

Sexual assault of an adult female.

[2023]GRC073

*“Section 45 of The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 applies to this case so there must be no publication of any matter including but not limited to the name or any photograph likely to lead to the identification of the victim mentioned in this matter in her lifetime. Any publication is an offence. Publication includes any speech, writing programme or communication addressed to the public or any section of the public and social media is included.”*

**ROYAL COURT  
FULL COURT**

**1 December 2023**

**Before: Catherine Maureen Fooks, Judge of the Royal Court  
and Jurats: Claire Helen Le Pelley, Steven John Morris,  
David John Robilliard, Stuart Michael Crisp, Felicity Jane Quevâtre, Simon Ernest Bodkin,  
James Robert Toynton, Jillian Clark and Richard Jeremy Wallen James**

**THE LAW OFFICERS OF THE CROWN**

- v -

**MICHAEL EMMANUEL O’RAHILLY**

**Advocate P F Cobb appeared for the Crown  
Advocate S J Maindonald appeared for the Defendant**

**These sentencing remarks have been edited for publication.**

**JUDGE OF THE ROYAL COURT:**

**Background**

Mr O’Rahilly you have pleaded guilty to a single count of sexual assault of an adult female at the Crown Pier on 21 July, 2023 contrary to the Sexual Offences (Bailiwick of Guernsey) Law, 2020. The maximum penalty is 10 years’ imprisonment.

The facts are that on 21 July, 2023 whilst in the crowd at the Harbour Carnival you were standing behind your victim and performed a sex act. Your actions appeared unaffected by alcohol. The area was crowded with families enjoying the Carnival. You were seen by two witnesses. Your victim felt someone pushing up against her and that the person was too close and she moved forwards more than once, but she was unaware of what you had done until spoken to by Police.

You were arrested and your phone seized and examined. It contained two videos you took. We saw a compilation and this enabled the Court to assess the true nature and severity of the offence. The camera angle is clearly voyeuristic. At interview you immediately expressed your shame. You described your actions as stupid and immature, in terms you wished that you could turn the clock back and you said that you felt bad for upsetting your victim and her friend and shocked and disappointed at your

behaviour. Your victim described feeling disgusted, violated and having a sense of shame. She did not make a Victim Impact Statement as she wishes to forget the incident.

You are a 46 year old Irish National. Your home is in Ireland and you were only visiting Guernsey. You have a wife and three daughters. You are a graduate and had a senior role in IT until your arrest at which point your employment was terminated. You have no previous convictions and you have been remanded in custody since your arrest on 21 July, 2023.

### **Sentencing Considerations**

There are no specific guidelines for the sentencing for offences of sexual assault in Guernsey. We have found helpful the English sentencing guidelines, especially as to severity, aggravating and mitigating factors but we sentence on Guernsey considerations. The island community does not want such offences to occur and an eliminate of deterrence is required.

We set the initial starting-point before aggravating and mitigating factors at 2 years. There are considerable aggravating factors in your case. You videoed the offence, you caused humiliation and degradation for the victim when she discovered the ejaculate on her clothing. The offence was committed in broad daylight in the midst of a crowd and at a public event attended by families with children. We set the revised starting-point before consideration of plea and personal mitigation at 3 years.

### **Mitigation**

In terms of plea we consider that you are not entitled to full credit, as you really had no other alternative other than to plead guilty so we afford you a discount of 25%.

### **Personal Mitigation**

The Court has considered carefully the very detailed and informative Social Enquiry Report prepared in respect of you. We have also listened to the sensible and appropriate submissions of your Advocate. We have read the letters provided from your family, which, quite properly, express their shock, disappointment and concern that the person they know has behaved in this way. You have no previous convictions, which is an important point to your credit. You were fully cooperative with the Police and the Court process. Until your arrest you had been working in a responsible job. You are a family man and despite the significant impact on your family of the offending, your family is standing by you. You are rightly shocked and shamed by your own behaviour; you are unable to explain your actions, especially the filming.

The writer of the Social Enquiry Report is concerned about your offending and the risk that you pose. You are assessed as having a very low level of general re-offending but a moderate risk of committing a further sexual offence with potential to harm the public, which we must take into account. You are to be managed by MAPPA.

You have a wife and three daughters. In accordance with Bourgaize v Law Officers of the Crown 2014 (Judgment 49) the Court is required specifically to consider the Article 8 Rights of your wife and minor children affected by your being imprisoned, as well as yourself. There are three questions:

- 1) is there an interference in family life?
- 2) is it in accordance with law and in pursuit of a legitimate aim within Article 8.2?
- 3) is the interference proportionate given the balance between the various factors?

The sentence of imprisonment almost by definition interferes with family life. The imposition of a sentence of imprisonment for a serious criminal offence is in accordance with law and in pursuit of a legitimate aim within Article 8.2. Parents who commit serious offences face prison like everyone else.

The issue for this Court is always whether the imposition of an immediate custodial sentence would be a proportionate interference with family life given the balance between the various factors.

Your wife and children are in Ireland. It goes without saying that there is an emotional impact on them as result of you being in custody in Guernsey. They cannot easily visit you. Whilst you had lost your job and are likely now to struggle to secure another, there is also undoubtedly a financial impact. Specifically, we note the position of your wife as not yet being an Irish citizen, which carries certain financial consequences. The Court has to balance that impact against the legitimate aims of sentencing in a serious case. This is not a case which stands on the cusp of custody. In a case, such as this, where the custody threshold is clearly passed the balancing exercise entitles the Court to consider reducing the length of the sentence or if appropriate, imposing an alternative. The Court has undertaken the balancing exercise very carefully.

## **Sentence**

You have committed a serious sexual offence. The Court is satisfied that the custody threshold has been passed and your Advocate sensibly conceded it. In sentencing you the Court has to balance your circumstances, including the impact on your family of a prison sentence with the gravity of offending, including harm to the victim and the public interest in imposing appropriate punishment for serious offending. The risk that you are assessed as posing requires the Court to consider protection of the public as an important factor. In view of the seriousness of your offending, alternatives to immediate custody are inappropriate.

It is, to borrow the words of your brother, hard to “*fathom*” how a family man such as yourself with a good job and no previous convictions has found himself before the Court today having committed such a revolting offence and, which we find extraordinary, having filmed it. It is said to be out of character but there has to be a concern as to why a man with everything going for him would lose all sense of decency and inhibition in this way. The lack of food and consumption of alcohol cannot explain it. The people of Guernsey are entitled to attend family events without having to encounter such disgusting behaviour. The public must be protected from such offending. Whatever we say pales into insignificance compared with the huge shame you have brought on yourself and your family and the impact on them. We can only urge you to cooperate fully with the work to be done with you, in relation to your sexual offending.

Taking into account all of the above and applying all the discounts, the sentence will be one of immediate custody of 18 months from 21 July, 2023.

## **Extended Sentence Licence**

Having considered the recommendation within the Social Enquiry Report, with which this Court agrees, we consider that the usual period of supervision if any 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 extended period of imprisonment, it has two elements, the custodial term which I have already told you will be 18 months followed by an extension period after your release throughout which you will be subject to an Extended Sentence Licence. The extension period shall be for the period recommended of 3 years thereby enabling completion of the work begun while you are in prison, as well as monitoring and addressing your progress after release and I add that we do consider that there is value in this sentence even though we acknowledge that you are unlikely to be in Guernsey after your release from immediate custody.

If upon release, you fail to comply with the conditions of the Extended Sentence Licence, or you 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 the Extended Sentence 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.

We have been told by Advocate Cobb that the Probation Service will consider your moving away from Guernsey at the appropriate time, at which time, were you to go to England the Extended Sentence Licence could be reimposed over there, as we understand it. There are not similar provisions in Ireland but again, we consider that there is value, nonetheless, in having this Extended Sentence Licence and it will be a flag to the Irish Law Enforcement, who will take such action as they consider appropriate.

We are adding an additional condition, as recommended in the Social Enquiry Report which the Court considers necessary not oppressive and proportionate as follows:

- 7) To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your sexual offending behaviour.

## **Notification**

Having been convicted of an offence under the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 you became subject to the notification requirements under part 2 of that Law. We must now set the notification period. We follow the recommendation of the Probation officer, that period should be 10 years which runs from the date of your guilty plea which was on 21 September, 2023. This 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, but in summary they are:

- You should now have provided the police with your details as required by law and explained to you when convicted.
- You have to 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 have no prior knowledge of the change occurring. In your case this would be specifically apply on your release from prison.
- Once released you have to 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 those details.

- Once released, you must notify the police at least 7 days in advance of any plans to travel abroad. Please note that in so far as the Notification and the Extended Sentence Licence are concurrent, the Extended Sentence Licence provisions take priority.

## **Forfeiture**

There is an application in this case for the Forfeiture of your phone and we have listened carefully to the submissions made by your Advocate and we will adjourn that application to a later date, as we consider that there has to be further time for the Advocates to consider what might be on your phone and what might be the impact on you of the Forfeiture of that device in terms of your future needs.

The sentence is as follows:

- Total term of **imprisonment 18 months** from 21 July, 2023
- **Notification period of 10 years** from 21 September, 2023,
- **Extended Sentence Licence of 3 years**
- Application in relation to the Forfeiture of the phone is adjourned [to 29 February, 2024]

The Court would like to finish by commending the prompt action of the two witnesses in reporting this matter.

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

**1 December 2023**