[2025]GRC035

Appeal against Sentence, Impact on Family life, admission of fresh evidence & Victim Impact Statement

IN THE ROYAL COURT OF GUERNSEY
(CRIMINAL DIVISION)

ON APPEAL FROM THE MAGISTRATE'S COURT
APPEAL AGAINST SENTENCE

22nd April 2025

Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Claire Helen Le Pelley, Steven John Morris, Paul Martin Burnard,
Felicity Jane Quevâtre, Richard Jeremy Wallen James,
Kay Alison Parnwell and Sally-Ann May David

SIMON CROWSON

- v -

THE LAW OFFICERS OF THE CROWN

Advocate S G Watson appeared for the Crown on the Appeal (Advocate Roffey at the preliminary hearing)
Advocate S E Steel appeared for the Appellant

Cases and materials referred to in the Judgment:-

The Court of Appeal (Guernsey) Law, 1961
The Offences against Police Officers (Bailiwick of Guernsey) Law ,1963
The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988
The Magistrate's Court (Criminal Appeals) Rules, 1989
The Human Rights (Bailiwick of Guernsey) Law, 2000
The Magistrate's Court Guernsey law 2008

Bourgaize v The Law Officers of the Crown 2014 (Jmt 49)
Trenchard v The Law Officers of the Crown [2024] GCA009
Michael Le Gallez v The Law Officers of the Crown [2025] GRC 005

Alexander v The Law Officers of the Crown [2025] GRC 019

Blackstone's Criminal Practice 2025

JUDGE OF THE ROYAL COURT:

Introduction

1. This is an appeal by Simon Crowson ("A") represented by Advocate Steel against the following sentences imposed by the Magistrate's Court on 27 March 2025 :

    (a) Assault on Ivanda de Garis ("IDG") – 4 months' imprisonment; and
    (b) Resisting Ryan Sheppard ("PCS") and Alex Hearn, officers of Police in due execution of their duty; contrary to section 1(2) of The Offences against Police Officers (Bailiwick of Guernsey) Law ,1963, as amended – 2 months' imprisonment, consecutive.

    The total sentence is therefore one of 6 months' imprisonment from 27 March, 2025. The Appeal is resisted by the Law Officers, represented by Crown Advocate Watson

Preliminary issue - Fresh Evidence

2. Before turning to the appeal itself, it is necessary to record that there was a preliminary legal issue namely the admission of fresh evidence on appeal which is a matter for the Judge alone. That issue arose over the inclusion, without leave, of two letters in the bundle for A's appeal against sentence. The bundles were filed as directed on 17 April, 2025, the hearing date of 22nd April 2025 having been set quickly as A is in custody and it is his contention that he should have received a non-custodial alternative to that sentence. If an appellant wishes to adduce fresh evidence, an application should be made. In this case, as time was short, I deemed an application to have been made and determined it and heard oral submission from Advocate Roffey and Steel.

3. There is provision in Magistrate's Court (Criminal Appeals) Rules 1989 which apply to this appeal for fresh evidence as follows:

    "6. (1) If it appears to the Royal Court that […]

    (c) further material evidence not available to one or other of the parties at the time of the Magistrate's Court proceedings is now available and that the interests of justice require that the said material evidence be heard;

    the Royal Court may direct that witnesses shall be heard in relation to any such error or for the amplification of the notes of the Magistrate's Court or in respect of such further material evidence and may adjourn the proceedings to enable any of such witnesses to be served with a summons to attend.

    (4) (sic)The Royal Court may order the production of any document, exhibit or other thing which may appear to be necessary for the determination of the case."

    Thus, the Royal Court in considering an appeal has very wide powers to receive such evidence as is necessary to dispose justly of an appeal. This provision is very similar to section 32 of The Court of Appeal (Guernsey) Law 1961. The issue of fresh evidence on an appeal against

conviction was recently considered by the learned Judges of the Guernsey Court of Appeal in Trenchard v Law Officers of the Crown [2024]GCA009 at paragraph 19:

> *"Guernsey has followed the guidelines laid down by the Court of Appeal of England and Wales for the admission of fresh evidence on an appeal (see Law Officers of the Crown v Collins (1989) 8 GLJ 16 applying R v Parks [1961] 3 All ER 633). Adopting the wording from the judgment in Parks, these guidelines are as follows:*
>
> *(1) the evidence must be evidence that was not available at the original trial;*
> *(2) it must be evidence that is relevant to the issues;*
> *(3) it must be capable of belief; and*
> *(4) the court must consider that, if that evidence had been called at trial, there might have been a reasonable doubt as to the defendant's guilt."*

6. As ever, it is helpful to consider the current guidance available in England at Blackstone's D26.48 which sets out the limitations on use of update material and fresh evidence in appeals against sentence. In England there are statutory rules. Section 23 (1) Criminal Appeal Act 1968 relating to the receipt of fresh evidence is broadly similar to our provisions above. In the Blackstone's commentary it is said that "*First, it is incumbent on those acting for an offender to call all the evidence before the sentencing court and, therefore, persuasive evidence is required to explain why it was not all called. Second, the court must consider whether it is in the interests of justice that it should be admitted notwithstanding that failure."*

7. Reference was made in submissions to the fact that recently two appellants were permitted to adduce fresh evidence on appeal to this Court against sentence. In Michael Le Gallez v The Law Officers of the Crown [2025] GRC 005, leave was given to admit fresh evidence as, in that case there was an argument that impact on employment had not been sufficiently aired at the time of sentencing. In Alexander v The Law Officers of the Crown [2025] CRC 019, whilst A may have been allowed to file new material, the appeal was determined as a matter of law so the case is not on point.

8. Distilling the principles above from our Court of Appeal decision into those for an appeal against sentence I consider the test for admission of fresh evidence on an appeal against sentence to be:

> *(1) the evidence must be evidence that was not available at the original sentencing;*
> *(2) it must be evidence that is relevant to the issues;*
> *(3) it must be capable of belief; and*
> *(4) the court must consider that, if that evidence had been called at the sentencing, it might have made a material difference to the sentence or, put another way, that the evidence may afford any ground for allowing the appeal*

The broad basis of the test is that of the interests of justice. The Appellant's Article 6 Rights are also potentially engaged.

9. Advocate Steel urged me to allow in the two letters to help the Jurats see the consequences of the custodial sentence on innocent third parties, especially A's mother and son, which was a key issue raised during the plea in mitigation and a cornerstone of this appeal. Advocate Steel submitted that the material is not challenging a factual basis of sentencing in the sense of the examples given in Blackstone's. The letters could not have been submitted sooner as they speak of the consequences which had not yet occurred at the time of the sentencing hearing. Advocate Steel submitted that it was in the interests of justice for the Jurats to see the new letters as they provide evidence of the actual consequences of the sentences on innocent third parties. He accepted that the Jurats can place as much or little weight as they see fit. Advocate Roffey had

already indicated that the Prosecution took a neutral stance. He did not consider that the letters added anything.

10. I considered the letters, the applicable legal principles and the submissions. In the sense that the letters post-date sentencing, it can be said that the material was not available at the sentencing but a lot of what is said is what was said in mitigation so the material is not new. This is especially so of the information about A's mother which makes for sad reading but Judge Perry was fully aware of the role A played in her life he being described as *"only link to the outside world"* so, in my judgment, this does not meet the test for admission. Similarly, there was material before Judge Perry as to the likely impact of a custodial sentence on the son and the information about him adds nothing materially new. There is one new point raised namely that of A's fiancée's job at the prison which is said to have been closed to her on the first day because A is a serving prisoner which has left her and the household without income at a time when a new property was to be purchased. It appeared to me that this was not known at the time of the sentencing. I took the view that this might be relevant to the appeal, taking the letter at face value on that point, so released the fiancée's letter to the Jurats to be considered by the Court.

19. That was not the end of the matter as Advocate Watson, who had prosecuted the matter, resumed conduct of it for the appeal and objected to the inclusion in the fiancée's letter of the material about A's son on the grounds that it was inaccurate in terms of what contact he has with his maternal family. Both she and Advocate Steel addressed the Court at the start of the appeal hearing on the issue and the question of weight to be attached to that paragraph was left to the Court. It was made clear that the letter had been admitted because of what appeared to be new information about A's fiancée's job. At the hearing, there was some discussion as to whether A's fiancée might give evidence and the Court indicated that it would like to hear more on the issue of the lost job, finances and the house purchase as these issues might have a bearing on the appeal so A's fiancée gave evidence and was cross-examined by Advocate Watson and answered the Court's own questions.

Law Applicable to the Offences

20. Turning now to the Appeal itself, the maximum penalty for assault in the Magistrate's Court is 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. There is also a maximum aggregate of sentences of imprisonment of 3 years for more than one offence. The maximum penalty for resisting arrest is 3 months' imprisonment or a fine of level 5 on the Uniform Scale of fines or both.

21. Under section 1 of The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 ("the 1988 Law") the Appellant has a right of appeal against sentence which is not limited by any of the restrictions in section 2.

Approach of the Court to appeals

22. 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 sentences fall outside the appropriate range of sentences for the offence and the offender. An appeal will not be allowed just because a 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

23. 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

24. The grounds of appeal are that the sentences were manifestly excessive in that:

1. the Court placed too much weight on historical previous convictions;
2. the Court placed insufficient weight on the impact of immediate custody on family members such as the Appellant's mother and son;
3. the Court placed insufficient weight on the Probation Officer's recommendation for a Probation Order; and
4. the Prosecution relied upon a Victim Impact Statement which was in an email format and unsigned, and had not been served in good time upon the Appellant's Advocate.

Legal Principles where impact on family life is raised

25. The familiar legal principles to be applied by the Magistrate's Court (and this Court) where impact on family life is raised are set out in the Royal Court case of Bourgaize v The Law Officers of the Crown 2014 (Jmt 49). The Court is required specifically to consider the Article 8 rights (incorporated into domestic law by virtue of The Human Rights (Bailiwick of Guernsey) Law 2000 of those affected by a defendant being imprisoned as well as on the defendant himself. There are 3 questions to be considered.

- Is there an interference with family life?
- Is it in accordance with law and in pursuit of a legitimate aim within article 8.2?
- Is the interference proportionate given the balance between the various factors?

26. A sentence of imprisonment 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 and those with caring responsibilities who commit serious offences face prison like everyone else. The issue for the sentencing 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.

27. The case of Bourgaize makes it clear that the sentencing Court should be informed about the domestic circumstances of a defendant facing an immediate custodial sentence. The amount of information will be dependent upon the defendant's circumstances and will usually be contained in the Social Enquiry Report ("SER") which should indicate if any further inquiries

or reports might be needed. In our judgment the primary burden of ensuring that all the relevant information is before the Court rests on the defendant and it is the current practice for the defendant to file relevant information to supplement that in the SER.

Facts of the case/Approach of the Magistrate's Court to sentence

28. The facts of the assault and resisting arrest were agreed between the Prosecution and Defence as confirmed at the start of the sentencing hearing where the learned Judge properly raised a concern about A's change of plea to Guilty to the assault in view of his comments to the Probation Officer. This change of plea had been indicated the day before the trial, A having originally entered a Not Guilty plea. Initially, the Guilty Plea was entered on the basis that he had only thrown one pole. The learned Judge decided that whether A had thrown one or two poles was material to sentence so there was a Newton hearing. After some evidence had been presented, A indicated a Guilty Plea on the full P facts i.e. that two poles had been thrown.

29. The facts of the assault as outlined at the sentencing hearing are that on 10th August 2024 there was a verbal altercation between A and an adult female IDG, daughter of a former partner of A ("V") and her husband outside A's home. Police officers saw V in the road so stopped. A was seen by police to throw a long metal pole in the manner of a javelin at her. A was captured on the police car's dashcam to throw a second pole. V ducked to avoid them. PCS arrested and cautioned A who was verbally aggressive and was generally resisting. Whilst handcuffed, A kicked PCS on the shin. A police van was summoned to transport A. Whilst standing with the two officers at the rear of the van, A was confrontational and kneed PCS in the groin causing him some discomfort. It was alleged that A resisted for 5 minutes.

30. This Court watched the same dashcam and bodycam footage as the learned Judge. V is seen standing in the road and what appears to be a light pole passes close to her causing her to duck followed by another which passes further over her head but she ducks nonetheless. The police car which, we are told, happened to be in the area, slows when it sees the lady in the road. The poles land on the other side of the road and are retrieved. The body worn footage records A shouting and swearing at officers, the sound of kicking which the officer asks him to stop and the officer complaining of being kneed. Several officers have to load A into the van while he is still protesting.

31. At the sentencing hearing what was described as a Victim Impact Statement ("VIS") was handed to the learned Judge. It was accepted that it was not in the usual format of a statement. It was an email purportedly from V marked with what were described as "agreed" redactions. Advocate Watson, prosecuting, accepted that, as it was not in proper form and that it would be up to the Judge how much weight it had. V described that the incident had made her feel isolated and she had had to seek help for depression for which she was on medication and undergoing therapy, when affordable. A's previous convictions were also handed up.

32. In mitigation, Advocate Steel referred to the various letters which we have also read. He asked that credit be given for the guilty pleas, though late, as the time of three police officers had been saved. He explained that A had returned home exhausted after a long day, was unwinding with a bottle of wine and fell asleep. He awoke to knocking on the door to find V and her husband, who had visited out of concern for A's son, a visit which was unwelcome and, Advocate Steel said, unnecessary. A reacted impulsively, throwing what Advocate Steel described as light plastic poles, neither of which made contact, the second passing high above V's head but he acknowledged that she took evasive action. There were no injuries. The VIS was late and was unclear as to when the victim's depression started. It was accepted that A did himself no

favours in terms of his behaviour towards the police. It was submitted that he had expressed remorse, at least to those close to him, notwithstanding his presentation to the Probation Officer, whereby he seemed to be blaming others, on which the learned Judge commented. Advocate Steel pointed out to the learned Judge paragraph 7 of the Social Enquiry Report which refers to the deflection of blame as a defence mechanism. Advocate Steel said that A was worried about the impact of a prison sentence on his self-employed work as a plasterer and his ability to meet his financial responsibilities. His 16 year old son had resided with him since June so there was concern for his care should A be imprisoned. Advocate Steel also described A as part-time carer for his 88 year old mother as her "only link to the outside world". A's life had changed considerably since the incident. His new partner is teetotal and has been the driver for A no longer consuming alcohol. He and his son have moved in with her and A and his partner plan to marry and are in the process of buying a house. A, his partner and family were all concerned at the impact of a custodial sentence. His partner was concerned about having to care for his son and sort out the house move on her own, his brother was particularly concerned at the impact on their mother. Advocate Steel emphasised that there had been a gap in offending of 10 years and urged the learned Judge to impose a Community Service Order or a Suspended Sentence.

33. In his sentencing remarks the learned judge stated that he had given A less than full credit for the late guilty pleas, he had taken into account all the letters and could see that they described a different person from A at the time of offending but he was sentencing the offender. He was clearly concerned by A's answers to the Probation Officer which he described as speaking to A's "real person". The learned Judge referred to A's "terrible record", inability to control himself and his need, in terms, to blame others. The assaults had had the potential for far more serious consequences. It was a matter of luck that no one was hurt and this was another example of resisting arrest and demonstration of lack of respect for police officers. There was a need to protect the public. He had taken account of totality.

The Social Enquiry Report

34. The SER records A as being either unable or unwilling to take responsibility for his actions. A went as far as to suggest that he had been set up provoked into offending by the victim. At times, A demonstrated no insight into the impact of his behaviour on others. He blamed everyone including his legal team and the police and suggested that the dashcam footage had been doctored. The writer did say that deflection is common in those with self-regulation issues. A was assessed as posing a medium static risk of reoffending but a high risk of further offending in the context of arrest because of his entrenched beliefs about the police and being victimised. This risk could be reduced by abstinence and emotional regulation. The level of violence was said to be not beyond the threshold of a risk of serious harm with concern expressed at the use of a weapon. The recommendation was for a Probation Order as the most constructive sentence. The gap in offending was noted and it was said that there was evidence that A could respond to such interventions. A Community Service Order or Suspended Sentence were also suggested.

The Fiancée's evidence at the Appeal Hearing

35. A's fiancée gave evidence that she had been due to start working at the prison as a teacher in the days following A's sentencing hearing. After A was given the custodial sentence, she contacted Human Resources and the prison to alert the Governor to the situation. He told her that she could not take up the post on account of conflict of interest and welfare concerns for A. By then, her previous post had been filled so she was (and is) without a job. The prison job is no longer available. She managed to complete the house purchase with financial help from one of A's brothers. She acknowledged that an immediate custodial sentence had been possible and foreseeable and that she might have raised the job issue sooner but said that, in her mind, she had been sure that immediate custody was a very low risk. She did not think to raise the

possible loss of her job at the sentencing hearing as she was so sure that there would be no immediate custodial sentence. Such was the certainty that they had not even arranged for A to transfer funds to her for the house purchase before that hearing, hence the need for the assistance from A's brother. A's fiancée also gave limited evidence about A's son, that he is due to start an apprenticeship with his father in September and had begun to work with him, learning the ropes. She described him as shut down and refusing to get out of bed. She is trying to get him into work.

Counsel's submissions on appeal

36. Advocate Steel addressed the Court eloquently and at some length in support of his overall submission that the sentences were manifestly excessive. We have considered carefully all that he said. The main points can be summarised:

    (a) in this case, A should be given a chance to respond to a non-custodial alternative and to have the Probation Order as recommended in the Social Enquiry Report;
    (b) no contact was made and no injuries were caused (it is to be noted that the officer complained of some discomfort in his groin); the poles were lightweight;
    (c) this was not a drunken assault in town but a man reacting to those he saw as unwelcome visitors trying to abduct his son. His resistance was vindicated by social services being subsequently satisfied that there was no issue;
    (d) A was entitled to a discount for his Guilty Pleas, though late, as they had saved officers from having to attend Court;
    (e) immediate custody was disproportionate taking into account the impact on his son and mother, being innocent third parties (Bourgaize). A's son was living with him at the time of the offence before they both moved in with the fiancée where the son is still living. The impact on his young son was heightened as he has no maternal family support. Advocate Steel referred to the report by A's fiancée that the boy is mute and will not get out of bed. Advocate Steel also referred to A being his mother's link to the outside world. In response to questions from the Bench, Advocate Steel explained that A has two other siblings in Guernsey (one sat though the appeal hearing) one has a demanding job which leaves little time to assist and the other is having cancer treatment. A with his flexibility by being self-employed is best placed to assist his mother;
    (f) A had made many positive changes in his life including giving up alcohol as a result of his stable and positive relationship with his fiancée;
    (g) that the learned Judge erred in saying that A had convictions for assaulting others. Further, the Judge's description of A's record as "terrible" ignored the significant lapse of time since the last assault on police (2010) and before that (2003) and since the only resisting police offence (1999) and that there had been no offending since 2017;
    (h) an immediate custodial sentence was not a real test of his abstinence from alcohol;
    (i) A was deemed suitable for Community Service Order, the Royal Court could impose the maximum 180 hours which would be a punishment and a deterrent with an effect outlasting a 4 month period in custody (based on time served less remission) and would enable him to be the father and son he needs to be; he had responded to supervision in the past; and
    (j) Re the VIS, Advocate Steel explained that it had appeared at the last minute and he and his client took a pragmatic view to avoid any delay. He submitted that it should be given little weight.

    2. Advocate Watson drew out a few points:

        (a) the potential danger to passing road users of throwing the poles into the road;

(b) the guilty pleas were so late that no preparation time was saved and there was inconvenience in having to have the officers available. The Court might conclude from the video evidence that A had little choice other than to plead Guilty;
(c) assessment of remorse by a trained probation officer carries more weight than the unsworn hearsay of his friends and family who do not want him to go to prison;
(d) he has convictions for criminal damage and public order offences;
(e) Probation Officers rarely recommend custody;
(f) the Probation Officer reported on the cycle of abstinence and relapse which the learned Judge was bound to take into account; and
(g) the impact on son and mother was fully aired at the sentencing hearing. Whilst it is not the fiancée's role to take on A's responsibilities, she entered into the relationship knowing that A was facing sentencing, the son does have a maternal family and there are A's siblings to assist his mother, who lives in sheltered accommodation, so it is not as if there are no other options for them.

Discussion

37. The Court's powers are as set out above. The test is whether the appeal is manifestly excessive not whether this Court would have passed a different sentence. We have no doubt that the custody threshold was passed – throwing two weapons into a road was highly dangerous to V and anyone passing. The resisting arrest was at the higher end in view of the kicks and kneeing. The Guilty Pleas were about as late as they could be and were inevitable so A was entitled to only minimal credit for them.

38. Whilst Advocate Steel tried, with some skill, to present the previous convictions as less than "terrible", we consider that the learned Judge was quite right to describe them in that way. We agree with his conclusion that A has no respect for the police and cannot control himself in the face of a perceived injustice. That sense of injustice is apparent from A's own letter and that of one of his supporters who describes the victim as an "alleged" victim. The Probation Officer assessed A as high risk of further offending in the context of arrest. This is not diminished by her comment that deflection of blame is common in those who struggle to regulate emotions. It is the dysregulation which is the problem, not the alcohol though that exacerbates the problem. The writer of the Social Enquiry Report was justifiably concerned at A's extraordinary presentation during her assessment and the learned Judge was right to place that presentation at the heart of the sentencing exercise. That presentation negated the alleged progress made by A since the incident and brought fully into play the previous convictions, notwithstanding the gap since the last relevant offence. A is 54 years old and should have better self-control, especially in the presence of his young son. Sentencing is not just about the offender. Sentencing must address punishment, deterrence and protection of the public.

39. We will consider each specific ground in turn:

    <u>The Court placed too much weight on historical previous convictions</u>

40. As above, A's previous extensive record speaks for itself. The error that A has no convictions for assaulting others is not material. The learned Judge was absolutely right to take the record fully into account. He specifically acknowledged that A had kept out of trouble for a relatively long period.

41. <u>The Court placed insufficient weight on the impact of immediate custody on family members such as the Appellant's mother and son.</u>

42. The impacts on A's son, mother and fiancée are set out in the bundle and summarised above. The sentencing Court had to balance those impacts against the legitimate aims of sentencing in a serious case. In a case such as this where the custody threshold is clearly passed the balancing exercise entitles the court to consider reducing the length of the sentence or suspending it or imposing a Community Service Order as a direct alternative. The learned Judge clearly took into account all the material before him. We have considered that material and the additional information presented as part of this appeal to ensure that all issues were fully considered. A's fiancée is to be commended for her care of A's son. It is unclear exactly what the position is with the maternal family. The son's own letter says no more than that he prefers to be with his father. One Uncle says that the incident has split the family. That is for the adults to resolve. The reality is that the son is cared for and has family. A's Mother is in sheltered housing which provides a level of care and we have heard that she has other children who can assist her. The impact on A's fiancée herself was not particularly raised at the sentencing or in the grounds of appeal but clearly there is one. She has care of A's son and her finances are less secure than they would have been had A not been imprisoned. The Court considered carefully the circumstances of the loss of her job at the prison and formed the view that this was a matter which should have been addressed much earlier. The Court did not accept that the possibility of an immediate custodial sentence was so low that she need not have planned for it in terms of the prison job. Similarly, the transfer of funds should have been planned ahead of the sentencing date. In the Probation Report it was made clear that A knew that he was facing an immediate custodial sentence. The impact on A's fiancée is unfortunate in terms of her having to care for the son and in terms of financial difficulties but the house sale has completed and there was no evidence of acute financial hardship which might be material to the appeal.

43. <u>The Court placed insufficient weight on the Probation Officer's recommendation for a Probation Order</u>

44. This was the writer's recommendation but it is important to read her full conclusion. She described a violent offence aggravated by use of not just one weapon but two with the aggression then redirected at the officers. Whilst there was no physical harm, there was the potential for physical and emotional harm to others directly or indirectly. The behaviour was reactive, triggered by emotional dysregulation supported by entrenched attitudes and aggravated by the use of alcohol. She fully acknowledged that the Court would be considering a custodial sentence. Sentencing Courts regularly depart from recommendations in SER. The learned Judge considered all the material before him. His rejection of the recommendation is above criticism.

45. <u>The Prosecution relied upon a Victim Impact Statement which was in an email format and unsigned, and had not been served in good time upon the Appellant's Advocate</u>

46. In this case the VIS was in the form of an email from V and clearly contained disputed and possibly inappropriate content. Whilst it is understandable that Advocate Steel and A took what Advocate Steel described as a "pragmatic" approach so as not to delay the sentencing hearing, this makes it hard for Advocate Steel to rely on the form of the VIS as an appeal point. Advocate Watson properly conceded that the VIS was not in proper form and that this went to its weight. Advocate Steel made all relevant points on the VIS. In any event there is nothing said by the learned Judge to indicate that he placed any reliance on it to any extent at all. His focus was the offence, A's record and the serious concerns raised in the SER.

Conclusion

47. The key issue in this appeal is whether immediate custodial sentences were manifestly excessive. Advocate Steel's case is that they are and that they should have been suspended or a Community Service Order imposed as a direct alternative. A Probation Order might have been added as suggested in the report. We remind ourselves again that the test is whether the

sentences imposed fall outside the range of sentences which might reasonably have been imposed on this offender for these offences not how he might have been sentenced by us. We also must not tinker with sentence which is relevant as the sentence for the resisting arrest is in our view arguably a bit higher than it should have been. Of the appeal points raised, the only one which we consider has any merit is the impact on others of A receiving immediate custodial sentences. The impacts are well evidenced. The question is whether those impacts are, individually or collectively, disproportionate which would render the immediate custody manifestly excessive. Having given the matter anxious consideration, we have concluded that the impacts are not disproportionate bearing in mind the offences themselves, A's past record, his response to offending and risk profile and the mitigations that are available for the care of his son and mother. Accordingly the Appeal is dismissed.

Victim Impact Statements

19. The Judge wishes to make some comments on the issue of the VIS. VISs are a regular and important part of sentencing in Guernsey. They can have a significant impact on the sentence passed and must be properly prepared, managed and disclosed. There is no formal guidance in Guernsey on VIS. There is guidance in England in the form of a Practice Direction and in the practitioners' works such as Blackstone's. As a matter of practice in Guernsey, we largely follow and, in my judgment, should follow that guidance, though it is in no way binding. The process of taking a VIS should begin when a victim is providing a witness statement or evidence. A VIS should be in the form of a statement drawn up in good time with the help of a police officer who can guide the victim as to the appropriate content. That content should be confined to the impact on the victim and not stray into the facts of the offence. It must not be forgotten that the content of a VIS can be challenged. Reasonable care must be taken to ensure its accuracy. It should be provided to defence counsel in good time so that any issues or disputes can be addressed in good time before the sentencing hearing. In England, a VIS cannot be changed, rather a supplementary statement has to be filed. In Guernsey redaction does on occasion occur but that is to be discouraged. The statement should be correctly drafted in the first place. As can be seen from the appeal case of Trenchard v The Law Officers of the Crown [2024] GCA 009 the content of a VIS can lead to an appeal so great care in is required. Counsel are asked to note this guidance in future cases.

Catherine Fooks
Judge of the Royal Court

29th May 2025