

Breach of 3 year Probation Order by committing four offences of behaving in an indecent manner in a public place.

[2024]GRC018

**ROYAL COURT
FULL COURT**

23 February 2024

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and Jurats:
Stephen Murray Jones OBE, Jonathan Grenfell Hooley, Marilyn Jasmine King,
Heather Reed, Simon Ernest Bodkin, Jillian Clark and
Richard Jeremy Wallen James.**

THE LAW OFFICERS OF THE CROWN

- v -

Dane Luke Robilliard GAUVAIN

Crown Advocate C G Dunford appeared for the Crown

Advocate C J Fletcher appeared for the Defendant

LIEUTENANT BAILIFF:

Background

On 11th May 2022, this Court sentenced you to a 3 year Probation Order, with extra onerous conditions, on an Indictment containing 7 Counts: three of inciting a child, aged then 14 years, to commit an act of gross indecency; four of sending indecent messages. We have the full facts, plus the sentencing remarks which I delivered on behalf of the Royal Court.

You are here today for breaching the Probation Order by committing four offences of behaving in an indecent manner in a public place, which also breached a specific element of the Probation Order i.e. to behave yourself. These offences came to light when your mobile phone was examined and four videos of you masturbating in public places were found. There were captions, e.g. “quick wank on castle grounds”. These were put on-line. You were also found to be using social media sites, also contravening a specific requirement of the Probation Order with, for example, e-mail addresses linked to the website ‘Pornhub’. These new offences are only triable in the Magistrate’s Court, with a maximum on each of 3 months’ imprisonment. I shall, after the conclusion of this case, come in and sit as Judge of the Magistrate’s Court to deal with them.

You also accessed the ‘Only Fans’ website, without the permission of your Supervising Officer.

There is an application for a Sexual Offences Prevention Order (SOPO) in this case today as well.

Our Approach to the Case

You have re-offended whilst subject to a Royal Court Probation Order. The new offending was not just petty or minor, but consisted of four separate offences involving public indecency plus, as we have said, breaches of the requirements of your Probation Order.

In sentencing, you were told in words simply put, that ‘if you do anything at all wrong, it is straight back here’, and these excuses that we have heard, won’t be used again. You were told that if you failed to comply with the conditions you would be punished severely. I also took the opportunity to give you a warning as Judge, in clear wording. You have now breached this Probation Order in different ways.

Sentencing Considerations

There were seven Counts on that Indictment: 1, 2, 5 and 7 sending indecent messages, maximum penalty on each offence, 2 years’ imprisonment. Counts 3, 4 and 6 were inciting a child to commit an act of gross indecency, a 14 year old boy; Count 5 was a 15 year old boy; Count 6, another 14 year old boy and Count 7 was an indecent image on Snapchat, seen by a number of children, committed whilst on Police bail and under investigation. This was an erect penis. On other counts there were references to “cock” and “your balls” and “wank you off”, etc.

A good deal of work has been done by the Probation Service and your case is monitored by Multi-Agency Protection Arrangements (or MAPPA) and risk management plans.

All in all, what this Court is now presented with is unpleasant and concerning facts to which an appropriate response is needed, particularly in the public interest and to protect young people. You have had a chance, which we stated was not for us an easy option, and you failed to take it.

Mitigation

When looking at the previous case, we consider that an appropriate combined starting-point would, on the facts, be in the region of 36 months (or 3 years), and allowing for the pleas and lack of previous similar convictions, and your age when offending, a substantial discount, leaving a 16 month total. There are also further measures that can be taken to protect others. The mitigation that was put-up at the last hearing cannot now all be re-cycled. However, we note your Advocate’s submissions and looking fairly at all the circumstances and carefully considering the detailed Probation Report, we now find there is no alternative to an immediate custodial sentence for the original offences. You have had a very fair chance and not taken it. We note, we repeat, your age when offending, when considering the sentence.

Sentence

The sentence on each of the Counts 3, 4 and 6 will be 16 months’ imprisonment, with effect from 26th October 2023, concurrent. **Total: 16 months’ imprisonment**.

In respect of each of the other Counts, which have lesser maximum sentences – 6 months’ concurrent and concurrent to the total.

A total of 16 months’ imprisonment from the date that you were originally locked up on: 26th October 2023.

SOPO

There is an application for a 5-year SOPO Order. The grounds set-out include the assessment of risk in the Probation Report for today, especially at paragraphs 15-18, and they satisfy the criteria in section 18 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2018. The grounds are fully given in the application and are as follows:

- It is said that you pose a threat of sexual harm to children in general, or to a particular child or children.
- You are a serious sexual harm to the public and any particular person or persons and it is believed that a Sexual Offences Prevention Order is necessary in order to protect children or the public in general, or a particular child or person. (We are obviously talking here about children in general and the public in general).

The Probation Report at paragraph 15 said:

“Risk presented is towards male children, mostly instigated on social media, but with concern this could extend to contact offending as well as offences of an exhibitionist (risk taking) quality such as the current offences.”

Had a Probation Order not been made at the last hearing, we would have made a SOPO then; we make one now. We note the psychologist, Dr Briggs, a regular witness and report-writer in Guernsey cases, also referred to the risk that you present.

On considering all the facts, we are satisfied that a 5-year SOPO Order is appropriate and proportionate, noting the history of your offending. This dates from today’s date. We consider that the 5-year period is appropriate, as stated, and is the right length of time needed for public protection.

The Extended Sentence is therefore not required today as it was duplicated. There is also a 7-year Notification period enforced from 27th January 2022, back when you first pleaded guilty to the original offences. That 7-year Notification will remain.

So as far as this Court is concerned:

- 16 months’ imprisonment from when you were first locked up on this (26th October 2023);
- A 5-year Sexual Offences Prevention Order;
- Notification of 7 years to remain as it was.

We will now close this Court and I shall come back in a moment and deal with the Magistrate’s Court matters which I also have to sentence. You will have in writing, the conditions, and they can be explained to you by your Advocate and by anyone else who wishes to assist you. But, I think it is right to read them out so that everyone is aware of the conditions which you will be subject to and these will obviously apply upon your release from custody:

1. 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.
2. To comply with any requirements specified by your Supervising Officer, for the purpose of ensuring that you address your sexual offending behaviour.
3. Not to have any contact, directly or indirectly by any means, with a male child under the age of 16 years, without the prior permission of your Supervising Officer, other than such contact that is inadvertent and not reasonably avoidable in the course of lawful daily life.
4. Not to possess or use a computer, or other electronic device, with the purpose of accessing the Internet, or have access to instant messaging services, social media platforms or any other on-line message board forum or community, without the prior approval of your Supervising Officer.
5. Not to delete the usage history of any Internet enabled device or computer and to allow such items to be inspected and removed as required by the Police, or your Supervising Officer.
6. To allow the installation of monitoring software, where available, of any Internet enabled device or computer, if deemed necessary by your Supervising Officer.

7. Not to use Cloud or similar remote storage media, capable of storing digital images or communications unless within 48 hours of the creation of an account of such storage, you notify the Public Protection Unit and/or Probation Service of that activity and provide ongoing access to it.

Those are the conditions that you must keep, as I said, it will be in writing and if there is anything you do not understand, your Advocate can explain it to you, but if you breach those in a 5-year period from today, then you will be brought back here and suffer the consequences. That is the Order of this Court today and we will resume in a moment just with me.

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

23 February 2024