

Appeal against sentence from the Royal Court in relation to two counts of making indecent images of a child. The appeal was dismissed.

**[2025]GCA024**

**IN THE GUERNSEY COURT OF APPEAL  
(CRIMINAL DIVISION)  
Court of Appeal Case No: 522**

**9<sup>th</sup> April 2025**

**Before:**

**JONATHAN CROW CVO, KC  
DAVID PERRY KC  
THE RT HON JAMES WOLFFE KC**

**Between:**

**PAUL FOX**

**Appellant**

**-v-**

**THE LAW OFFICERS OF THE CROWN**

**Respondent**

**Advocate SE Steel for the Appellant**

**Advocate CG Dunford for the Respondent**

**Perry JA**

**Introduction**

1. This is the judgment of the court on an appeal against sentence. The Appellant, Paul Fox, is aged 42 (date of birth 18 November 1982). On 19 January 2024, he appeared before the Royal Court (John Russel Finch, Esq, O.B.E., Lieutenant Bailiff and seven Jurats) to be sentenced on an indictment containing two counts of making indecent images of a child. The maximum penalty for each of the two offences is 10 years' imprisonment. The Appellant was sentenced to a total term of 4 years and 6 months' imprisonment. In the course of his sentencing remarks, the Lieutenant Bailiff

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made clear that the sentence of imprisonment was to “*commence at the expiry of any other sentence to which [the Appellant is] now subject...i.e. consecutively.*” This is reflected in the associated Act of Court which states that “*the total of four years and six months’ imprisonment to reckon from the expiry of the sentence of imprisonment for which the accused is currently serving that is to say consecutive to the current sentence.*” The Lieutenant Bailiff’s sentencing remarks and the Act of Court make clear that the intention of the Royal Court was to pass a sentence that would have the practical effect of following on from, and be consecutive to, the sentence the Appellant was at that time serving. At the time he was sentenced, the Appellant was in custody serving the unexpired portion of an extended sentence licence. This licence was originally the non-custodial part of a sentence imposed for strikingly similar offending on 18 December 2020. The custodial portion of that sentence was 33 months’ imprisonment and the extended sentence licence was for a period of 3 years. The extended sentence licence is designed to ensure that when an offender is released from a custodial term they remain subject to supervision and liable to recall to prison. This is to protect the public from the risk of re-offending. Any breach of a licence condition may result in a recall to custody, as happened in the Appellant’s case (which we explain below).

2. There are two grounds of appeal. First, the Appellant submits that it was wrong in principle for the Royal Court to delay the start of the new custodial sentence by ordering it to run consecutively to the sentence he was then serving and seeks to support his argument by reference to the position in England and Wales. The position there is governed by section 225 of the Sentencing Act 2020, which restricts a court imposing a determinate custodial sentence from directing that the new sentence shall commence on the expiration of any other custodial sentence from which an offender has been released on licence (as the Appellant had), even where the offender has been recalled from that licence (as the Appellant had). This is ground 1 of the appeal. Second, the Appellant submits that the length of the term of imprisonment is manifestly excessive, particularly having regard to the fact that it will not begin to take effect until 13 September 2025, that being the day on which the earlier sentence will come to an end, a period of almost 20 months since 19 January 2024 when the current sentence was imposed. This is ground 2 of the appeal.
3. Leave to appeal on both grounds was granted by the Bailiff, Sir Richard McMahon, on 4 April 2024.

## **Background**

4. The background can be shortly stated. On 9 March 2023 police officers visited the Appellant at his home address. The police officers believed that the Appellant was using electronic devices in order to possess indecent images of children. He was at that time a person who had been released from prison and he was the subject of the extended sentence licence imposed by the Royal Court in December 2020. This licence period had commenced on the Appellant’s release from the custodial term of that sentence and is due to expire on 13 September 2025. The earlier sentence had been imposed for offences of being in possession of indecent images of children. An Apple iPhone was found at the Appellant’s address and he was arrested. The iPhone was later found to contain at least five indecent images of children.
5. Also on 9 March 2023, following the Appellant’s arrest, the Parole Review Committee revoked the licence to which his release from prison had been subject, that is following the sentence imposed in December 2020. Thereafter on 21 July 2023, the Appellant was charged with two offences arising from the police visit on 9 March and he pleaded guilty (having initially pleaded not guilty) to the indictment on 9 November 2023.

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6. The indicted offences were of “making” (which for present purposes includes copying) an indecent image of a child, contrary to section 105(1)(a) of the Sexual Offences (Bailiwick of Guernsey) Law 2010. The first count related to a single image of Category A (the most serious category). The second count related to four images of Category C (images not falling within Category A or Category B (the second, more serious category)).
7. The particular sentences imposed by the Royal Court were 4 ½ years’ imprisonment in respect of the first count and 18 months’ imprisonment in respect of the second count, to run concurrently together with an extended sentence licence (in practical terms, an extended licence period) which was fixed at 5 years. In addition, the Appellant was made the subject of a 10 year Sexual Offences Prevention Order, and became subject to notification requirements by virtue of the Criminal Justice (Sexual Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2013 for 10 years from the date of his guilty pleas on 9 November 2023 (as recorded in the Act of Court). As noted, the sentences were to run concurrently to each other but consecutive to the sentence which the Appellant was then serving.
8. An important factor in the Royal Court’s reasoning was the Appellant’s prior record of committing similar offences. The Lieutenant Bailiff explained the position in the course of his sentencing remarks:

*“You are a local man aged 41, with a number of previous convictions, including 9 August 2021: six months for theft. You also have convictions including burglary and criminal damage. Most significantly, you have appeared here twice before in respect of indecent images of children. On 17 January, 2019 you received 18 months’ imprisonment and an Extended Sentence to expire on 29 October 2022. You re-offended and broke one of the Extended Sentence conditions by possessing a device which accessed the internet. On 18 December, 2020, you appeared again for the same type of offences. This time you received 33 months’ imprisonment and another Extended Sentence of 3 years, expiring on 13 September, 2025. The same condition attached which you have again broken. You were arrested following an unannounced check on 9 March, 2023. A sim card for a mobile phone was located under your bed, which you pointed out. Examination by a High-tech Crime Unit found the images you are now charged with.”*

9. As this summary makes clear, the Appellant had two sets of relevant previous convictions. He had been sentenced to custody and extended licence periods and he had breached his licence conditions on both occasions. At the time of the sentencing hearing a Probation Service report, dated 15 January 2024, was available to the Royal Court. This described the Appellant as “highly sexually preoccupied” with “diverse sexual interests, some of which cross the threshold of legality” It noted that he “lacks the internal controls to manage his sexual behaviour appropriately in times of stress and loneliness”. The risk assessment carried out by the author of the report concluded that the Appellant “presents a high risk of serious harm to children by accessing and viewing images of children” and that he will need to display significant ongoing commitment to treatment for there to be any confidence that his risk of re-offending is reduced. The author concluded:

*“To summarise, it is my recommendation that [the Appellant] is sentenced to an immediate custodial sentence of a length that marks the seriousness of the offences and the repeated nature of such offences and breaches of the current and previous [Extended Sentence Licence]. I am respectfully requesting a further Extended Sentence Licence of five years, and for the protection of the public longer term, the imposition of a 10-year Sexual Offences Prevention Order (SOPO).”*

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### **The Appellant's Arguments: Ground 1**

10. In support of the first ground of appeal, Advocate Steel submits that it was wrong in principle for the Royal Court to order the custodial sentence to begin at the expiry of any other sentence to which the Appellant was then subject. The steps in the argument reduced to their essentials are as follows:
  - (i) At the time of his arrest, on 9 March 2023, the Appellant was subject to an extended sentence licence period which is due to expire on 13 September 2025;
  - (ii) On 9 March 2023 the Appellant was recalled to prison for breach of his extended sentence licence;
  - (iii) The time spent by the Appellant in custody prior to the sentence imposed on 19 January 2024 was in respect of his recall to prison;
  - (iv) Directing the custodial sentence to operate consecutively to the licence period deprives the Appellant of any realistic opportunity for early release (either by satisfying the Parole Review Committee that he satisfies the statutory test for re-release or having the final one third of his term remitted for good behaviour); or, alternatively, if he were to be re-released from his current extended sentence licence, the appellant would face the prospect of being returned to custody on 13 September 2025;
  - (v) Legislation in England (section 225 of the Sentencing Act 2020) expressly prohibits the approach adopted by the Royal Court, although in the course of oral submissions, Advocate Steel acknowledged that interpreting the legislation in England was not necessarily a straightforward exercise.
11. The Appellant submits that the "*sentence start date*" ordered by the Royal Court should be quashed and substituted with the date on which the Appellant first appeared in the Magistrates' Court to face the two charges in the indictment, namely 14 August 2023. This would be consistent with the approach adopted by the Royal Court on 18 December 2020 when the overall sentence of 33 months' imprisonment was directed to take effect from the Appellant's first appearance in the Magistrates' Court, even though the extended sentence licence to which he was then subject was not due to expire until 29 October 2022. In the alternative, the appellant submits that the sentence of imprisonment should have been ordered to take effect on 19 January 2024 (the day on which the Appellant appeared before the Royal Court to be sentenced on the indictment). The effect in either case would be that the extended sentence licence and the custodial sentence now under appeal would operate concurrently.

### **Decision on Ground 1**

12. We do not accept the argument that the sentence imposed on the Appellant by the Royal Court was wrong in principle. Nor do we accept the legal and factual basis on which the argument is advanced. The starting point is that there is no legislation in Guernsey to prevent the Royal Court from imposing a sentence to run consecutively to any sentence to which an offender is currently subject. This reflects the common sense position that consecutive sentences are not wrong in principle if they are imposed for good reason, for example to ensure separate punishment is imposed for offences committed on different occasions. The Appellant himself accepts that it would be 'absurd' if an offender could avoid punishment for discrete conduct by the use of concurrent sentences, with one sentence effectively cancelling out the other. We agree. Nor is there any reason why the ability to impose consecutive sentences should not apply to breaches of an offender's licence which result

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in his recall to prison. Any other conclusion would serve to undermine the importance attached to licence conditions and fail to mark the gravity associated with any breach of their terms. It is also to be noted that extended sentence licences are designed to protect the public from offenders who pose a particular risk of harm.

13. We also note that the Royal Court did not direct the Appellant to serve the full extension period in custody (as the Appellant originally argued). Nor did the Royal Court purport to alter the terms of the extended sentence or the ability of the Appellant to obtain early release. The Royal Court was careful to restrict itself to its proper function as the sentencing court. Any release from the extended sentence licence remains a matter for the Parole Review Committee, governed by section 5 of the Criminal Justice (Supervision of Offenders) Bailiwick of Guernsey Law 2024. As the Respondent submits, the Appellant is entitled to apply to reduce the period which he must serve as part of the extended sentence licence recall and this has been confirmed in a letter from the Parole Review Committee, dated 9 October 2024.
14. While we acknowledge that, in practical terms, the position is complicated by the fact that if the Appellant is re-released under the extended sentence licence this would not result in a change to the commencement date of the sentence, (as the letter from the Parole Review Committee makes clear), this complication does not in itself render the consecutive sentence wrong in principle. It is merely the necessary incident of giving effect to the Royal Court's clearly stated and lawful intention: to ensure that the Appellant is appropriately sentenced for his most recent serious offending.
15. To summarise, the position is as follows. The Appellant had been released on licence from an earlier sentence. Having breached that licence, he was recalled to custody. The Royal Court dealt with the Appellant's new offending by ordering the sentence to take effect consecutively. This was in recognition of the fact that the Appellant had no entitlement to a concurrent term which would undermine the practical effect of the sentence, with one custodial element cancelling out the other. The remedy (if any) for an offender in the Appellant's position is to argue that the overall sentence is manifestly excessive, and that some adjustment should be made to avoid injustice. We address this aspect of the Appellant's argument when we discuss Ground 2. We have, in reaching our conclusions, considered that by operation of law (section 4(2) of the Criminal Justice (Supervision of Offenders) Bailiwick of Guernsey Law 2004 and section 29 of the Prison (Guernsey) Ordinance 2013) there is no automatic remission of the custodial part of the extension period. In our view, this does not render the Royal Court's sentence wrong in principle.
16. Turning to the Appellant's argument (not pressed with any vigour in oral submissions) that section 225 of the Sentencing Act 2020 has some relevance to the sentencing exercise conducted by the Royal Court in Guernsey, we reject this argument. The sentencing framework in England and Wales is notoriously complex and any attempt to rely on a single statutory provision, removed from its statutory setting, is unlikely to be helpful. Section 225 forms but one part of a highly intricate code, the application of which would be entirely unsuited to sentencing in the Bailiwick. The absence in Guernsey of a provision similar to section 225 is no doubt for good reason. We wish to emphasise that it is not wrong in principle for the Royal Court to make a sentence consecutive to a sentence currently being served by an offender and we consider there is much to be said for the Royal Court's non-technical and flexible approach to sentencing practice.

### **Manifestly Excessive: Ground 2**

17. The Appellant submits that the total sentence of 4 ½ years' imprisonment is manifestly excessive having regard to the consecutive impact of the sentence which will follow on the extended sentence

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licence term (which the Appellant submits will be served in full). In short, the Appellant contends that the aggregate effect of the sentences amounts to an unreasonably severe sentence in breach of the totality principle.

18. In support of his arguments the Appellant relies on certain aspects of his personal mitigation. These were detailed in the Probation Service report; in particular, the death of his mother in November 2022, his social isolation, and the struggle with his (trans) identity in the community and his difficult childhood (marked by neglect and abuse of both a physical and sexual nature). The Appellant also relies on his pleas of guilty, for which the Royal Court granted a discount of only 25% (on the basis of the belated change of plea), and his cooperation in providing the police with the pin code to his iPhone.

## **Decision on Ground 2**

19. In our view, the sentence imposed was not manifestly excessive (even assuming that the extended licence term will be served in full). The serious aggravating factors of the Appellant's case are the two previous convictions for pornography offences involving children. As this Court stated in *Wicks* 2011-2012 GLR 452 (at paragraph 51), any previous conviction for making or possessing an indecent image of a child will significantly aggravate the offence and, if the offence itself has other aggravating features, that may justify a sentence near to the statutory maximum. The Royal Court noted the two previous convictions with associated breaches of the extended licence in two cases. It was entitled to treat the Appellant's response to his earlier sentences as a significant aggravating factor. The Royal Court had regard to the matters set out in the Probation Service report which it described as "*helpful and impressively reasoned*" and it was entitled to treat the case as one of great seriousness deserving of an enhanced starting point of 6 years' imprisonment for both offences, as a combined figure, both as a measure of deterrence and to mark the gravity of the offending.
20. It is apparent from the Royal Court's sentencing remarks that it did not engage in any 'double-counting', that is, it did not separately deal with the Appellant for the breach of his licence conditions (that was the function of his recall to prison). Instead the Royal Court focused on the seriousness of the offending. It is also a notable feature of the case that the sentence was heavily influenced by the contents of the Probation Service report which recommended a sentence of immediate custody to mark the seriousness of the Appellant's conduct.
21. The mitigating factors were included in the Probation Service report and any discount for those factors and the Appellant's plea of guilty was a matter for the Royal Court's discretion. In our view the discount of 25% for the plea from a starting point of 6 years cannot be faulted as being wrong, nor can the Royal Court be faulted in its evaluation of the mitigation.
22. In summary, the Appellant was sentenced for serious offences of a type for which he had previously been sentenced. The sentence properly marked the gravity of his offending and properly respected the principle of totality. The sentence is neither wrong in principle nor manifestly excessive and we dismiss the appeal.

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