

Sentencing remarks in relation to four counts of breaching a Sexual Offences Prevention Order ('SOPO') contrary to section 19(4) of The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013

[2024]GRC090

**ROYAL COURT
FULL COURT**

18th December 2024

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats: Stephen Murray Jones OBE, Marilyn Jasmine King,
Tina Jane Le Poidevin, Felicity Jane Quevâtre, Simon Ernest Bodkin,
James Robert Toynton, Richard Jeremy Wallen James and
Kay Alison Parnwell.**

THE LAW OFFICERS OF THE CROWN

- v -

GARRETT CLEVE MOON

Advocate J D McVeigh appeared for the Crown

Advocates N Newell and S E Steel appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Mr Moon you pleaded guilty to four counts of breaching a Sexual Offences Prevention Order ('SOPO') contrary to section 19(4) of The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 which carries a maximum penalty of 5 years' imprisonment.

The facts are that, on 25 February 2015, you were sentenced by this Court to an Extended Sentence comprising immediate custody of 3 years and 6 months for the sexual offences, plus supervision of 30 months for inciting a girl aged 14 to an act of gross indecency, 7 offences of sending indecent messages to females under 16 years with 21 offences taken into consideration. You were recalled in 2017 for breaching the Extended Sentence Licence by contacting a female under 16 years in breach of the Extended Sentence Licence. Whilst in Prison, there were concerns about your continuing to offend by way of telephone calls and interaction with others, so called "parallel offending". Prior to your release from custody, which would have been without any supervision as the Extended Sentence Licence had been activated, Her Majesty's Procureur was granted a SOPO dated 14 February 2020 of 5 years' duration, condition 4(1) of which restricted your use of internet enabled devices without the prior approval of your SOPO supervising officer and condition 5 of which provided for a signed agreement between you and the Guernsey Probation Service regarding the usage of approved devices. A copy of the latest updated version of this agreement in the form of a technology contract dated 20 December

2023 is in the Prosecution bundle. It has been explained that those who are subject to such restrictions are gradually given more freedom, are supervised and are allowed to access adult pornography as part of the rehabilitation process. That technology contract included the following conditions which you have breached:

- deleting Facebook messenger chats – Count 1 (you deleted 6 of those between July 2023 and February 2024);
- accessing unapproved email accounts – Count 2 (you accessed 3 of those in the same date range);
- using a prohibited application – Count 3 (YouTube from January to February 2024); and
- accessing unauthorised pornographic sites – Count 4 (you did this between 11 and 19 February 2024).

The breaches came to light when an adult female complained to the Police about concerning messages you had sent to her of a sexual nature, in which you referenced your sexual interest in children. Your Samsung Galaxy Ultra was seized and examination revealed evidence of the above breaches. At interview you admitted sending the messages to the adult female, argued that you could have unlimited email accounts and said that you did not understand that watching videos through your internet browser may re-direct the user to YouTube.

You are a local man of 37 years of age and you have a child who is not relevant to our deliberations for the reasons contained in the Social Enquiry report. You had been working for a period. You have a number of other relevant previous convictions, unlawful sexual intercourse with a vulnerable 14 year old in 2009 for which you received 7 months' custody, together with an Extended Sentence Licence which you breached. In 2013 you were convicted of sending indecent messages and the victims included a 13 year old girl for which you received a Probation Order which you quickly breached by having unsupervised contact with underage females. You have been in custody since your arrest on 23 February 2024.

Sentencing Considerations

There are no specific sentencing guidelines for breaching a SOPO so we set the sentence on general principles in the context of Guernsey but assisted by the helpful English sentencing guidelines, especially as to aggravating and mitigating factors. It is accepted that the custody threshold has been passed and that the breach of SOPO is a serious matter. We set the initial starting point for the breaches at 24 months before applying aggravating and mitigating factors. There will be concurrent sentencing in this matter.

The report writer has set out in detail your explanations (and we note that your Advocate and you have stressed that they are not excuses for the offending) and the reasons for it and she has also given her assessment of those explanations and reasons. Your Advocate has expanded on all of these. The breaches occurred at a time of difficulty in your personal life. The concerning messages were sent to shock, a behaviour described by the report writer as "parallel offending". The unauthorised email addresses were visible, supporting your explanation that you had misinterpreted a conversation about Gmail but you have to accept that you failed to check and should have done so. The evidence is that you did not use the addresses to try to contact children. YouTube is a preloaded application which makes it difficult not to have it but you should not have used it and you should have raised the issue. The report writer does not consider your accessing it was motivated by an intention to commit criminal offences and there is no evidence that you watched videos. You were re-directed by Pornhub itself (an authorised site) to unauthorised pornographic websites. You yourself were reckless in terms of accessing those unauthorised sites but there is no evidence that you accessed illegal material.

There are, therefore, mitigating factors in your case: none of the breaches would constitute an offence in its own right, the breaches occurred after a long period of compliance (4 years), you were

experiencing particularly personal difficulties at the time and it is acknowledged that certain of the terms imposed on you would not be replicated. However, there are also aggravating factors, including previous breaches of the Extended Sentence Licence and conditions of the Probation Order and there is also the impact on the adult female. In our view these mitigating and aggravating factors balance each other out so the starting point remains at 24 months.

Mitigation

Plea

The Court must now consider the impact of your guilty pleas on sentence. You are entitled to credit for the early guilty pleas to Counts 1 and 4, but to almost no credit for the pleas to Counts 2 and 3 entered on the first day of trial. Overall, therefore, we give you a discount of 20%.

Personal Mitigation

The Court has considered carefully the comprehensive and extremely helpful Social Enquiry report prepared in respect of you. We have, of course, read your letter and we listened to the submissions of your Advocate. We note your adverse childhood experiences and struggles with alcohol and substances. We note the sexual offending history as set out, which goes back to 2009, and your compliance and engagement with treatment from 2020 to 2024. Prior to the breaches you have been living in a flat and managing your finances well. You had formed a relationship and had detoxed with CDAT and gained employment. Sadly, that relationship broke down and other events subsequently, as set out in the Social Enquiry report, caused you, justifiably, in the view of the report writer, much emotional difficulty. You disengaged from Probation. It was following this that the breaches occurred. Since being remanded in custody, you have re-engaged positively with the Probation Service, but it has not always been positive, as there were renewed concerns that you were engaging in parallel offending again with adult females while in custody. The flat was lost while you were remanded in custody and you face an uncertain housing situation. The report writer assesses you as genuinely remorseful and wanting to desist from offending behaviour.

You are assessed as posing a risk of serious sexual harm to the public and you are a MAPPA subject which we cannot ignore and must take into account. It is accepted that the custodial threshold has been passed and an immediate custodial sentence is the only appropriate sentence in this case. In sentencing you we have taken into account the totality principle and we have taken into account the time served on remand.

Sentence

In your letter, you explained that being in Prison has brought you solace from the difficulties you had encountered and that you are ready for the next chapter and that you have learnt your lesson as far as compliance with the SOPO. You have said that you are willing to continue to work with Probation and to comply with the terms of the new SOPO. You say that you will not be before this Court again and will not fail. These are bold words and we hope that you are right.

Taking into account everything that has been said the sentences will be one of 18 months in respect of each count. Each one is concurrent with the other and with effect from 23 February 2024, which means a total sentence of **18 months' immediate custody with effect from 23 February 2024.**

The Crown's application, pursuant to Section 3 of The Police Property and Forfeiture Law (Bailiwick of Guernsey) Law, 2006, which was not opposed, for forfeiture of the lawfully seized Samsung Galaxy Ultra, which is valued at less than the current retail price of £634.99, which clearly relates to the offences is also granted, the Court having considered the likely effects on your of forfeiture. It is noted that the application was unopposed on the basis that there will be an extraction of your family photographs at

your expense which the Prosecution agrees and this Court is pleased to see that that provision is available.

In terms of supervision, 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.

So, the total sentence is **18 months concurrent from 23 February 2024** and **forfeiture** of the device is ordered.

The SOPO

The current SOPO is due to expire on 13 February 2025 and His Majesty's Procureur has, by application dated 18 December 2024, applied under Section 19(3) of the 2013 Law, to extend the period of SOPO and to amend its terms. The Application is unopposed but we have heard some submissions from Advocate Steel.

We have considered carefully the written application, the submissions that have been made and the very helpful and informative report from the Probation officer. When considering an application to amend or extend a SOPO the court has to apply the same test as it would for an application for an order and so it must be satisfied that, on the balance of probabilities, one or more of the conditions in Section 18 are met and that the terms of the order are necessary and proportionate taking into account your Article 8 rights, that they are readily understandable and easily enforced (see case law in the Guernsey case of Blampied and also taking guidance from the more up to date English case law of Smith and Parsons).

The basis of the original order was that you posed a risk of sexual harm to children in general (section 18(1)(a) of the Law). We have considered your offending history, the manner in which you have breached the Order, the other 77 photographs discovered on your device, the illegal images of children present on the device, your parallel offending behaviours, even whilst in custody, and the assessment of the report writer who has been your Probation officer since 2022 that you pose a serious risk of sexual and psychological harm to females, including children but also adults. We are satisfied that the risk of harm to children, generally, remains undiminished and that it is necessary in order to protect children from sexual harm and proportionate to grant the application to amend the terms and to extend the period to ensure that the protection remains until you are settled back in the community. It is also acknowledged that the risk is now wider and is a risk to females and there is an assessment of the report writer that that risk also extends to males.

The new terms, which are sought and will be granted are, in effect, updated and reduced to what is considered as appropriate and workable in 2024 in terms of technology. The provisions will be blanket prohibitions, subject to prior approval to enable proportionate internet access for you. There will be a record of those permissions. We are satisfied that the provisions are necessary, reasonable, proportionate and that they are easy to understand and easy to enforce.

The terms will be as follows:

The conditions of the existing SOPO are replaced with the following:

- In accordance with section 18(3) of the Law, the court hereby prohibits you from doing any of the following:
 - i. not to have any contact, directly or indirectly, by any means, with any female child under the age of 16 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;

- ii. not to undertake work or other organised activity which will involve a person under the age of 16 years, either on a paid or unpaid basis without the prior approval of your supervising officer;
 - iii. not to possess or use a computer or other electronic device with the purpose of accessing the Internet or have access to instant messaging services, social media platforms or any other on-line message board/ forum or community without the prior approval of your Supervising Officer, and further;
 - a) not to delete the usage history of any internet enabled device or computer;
 - b) not to use applications, or software that automatically delete, have/has auto wiping functions;
 - c) to allow such computer or other electronic devices to be inspected and removed as required by the Police or your Supervising Officer; and
 - d) not to use any “Cloud” or similar remote storage media capable of storing digital images or communications, unless within 48 hours of the creation of an account for such storage you notify the Public Protection Unit and/or the Probation Service of that activity and provide ongoing access to it.
- Also in accordance with section 18(3) of the Law, the Court hereby **requires** you to do the following:
 - i. permanently 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; and
 - ii. notify your supervising officer of any developing personal relationships, whether intimate or not, with any person you know or believe to be resident in a household containing children under the age of 16. This includes persons known to you prior to your conviction with whom you are renewing or developing a personal relationship.

We are aware that these terms have been considered very carefully and that you have had an opportunity to look at them and you have, in fact, agreed to abide by them.

The SOPO is imposed upon you for a period ending 14 February 2026 or a date one year from your release from custody, if that is on a date after 14 February 2025.

Notification

As I explained, by virtue of Section 26 and 35 of the 2013 Law, the making of the SOPO also makes you subject to the Notification requirements under part 2 of that Law for the duration of the SOPO. It is a precaution against a 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:

- within 24 hours of your release, if not already provided, you must provide the Police with your personal details as set out in the Notice you will be given;
- after your release 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 but remember that there is the residence condition in the SOPO and, where there is any conflict, the SOPO takes priority;

- after your release you must notify the Police of any address where you reside or stay for 7 days or longer but the SOPO condition is stricter than that;
- you have to notify the Police of your details every 12 months on the anniversary of the initial notification, even if there is no change in these details, and
- after your release you must notify the Police at least 7 days in advance of any plans to travel abroad.

Summary

1. **18 months' immediate custody** with effect from 23 February 2024.
2. **Forfeiture** of the Samsung Galaxy Ultra.
3. **SOPO** varied and extended to 14 February 2026 or one year from your release from custody if after 14 February 2025.
4. **Notification** for the period of the SOPO.

Catherine Maureen Fooks
Judge of the Royal Court

18th December 2024