

Sentencing on three counts of sexual touching of a child; contrary to Section 21 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020; an offence of causing or inciting a child to engage in sexual activity; contrary to Section 22 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020; three counts of making indecent images of children; contrary to Section 105 (1) (a) of the Sexual Offences (Bailiwick of Guernsey) Law, 2020 and three counts of distributing indecent images of a child; contrary to Section 105 (1) (b) of the Sexual Offences (Bailiwick of Guernsey) Law, 2020.

[2024]GRC076

Section 45 of The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 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 is an offence.

**ROYAL COURT
FULL COURT**

25th October 2024

**Before: John Russell Finch, Esq., OBE., Lieutenant Bailiff and Jurats:
David John Robilliard MBE, Stuart Michael Crisp, Marilyn Jasmine King,
Heather Reed, Simon Ernest Bodkin, James Robert Toynton,
Richard Jeremy Wallen James and Ian Michael Brown.**

THE LAW OFFICERS OF THE CROWN

- v -

BEN PETER LE NOURY

Advocate J D McVeigh appeared for the Crown

Advocate A M Merrien appeared for the Defendant

LIEUTENANT BAILIFF:

Background

You appear here today for sentence on an Indictment containing 10 Counts. Counts 1 and 2 are offences of a sexual touching of a child by penetrating the vagina of a 13 year old local girl. Count 3 is sexual touching of her breasts. Count 4 causing or inciting her to engage in sexual activity by masturbation. The maximum penalty on each is 14 years' imprisonment or, in your case, Youth Detention.

Counts 5, 6 and 7 are making indecent images of a child. These relate to the same young victim as in the other counts. There relate to 30 images of Category A, 79 images of Category B and 80 images of Category C. Counts 8, 9 and 10 are offences of distributing indecent images of the same victim to her. The Counts cover 1 image of Category A, 41 of Category B and 26 of Category C. There is no suggestion of further distribution by you, and I am referring in this description to the distribution counts.

All these offences carry a maximum of 10 years. We note what the categories relate to; Category A involves images concerning penetrative sexual activity with a child; Category B images depicting non-penetrative sexual activity with a child; Category C all other types of indecent images of a child.

You are aged 20 now and a local person. You have been in custody since your first appearance on 26 June of this year. Guilty pleas were given on 29 August, 2024. You have unrelated previous convictions.

The offences came to light because of sharp eyed observations by an off-duty member of the Island's Police force. Over four occasions she saw you and the child together behaving affectionately, and once you kissed her on the lips.

You were arrested on 21 May, 2024 and denied any sexual relationship. The victim said the same. You provided a PIN for one of your mobile phones then, and another two weeks later. Upon examination of this one, it showed the sexual relationship between you and the child. There were multiple videos of vaginal intercourse - and one of sexual intercourse, which was dated 25 April 2024. There were multiple videos of one occasion of your sucking one of the victim's nipples. In all, 189 indecent images as categorised, were located. You sent 68 to the victim. Prior to this sexual activity you were in a relationship, a sexual relationship, with her mother. When you were told about this evidence you made full admissions of the offences. The girl was a willing participant throughout.

Sentencing Considerations

Each one of these cases depends on its own individual facts. These were repeat offences, but the complainant was willing. But it is precisely because the law has always recognised the need to protect young children from predatory older persons that these types of offences exist. You were 19 to 20, she was only 13. This amounts to the sexual exploitation of a child.

Nor is this a one-off offence. Sexual activity was repeated. We must take account of the very significant gap in your ages and that offences took place on various occasions. We select a total starting-point for all these matters, as the sentences will be concurrent in order to reflect your total criminality. It is true that there was no force, otherwise the starting-point would be very much higher. But, we emphasise, this offence is designed to protect immature young people from older persons. You were not a young teenager when this all happened.

On the facts, as given, we select a combined starting-point of 6 years' Youth Detention reflecting the totality of the offending. The relevant considerations are as stated, the disparity in ages, the repetition of offending and the fact full vaginal penetration took place.

Mitigation

You do not have similar previous convictions and you pleaded guilty, having admitted the offences once the evidence on your second mobile phone was found. Also, we are obliged to note and give proper effect to your age. You are still a young person and subject, as noted, to Youth Detention, not imprisonment. It is accepted there were no threats or violence.

The evidence, once located, was unanswerable. You had initially denied any criminality. Whilst it is always right to give credit for guilty pleas, we are limited here, due to the evidence against you. But we must consider your age which is, on the legal authorities, a factor in your favour. We also note that whilst offences involved indecent images, they were sent to the victim and non-one else, Counts 5 to 10 concern indecent images.

We have considered what your very experienced Advocate has said and read a Probation Report which was illuminating and realistic. We carefully note the written references. One refers to you as naïve, on

the facts this is incorrect; you pursued a course of sexual exploitation of a 13 year old and you were 20, or 19 coming up to 20.

The Probation Officer considers (paragraph 13 of the Report) that you pose a significant and ongoing risk of serious harm to female children under the age of 16. You will be subject to MAPPA (Multi Agency Public Protection Arrangements) from the various authorities to monitor your behaviour. You are placed in a population with a high likelihood of committing a further sexual offence, and the Report indicates why. A community based sentence is not recommended. An Extended Sentence of 5 years is recommended for these reasons, plus a minimum of 10 years Notification requirements.

All in all, looking at the situation we hope, fairly we apply a discount of 50%. Your age is the main factor here and you did provide the relevant PIN number.

Sentence

Whatever this very young victim says, this was clear sexual exploitation of a child by a noticeably older adult. As we have said, hardly a one-off. The law protects young victims in this type of situation. You knew what you were doing and involved yourself deeply in this unlawful and shameful activity. There is no excuse and the overall picture is highly unpleasant and disturbing.

In respect of Counts 1 and 2, and all the sentences will be concurrent. The sentence is **3 years' Youth Detention.**

On Counts 3 and 4 – 2 years' Youth Detention, concurrent.

On Counts 5 to 7 – 2 years' Youth Detention, concurrent.

On Counts 8, 9 and 10 – 9 months' Youth Detention, concurrent.

The grounds under the Youth Detention Law are the seriousness of the offences and the protection of the public and the total is **3 years' Youth Detention** with effect from 26 June, 2024 when you were first in custody.

Forfeiture and Destruction Orders, as requested.

Extended Sentence

As stated, a 5 year Extended Sentence is recommended in the Probation Report. It is not contested today.

This is a decision for this Court to make on the facts found. We stress, it is never a question of rubber-stamping such a recommendation but exercising our powers judicially. The 5 year period is put forward due to the nature of your offending.

Bearing that in mind, plus the ongoing risks perceived and fully articulated in the Probation Report, we consider that such an Order would be proportionate and provide a measure of protection for the community. We apply it to the sentences on all 10 Counts.

So your sentence today is made up of two elements - the custodial period you have just had of 3 years' Youth Detention, plus a 5 year period - which is for your rehabilitation and the protection of the public, as the custodial sentence in this case is not sufficient on the facts to provide for these matters. During the course of the Extended Sentence, which is an extended period of supervision, should you re-offend or fail to comply with any of the requirements you can be returned to prison via a court or the Parole Review Committee for up to the period of 5 years.

The conditions are set out in the Probation Report. I have no doubt your experienced and capable Advocate has gone over all of this with you. In view of the facts of the offending, we consider they are

necessary and proportionate, both in your interests and those of vulnerable members of the community. You will receive a written notice, but on behalf of the Court I will now read them out so that everyone understands what you are subject to during this period.

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 a device capable of accessing the internet without the prior permission of your supervising officer.
3. Not to possess or use a device capable of accessing a camera without the prior permission of your supervising officer.
4. Where permission is granted, not to delete the usage history on any internet camera enabled device or computer used without the permission of your supervising officer and to allow such items to be inspected, as required by the Police or your supervising officer. Such inspection may include removal of the device for inspection.
5. Not to have any contact directly or indirectly by any means, with any female child under 16 years without the prior permission of your supervising officer, other than such contact that is inadvertent or not reasonably avoidable in the course of lawful daily life.
6. Notify your supervising officer of any developing personal relationships, whether intimate or not with any person you know or believe to be resident in a household containing children under the age of 16. This includes persons known to you prior to your conviction with whom you are renewing or developing a personal relationship.
7. Not to have any contact directly or indirectly, by any means, with the named victim in this case without the prior permission of your supervising officer.

Those are the conditions, if you breach them you will be back here and you can be sentenced for up to 5 years.

Since you pleaded guilty you have, as a matter of law, to be subject to Notification requirements. They can be reviewed if circumstances warrant it, namely you are no longer posing a threat of sexual harm. I will read these out too. Again, you will receive a written Notice. Failing to comply means coming back here and potentially serious consequences for you. We agree that the 10 year period from 29 August, 2024 is called for on the facts of this case, including the concerning assessment of your situation by the Probation Officer. I will read it and again, you will receive a written Notice and doubtless your Advocate has explained it to you, so you know what is coming.

As you have been convicted for sexual offences, in accordance with the Criminal Justice Law, 2013 the requirements of notification are imposed and accordingly you must:

- 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, photograph and/or a DNA sample to be taken.
- 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.
- Notify the Police of any address where you reside or stay for 7 days or longer, these means either 7 days at a time or a total of 7 days in any 12 month period.
- Notify the Police of your details every 12 months on the anniversary of your initial notification, even if there is no change to these details.
- Notify the Police at least 7 days in advance of any plans to travel abroad.

These apply to you from the dates you pleaded guilty and the conviction was entered.

Those are the Orders of the Court.

- **3 years' Youth Detention**
- **5 years Extended Sentence** which is a period of extended sentence with these strict conditions
- **10 year Notification from the day you pleaded guilty.**

Do not breach any of those requirements, as I have said, or you will certainly be back here and face an unsympathetic hearing.

That is the Order of the Court, if you have any queries your Advocate will be only too happy to assist you with them.

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

25th October 2024