

**ROYAL COURT
FULL COURT**

9th June 2023

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats: Claire Helen Le Pelley, Jonathan Grenfell Hooley,
Steven John Morris, Joanne Marie Wyatt, Marilyn Jasmine King, Tina Jane Le Poidevin,
Heather Reed, Simon Ernest Bodkin, Jillian Clark.**

THE LAW OFFICERS OF THE CROWN

- v -

WAYNE JAMES DIAMOND

**Advocate J D McVeigh appeared for the Crown
Advocate P Lockwood appeared for the Defendant**

JUDGE OF THE ROYAL COURT:

Background

Mr Diamond you have pleaded guilty to a one count Indictment which states that, on 16th December 2022, you unlawfully and maliciously wounded Jason Mariess. This is a common law offence which has no maximum penalty. The facts based on witness evidence, but primarily from the CCTV, which we have seen, are that the victim went to Absinthe Bar to meet friends and you were already there. There was a verbal altercation between you and some of the victim's group which became physical. It can be seen from the CCTV that your friends were holding you back but you were trying to get at the victim and the victim throws at least one punch at you. The victim's glasses are swiped off in the mêlée. He is then hit on the nose by a tumbler which has been thrown by you. It cannot be seen if the glass shattered upon impact on the victim's nose or on the floor.

The impact of the glass caused a full thickness skin laceration the full length of the victim's nose and a small fracture to his nose and he required immediate hospital treatment. The wound required eight stitches. Photographs have been provided. You had left the bar but were later identified and arrested. You were interviewed twice and exercised your right to silence.

The victim impact statement has been read and records the victim's time off work and the psychological impact, in terms of the social discomfort at the visible facial scar being noticed and the subject of comment, paranoia, impact on social life and a change in mood affecting work and home. Additionally, the victim has suffered financial losses.

You are a local man of 35 years of age now, 34 at the time of the offence. You have what is aptly described in a previous Social Enquiry Report an extensive and eclectic criminal record with convictions for assaults, having an offensive weapon, theft drugs, public order, criminal damage and

driving offences going back to 3rd February 2003, when you were still 14 years old. You have received the full range of penalties available to the Court, most recently in March 2022, a custodial sentence of six months for assault in May 2021. You are awaiting sentence later today for a further assault, committed in November 2022 not long after your release from prison and one month before the unlawful wounding with which this Court is concerned.

You have been remanded in custody since 16th January 2023.

Sentencing Considerations

The practice of this Court has been to treat the unlawful wounding as the equivalent of an offence in England under section 20 of the Offences Against the Person Act 1861, which has a maximum penalty of 5 years' imprisonment. Whilst this Court looks at English sentencing guidelines, it must always be remembered that Guernsey is a separate jurisdiction and we have to sentence on Guernsey considerations. Based on the harm caused to your victim alone, without consideration of any aggravating or mitigating factors relating to the offence itself, the starting point has to be a custodial sentence and we take an initial starting point of 3 years.

There are aggravating factors in your case: the use of a glass which is a weapon, that the offence was committed whilst under the influence of alcohol, that a serious physical injury was caused, which has left a visible facial scar, the ongoing psychological impact on the victim, as set out in his statement, that the offence was committed whilst you were on bail for a not dissimilar offence and your previous convictions, including a number of convictions for violence, for the last of which which you were sentenced in 2022.

Having taken into account those aggravating factors, we set the revised starting point before consideration of your plea and personal mitigation at 4½ years.

Mitigation

Plea

The Court must first consider the impact of your guilty pleas on sentence and we can afford you full credit for your guilty plea.

Personal Mitigation

The Court has considered carefully the Social Enquiry Report prepared in respect of you. We have listened to the helpful submissions of your Advocate, who made all available points on your behalf. We have read the letters provided by your mother and your grandfather, who has been your mainstay, and also your letter which the Court found to be heartfelt, in which you expressed remorse and an understanding of what you need to do.

It can be seen that you were, to an extent, goaded by the group in the bar and that there was an attempt by the victim to punch you but your response in throwing the glass so that it hit the victim causing such a nasty injury is in no way a proportionate response. It was dangerous and it is only by chance that an even more serious injury was not caused. You seem to understand that but not fully the psychological impact on your victim, who is left with that visible scar.

We particularly note the history of your offending and your early experience of prison and the development of your urge to fight. We note the medical issues which will have caused difficulties for you as a young person and now.

In the Social Enquiry Report you were said to be in a poor mental state on account of the November assault and your fear of returning to prison. The response to that should have been to stay away from

trouble, and specifically pubs and bars, but instead you drank far too much on top of the drug that you had been abusing. The writer of the Social Enquiry Report notes that, despite saying that you want to do so, you have been unable to date to take the steps that you need to take when out of prison to address your alcohol and substance misuse and your ingrained inclination to fight in certain circumstances. It is said, by the writer again, to be time for you to understand that you must take those steps and that you want to do so.

You are assessed as having a high likelihood of reoffending and to pose a serious risk of harm to the public, both of which we have to take into account.

You have a son aged three years. In accordance with the case of Bourgaize v The Law Officers of the Crown 2014, Judgment 49 the Court is required specifically to consider the Article 8 rights of your minor child and others affected by you being imprisoned, as well as yourself.

A 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.

The Court has not been given very much information about the arrangements about the care of your son but it is clear that he is being cared for by his mother, grandmother and great-grandparents and no particular concerns have been raised about his welfare should you remain in prison. Of course he will miss you and that is very sad.

The Court has to balance the impact of you being in prison against the legitimate aim of sentencing in a case of serious violence. The Court has undertaken the balancing exercise very carefully noting the impact not only on your young son but on your wider family.

Sentence

The Guernsey community does not tolerate this type of violence. It was your choice to go out and drink that night. You should have stayed at home and out of trouble, but instead you drank far too much so that you had no way of controlling your behaviour, not for the first time. You know that you are prone to fighting when drunk and that you need to do something about it but you have not done so even after the birth of your son, who is now three years old.

You are a danger to the public and there is no alternative to a prison sentence even taking account the impact on your son and wider family. The offence is too serious for a non-custodial alternative. You must take responsibility for the impact on your family. You can choose to use the time in prison wisely to make the changes you know you need to make this your last appearance in Court. It is never too late to make changes.

In view of your record and the two offences of violence within one month, only shortly after your release from prison for an offence of assault. This Court can understand the recommendation by the Probation Officer for an extended sentence licence but of course that is only possible if the sentence exceeds 4 years and it will not in your case. We note that you will be subject to MAPPA.

Advocate Lockwood very realistically accepted that the Court was likely to impose an immediate custodial sentence and he explained that it appears that the Probation Officer had not appreciated the limit on the Court's powers to order an Extended Sentence Licence. He submitted that the Court could instead consider a Probation Order which would have a maximum of 3 years to run alongside a custodial sentence. In carefully considering the purpose of an Extended Sentence Licence, the Court considers that it should impose a Probation Order for the maximum term of 3 years to support you as you make the changes in terms of alcohol and substance abuse and your attitude and urge towards

violence and to help you develop the appropriate coping strategies should you encounter a situation which might trigger your urge to fight.

Taking into account all of the above and applying the appropriate discounts, the custodial sentence will be 2 years 6 months with effect from 16th January, 2023. In accordance with section 1 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004, upon release (or completion of any parole period if applicable), you will be subject to supervision by the Probation Service for a period equal to one quarter of the total sentence or the period you would have served had you not received remission, whichever is the shorter. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine, or both.

The Court was asked to consider an order for compensation which we have considered and particularly whether it is appropriate to make an order in circumstances where you are going into custody and we consider that it is not. Additionally, the Civil Court is better placed to hearing a claim that your victim may wish to make for compensation for the injuries sustained and any other losses. That said, you have offered to pay the expenses and compensation and we encourage you to do so.

The Court has decided to impose a Probation Order for the period of 3 years. The purpose of that Probation Order I have already set out to support you as you deal with the various issues you have. Such an Order is imposed for the purpose of your rehabilitation, to prevent you offending further and to protect the public. We have heard that you have had explained to you the purpose and effect of the Order and the powers that follow if it is breached, including the consequences thereof, but in summary, it means that you must keep in contact with your supervisor in accordance with the instructions you will be given from time to time, notify your supervisor of any change of address or working arrangement, which is obviously more relevant after your release, and not to do anything to undermine the purposes already mentioned for which the order is made. If you were to fail to comply with any requirement, you would be liable to be returned to Court, which has the powers to continue the order, with or without variation, to fine you or even to revoke the order and to re-sentence you.

In summary, therefore, the final sentences are as follows:

- Custodial sentence of **2 years and 6 months** from 16th January, 2023
- a Probation Order for 3 years.

Catherine Maureen Fooks
Judge of the Royal Court

9th June, 2023