Appeal against the sentences imposed by the Magistrate's Court on 15th August 2024: section 4(1)(a) of The Public Order (Bailiwick of Guernsey) Law, 2006 – public order offence - fear or provocation of violence 15.6.24. - 1 month's immediate custody; and (2) assault on an unknown male at the same time and place - 1 month's immediate custody concurrent. Appeal dismissed.

[2025]GRC005

IN THE ROYAL COURT OF GUERNSEY

(CRIMINAL DIVISION)

ON APPEAL FROM THE MAGISTRATE'S COURT

APPEAL AGAINST SENTENCE

16 January 2025

Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats: Stephen Murray Jones OBE, Steven John Morris, Marilyn Jasmine King, Tina Jane Le Poidevin, Paul Martin Burnard, Jillian Clark, Ian Michael Brown and Kay Alison Parnwell.

MICHAEL LE GALLEZ

- v –

THE LAW OFFICERS OF THE CROWN

Crown Advocate C Dunford appeared for the Crown
Advocate S Steel appeared for the Appellant

Cases and materials referred to in the Judgment:-

The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988
The Public Order (Bailiwick of Guernsey) Law, 2006
The Magistrate's Court Guernsey Law 2008

JUDGE OF THE ROYAL COURT:

Introduction

1. This is an appeal by Michael Le Gallez ("A") against the following sentences imposed on him by the Magistrate's Court on 15th August 2024:

(1) section 4(1)(a) of The Public Order (Bailiwick of Guernsey) Law, 2006 – public order offence - fear or provocation of violence 15.6.24. - 1 month's immediate custody; and

(2) assault on an unknown male at the same time and place - 1 month's immediate custody concurrent.

Law Applicable to the Offence

2. The maximum penalty on summary conviction for a section 4 offence is set by the 2006 Law as imprisonment for a term not exceeding 12 months, or a fine not exceeding level 5 on the uniform scale, or both.

3. The offence of common assault is a customary law offence which has no maximum penalty but the Magistrate's Court's sentencing powers are limited by the Magistrate's Court Guernsey Law 2008 ("the 2008 Law") to a maximum sentence of two years' imprisonment or a fine not exceeding twice level 5 (Level 5 being £10,000) or both for a single offence or an aggregate of a maximum of three years' imprisonment for more than one offence.

4. Under section 2 of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 ("the 1988 Law") A has a right of appeal against sentence which is not limited by any of the restrictions in section 2.

Approach of this Court to Appeals

5. There are no prescribed Grounds of Appeal in the 1988 Law. This Court approaches appeals against sentence as the Court of Appeal approaches such appeals from the Royal Court namely that it will not interfere with a sentence unless it is wrong in law i.e. beyond the Magistrate's Court's powers, wrong in principle or manifestly excessive. In this appeal only the last ground is raised. In order to succeed on a submission of a sentence being manifestly excessive, A has to satisfy the Court that the sentence falls outside the appropriate range of sentences for the offence and the offender. An appeal will not be allowed just because the sentence might be more severe than the Court itself would have passed. Specifically, this Court will not "tinker" with a sentence.

Powers of the Royal Court

6. Under section 6 of the 1988 Law, the Royal Court has the following options on appeal:

> *"6. (1) On the termination of the hearing of an appeal the Royal Court*
> *(a) may confirm, reverse or vary the decision appealed against, or*
> *(b) may remit the matter with its opinion thereon to, the Magistrate's Court, or*
> *(c) may make such other order in the matter as may be just, and by such order exercise any power which the Magistrate's Court might have exercised.*
> *(2) If the appeal is against a conviction or a sentence, the preceding provisions of this section shall be construed as including power to award any punishment, whether more or less severe than that awarded by the Magistrate's Court whose decision is appealed against, if that is a punishment which the Magistrate's Court might have awarded."*

It is to be noted that the Royal Court may increase a sentence.

The Grounds of Appeal

7. Advocate Steel confirmed that the sole ground of appeal was that the sentences were manifestly excessive and not that they were wrong in principle as stated in the Notice of Appeal.

Facts of the case

8. The facts can be summarised that, on 15th June 2024, A was drinking in Bad Habits Bar. He was assessed as too drunk and asked to leave by bar staff. He initially co-operated then refused to leave and began grappling with one of the bouncers which resulted in A and the bouncer going to the floor where A was flailing his arms about and, attempting to punch and kick but no connection was made. A's basis of plea that his behaviour was reckless was accepted by the Prosecution. A was removed with the assistance of 2 police officers. He was led handcuffed out of the bar and, as he passed an unknown male, words were exchanged and A spat directly at the unknown male but the spittle did not connect. We have seen the CCTV footage. Whilst the Prosecution accepted a basis of plea that this was, in effect, a reckless assault, the learned Judge rejected that basis of plea and found, as he was entitled so to do, that the spitting was intentional. Neither the bouncer nor the unknown male was injured. A has numerous previous convictions, all traffic except one, a relevant one, for assault in 2019 for which he received a Community Service Order.

Approach of the Magistrate's Court to sentence

9. The mitigation offered by A's counsel at the sentencing hearing and sentencing remarks of the learned Judge are to be found at Tab 2 of the Appeal bundle. The SER and A's letter to the Court are at Tabs 3 and 4 of the Appeal bundle. The learned Judge gave A credit for his guilty pleas and noted the terms of the Social Enquiry Report ("SER") and, in particular, the assessment of low risk of re-offending. He said that violence in town will not be tolerated and people will be sent to prison unless there are very good reasons for not doing so. In terms, he found that the mitigation, which he accepted was powerful, was not sufficient to prevent A from going to prison. He passed the sentence on the section 4 and reflected the mitigation by making the sentence for the assault concurrent.

A's submissions on appeal

10. In support of the Appeal, Advocate Steel filed a bundle of supporting documents and was given leave to add letters from A's employer, doctor and mother.

11. Advocate Steel's main submission was that, whilst he accepted that the offending crossed the custody threshold, the sentence should have been one of an alternative to immediate custody, in other words, either suspended or commuted to a Community Service Order (CSO). He described the assault as "unusual" because the spittle did not land. He referred to the CCTV footage and the absence of any particular reaction from the unknown male and the absence of any report by him to the police. Advocate Steel quite rightly said that spitting is a disgusting way of committing the offence of assault but that the consequences of it (or lack of) in this case placed it at the lowest end of the scale. The previous conviction for assault was, he submitted, a substantial time ago and the sentence was completed successfully. He questioned whether sufficient credit had been given for A's genuine remorse and referred to A's letter, which was before the learned Judge. He made reference to the role that alcohol had to play in the offending in respect of which he submitted that it was clear that A had been motivated to address that issue and had done so before sentencing and remains abstinent. He drew attention to the SER in terms of the assessment of low risk of re-offending and drew out other points from the SER. The recommendation in that report was for an alternative to immediate custody. Advocate Steel made the point that it is open to this Court, if it considers that the sentence was manifestly excessive, to replace the sentences with one CSO for one offence and one suspended sentence for the other.

12. Advocate Steel then turned to the issue of A's employment which he described as a key part of his life and an important factor for his stability and one which minimised the risk of re-offending. Advocate Steel submitted that it was possibly unclear to the learned Judge that A's employment was in jeopardy were he to receive an immediate custodial sentence. A has been told this, but no evidence was available before the Magistrate's Court or this Court. Advocate Steel submitted that, because A is facing a disciplinary process in relation to the criminal investigation into his offending in this matter, it would be inappropriate for his employer to provide any letter regarding the loss or otherwise of his employment in those circumstances. The letter from his employer dated 10th January 2025 concerning the disciplinary investigation interview arrangements is to be found at Tab 8. It refers to a meeting which the Court was told took place on the 14th January 2025 but the outcome will not be known for 2-4 weeks. Advocate Steel could not say whether the disciplinary process had arisen because of the criminal proceedings i.e. the offending or because of the risk of a custodial sentence. He said that he thought that the custodial sentence came as a surprise not only to A but also to his employer. Advocate Steel also referred to the Doctor's letter dated 13th January 2025 to be found at Tab 9 which confirmed the medical conditions of A as set out in the SER. Advocate Steel told the Court that A is currently signed off with anxiety and we were told that he has been signed off since sentencing.

13. Advocate Steel also referred to the letter from A's mother dated 14th January 2025 to be found at Tab 10 which is an impassioned plea to this Court to allow the appeal as otherwise A will lose his job and in recognition of the impact on him of a prison sentence. She attested to the positive impact on him of the criminal proceedings in terms of his abstinence from alcohol. She referred to the lengthy process which has been difficult for all. Advocate Steel described the sentences as "extreme" and urged the Court to allow the appeal based on the minimum consequences of A's actions, the principle of totality and that the sentences of immediate custody would be counter-productive.

14. In accordance with usual practice, Crown Advocate Dunford for the Law Officers made no representations.

Discussion

15. We have taken fully into account all the submissions made by Advocate Steel and all the materials placed before the Court including the new material. It is clear that this offending crossed the custody threshold and, neither in this Court, nor in the Magistrate's Court was this disputed. There were numerous aggravating factors including the consumption of alcohol, the behaviour occurring at night and in town, the fact that there were two offences involving two different "victims", the bouncer was performing an important role (designed to minimise bad behaviour), the known dangers of spitting (albeit that it is acknowledged that the spittle did not land) and, importantly in our view, A's previous conviction for exactly the same offence of assault, albeit 5 years ago. It is clear that the learned Judge took into account the guilty pleas and the mitigation which he described as powerful and which he specifically took into account by making the two sentences concurrent. We reject the submission that A was given insufficient credit for remorse bearing in mind the clear taking into account of the mitigation by the learned Judge. In relation to A's employment, the point was not raised specifically in the lower Court but we are not satisfied that there is evidence that A will lose his job because he receives an immediate custodial sentence, especially one as short as one month of which he will serve three weeks, as opposed to the risk that he will lose his job because of his offending behaviour. The learned Judge was clear as to his considerations in terms of sentencing with deterrence and protection of the public being important in the sentencing exercise albeit with full consideration of the impact on A of an immediate custodial sentence. Sentencing is not only about the defendant. The court must apply the usual principles of punishment, deterrence, and protection of the public, as well as rehabilitation. In our judgment, the learned Judge arrived at sentences well within the range of appropriate sentences for these offences. The

sentences are in no way "extreme". We endorse the learned Judge's approach that violence in Town will not be tolerated and will result in an immediate custodial sentence unless there are very good reasons. In this case we are satisfied that there was an absence of very good reasons.

Conclusion

16. Having considered all matters carefully, we have concluded that it cannot be said that the sentences were manifestly excessive and in those circumstances, the appeal is dismissed.

Catherine Fooks
Judge of the Royal Court

21 January 2025