

Offences of vaginal rape, oral rape, assault by penetration, sexual assault, and assault.

[2023]GRC070

Section 11 of The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 applies to this case so there must be no publication of any report containing the name address or school or any particulars likely to lead to the identification of the defendant, complainant or any witness who is a child and there must be no publication of any picture of any such child. Any publication by any medium including social media is an offence.

Section 45 of The Criminal Justice Sex Offenders and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2013 also applies to this case so there must be no publication of any matter including (but not limited to) the name, address of work or school or any photograph likely to lead to the identification of the complainant, the Victim in this matter, in the complainant's lifetime. Any publication is an offence.

**ROYAL COURT
FULL COURT**

17th November 2023

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats: Stephen Murray Jones OBE, Joanne Marie Wyatt,
David John Robilliard, Marilyn Jasmine King, Paul Martin Burnard,
Felicity Jane Quevâtre and Simon Ernest Bodkin,**

THE LAW OFFICERS OF THE CROWN

- v -

THE FIRST DEFENDANT (“D1”)

THE SECOND DEFENDANT (“D2”)

Advocate S Watson appeared for the Crown

Advocate A M Merrien appeared for D1

Advocate S J Maindonald for D2

JUDGE OF THE ROYAL COURT:

Background

In a few moments I will start reading out the sentencing remarks of the Court which are quite long and set out the legal principles this Court has applied in sentencing you. You are young persons and the principles which apply to the sentencing of young persons are not the same as those which apply to the sentencing of adults. You should, of course, listen and pay attention but we have decided that you should be told now what the sentences are. What you both did to your victim (“the Victim”) was very wrong and very serious. That day you made her life change and she will never again be the person that

she was. Life changed for you both, as well. D1's grandfather has said "*the hopes and dreams of the three of you lie in tatters*". The difference is that you both caused that for your lives. You also caused it for your Victim's life, but she did not cause it. You have, together, violently raped a young girl and now you must face the consequences. We have thought carefully about the sentences in view of your ages. Because what you did is so serious you have to go into Youth Detention, but we have made it for the shortest time possible. Whilst in Youth Detention, you will have opportunities for education, for training and work will be done with you to make sure that you are not a risk on your release. Right now, all of this will be overwhelming but do take the chances you have whilst in Youth Detention, so that, in the future, you can look back and know that you made the best of it.

The sentences will be as follows:

D1 – Youth Detention of 2 years' and 9 months.

D2 – Youth Detention of 2 years' and 3 months.

For both of you, there will be Extended Sentence Licence of 3 years, with the conditions and Notification of 7 years. I will read out those parts and remind you that you will need to be paying attention, particularly at that stage.

D1 you were found guilty after a trial of four offences on 11 July 2022 against the Victim, vaginal rape, oral rape, assault by penetration and assault. D2 you were found guilty after trial of three offences on the same date against the Victim, vaginal rape, sexual assault and assault. The sexual offences are all contrary to the Sexual Offences (Bailiwick of Guernsey) Law, 2020. The assault is contrary to customary law. The maximum penalty for D2's sexual assault is 10 years' imprisonment and the maximum penalty for the remaining sexual offences and the assault is life imprisonment.

The facts have been set out in detail by the Prosecuting Advocate, so can be summarised. On 11th July 2020 you both and the Victim were all 14 years old and still at school. D2 and the Victim were friends, and D1 was the Victim's boyfriend of a few weeks. The Court saw messages in which that was a suggestion that there might be sexual intercourse. After school that day, you all went off to a field where you initially sat chatting and drinking alcohol. The Victim was feeling the effects of the alcohol and laid down. [The rapes, sexual assaults and assaults are described.]

You got the Victim dressed and began walking home. Before leaving the field, she fell into a ditch. On the way home another friend came to help, as the Victim was barely able to walk and in such a state that a passing couple also stopped to help. Once home, the Victim said she had been raped. She had to undergo two medical examinations, one in Jersey, in which various injuries to her body, including her neck and genital area were noted. The forensic evidence gathered from those examinations and from you was analysed and two experts gave evidence at trial as to their findings.

You were both arrested. D2, you gave a detailed account in which you said that D1 had had sex with the Victim, but you had not. D1 you largely exercised your right to silence, but did answer some questions, accepting that you had intended to have sex with the Victim but saying that you did not do so and also saying that D2 had encouraged you.

The Court has heard two Victim Impact Statements, one from the Victim and one from her mother. [...]

Neither of you has any previous convictions. D1 you are now 16 and D2 you are 15½. You have both been on conditional bail throughout the proceedings.

Sentencing Considerations

There are no specific guidelines for the sentencing of sexual offences in Guernsey. Whilst sentencing must always take into account the special circumstances in Guernsey, where such offences are rare, this

Court has tended to look at the case of Millberry [2002] EWCA Crim 2891 for guidance, as approved by the Guernsey Court of Appeal in the case of Hastie v Law Officers Judgment 25/2015. This case provides that the Court should consider the effect on the Victim, the blameworthiness of the offender and any threat to the public. The learned Judges of Appeal in Millberry considered and approved the guidelines proposed at that time by the Sentencing Advisory Panel in England. This Court notes that the factors considered have, at least largely, been incorporated into the current guidance in the Sentencing Code and Guidelines in England. The Guernsey Court of Appeal in Hastie also considered that the then current English Sentencing Guidelines were of assistance to this Court and that, in our view, remains the case.

In Millberry it was said that the starting point for a single offence of rape without any of the additional features and aggravating factors identified in the Millberry judgment, should be 5 years, increasing to 8 years where there are any such features or aggravating factors. Those features and factors are also part of the English Sentencing Guidelines where the minimum starting point is also 5 years, based on the lowest harm and culpability, increasing thereafter depending on the circumstances.

There are aggravating factors in your cases; your Victim's young age, 14; the use of violence over and above that necessary to commit the offence; in D2's case, the strangulation and, relevant to both of you, the extent of the Victim's injuries, both internal and external, the fact that there were two of you forcing sexual activity on her at the same time and holding her down, the additional degradation of pouring alcohol over her and laughing at her, the use of alcohol and an element of planning in the messages. The impact on your Victim is taken into account in the starting point. All offences of rape have a significant impact on Victims, which cannot be overstated, but we do not find evidence in this case of additional impact which would cause the starting point to be increased.

We first look at the starting points were you adults. You have not been convicted of the same offences, D1 was convicted of three sexual offences involving penetration, vaginal rape, oral rape and digital penetration. D2 was convicted of one rape and one sexual touching which has a lower maximum penalty. We have taken a combined starting point for each of you, reflecting the different convictions and the difference in aggravating factors, noting particularly the aggravating factor in D2's case of the strangulation, which is very serious. This will result in a higher combined starting point and end sentence for D1. You were both also convicted of assault. We have taken into account the violence as an aggravating factor of the sexual offending, so the sentence for the assaults will be concurrent. We consider that the combined starting point for each of you, based on your offending, aggravated by such factors applicable to each of you above and taking into account totality, were you to be sentenced as adults, would be, for D1, 8 years and 3 months and, for D2, 6 years and 9 months.

You are both young persons, children, and we must approach sentencing in accordance with the sentencing principles applicable to young persons, which in Guernsey are set out in the statutory framework under the terms of the Criminal Justice Youth Detention (Bailiwick of Guernsey) Law, 1990 and the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008.

Under the 2008 Law, the Court, when sentencing, is required to have its principal consideration the prevention of offending by the young defendant in the long and in the short term, taking into account also the interests of any victim of criminal behaviour by the young defendant. It must also consider the welfare of the young defendant and the desirability of ensuring that the young defendant remains in the community, so far as is practicable and consonant with the need to ensure the safety of the public. Disruption to education is a key consideration when sentencing young people. Based on what we have read and heard we are satisfied that appropriate educational provision can be made for you in Youth Detention.

Under the 1990 Law, the Court must be satisfied that the only appropriate method of dealing with you is to pass a custodial sentence, which is one of Youth Detention, which must not be passed unless one of three factors is satisfied, only two of which are applicable to you, and they are:

- (a) that a custodial sentence is necessary for the protection of the public or the prevention of crime, or
- (b) or that the offence was so serious that a non-custodial sentence cannot be justified.

The Court is required to take into account any information relevant to your characters and physical and mental conditions and should consider reports. The Court has had the benefit of a Youth Justice Report on each of you.

In the Guernsey Court of Appeal this year, in the case of L. Topley v The Law Officers [2023] GCA027 it was emphasised that there is a need for this Court to take account of age as a mitigating factor, amongst other mitigating factors, in that case. We consider that your age is a very important consideration when sentencing you and it will be reflected in the final sentence set.

The English guidance from the specific Sentencing Guidelines for Sentencing Children and Young People for Sexual Offences sets out the following guidance in relation to possible reduction of sentence for young people, which we considered to be of assistance. It says this, “*When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of one half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically.*” This recognises that young people are still not fully mature, both generally and in relation to sexual matters, and are likely to be more affected than adults by a custodial sentence, which will seem longer on account of the offender’s young age. In England it is said that a sentence for rape by a youth should normally, but not invariably, result in a shorter sentence than for an adult.

Having taken all of that into consideration, we are of the view that the adult sentence should be reduced by 60% to take account of the fact that you were both 14 when the offences were committed.

Mitigation

Plea

You both pleaded not guilty and you forced your Victim to come to Court and give evidence, thereby re-living her ordeal. No credit is available to you for plea but the sentence is not aggravated by reason of your not guilty plea and the need for the trial.

Personal Mitigation

In terms of personal mitigation, the Court has considered carefully the very helpful Youth Justice Reports prepared in respect of you and the educational reports. We have also listened to the focussed and realistic submissions of your Advocates. We have read the letters provided.

There are some points which are relevant to both of you. Neither of you accept your guilt, which is your right, of course, but that means that other mitigation, in terms of remorse and response to offending, is not available to you. For each of you the best mitigating point is your age, 14 at the time and you are now 15 and 16. You both have a lack of emotional maturity and a likely vulnerability in a Youth Detention setting. You have both felt visible as sex offenders despite the reporting restrictions and you have both been socially ostracised. Your families and yourselves have been impacted by the community’s reaction to the offending and the Court is concerned that there has been social media comment, despite the clear restrictions. Neither of you have any previous convictions. For both of you this is your first court appearance. Neither of you requires particular help with alcohol or substances. Both of you have complied with the bail conditions.

In D1’s case, we note your difficult childhood experiences and the difficulties which existed in 2020 and at the time of the offences. Those difficulties no doubt played a part in referrals to the Convenor and exclusions at school. Your home life is now stable. The support offered by your grandfather has

been unwavering and his letter to the Court was thoughtful and powerful. Education for you was already “hit and miss” at the time of the offences and you have withdrawn from it. You have engaged well with Youth Justice but expressed some hesitation in engaging with CAMHS. You have now said you will engage, keep an open mind. You have been described as subdued and guarded and in self-imposed solitary confinement. Your career aspirations are uncertain. You are assessed as having a medium to high risk of reoffending which we must take into account. You are already listed on MAPPA.

D2, you too have experienced some childhood adversity. You have a supportive family around you. Your grandmother spoke of your kindness and consideration to her. Your father has supported you throughout the proceedings. You were excluded from school because of the charges but you have engaged well with education on offer since and there has been a very positive report from your tutor, who describes you as “*a pleasure to teach*”. It is clear that you intend to continue with your education and training in a vocation with the full support of your family. You have engaged well with Youth Justice and been discharged from CAMHS. Some concerns are expressed in the report as to sexual behaviour which is one of the areas for work clearly set out in the report. You are assessed as having a medium risk of reoffending which we take into account. You have also been listed for MAPPA.

We note that the recommendations for the Extended Sentence Licences are not opposed.

Sentence

In your cases, the Court has to have regard to the sentencing principles from the Youth Detention 2008 Law. The starting point has already been reduced on account of your ages at the time of the commission of the offences. Even taking into account all of the mitigating factors, the terms of the 2008 Law and recognising that a sentence of Youth Detention is a last resort, a sentence of Youth Detention is the only appropriate sentence in view of the seriousness of the offences, and the need to protect the public and prevent crime, but the length of the sentences can be further reduced on account of your other mitigation.

On release from Youth Detention you will be subject to the supervision of a Probation Officer for a period of 3 months starting from the date of your release or the date upon which you would have been released had you not received remission, whichever is the later, with a maximum of 12 months. If you fail to comply with the conditions of the supervision, you will be liable to further Youth Detention, a fine, or both.

Taking into account all the above and applying the appropriate discounts, the sentences will be as follows:

D1:

- Count 1** – vaginal rape 2 years’ 9 months Youth Detention;
- Count 2** – oral rape, 2 years’ 9 months Youth Detention, concurrent;
- Count 3** – assault by digital penetration, 2 years’ Youth Detention, concurrent; and
- Count 4** – assault, 1 year Youth Detention, concurrent.

D2:

- Count 5** – vaginal rape, 2 years’ 3 months Youth Detention;
- Count 6** – sexual assault, 1 year Youth Detention, concurrent; and
- Count 7** – assault, 2 years’ Youth Detention, concurrent.

This means that in total sentences will be,

- D1 - Youth Detention – 2 years, 9 months from today.
- D2 - Youth Detention – 2 years, 3 months from today.

Extended Sentence Licence

Having considered the recommendation in the Youth Justice Reports, with which this Court agrees, we consider that the usual period of supervision, if any, after sentence for each of you, would not be adequate for the purposes of preventing the commission of further offences and securing your rehabilitation. Consequently, the Court is imposing an extended period of Youth Detention in relation to each of the sexual offences. This has two elements, a custodial term, which I have already told you will be 2 years' 9 months for D1 and 2 years' 3 months for D2, followed by an extension period after your release, throughout which you will be subject to an Extended Sentence Licence. The extension period will be for the period recommended of 3 years for each sexual offence, concurrent, so total 3 years, thereby enabling completion of the work begun whilst you are in Youth Detention, as well as monitoring and addressing your progress after release.

If, upon release, you fail to comply with the conditions of the Extended Sentence Licence, or are convicted of a further imprisonable offence, the Court sentencing you, or the Parole Review Committee, can revoke the Extended Sentence Licence, in which case you could be returned to custody for the remainder of the sentence.

The Extended Sentence Standard Conditions 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 (which will be given in exceptional circumstances only).

Additional conditions are added, as recommended in the Youth Justice Reports, which the Court considers necessary, not oppressive and proportionate. These conditions are clear and are as follows:

1. not to have unsupervised contact with female children under the age of 16, save that which is unavoidable in the course of normal daily life,
2. to comply with any intervention proposed or delivered by your supervising officer (which means you have to do what the supervising officer says).

Notification

Having been convicted of relevant offences under the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, you became subject to the notification requirements under Part II of that Law and I read them out to you at the time. We must now set the Notification period.

We follow the recommendation of the Youth Justice worker that the notification period should be 7 years for each of you, which runs from the date of your convictions on 4 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 the requirements of being a notifier, but in some summary they are:

- You should by now have provided the Police with your details, as required by Law and explained to you when you were convicted.
- 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 the change occurring. In your case, this will apply specifically on your admission and release from Youth Detention. You are going into Youth Detention today, so you have to tell the Police about that and when you are released from Youth Detention you have to tell them again.
- Once released 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.
- 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.
- Once released you must notify the Police at least 7 days in advance of any plans to travel abroad.

And finally, D1 and D2 I repeat what I said at the beginning, make the best of your time in Youth Detention.

The total sentences are:

D1 – Youth Detention 2 years 9 months;

D2 – Youth Detention 2 years 3 months;

D1 & D2 - Extended Sentence Licence – 3 years with the conditions requested; and

D1 & D2 - Notification – 7 years.

I would like to thank D2's father and D1's grandfather for their support as appropriate adults during proceedings and I am sure that that support will continue for you boys.

Catherine Maureen Fooks
Judge of the Royal Court

17th November, 2023