludes the matter today.

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

17th October, 2022