

[2024]GCA030

IN THE COURT OF APPEAL OF GUERNSEY
CRIMINAL DIVISION

Between: **PAUL FOX** **Applicant**

-v-

THE LAW OFFICERS OF THE CROWN **Respondent**

APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE

Decision on the Papers

Decision of Sir Richard McMahon, Bailiff

Date of Decision: 4 April 2024

Counsel for the Applicant: Advocate S E Steel

Introduction

1. On 19 January 2024, the Royal Court sentenced the Applicant, Paul Fox, in respect of an Indictment containing two Counts of making an indecent image of a child, contrary to section 105(1)(a) of the Sexual Offences (Bailiwick of Guernsey) Law, 2020. The first Count related to a single image of Category A. The second Count related to four images of Category C. Both offences were committed in March 2023. They were discovered at a time when the Applicant was subject to the terms of an existing Extended Sentence Licence (“ESL”) following his release about six months earlier from serving a custodial sentence for similar offending. He was recalled to prison at that point for breaching a condition of that ESL.
2. The sentences imposed were 4½ years’ imprisonment in respect of the first Count and 18 months’ imprisonment in respect of the second Count, to run concurrently, together with an extended sentence, the period of which was fixed at 5 years. In delivering those sentences, the Lieutenant-Bailiff stated that the sentences “*will commence at the expiry of any other sentence, to which you are now subject to in respect of earlier matters i.e. consecutively*” and summarised the position as being that these sentences would “*commence when any other term ends*”. The Act of Court refers to “*the total of four years and six months’ imprisonment to reckon from the expiry of the sentence of imprisonment for which the accused is currently serving that is to say consecutive to the current sentence*”. In addition, a Sexual Offences Prevention Order for 10 years was imposed and the Applicant became subject to notification requirements by virtue of

the Criminal Justice (Sexual Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 for 10 years from the date of his guilty pleas on 9 November 2023.

3. The Applicant seeks leave to appeal against the custodial sentences. His application is dated 16 February 2024, settled by Advocate Steel. The Applicant contends that it was wrong in principle to order that the new custodial sentence would only commence at the expiry of the existing ESL, which is understood to be 13 September 2025 and that the length of the term of imprisonment is manifestly excessive, particularly having regard to the delay before it starts to be served of almost 20 months. Those grounds have since been perfected by an amended application dated 1 April 2024. At the same time, at my request, sitting as a single judge of the Court of Appeal, I requested that Advocate Steel might set out in a brief Skeleton Argument the basis on which he advances these grounds. In addition, I have had regard to the sentencing remarks and the social enquiry report that was before the Court at the sentencing hearing and have proceeded to decide this application on the papers.
4. Advocate Steel's Skeleton Argument helpfully sets out a chronology. The Applicant was sentenced on 17 January 2019 for offences of making and possessing indecent photographs of children. The total sentence was 18 months' imprisonment. On that occasion, there was an ESL for a 3-year period. The Applicant was released from custody on 30 October 2019, but he similarly breached a condition of the ESL then in place in February 2020, resulting in his recall to prison and subsequently, the sentences passed on him on 18 December 2020, to which reference was made by the Royal Court when imposing the latest sentences. On that occasion, the Applicant was warned that he faced even longer sentences were he to re-offend. However, in 2020, the overall sentence of 33 months' imprisonment took effect from the Applicant's first appearance in the Magistrate's Court, even though the original ESL was only due to lapse on 29 October 2022.
5. Although there are two grounds of appeal, they appear to me to be inter-related. There is no legislation in Guernsey preventing the Court from imposing a sentence to run consecutively to a sentence currently being served by a prisoner. In this regard, the position differs from section 225 of the Sentencing Act 2020 as it operates, for example, in England and Wales. There is a simple summary of the position set out in *Blackstone's Criminal Practice 2024*, at para. E13.19. However, the submissions of Advocate Steel about this provision may result from a misreading of that section. The position is not that the latest sentence only runs from when the period of the ESL ends, but rather that the Applicant has been recalled to prison and so is serving the sentence in respect of which he had been released on licence prior to his recall. This does not appear to be covered in section 225 of the 2020 Act.
6. I have, therefore, carefully considered whether it is arguable that the sentence imposed was wrong in principle by making it run consecutively to whenever it is that the Applicant would be released from serving his current sentence. If this were the only ground of appeal, I would not have been persuaded that leave should be given. I take the view that something more than referring to the different statutory position in England and Wales would be needed for that purpose. There would need to be something more focused about the choices available to the sentencing Court before the ground that the sentence was wrong in principle would have merit. In the absence of any suggestion that it was impermissible to impose these sentences to run consecutively as a matter of Guernsey law, rather than it being a matter of discretion exercised adversely to the Applicant, I would not have been minded to grant the leave to appeal sought.
7. Turning to the second ground of appeal, however, I do think it is arguable that the overall sentence might be regarded as manifestly excessive, although that does not necessarily mean that it was. However, presenting an arguable case is all that is required to grant the leave sought and that is what I will do.

8. I will do more than to summarise the reasons for reaching that decision. It was open to the Royal Court to reach a different conclusion as to the date from which the sentence should run. Whilst I have noted that a discount of 25% from the Court's starting point was allowed for the guilty pleas, which followed approximately two weeks after not guilty pleas had first been entered, and for any other mitigation, the starting point taken of six years was double the initial figure suggested in *Wicks v Law Officers* 2011-12 GLR 482 (at [37]). In the circumstances of repeated offending of this type, that starting point may have been justified, but I recognise that it might be viewed differently on appeal, particularly when combined with the decision to make the sentences run consecutively and having regard to the totality principle. Although the period of extension was what had been proposed in the social enquiry report, it did mean that the two elements of the sentence come close to the maximum of 10 years capable of being imposed for an indecent images offence. This is not contrary to section 3(5) of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, as amended, but I consider it is another factor to bear in mind on this ground of appeal.
9. Because I am granting leave to appeal on the second ground, and because I regard both grounds as inter-linked, it seems appropriate that I should not refuse leave on the first ground, meaning that the leave application would have to be renewed if the wrong in principle ground were still to be advanced. Leave is, therefore, granted on both grounds that the Applicant wishes to pursue.
10. Having granted the leave to appeal sought, it follows that I will also grant the Applicant legal aid in respect of his appeal against sentence.