

Sentencing on two offences – one of anal rape, contrary to Section 11 of The Sexual Offences (Bailiwick of Guernsey) Law, 2020 and the second is the offence of sexual assault by penetration, contrary to Section 12 of the same Law.

**Section 11 of The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 applies to this case so there must be no publication of any report containing the name address or school or any particulars likely to lead to the identification of the defendant, complainant or any witness who is a child and there must be no publication of any picture of any such child. Any publication by any medium including social media is an offence.**

**Section 45 of The Criminal Justice Sex Offenders and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2013 also applies to this case so there must be no publication of any matter including (but not limited to) the name, address of work or school or any photograph likely to lead to the identification of the complainant, the Victim in this matter, in the complainant's lifetime. Any publication by any medium including social media is an offence.**

**[2024]GRC078**

**ROYAL COURT  
FULL COURT**

**20<sup>th</sup> August 2024**

**Before: Catherine Maureen Fooks, Judge of the Royal Court  
and Jurats: Stephen Murray Jones OBE, Claire Helen Le Pelley,  
Steven John Morris, Stuart Michael Crisp, Felicity Jane Quevâtre,  
Simon Ernest Bodkin, Jillian Clark and David Mortimer**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**“R”**

**Redacted for publication**

**Advocate C G Dunford appeared for the Crown**

**Advocate P Lockwood appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Background**

R you have been found guilty, by a majority, of two sexual offences. The first is the offence of anal rape, contrary to Section 11 of The Sexual Offences (Bailiwick of Guernsey) Law, 2020 and the second

is the offence of sexual assault by penetration, contrary to Section 12 of the same Law, the maximum penalty for each being life imprisonment.

Whilst you do not accept your guilt, this Court accepted the victim's evidence and so found you guilty and it is on that basis that this Court must sentence you. The facts are that in the early hours of 8 May, 2023 you met your victim at [...]. You had not met in person before but you had been messaging each other. You had both consumed alcohol. Your victim was dropped off and collected. You made your way on foot. You were alone when you met. Initially you were [...] after which you moved [...]. There was some consensual kissing and sexual activity, including vaginal sexual intercourse and oral sexual intercourse. You digitally penetrated her anus (Count 2). In the course of consensual vaginal sex, you anally penetrated her with your penis on two occasions, without her consent (Count 1). She asked what you were doing and you told her to trust you, that she would like it. She described how it hurt her and she was crying and panicking. She contacted her friend and you parted company. Her friends described her as visibly upset and distressed immediately after the events. The victim told two friends and then her parents and you were arrested on 10 May, 2023.

You were interviewed twice by the Police, you answered the questions and denied any non-consensual activity.

The victim has explained in her statement the profound and long-lasting impact of your offending on her mental and physical health. She described her initially hourly panic attacks and severe weight loss in the immediate aftermath of the offence and her need for professional assistance. Her intimate relationships have been impacted greatly by panic attacks and she is clearly traumatised. She was 17 years old on the date of the offences.

You are a local man, now of 17 years. You were 16 at the time of the offences. You live at home with your parents. You have left school and are an apprentice [...].

You have no previous convictions. The referral for speeding is irrelevant. You have been on conditional bail throughout the proceedings.

### **Sentencing Considerations**

There are no specific guidelines for the sentencing of sexual offences in Guernsey. Such offences are rare and this Court wants them to remain so.

The Guernsey Court of Appeal recently reviewed the sentences of this Court of persons found guilty of rape and other sexual offences in the cases of The Law Officers of the Crown v Trenchard [2024] GCA025 and The Law Officers of the Crown v D1 and D2 [2024] GCA029. In the judgments in those matters the Court of Appeal affirmed the practice of this Court to look at the English case of Millberry [2002] EWCA Crim 2891, as well as the current English Sentencing Guidelines for guidance.

In Millberry, it is said that the Court should consider the effect on the Victim, the blameworthiness of the offender and any threat to the public. The starting point for a single offence of rape without any of the additional features and aggravating factors identified in the Millberry judgment, should be 5 years, increasing to 8 years where there are any such features or aggravating factors, and specifically, including where the victim is a child. Those factors are not dissimilar from the English Sentencing Guidelines where the minimum starting point is also 5 years and the highest 15 years, based on gravity assessed by reference to three criteria which are broadly similar. First, the harm to the victim, second the culpability of the offender and third the level of risk posed by the offender to society. The starting point is then increased or decreased by the application of aggravating and mitigating factors. This Court routinely looks at the sentencing guidelines in England for guidance in a range of cases, not just sexual cases, especially in terms of aggravating and mitigating factors. We have started our sentencing exercise with all of the above in mind.

We must first set the starting point as if you were an adult. Were we sentencing an adult for the anal rape alone, the initial starting point before aggravating and mitigating factors would be 5 years. In your case there are two offences, so the starting point for the anal rape will be increased to take account of the second offence and also the aggravating factors and a lower concurrent sentence passed on the second offence. There are aggravating factors in your case. Your victim was a child and this is a specific aggravating factor. But, we note, in your case, this has to be balanced by closeness in your ages. The context of the offending was in, otherwise, consensual sexual activity but your victim was entitled to consent or not consent to each specific act. All offences of rape have a significant impact on victims which cannot be overstated but we do not find evidence in this case of additional impact which would start the starting point to be increased. There is, as your Advocate submitted, an absence of most of the aggravating factors set out in both Milberry and the sentencing guidelines. There was no violence beyond the act itself. Alcohol played no significant part but there was a persistence in the face of resistance from your victim and we assess there was also an element of dominance. Were we sentencing you as an adult, the revised starting point would be one of 6 years and 8 months.

You are young person and we must approach sentencing in accordance with the sentencing principles applicable to young persons, which in Guernsey are set out in the statutory framework under the terms of The Criminal Justice Youth Detention (Bailiwick of Guernsey) Law, 1990 and The Criminal Justice Juvenile Court Reform (Bailiwick of Guernsey) Law, 2008. The recent Court of Appeal decisions referenced above confirm that age is an important mitigating factor to be reflected in the final sentence set.

Under the 2008 Law, the Court when sentencing is required to have, as its principal consideration, the prevention of offending by the young defendant in the long and in the short term, taking into account also the interests of any victim of criminal behaviour by the young defendant. It must also consider the welfare of the young defendant and the desirability of ensuring that the young defendant remains in the community, as far as is practicable and consonant with the need to ensure the safety of the public.

Under the 1990 Law, the Court must be satisfied that the only appropriate method of dealing with you is to pass a custodial sentence, which is one of Youth Detention, which must not be passed unless one of three factors is satisfied, only two of which are applicable to you, and they are:

- (a) that a custodial sentence is necessary for the protection of the public or the prevention of crime, or
- (b) or that the offence was so serious that a non-custodial sentence cannot be justified.

The Court is required to take into account any information relevant to your character and physical and mental conditions and should consider reports. The Court has had the benefit of the Youth Justice Report on you. The Court is also required to consider the issue of disruption to education and training. The Court is satisfied that there would be education provision for you within the prison setting.

The Court of Appeal in the D1 and D2 case endorsed this Court's use of the English specific Sentencing Guidelines for Sentencing Children and Young People for Sexual Offences for guidance. It sets out the following guidance in relation to possible reduction of sentence for young people, which we consider to of assistance. It says this, "*When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of one half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically.*" This recognises that young people are still not fully mature, both generally and in relation to sexual matters and are likely to be more affected than adults by a custodial sentence, which will seem longer on account of the offender's young age. In England it is said that a sentence for rape by a youth should normally, but not invariably, result in a shorter sentence than for an adult.

Having taken all of that into consideration, we are of the view that the adult sentence should be reduced by 40%, on account of your age.

## **Plea**

You pleaded not guilty and you forced your victim to come to Court and give evidence, thereby re-living her ordeal. No credit is available to you for plea but the sentence is not aggravated by reason of your not guilty plea and the need for the trial.

## **Mitigation**

The Court has considered carefully the helpful Youth Justice Report prepared in respect of you. We have also listened to the careful and appropriate submissions of your Advocate. We have read the letters provided by your parents, football coach, tutor and employer.

You do not accept the Court's verdict and have appealed. The Court respects that this is your right but it does mean that you have not engaged with the Youth Justice Report and there is no mitigation by way of remorse or response to offending. Your stance has also prevented any meaningful assessment of your risk of re-offending.

You have no previous convictions, which is an important piece of mitigation as is, of course, your age at the time of the offences but this has already been taken into account in the starting point. There is no evidence of problematic use of alcohol, substance misuse or anti-social behaviour traits beyond the offending.

We have also found mitigation in the letters provided. It is to your credit that you continued your studies after your arrest and secured your place on the [...] course. We note and take fully into account the glowing reference from [...] and from your employer, who describes you as hard working and talented. We also take into account what your parents wrote about you. Even though they are your parents, we accept their description of you as a loving, caring and well-behaved young man, a description echoed in the other letters. You have a strong and loving family. They are feeling the impact of your offending, especially your mother.

You have complied with your bail conditions and the requirements of the Court process. We have heard that your [sport] (which you were playing to a high standard and in which you were considered to be an integral part of the team) and your social activities have been curtailed as a consequence of your convictions, and your standing in our small community has been diminished.

The report-writer has expressed concerns that you may be particularly vulnerable in prison and may need support and urged the Court to keep the sentence as short as possible.

It has not been possible for Youth Justice, even with assistance from Adult Probation Services, to come to any definitive conclusion as to the risks you pose of re-offending and specifically of sexual re-offending, whether against adults or children and no treatment plan could be identified. We have to proceed on the basis that there are risks, albeit unquantified ones. We note that responsibility for your assessment and treatment will pass to Adult Probation Services on your 18<sup>th</sup> birthday.

The report-writer requests consideration of an Extended Sentence Licence, in respect of which you have not made any submissions but there is no application for or recommendation for a Sexual Offences Prevention Order (SOPO), at this stage. We note that you are subject to MAPPA.

## **Sentence**

In your case, the Court has to have regard to the sentencing principles from the 1990 and 2008 Laws. The starting point has already been reduced on account of your age at the time of the commission of the

offences. Even taking into account the terms of the 2008 Law and recognising that a sentence of Youth Detention is a last resort, a sentence of Youth Detention is the only appropriate sentence in view of the seriousness of the offences. There are few offences more serious than rape and there is a need to protect the public and prevent crime, but the starting point has been adjusted to reflect your age and we are able to make a further reduction to take account of your personal mitigation. We have, of course, taken into account the totality principle so that the end sentence is just and proportionate to the offending behaviour, as a whole. The Extended Sentence Licence will also be imposed.

The Court has found you guilty of the rape and sexual assault of a young woman. You have to be punished accordingly. The offences were committed in the course of sexual activity, some of which was consensual. She was entitled to choose to which sexual activity she was consenting. You were determined to have anal sex and so carried on even despite her protests. She will never be the same person again and neither will you. You are responsible for both of those outcomes.

Those who rape and assault others sexually have to go to prison (Youth Detention) and have Orders made against them which are long lasting to ensure that there is no further offending and that they are rehabilitated. We have reduced your term of Youth Detention to the minimum we could, taking into account your age and mitigation. We urge you to engage fully with those who will seek to work with you.

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

- **Count 1** – 3 years' Youth Detention from today.
- **Count 2** – 2 years' Youth Detention concurrent.

This means that in total the sentence of Youth Detention will be **3 years from today**.

### **Extended Sentence Licence**

Having considered the recommendation in the Youth Justice Report, with which the Court agrees we consider that the usual period of supervision after sentence would not be adequate for the purpose of preventing the commission of further offences and securing your rehabilitation, consequently the Court is imposing an extended period of imprisonment, in relation to each of the offences. An Extended Sentence Licence has two elements, a custodial term which I have already told you will be 3 years in total, followed by an extension period after your release, throughout which you will be subject to the Extended Sentence Licence. The extension period shall be for the period recommended of 2 years on each count, concurrent thereby enabling completion of the work begun while you are Youth Detention, as well as monitoring and addressing your progress after release.

If, upon release, you fail to comply with the conditions of the Extended Sentence Licence, or are convicted of a further imprisonable offence, the Court sentencing you, or the Parole Review Committee, can revoke the licence, in which case you could be returned to Youth Detention for the remainder of the sentence.

The standard conditions are as follows:

1. to be well behaved and not commit any offence and not do anything which could undermine the purposes of your supervision, 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 the approved address;
5. to undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change; and
6. not to travel outside Guernsey without the prior permission of your supervising officer (which will be given in exceptional circumstances only);

We add an additional condition, as recommended by Youth Justice which is clear, necessary and neither oppressive nor disproportionate, that condition is as follows:

- not to have any contact directly or indirectly by any means with any female person under the age of 18 years without the prior permission of your supervising officer, other than such contact as is inadvertent and not reasonably avoidable in the due course of normal daily life.

When you were convicted of the relevant offences under the 2013 Law you became subject to the Notification requirements under part 2 of that Law and we must now set the notification period. We have decided that the appropriate notification period is one of 7 years, which runs from the date of your convictions, which is 19 June, 2024. 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, but in summary they are:

- you should by now have provided the Police with your personal details as required by Law and explained to you when you were convicted;
- within 24 hours of your release (if not already provided) you must provide the police with your personal details as set out on the notice you will be given;
- [After your release] 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 notice of that change occurring.
- [after your release] 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 initial notification, which is 19 June, 2024, even if there is no change in those details; and
- [after your release] you must notify the Police at least 7 days in advance of any plans to travel abroad.

You may have noticed that there is some conflict between those provisions and the provisions of the Extended Sentence Licence for so long as the Extended Sentence Licence runs its provisions take precedence. So refer to the Extended Sentence Licence first and then the Notification provisions and if you have any questions or doubts, please check at the time.

So finally, the total sentence is as follows:

- **a total term of Youth Detention of 3 years from today;**
- **an Extended Sentence Licence of 2 years; and**
- **a Notification period of 7 years.**

The Court records its gratitude to your mother who has performed the unenviable role of your appropriate adult throughout these proceedings.

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

**20 August 2024**