

Making indecent photographs of children between 19 May 2018 and 13 November 2021, contrary to section 39(1)(a) of the Protection of Children (Bailiwick of Guernsey) Law, 1985 as amended and possession of an indecent image of a child, contrary to section 107(1) of the Sexual Offences (Bailiwick of Guernsey) Law, 2020.

**[2024]GRC054**

**ROYAL COURT  
FULL COURT**

**11<sup>th</sup> June 2024**

**Before: Catherine Maureen Fooks, Judge of the Royal Court  
and Jurats: Jonathan Grenfell Hooley, Stuart Michael Crisp,  
Marilyn Jasmine King, Tina Jane Le Poidevin, Heather Reed,  
Simon Ernest Bodkin and James Robert Toynton.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**ANDREW JAMES DENNING**

**Advocate S G Watson appeared for the Crown**

**Advocate S J Maindonald appeared for the Defendant**

**JUDGE OF THE ROYAL COURT:**

**Background**

Mr Denning you appear today to be sentenced in respect of an Indictment containing three counts. The first two counts are of making indecent photographs of children between 19 May 2018 and 13 November 2021, contrary to section 39(1)(a) of the Protection of Children (Bailiwick of Guernsey) Law, 1985 as amended, the maximum penalty for which is 10 years' imprisonment and/or a fine on level 5. The third count is the possession of an indecent image of a child, contrary to section 107(1) of the Sexual Offences (Bailiwick of Guernsey) Law, 2020, the maximum penalty for which is 5 years' imprisonment and/or an unlimited fine.

The images are now grouped into three categories by reference to the child abuse images database ("CAID"). The most serious is Category A, which includes penetrative sexual activity, sadism or sexual activity between children and animals of which you made 26 Category A images (Count 1) and Category B covers non-penetrative sexual activity of which you made 128 images (Count 2). Category C covers all other indecent images not in the first two categories of which you had in your possession 36,604 (Count 3). Of the images not all were visibly unique, but it was explained to us that there are various ways in which images can be properly counted more than once.

The facts have been set out in full in the Prosecution outline. Your IP address was identified as being involved in the downloading of indecent images of children, so a search warrant was executed on 15 November 2022. You and family members were arrested and five devices seized, a Silicon Power external drive, a black Maxtor external drive, two Asus laptops and a Lenovo laptop, which you

accepted were yours. Your family members were quickly exonerated. At interview you initially denied downloading indecent images of children and said that the images found on one device had come from a transfer from a hard drive which had been scavenged by you from the tip, which is demonstrably a lie, as no scavenging was possible on the date claimed by you. When later confronted with the sheer numbers of downloaded images you admitted your offending regarding Category C but not the Category A and B images. You spoke openly about what you described as your “*problem.....looking at images*”. There was considerable evidence of searching specifically for indecent images of children and evidence of sophistication in terms of platforms and programmes used to delete files and evade detection by providing anonymity.

Following certain queries a further 273,385 files were manually graded (which increased the number of images in Counts 1 and 2) and the Prosecution was given leave, with your consent, to amend the Indictment in terms of the numbers of images and framing of the charges.

You are a local man of 64 years of age. You are married with one daughter. You were working in greenhouse construction up to the time of your arrest. You have been signed off since with depression.

You have no relevant or recent previous convictions. Your last conviction was for motoring in 1990. You have been on conditional bail throughout the proceedings.

### **Sentencing Considerations**

The Court continues to apply the guidance from the 2012 Court of Appeal case of Wicks, Sharp and Towers when sentencing for making images. Adopting that guidance, the initial starting point for the making of Category A images is 3 years and for Category B images 18 months.

Most of the aggravating factors set out in Wicks, Sharps and Towers are not present in your case. The only aggravating factor of any significance is that mentioned in paragraph 40, that is to say the number of the Category B images, which is large in accordance with the definition in Wicks, which says that “*any number of images in three figures is to be regarded as constituting a large number*”. We do also note the duration of your offending being, by your own admission, some 10 years. We note that there were some moving images. We note the young age of the subject for your search and the results of those searches. We cannot ignore the unpleasant task of manually grading such a huge number of images which will have taken its toll on those involved. The presence of the Category A and B images cannot be accidental. Your offending was sophisticated in technical terms.

Wicks does not apply to the possession of images but we take from Wicks that possession of Category C images should be treated as less serious than Categories A or B but the huge number of images in this case must be an aggravating factor so, were we dealing with that count on its own, the starting point would be 2 years.

Despite the submissions from your Advocate, we have started with what we view as the most serious view of the offences; Count 1 the making of the significant number of Category A images and that starting point has been increased to take account of the other counts of making the Category B images and the possession of the Category C images, taking into account the aggravating factors, particularly that of numbers which I have just mentioned. Applying the totality principle, the starting point for Count 1 is therefore aggravated to 5 years 6 months and we will pass concurrent sentences for the remaining counts.

### **Mitigation**

The Court must first consider the impact of your guilty pleas on sentence. You entered an early guilty plea to Count 3 and we accept that your guilty pleas to Counts 1 and 2, though later, were at the earliest opportunity following a significant revision to the Indictment, so we award you full credit for your guilty pleas to all offences.

The Court has considered carefully the detailed and insightful Social Enquiry Report prepared in respect of you. We have also listened to the sensible submissions of your Advocate and read the letters provided.

We treat you as a person of good character. We note your less than perfect childhood and that, despite it, you have always been a hard worker. We note your explanation for the offending which started some ten years ago and which you describe as “going down the wrong path”. We note your shock at the number of images found. You are rightly embarrassed and ashamed and recognise the distress caused to your wife and daughter, not least because they were at first arrested on suspicion of offending. You have, since your arrest, been able to reflect and are rightly ashamed that you have contributed to child sexual exploitation. Nonetheless, the report writer considers that you have not yet fully accepted responsibility. A long piece of work is required with you via the Sex Offender Treatment Programme in view of how entrenched your offending is.

We take into account your medical conditions and your recent diagnosis of autism which helps to explain some of your behaviour but does not provide any excuse and you do not say that it should do so. You have been taking steps to understand your autism which is to your credit.

We note that the majority of offending was in Category C. We note the length of the proceedings.

You are assessed as having a low risk of general re-offending and sexual recidivism which we take into account. The report writer considers that the court proceedings have been a salutary experience and could see no evidence that you pose a risk of contact offending.

### **Sentence**

As you have accepted, there can be no doubt that the custody threshold has been passed. In view of the length of sentence which the Court has in mind, alternatives to immediate custody cannot be considered.

The offences committed by you are shocking and you are right to be ashamed by your own actions of downloading such images for your own perverted pleasure. For each image that has been created, a child or young person has been subjected to abuse and the downloading ensures the continuation of the cycle of that abuse. Society demands that those who commit such offences are punished and the sentencing starting points include an element of deterrence.

You have only yourself to blame for the disgrace that you have brought on yourself and your family by your offending; offending which this Court and community views as vile and revolting. You need to accept full responsibility for that offending and engage with the professional work which has been offered to you and which is necessary.

In sentencing you the Court is concerned to prevent re-offending so there is considerable emphasis on your rehabilitation. There will be an Extended Sentence Licence. You have indicated your willingness to cooperate.

Taking into account all that has been said the sentences will be as follows:

- In relation to **Count 1** there will a term of immediate custody of 2 years 10 months.
- In relation to **Count 2** – immediate custody of 9 months, concurrent.
- In relation to **Count 3** – an immediate custodial term of 6 months, again concurrent.

Total term of imprisonment from today of **2 years and 10 months**.

Having considered the recommendations in the Social Enquiry report, with which this 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 extending period of imprisonment in relation to each of the counts. This has two elements, a custodial term and I have already told you that the total custodial term will be 2 years 10 months followed by an extension period after your release, throughout which you will be subject to an Extended Sentence Licence. The period shall be for the period recommended by the report writer of 2 years in each case, concurrent thereby enabling completion of the work begun while you are in prison, as well as monitoring and addressing your progress after release.

Please note, 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 custody for the remainder of the sentence.

The standard conditions of an Extended Licence are as follows:

1. To be well behaved and not commit any offence and not to 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 that 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.
6. Not to travel outside Guernsey without the prior permission of your supervising officer (which will be given in exceptional circumstances only).

Additional conditions are added, as recommended in the Social Enquiry Report, which the Court considers necessary, not oppressive and proportionate. The conditions are as follows:

- To comply with any requirements specified by your Supervising Officer for the purpose of ensuring that you address your sexual offending behaviour problems.

We note, and I have already mentioned that the second condition requested by the Probation Officer was not to “own or use any device”, but the Court considers it appropriate to reword that as “possessing”.

- Not to possess or use any internet enabled device without the prior approval of your Supervising Officer.
- Not to delete the usage history from any internet enabled device without the prior permission of your Supervising Officer and to allow such devices to be inspected or removed for inspection, as required by the Police or your Supervising Officer.

The Crown's application pursuant to Section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006, which was not opposed, for forfeiture of the lawful seized Silicon Power external hard drive, black Maxtor EHD, two Asus laptops and a Lenovo laptop which are collectively valued at £120 and which clearly relate to the offending, is also granted, the Court having considered the likely effects on you of forfeiture.

Having been convicted of a relevant offence under Section 2(3) of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 you became subject to the notification requirements under Part II of that Law. We must set the notification period.

We follow the recommendation of the Probation Officer that the notification period should be 5 years, which runs from the date of your guilty plea to Count 3, namely 17<sup>th</sup> August 2023. This period is a precaution against risk you may pose and can be further extended. You will be given a written notice again 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.
- 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 knowledge 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, which 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, even if there is no change in these details.
- After your release, you must notify the Police at least 7 days in advance of any plans to travel abroad.

Insofar as there is any conflict between these provisions and those of the Extended Sentence Licence, the licence takes precedence for its duration.

By way of summary, the total sentence is:

- Total term of imprisonment 2 years 10 months from today.
- Extended Sentence Licence of 2 years.
- Notification period of 5 years.
- Forfeiture of the devices.

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

**11<sup>th</sup> June 2024**