

Six counts of sending, by means of a telecommunications network, to six named persons, messaging of an indecent character contrary to Section 16(1)(a) and punishable under Section 16(2) of the Telecommunications (Bailiwick of Guernsey) Law, 2001.

[2024]GRC013

**ROYAL COURT
FULL COURT**

21st February, 2024

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

THE LAW OFFICERS OF THE CROWN

- v -

JAMES DAVID WILSON

Crown Advocate C G Dunford appeared for the Crown

Advocate C J Green appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Mr Wilson you have pleaded guilty to six counts of sending, by means of a telecommunications network, to six named persons, messaging of an indecent character contrary to Section 16(1)(a) and punishable under Section 16(2) of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the maximum penalty for which is 2 years' imprisonment or a fine or both.

The facts in brief summary are that 28 April and 31 August 2023, at various times, you sent a huge volume of messages of a sexual nature to persons who told you that they were female children between the ages of 12 to 15, including graphic descriptions of sexual acts, encouraging the children to masturbate and suggesting in graphic sexual language that you might meet most of the children and engage in sexual activity with them. You also sent images of yourself to those persons, including some indecent images to one of them. In fact, the persons with whom you were in contact were adult paedophile hunters posing as children, whose aim is to identify those with a sexual interest in children.

At interview you said you believed but could not be 100% sure that you were talking to persons who were not children. You carried on as "game". You said that your risk-taking trait caused you to send photographs of yourself. You blamed your autism and depression. You denied any intention to meet the persons. You provided the PIN to your phone and laptop.

You are from the United Kingdom and a man of 36 years of age, 35 at the time of the offences. You are a qualified carpenter. You were working in the shop on Herm prior to your arrest. You have no right to remain in Guernsey or Herm, so will be leaving at the end of any immediate custodial sentence. You have no previous convictions.

You have been remanded in custody since your arrest on 30 August, 2023.

Sentencing Considerations

There are no sentencing guidelines for the sending of indecent messages so we sentence on Guernsey principles in the Guernsey context. The maximum sentence for each offence is 2 years.

You have engaged over a prolonged period in extensive communications with multiple persons and therefore multiple potential victims. Your Advocate has made it clear that you are now, belatedly, no longer asserting that you believed that they might not be children.

You have said that you were not committing the offences for sexual gratification. The Probation Officer did not accept that and nor does this Court. The indecent image sent by you alone gives the lie to that. You were fully aware of the ages and indicated a willingness to engage in sexual activity with children. You stopped because you were caught.

We take a starting point of 16 months for one offence, which we will aggravate to 22 months to take account of the number of offences and the aggravating factors, which are the knowledge that one person had disabilities but you carried on with the communication nonetheless and the attempted use of disappearing messages in an attempt to hide the offending but which we also reduce in view of the mitigating factor urged upon us by your Advocate that there was no actual child who could be harmed, which the English Court of Appeal considered to be a mitigating factor in the case of R v Malcolm Stephenson [2019] EWCA Crim 2418. The facts of that offence were similar – sending indecent messages to a person who appeared to be a 12 year old girl but was in fact a Police officer, but the case is otherwise distinguishable in that it was a different offence charged as an attempt and in terms of the mitigation available to that defendant and, of course, the English Court has its own sentencing regime. We will pass concurrent sentences in respect of the other counts.

Mitigation

Plea

In terms of plea, we accept that the pleas to these matters were entered at the earliest opportunity and we therefore afford you full credit for those guilty pleas.

Personal Mitigation

In terms of personal mitigation, the Court has considered carefully the very helpful and detailed Social Enquiry Report prepared in respect of you and the additional information helpfully provided in relation to sentencing options and the mechanics of the transfer of orders to England. We have listened to the submissions of your Advocate. We have taken into account the references provided and carefully read your letter.

Your best mitigation is that you are a mature man with no previous convictions. We note your role as carer within the family and the other points that you have raised. In particular, we note your adverse childhood experiences, past traumas and that the offences were committed at a time of great isolation, emotional distress, stress and fragile mental health. We note your Aspergers/Autism diagnosis.

We note your active engagement with Probation and Prison Services and the family support, including employment available to you so that your circumstances will be different on release. It is to your credit that you have been making good use of your time whilst in prison.

You are assessed as needing work to enable a full understanding of what led to the offending and what treatment is needed to help you manage difficulties without relapsing into such offending. You are assessed as having a medium risk of general offending and sexual re-offending and a medium risk of sexual harm to children in the Community, which we have to take into account. You will be registered to MAPPA and those concerns passed to the United Kingdom authorities.

Sentence

Clearly the Court is satisfied that the custody threshold has been passed and you have sensibly conceded that. Nothing short of an immediate custodial sentence is appropriate in your case. Your case is made more complex by the fact that you will not be remaining in Guernsey and there may be issues with the transfer of certain orders intended for the protection of the public and your rehabilitation. Nonetheless, the Court considers that it must sentence with you with the protection of the public and rehabilitation at the forefront of the sentencing exercise, especially bearing in mind the Probation Officer's comment that the assessment and treatment is essential before your risk can be managed in the Community.

In sentencing you we have taken into account the totality principle and the time served on remand and we have ignored the offences for which you will be sentenced separately.

This Court deplores this sort of behaviour. Real children or not, engaging in such messaging is the product of a warped mind. Whatever was going on with you, you are a danger to the community. It is vital that you continue engage with those who are seeking to understand what has made you behave in this depraved and predatory manner.

Taking into account everything that has been said and applying appropriate discounts the sentence on Count 1 will be one of **11 months' immediate custody** and that is to take effect from 30 August, 2023 and the sentencing in respect of each and every of the other **6 Counts is 11 months, concurrent**. That makes a total of **11 months' immediate custody** from 30 August, 2023.

As already mentioned, the Court is concerned with your rehabilitation and, further, protection of the public and considers, therefore that it is appropriate to add a Probation Order and will do so for a period of 2 years. Although you will return to England before or after your release from prison, this will give a structure to the completion of assessment and treatment which the Probation Officer considered so essential and it is the only order open to this Court to achieve that goal. Over the period of time there will be an opportunity to gain a fuller understanding of your offending behaviour and for you to respond appropriately. It will be a term of your Order that you comply with any requirements specified by the Supervising Officer (or the person managing you in England) for the purpose of ensuring that you address your sexual offending behaviour.

The Probation Officer had recommended certain conditions, some of which may not be capable of implementation in England but we add them nonetheless so that they are on the face of the Act of Court recording the sentence and they are as follows:

- Not to possess, or use any device capable of accessing the internet without the prior approval of your Supervising Officer;
- Not to delete the usage history on any internet enable device or computer and to allow such items to be inspected and removed as required by the Police or your Supervising Officer;
- To allow the installation of monitoring software on any internet enabled device or computer if deemed necessary by your Supervising Officer;

- Not to have any contact directly or indirectly by any means with any female child under the age of sixteen 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.

Such an order is imposed for your rehabilitation and to prevent you from further offending and to protect the public. We are satisfied, well we hope, that you have already had explained to you how that sort of Order would work, particularly in terms of transmission to England, if not, then please ask your Advocate to explain straightway the impact of that Order. It is important when subject to a Probation Order that you keep in contact with your Supervising Officer in accordance with any instructions the Supervisor gives, that you notify the Supervisor of any change of address or working arrangement and that you do not do anything which might undermine the purposes of the Order. If you were to fail to comply with any requirement, you would be liable to be returned to Court and your Advocate will explain the practical consequences of that. The Court does have powers in relation to any breach of the Order to continue it with or without variation, to fine you or even to revoke and re-sentence you.

The Crown's application pursuant to Section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006, which you did not oppose, for forfeiture of the lawfully seized Google Pixel 4a mobile phone valued at £100, which clearly relates to the offences, is also granted, the Court having considered the likely effects on you of forfeiture.

Notification

The Court is satisfied and certifies (without any objection from you) that at or before or after the time of committing the offences your actions included a sexual element directly connected with the commission of the offences and that you pose a risk of sexual harm to female children, such that the offences were sexually aggravated in accordance with Section 2(3) of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013. This means that you now, today become subject to the notification requirements under Part II of the Law and I am, of course, already aware that you are already subject to notification. We must set the notification period in relation to the matters here in this Court and we do so at 5 years, which was the recommendation from the Probation Officer.

The period is a precaution against any risk you may pose and can be further extended. You will be given a written Notice setting out all the requirements of being a notifier and I think you have probably had one of those the other day. But for the record and to repeat to you:

- Within 24 hours of your release if you have not already provided your personal details as set out on the Notice and any evidence required you must do so;
- Once you have been released:
 1. 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;
 2. You must notify the Police of any address where you reside or stay for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12-month period.
 3. 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.
 4. You must notify the Police at least 7 days in advance of any plans to travel abroad.

Mr Wilson the summary of the sentences imposed by this Court is as follows:

- Total term of **imprisonment, 11 months'** with effect from 30 August, 2023, together with
- **Probation Order** of 2 years.
- **Forfeiture** of the mobile phone; and
- **Notification period** of 5 years.

Catherine Maureen Fooks
Judge of the Royal Court

21st February, 2024