

Joint charges of burglary and possession of an offensive weapon. Possession of class A and B controlled drugs.

[2023]GRC020

**ROYAL COURT
FULL COURT**

28th April 2023

Before:

**Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Stephen Murray Jones OBE, Claire Helen Le Pelley, Joanne Marie Wyatt, David John
Robilliard, Stuart Michael Crisp, Marilyn Jasmine King, Tina Jane Le Poidevin, Paul Martin
Burnard and Simon Ernest Bodkin.**

THE LAW OFFICERS OF THE CROWN

- v -

ROSS CHRISTOPHER LE PAGE

and

BEN LE PREVOST

Advocate F Russell appeared for the Crown

Advocate C J Green appeared for the Defendant, Ross Le Page

Advocate S E Steel appeared for the Defendant, Ben Le Prevost

JUDGE OF THE ROYAL COURT:

Background

Gentlemen you appear for sentence today on an Indictment containing 4 Counts of which the first two are joint. First, that you together on 21st January 2022 burgled Room 18 at the Carlton Inn and stole a number of items belonging to Jason Duncombe, including a passport, medicinal cannabis, a jar of loose coins, laptop, iPad, speaker and two chargers for which offence the maximum penalty is 14 years' imprisonment. The second count is that on the same date you had with you at the Carlton and its car park an offensive weapon, namely a golf club, for which offence the maximum penalty is 5 years' imprisonment.

Mr Le Prevost you are also to be sentenced for 2 Counts of possession of controlled drugs, the first cannabis the Class B drug and the second Buprenorphine also known as Subutex, which is a Class A drug. The maximum penalties are 10 years' and 4 years' imprisonment respectively. The facts are set out fully in the Prosecution outline and can be summarised.

On 21st January 2022 Jason Duncombe was living in Room 18 at the Carlton Inn which is a multiple occupancy building with restaurant and adjacent car parks with much of the buildings and external areas

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covered by CCTV. Mr Duncombe went out at about 9.50pm. Mr Le Page, you had an ongoing dispute with Mr Duncombe and wanted to intimidate him. You and Mr Le Prevost both went to the hotel with your faces covered and wearing clothing to disguise your appearance. Mr Le Page you cut the CCTV and forcibly entered the room damaging the door and you both took items from the room. You left and Mr Le Page you can be seen throwing away Mr Duncombe's passport into a bush. Your comings and goings were captured on CCTV so the manager called the Police. While the Police were in attendance Mr Duncombe returned and was able to tell them what had been taken. There was a wooden hammer left on the bed by one of you. At about 12.30am G had gone to look at the damage to the door, by then you had returned to the hotel with golf clubs to fulfil the original mission of intimidation. You were seen by the manager on the CCTV, he called the Police back but you fled before they could catch you. You left the clubs behind and your DNA was on them.

Mr Le Page you were arrested following identification from the CCTV footage and Mr Le Prevost you were arrested through links with the car used. Loose change was found at your home, together with the two drugs, 0.05 grams of cannabis and 0.4 grams, fragments of Subutex. Values were given. Both your phones were seized and showed evidence of communications between you on the night in question.

Mr Le Prevost, you initially denied involvement in the burglary but at a third interview, held at your request, admitted your part in it and that you went along with Mr Le Page twice to scare Mr Duncombe, though you had no intention of using the golf clubs. You said that you were intoxicated when the plan was made earlier in the day. Mr Le Page you exercised your right to silence.

Mr Le Page you are a local man of 33, 32 at the time of the offences, and unemployed when arrested and living at your grandmother's. You have a criminal record going back to your teens, including numerous driving offences and thefts for which you have received sentences of immediate custody. You were last released in 2017 and other disposals. Your last offence was in July 2021 breach of bail. You are due to be sentenced later today with a different co-defendant for another matter. You have been remanded in custody since 19th October 2022. [note this date has been corrected after the hearing]

Mr Le Prevost you too are a local man. You are 30, 29 at the time of the offences and working as a tiler/painter. You also have previous convictions starting in your teens, including some thefts, assaults, criminal damage and numerous public order offences. Your last offence was on 14th January 2021 when you received a 4 month custodial sentence for cultivation of cannabis. You have long outstanding matters in the Magistrate's Court which pre-date the Indictment and you will be sentenced for those matters after this hearing. The offences were committed, therefore, while you were on bail. You have been remanded in custody by the Royal Court since 5th September 2022.

Sentencing Considerations

There are no sentencing guidelines for burglary in Guernsey so we sentence according to the local conditions but taking into account the useful list of aggravating and mitigating factors from the English sentencing guidelines. In Guernsey, burglary and offensive weapon offences are viewed as serious and no doubt cross the custody threshold. The burglary and offensive weapon offences were committed at separate times but they form one course of conduct so we take two separate starting points and aggregate them and then apply totality to arrive at a combined starting point. It goes without saying that the Court is satisfied that the custody threshold in respect of your offending has been passed.

The starting point before aggravating and mitigating factors of the offence will be in the case of the burglary 2 years, 6 months and in the case of the offensive weapon 18 months, which gives an aggregate of 4 years. There are several aggravating factors but we do note that this is not an offence of aggravated burglary. There was a stated intention to intimidate. It was night time. The premises burgled were Mr Duncombe's home. There were two defendants acting together. There was a degree of planning and sophistication with the disguising clothing, the face coverings and the cutting of the CCTV. There were two visits to the same premises on the same night. There are some relevant previous convictions for

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theft. Mr Le Page does not exclude the use of violence had Mr Duncombe been present. In the case of Mr Le Prevost the offences were committed in breach of bail.

We have taken the aggravating factors and considered the question of totality so that the result is that the combined starting point, allowing for totality, for Mr Le Page remains at 4 years and for Mr Le Prevost is 3 years, 6 months. In relation to Mr Le Prevost and the possession of drug charges we propose to make no additional penalty.

Plea

The Court must first consider the impact of pleas on sentence. Mr Le Prevost you indicated your plea at the earliest opportunity so you are entitled to full credit. Mr Le Page, you pleaded not guilty so are not entitled to any credit.

Mitigation

The Court has considered carefully the helpful and informative Social Enquiry Reports prepared in respect of you, as well as the sensible submissions of your Advocates. We have also read the letters provided.

Mr Le Page you have accepted responsibility for going to the Carlton on that night and for taking Mr Le Prevost with you. Whatever had or had not happened between Mr Duncombe and your ex-partner, going to confront him with golf clubs at night was not the way to resolve it. There is a concern that you still consider that he deserved it and more. There is continuing animosity and you could not exclude the use of violence. Your remorse is limited to your having involved your co-defendant and the potential impact on other residents. We note the caring attitude which you have demonstrated towards your grandparents and aunt, who have depended on you for your help. You have a poor record. Sensibly, your Advocate accepts that immediate custody is inevitable for you.

You are assessed as having a very high likelihood of re-offending, especially violent offences if you feel action is required which we must take into account. We do note that it is not felt that you pose a risk to the general public.

Mr Le Prevost, we note your lesser role in this matter. This was not your dispute. You were so intoxicated with alcohol and substances that you say you agreed to go along in the end and you have very little recollection. You have demonstrated remorse by your public apology and we note also your voluntary attendance at the station demonstrating your acceptance of responsibility for your actions. Your thinking is clearer since your detox in Prison and you are ashamed of your previous convictions and behaviour and you understand the need to stay off drugs. You have been accessing other support in Prison and have plans for courses. We note your good work ethic despite your lack of qualifications and you say that you have a job to go to on release. Your family situation is complicated and we note it. You have a very poor record with a pattern of substance abuse and anti-social behaviour. You are assessed as having a very high likelihood of re-offending which we take into account. It is said that you can pose a risk of harm to the public, especially if under the influence.

Sentence

This Community rightly deplores burglary which invades the privacy of an individual's home. The carrying of offensive weapons is dangerous and here could have escalated into violence; it is more by luck than judgement, in our view, that it did not.

In your case, Mr Le Page immediate custody is inevitable.

Mr Le Prevost the Court has thought carefully about the appropriate sentence for you. The Social Enquiry Report and your counsel focus on rehabilitation but we are concerned also with punishment and deterrence. You have made progress in Prison which you have never made before and there is here

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an opportunity for your rehabilitation. You have served a period on remand which we are able to take into account in sentencing you. Taking into account your plea, your mitigation and those circumstances we are able to consider non-custodial alternatives in your case.

Mr Le Page you will receive a custodial sentence. You have said that you will take advantage of the opportunities given to you in custody and we hope that you will do. It is in your hands.

Mr Le Prevost I will explain in a moment the range of non-custodial sentences which will be imposed on you. You have made good progress while you have been in Prison. The ultimate test for you will be keeping drug free in the Community. Your counsel acknowledges that complying with any requirements of the Criminal Justice Substance Service will be difficult for you and you have found it very difficult in the past which we note. You will have to keep focused on all the work necessary. You also have a history of breaching Community Service Orders, one of which will be imposed upon you in a moment, be in no doubt of the consequences should you breach any of the orders which the Court is going to make.

Taking into account all of the above and applying the appropriate discounts to you both the sentences will be as follows:

Count 1 on the burglary

- Mr Le Page 3½ years' immediate custody with effect from 19th October 2022.
- Mr Le Prevost 2 years' custody suspended for 3 years together with a Probation Order for 2 years.

Count 2 – the offensive weapon

- Mr Le Page immediate custody of 1 year 3 months, concurrent.
- Mr Le Prevost Community Service Order of 180 hours as a direct alternative to 1 year's imprisonment, concurrent with the suspended sentence.

As I have already said there is no separate penalty in relation to the drug offences.

I now turn to other matters.

Mr Le Page, 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.

Mr Le Prevost, in relation to the suspended sentence you will not have to serve the suspended sentence of imprisonment unless during the next 3 years you are convicted of an offence punishable with imprisonment. If you are convicted of such an offence, you will be liable to serve all or part of those sentences. A suspended sentence is not a let off. It will hang over your head for that period of time and those will be the consequences, so please keep that firmly in your mind.

Again, addressing Mr Le Prevost the Court has imposed a sentence of Community Service of 180 hours as a direct alternative to 1 year's custody, concurrently with the suspended sentence. The Order is made because of the seriousness of the offence for which you have been convicted. You are thereby being offered an opportunity to make a positive contribution to your Community through unpaid work. You are willing to be made subject to and you understand the nature and effect of a Community Service Order, the power of the Court to review the Order and the consequences that may follow if you fail to comply with any of the requirements of the Order, or if you are convicted of a further offence while the Order is in force. The Court is satisfied that provision can be made for you to perform work and that

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you are a suitable person to perform it. Please note, that if you fail to complete even one hour without a medical certificate or commit any other offence you will be brought back before this Court and you will face going to Prison.

Mr Le Prevost, the Court has also decided that it is appropriate to add a Probation Order and will do so for the period recommended in the Report of 2 years. That period will represent an opportunity to gain a fuller understanding of your offending behaviour and your response to it. It will enable you to be supervised and supported to deal with your alcohol and substance abuse issues. It is imposed for the purpose of your rehabilitation, to prevent you from offending further and to protect the public. We are satisfied that you understand the purpose and effect of the Order and the powers that follow if it is breached, including the consequences but in summary you must:

- keep in contact with your Supervisor in accordance with the instructions you will be given from time to time,
- notify your Supervisor of any address change or working arrangement,
- not do anything which would undermine the purposes already mentioned for which the Order is made, and
- comply with the additional requirements which we are satisfied should be attached to the Order as requested, namely
- attend the Criminal Justice Substance Service as directed and comply with alcohol and drug treatment, as required.

If you were to fail to comply with any requirement you would be liable to be returned to Court which has powers to continue the Order, with or without variation, to fine you, or even to revoke the Order and re-sentence you. Mr Le Prevost you have a lot of work to do.

The Crown's application pursuant to Section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006, in relation to two iPhones, one belonging to each of you. Each valued at £125 and £250 respectively, the latter being Mr Le Prevost's phone is opposed. This is unusual. Mr Le Prevost opposes it because on the phone there are photographs of his family. His counsel urged the Court when exercising its discretion to make such an Order, under the provisions of the Law which I read out, to take account, particularly of the other effects on a person in respect of whom a Forfeiture Order is made. In this case, the other effects are said to be the emotional damage to you of losing those photographs. Mr Le Page, after the Court had risen, also submitted a challenge to the making of the Order. He disputes that the phone was used for the offences but we are satisfied that we were told that Mr Le Page's phone contained records of deleted calls between the two defendants and therefore we do not accept the challenge on that basis. It is clear to the Court that the telephone has been used in the commission of the offences. There was a further challenge in a similar way to that of Mr Le Prevost on the basis that there was a sentimental value in the phone because it had been given to Mr Le Page by his grandmother. We have taken all matters into consideration in exercising the Court's discretion but the Orders are to be made. We do not consider that the points raised in relation to the photographs or sentimental value are sufficiently serious to negate the clear purpose of such Orders.

The Crown's application pursuant to Section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 as amended which was not opposed, for the forfeiture and destruction of the drugs, which were lawfully seized and relate to the offences is also granted.

I turn finally to the issue of compensation. We have considered whether a Compensation Order should be made in this case and we have formed the view that it would be inappropriate in this case to make such an Order against Mr Le Page, as he will be in custody. In relation to Mr Le Prevost, we make the Order that the £49.31 which was found at his home in loose change is effectively made into a Compensation Order. So we make a Compensation Order in that sum which is to be payable immediately and I assume that arrangements can be made for it to be released from the Police and handed over to Mr Duncombe. Mr Le Prevost you volunteered to make reparation to Mr Duncombe,

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in the circumstances we are not going to make any further Order but we hope that you will honour that commitment.

In summary, therefore, gentlemen, the outcome of today's sentencing hearing is as follows:

Count 1 Burglary

- Mr Le Page - 3½ years' immediate custody
- Mr Le Prevost – 2 years' custody suspended for 3 years, together with a Probation Order

Count 2 Offensive Weapon

- Mr Le Page – 15 months' immediate custody concurrent to the above
- Mr Le Prevost – 180 hours Community Service Order as a direct alternative to 1 year in custody concurrent to the suspended sentence.

Counts 3 and 4

- No separate penalty.

Compensation Order

- Limited to £49.31 as explained

Forfeiture of both phones and forfeiture and destruction of the drugs

**Catherine Maureen Fooks
Judge of the Royal Court**

28th April 2023