

[2024]GRC019

**IN THE ROYAL COURT OF GUERNSEY
(CRIMINAL DIVISION)**

ON APPEAL FROM THE COURT OF ALDERNEY

**APPEAL AGAINST SENTENCE
22nd February, 2024**

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats: Jonathan Grenfell Hooley, Steven John Morris,
Marilyn Jasmine King, Heather Reed, Simon Ernest Bodkin,
Jillian Clark and Richard Jeremy Wallen James**

Between:

ZEEV KING

Appellant

-v-

THE LAW OFFICERS OF THE CROWN

Respondent

Advocate S J Maindonald appeared for the Appellant

Crown Advocate S G Watson appeared for the Respondent

Cases and materials referred to in the Judgment:

The Summary Offences (Bailiwick of Guernsey) Law, 1982
The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988
The Magistrate's Court (Criminal Appeals) Rules, 1989
The Government of Alderney Law, 2004
The Probation (Bailiwick of Guernsey) Law, 2004

R v Chin-Charles; R v Cullen [2019] EWCA Crim 1140
Le Gallez v The Law Officers of the Crown, Judgment 06/2013
Leonczuk v The Law Officers of the Crown [2019] GCA 042

Introduction

1. This is an appeal by Zeev King against the following sentence imposed on him by the Court of Alderney on 4 January, 2024:
 - Assault 1 – 12 August, 2020 - 9 months' imprisonment.

- Assault 2 – 1 June to 31 July, 2021 – 9 months’ imprisonment concurrent.
- Behaving in a disorderly manner –26 September, 2021 contrary to section 1(c)(ii) of The Summary Offences (Bailiwick of Guernsey) Law, 1982, as amended - 3 months’ imprisonment concurrent.

The total sentence was 9 months with effect from 4th January, 2024 which the Appellant asserts was manifestly excessive. On 22 February, this Court reduced the sentences as set out below but reserved its reasons which are set out in this judgment.

Law Applicable to the Offences and Appeals

2. The sentencing powers of the Court of Alderney are limited by section 13 of The Government of Alderney Law, 2004 to 12 months and/or a fine on Level 5 of the Alderney Uniform Scale (Level 5 being £10,000) for any single offence. There is a maximum aggregate of sentences of imprisonment of 12 months or twice the fine of Level 5 for more than one offence. Those are its sentencing powers in respect of the assault charges. The maximum sentence it could impose for the disorderly behaviour was 3 months and/or a fine on Level 3 of the Alderney Uniform Scale.
3. Under section 1 of The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 (“the 1988 Law”), which applies to persons convicted and sentenced in Alderney, the Appellant has a right of appeal against sentence which is not limited by any of the restrictions in section 2.

Approach of the Royal Court to appeals

4. There are no prescribed Grounds of Appeal in the 1988 Law. This Court approaches appeals against sentence as the Court of Appeal approaches such appeals from the Royal Court, namely that it will not interfere with a sentence unless it is wrong in law i.e. beyond the Magistrate’s Court’s powers, wrong in principle or manifestly excessive and that same approach will be applied to this appeal..
5. The task of the Royal Court is not to review the reasons of the sentencing court as the Administrative Court would a public law decision. Its task is to determine whether the sentence imposed was manifestly excessive or wrong in principle (R v Chin-Charles; R v Cullen [2019] EWCA Crim 1140). In order to succeed on a submission of a sentence being manifestly excessive, the Appellant has to satisfy the Court that the sentence falls outside the appropriate range of sentences for the offence and the offender and not just because it might be more severe than this Court itself would have passed. Specifically, this Court will not tinker with a sentence.

Powers of the Royal Court

6. Under section 6 of the 1988 Law, the Royal Court has the following options on appeal from the Magistrate’s Court, which, by virtue of Section 12 means, in relation to Alderney, the Court of Alderney:
 6. (1) *On the termination of the hearing of an appeal the Royal Court*
 - (a) *may confirm, reverse or vary the decision appealed against, or*
 - (b) *may remit the matter with its opinion thereon to, the [Court of Alderney], or*
 - (c) *may make such other order in the matter as may be just, and by such order exercise any power which the [Court of Alderney] might have exercised.*
 - (2) *If the appeal is against sentence, the preceding provisions of this section shall be construed as including power to award any punishment, whether more or less severe than that awarded by the [Court of Alderney] whose decision is appealed against, if that is a punishment which the [Court of Alderney] might have awarded*

Grounds of Appeal

7. The Grounds of Appeal are that the “*sentence is manifestly excessive. Defendant was not awarded sufficient credit*”. Whilst Advocate Maindonald in her submissions raised other issues, specifically that the Court of Alderney had been misled by the Probation Officer’s comment at paragraph 18 “*should the Court be willing to show exceptional leniency and consider a Community sanction, I have assessed Mr King’s suitability for a Probation Order*”, and the factors which the Probation Officer took into account in her risk assessment, Advocate Maindonald declined the invitation to apply to broaden her grounds on the basis that the impact of those issues on the sentencing process could not be determined as there is no reference to them in the sentencing remarks.

Facts of the Case/Approach of Alderney to sentence

8. The facts are set out in detail in the transcript from the hearing on 4 January, 2024 and were not challenged by Advocate Maindonald in that Court or before us. They can be summarised as follows:

Assault 1 – 20 July, 2020

The Appellant found his wife (“the Victim”) with another man in a darkened room. Alcohol had been consumed by all. The Appellant was verbally abusive towards both and ordered them out of the house. He called the Victim a number of names and said that she “*fucking deserves it*”. On the way downstairs, when she was on the penultimate step, he pushed her aggressively, causing her to fall onto a shoe rack which broke and caused an injury to her side. There was a photograph handed into the Alderney Court of the injury, in respect of which Advocate Maindonald made no representations at sentencing. It is accepted that there was an injury. In a subsequent voice message to a friend, the Appellant accepted responsibility for mistreating his wife and referred to “*throwing down the stairs*”. He said that it was not completely her fault. No charges were pressed at the time of the incident, as the Victim would not support the Police action at that time.

Assault 2 – 6 to 31 July, 2021

By this time the parties were living separately in houses opposite each other. The Victim had invited the Appellant over for a meal with her and the children. There was an argument about who should order the takeaway and the children became distressed. The Appellant stood up and pushed the Victim against the wall by the shoulder, shouted in her face “*I’ll rip your fucking head off and your fucking bang out of order*”. His daughter, aged 8 or 9 at the time, asked him to leave which he did. In the same voice message to a friend, the Appellant said that he had just flipped his lid and acknowledged that he had scared his wife and the children.

Disorderly – 26 September, 2021

The children were staying at the Appellant’s house. The Victim and her new partner were on the back step of her property when they became aware that the Appellant was looking at them through the letterbox in the front door. They moved to a different room but the Appellant entered the house and approached the Victim. The partner stepped in and the Appellant verbally abused the Victim calling her a number of names and making a threat to the partner to tell his ex something which the Victim says is untrue. On the day after, the Appellant apologised by message saying that

he had been totally out of order but he also said that the Victim knows how to wind him up.

9. From a chronological point of view, the complaints were made in October, 2022 and the Appellant was charged and then on bail from December, 2022. There was a period between the commission of the third offence, September 2021 and at least the making of complaints in October, 2022 when the parties continued to share care of the children. The Appellant was on bail conditions from December, 2022. There were no breaches of the bail conditions. Advocate Maindonald has relied heavily on these periods, by way of mitigation. Whilst she did allude to them and specifically made reference to the period on bail, the point about the continued shared care was not made to the Court of Alderney.
10. The Alderney Court was given a bundle of documents, including references for the Defendant, the content of which was acknowledged by both counsel to include statements which would not ordinarily be placed before a sentencing Court as they strayed into the facts, and a redacted Victim Impact Statement from the Victim. That statement sets out a significant impact on the Victim, in terms of anxiety, fear that the Appellant would enter her home and is watching her and an impact on the daily life of her and the children, such that she was afraid to go out. The Alderney Court was also given the Appellant's criminal record, in respect of which we note three disorderly conduct offences, 1993, 1996 and 2001, and they had the Pre-sentence Report, in respect of which Advocate Maindonald made a number of submissions, primarily that the Alderney Court should not conclude that, although there was reference within that report to allegations against the Appellant after the commission of the offences, that behaviour has continued and that the Alderney Court should view him as not posing a serious threat of harm to the public.
11. By way of mitigation, Advocate Maindonald drew attention to the early guilty pleas, the date of the Appellant's last conviction being 2013 (not for any related offence), his lack of previous convictions for domestic abuse incidents, the date of the last disorderly conduct matter being 2001, the fact that the offences occurred either at a time of difficulties within the marriage or immediately after its end, the lapse of time since the offences were committed, his remorse, the references, that the offending was out of character, that he is a hardworking man and settled in a new relationship and assessed to have a low likelihood of general re-offending.
12. The point now taken by Advocate Maindonald about the Probation Officer's comment extracted above from paragraph 18 of her report (see paragraph 7 above) was not specifically taken by Advocate Maindonald in the Court below. Advocate Maindonald made extensive submissions to the Alderney Court as to why the condition as to approaching the Victim suggested by the Probation Officer in the report would be unworkable and she asked that the Court to consider a different alternative sentence. She mentioned a suspended sentence and she did make slightly more expanded submissions in relation to Community Service Order. She made the point that prison would lose the Appellant his income, which would impact on his family. We note that he was not at that time paying any maintenance for his children but he did have a new family. In her written submissions for this appeal, Advocate Maindonald made reference to the impact on his business, in terms of loss to his customers but that point was not made in the Court below.
13. Advocate Maindonald did make the important point to the Alderney Court that the facts on the assaults were those put forward by the Appellant, the Court having accepted his version of the facts at an earlier Newton Hearing.
14. The sentencing decision is at page 16 of Tab 2 of the Appellant's bundle. The Alderney Court says that it has taken into account the Social Enquiry Report, the early guilty pleas and mitigation, that the Jurats are "*in agreement that domestic violence is not acceptable in any circumstances*" and proceeds to set out the sentences, as above, which were all concurrent with each other, totalling a period of 9 months' immediate custody. In view of the way in which the sentencing remarks have been set out, we are unable to determine the method by which the

Court of Alderney arrived at the overall sentence of 9 months but it is clear that they were taking a robust approach in relation to domestic violence.

Submissions/Discussion

15. We have read and listened very carefully to Counsel's submissions. Advocate Watson provided information from the English sentencing guidelines, which is always useful in terms of aggravating and mitigating circumstances but, as she has rightly submitted, both Guernsey and Alderney are entitled to set their own sentencing policy based on local conditions. The cases which she provided in relation to sentencing and particularly the approach of the Court of Appeal when considering sentences of the Guernsey Royal Court, Le Gallez v Law Officers of the Crown, Judgment 06/2013 and Leonczuk v The Law of the Crown [2019] GCA 042 were helpful and are useful reading when considering appeals. In this case, the domestic context, alcohol (in charge one) and the presence of the children at the second assault are all aggravating factors, sensibly conceded by Advocate Maindonald. She had already also sensibly conceded that the custody threshold was passed in this case though she made the very relevant point to this Court that this concession should not inevitably lead to an immediate custodial sentence.
16. We consider that the preferable way of approaching sentence in this case is that set out in the extract from paragraph 11 of Le Gallez v Law Officers of the Crown in paragraph 28 of Advocate Watson's submission. The assault on the stairs is the more serious of the two assault offences, so a starting point for that should be identified which is then aggravated to take account of the second assault and the disorderly. The starting point is then reduced appropriately to take into account credit and other mitigation to arrive at the overall sentence. The Court should then consider whether alternatives to immediate custody would be appropriate in the circumstances. In announcing its conclusions, the Court should indicate that it has either given full credit, one third for the guilty plea, or if not, why not. The Court should also consider alternatives to immediate custody and explain its reasoning for either accepting or not accepting that they are appropriate.
17. It was Advocate Maindonald's key point that the Appellant appeared to have been given insufficient credit for his guilty pleas. Without knowing the starting point taken by the Court of Alderney, it is not possible to assess that accurately. We did receive submissions in relation to starting points. Advocate Watson suggested that, whilst the starting point for the assault offences could be higher than the maximum 12 months open to the Alderney Court by virtue of its limited sentencing powers, the starting point for an offence which carries a statutory maximum, such as disorderly conduct, could not be higher than the statutory maximum itself. We do not accept that as a matter of principle. She submitted that there did appear to be an issue with the sentence for disorderly conduct because it was set at the maximum. Again, it is difficult to know how the Court of Alderney approached the sentencing for that offence but, because the sentence was in the end concurrent, there was no prejudice to the Appellant.
18. Although we accept Advocate Watson's submission based on Leonczuk that it was open to the Court of Alderney to sentence on its own local considerations, there was no indication that there was anything particular to Alderney which had to be taken into account in sentencing in this matter. Both the Guernsey and Alderney Courts take a robust view on sentencing for domestic abuse and indeed they share a common domestic abuse strategy.
19. Turning now to the other points made by Advocate Maindonald, it is clear that there was a lack of clarity around the allegations which are mentioned in the Probation report. It is also clear that there were issues with the Victim Impact Statement which, in our view, should have been dealt with more fully at the Sentencing hearing. We are told that the Victim Impact Statement was prepared by the Victim herself, prior to the Newton Hearing and was therefore written on

her version of the facts. We are told that the usual procedure for Victim Impact Statements is that they are written by the Victim with the assistance of a Police Officer, who will be alert to excluding matters of fact which are disputed or which indeed have already been the subject of findings by the Court. It is good practice to get the Victim Impact Statement written as early as possible but, if there are issues with subsequent findings, as there clearly were in this case, it needs to be revisited and possibly a second statement produced. In the end, the statement was produced and redacted for the Court but Advocate Maindonald appears to not be entirely satisfied with that process. As the Victim Impact Statement was also taken into account by the Probation Officer, it was important that any issues with it were properly bottomed out before the sentencing hearing. Whilst redaction per se is not impermissible, it is not usual and not good practice. If the decision was taken to proceed with the sentencing hearing notwithstanding the issues with the Victim Impact Statement (and indeed the other issues identified), the Court should have been fully addressed so that there was no scope for misunderstanding. The most important example of this is in relation to the statement in the Victim Impact Statement that the Victim was afraid to go out, which Advocate Maindonald indicated was clearly no longer the case, as she was present at the Sentencing hearing and, had attended the Newton Hearing. Advocate Maindonald had not made this point to the Alderney Court on the basis that they would have been aware that the Victim was present in the Court. We are told that three of the five Sentencing Jurats had comprised the bench at the Newton Hearing. The valid point that Advocate Maindonald wanted to make was that things had moved on and that the Victim Impact Statement should be read in that light but she did not actually make that point.

20. In relation to the points about the risk assessment, Counsel told me that it is usual for the Probation officer to take into account whatever information is available. It would appear that, in this case, having received the Victim Impact Statement, the Probation Officer made contact with the Public Protection Unit and was provided with some information, the content of which was not known to the Appellant. It is not for us to delve into the practices and procedures of the Probation Service but, if Counsel have concerns about material on which risk assessment has been based, they must raise it. The Probation Officer was clear in the report that there had been no findings in relation to any other allegations and that the Appellant denied any further incidence of domestic abuse. Again, these points could have been made in full to the sentencing bench. It seems to us that the fact that the Probation Officer had recommended a Probation Order mitigated any concerns that were raised about her risk assessment.
21. As for the Probation Officer's comment about a Community Sentence being exceptional, that paragraph can be read to refer only to a Probation Order and we take the view that a standalone Probation Order would have been exceptionally lenient in a case where the custody threshold had clearly been passed. As indicated earlier, the thrust of Advocate Maindonald's submission was against a Probation Order both in terms of the conditions and in general where at page 14 of the transcript she says "*I would be asking you to consider an alternative sentence which doesn't involve any such conditions*" which we read as suggesting that she is asking the Court to pursue something other than a Probation Order. Advocate Maindonald did mention a suspended sentence and made some comments in relation to a Community Service Order but she did not make full submissions on either of those options. No-one addressed the Alderney Court on the possibility of a combined sentence of custody/an alternative and a Probation Order.
22. As can be seen from the above, there are a number of occasions where we consider that Advocate Maindonald is complaining about the way in which matters might have been taken into account by the Alderney Court but she did not make the points. She said that she did not consider it her job to 'spoon feed' the sentencing bench. We disagree. The Alderney Court is comprised of lay Jurats with a lay clerk. Whenever Counsel are addressing a sentencing bench, be it a professional Judge in Guernsey, the Full Court or the lay sentencing benches in the other Islands, it is important that all appropriate points are made properly, albeit succinctly, particularly in the lower Courts which are of summary jurisdiction. No assumptions should be

made that any sentencing bench has a clear recollection of what has happened at previous hearings. Points need not be laboured but they must be made.

23. In relation to remorse, Advocate Maindonald stressed that the Appellant was remorseful. There are some indications that that remorse is limited in that there was still reference to provocation (which is irrelevant). A sentencing bench is entitled to take into account whether or not remorse is as genuine as is being asserted.
24. Advocate Maindonald also made reference to a specific case in the Magistrate's Court in Guernsey where a Community penalty was imposed, notwithstanding what she described as more serious assaults. There were no children present. As Advocate Watson submitted, the Court of Appeal in Guernsey has long since discouraged the provision by Counsel of what might appear to be comprobable cases, as the true facts are not known and each case on its own facts.

Conclusion

25. As is often said, sentencing is an art not a science. The role of the Appellate Court is to answer the broad question in this type of case, "*was the sentence manifestly excessive?*" This Court takes the view that these were serious domestic assaults. Injury was caused in the first, the Victim and the children were frightened by the pinning of the Victim to the wall and the very serious threat shouted in her face in the second and the disorderly conduct represents an escalation of very concerning behaviour, potentially obsessive, jealous and controlling. Nonetheless, there was a considerable gap between the commission of the last offence and sentencing and significantly, between the commission of the last offence and charge, in which time, we are told, the parties shared the care of the children. We consider that the appropriate starting point for Charge 1 taking into account the aggravating factors and Charges 2 and 3 should have been around 6 months with the other charges receiving concurrent sentences, the third charge having the lower maximum sentence of 3 months. We consider that the Appellant was entitled to full credit for his guilty pleas. The Newton Hearing had gone in his favour and was not, therefore to be treated as diminishing the value of his early guilty pleas. Whilst in this case it was open to the Court to consider and ultimately impose alternatives to immediate custody, it cannot be said that the imposition of an immediate custodial sentence was in itself manifestly excessive. We have concluded, however, that the duration of 9 months was manifestly excessive and also that the Probation Officer's recommendation for a Probation Order was something which the Court should have been asked to consider, even if the sentence was to be one of immediate custody.
26. Accordingly, the appeal is allowed to the extent that the immediate custodial sentences are reduced. We have taken into account not only the material before the Alderney Court but also the expanded submissions of Advocate Maindonald which brought her good points on the Appellant's behalf into sharp focus. The sentences will be as follows:

Charge 1 -10 weeks' immediate custody from 4 January, 2024.

Charge 2 – 10 weeks' immediate custody, concurrent,

Charge 3 – 2 weeks' immediate custody, concurrent.

Making a total of **10 weeks' immediate custody** from 4 January, 2024.

Additionally, there will be a Probation Order in the terms read out on 22 February substantially with the conditions in the Probation Report with the exception of the condition contained in paragraph 20(ii) which, having heard further from Advocate Maindonald and having looked at the mutual undertakings given by the Appellant and the Victim, we have decided, in this particular case, is not appropriate and we accept raises practical difficulties. The Probation Order is to be treated as an Order of the Court of Alderney for the purposes of breach, as a consequence of the

combination of Section 16(2) and Section 27 of The Probation (Bailiwick of Guernsey) Law,
2004

Catherine Maureen Fooks
Judge of the Royal Court

19th March, 2024