

Ordinary Court Disposal Hearing. YP found unfit to plead so there could be no trial.

[2024]GRC071

Anonymised and Perfected for Publication

Section 11 of The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 applies to this case so there must be no publication of any report containing the name address or any particulars likely to lead to the identification of the young person or any other young person associated with the case and there must be no publication of any picture of any such person. Any publication in any medium whether that is in writing or by broadcast or by means of the internet including social media is an offence.

**IN THE GUERNSEY ROYAL COURT OF GUERNSEY
(CRIMINAL DIVISION)**

ORDINARY COURT

LAW OFFICERS OF THE CROWN

-v-

YOUNG PERSON

Disposal Hearing (Ordinary Court)

19th August 2024

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Jonathan Grenfell Hooley, Stuart Michael Crisp and Simon Ernest Bodkin**

**Advocate S G Watson appeared for the Crown
Advocate P Lockwood appeared for the Defendant**

Judge and Jurats

1. This a perfected and anonymised record of what was said at the hearing. On [date], the Ordinary Court found the Young Person (“YP”) unfit to plead so there could be no trial. Following that finding on [date], the Full Court determined that YP had carried out certain acts, namely downloading 234 indecent images of children, taking four Category C indecent images of a specific child and distributing two of those images.

2. The findings that YP had carried out the acts are not convictions, YP will not, cannot and should not be punished. Under some of our Laws, such findings enable certain Orders to be made with a view to ensuring that persons carrying out such acts do not repeat them and to protect the public from risks associated with those acts. In this case, the Full Court has, earlier today, made a Supervision Order under Section 15 of the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 and also set the relevant period for Notification under the Criminal Justice (Sexual Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 as the making of the findings falls within the definition of a conviction under that legislation. YP will also be managed by MAPPA.
3. Since YP was last before this Court, YP has gained a qualification and has been offered a job. He has been assessed by Mr Foote of the Youth Justice Service. He also been assessed by Dr Hill (again), who was one of the experts from whom you heard, and by Professor Leam Craig, a Consultant Forensic Criminal Psychologist. Their conclusions were that YP had moved on and matured and that he posed a low risk of sexual re-offending and was not a risk to pre-pubescent children. That being so, the Full Court made the Supervision Order which will run out [date] and there are plans within that Supervision Order to carry out some work with YP such as the NSPCC Course, 'The Change for Good Programme' for young people who display harmful sexual behaviour, 'The Good Lives Model for Rehabilitation' and some psycho-educative work which was recommended by Mr Foote, so there is a suite of work to be carried out and of course, YP has been working with Mr Foote and Youth Justice since [date].
4. The position is that when the Ordinary Court finds that a person is unfit to plead, section 1 of the Criminal Justice (Special Verdicts) (Guernsey) Law, 1961 provides that the Court shall order him to be detained during His Majesty's Pleasure ("the DAHMP Order") and such person shall thereupon be detained in an approved establishment (as defined) until further Order. The effect of that would be that YP would be detained at the Oberlands or in part of the Princess Elizabeth Hospital and it has long been the understanding of everyone involved in this process that that would not be what is required in YP's case and would not be an appropriate order.
5. As Section 1 of the Law makes the Order mandatory, the Judge directed that the Jurats of the Ordinary Court must now make the Order. This hearing had been deferred until after the hearing in the Full Court to determine whether or not YP had carried out the acts, as any Order for YP's detention without a finding that he had carried out any acts would be a breach of his rights under Article 5 of the Convention for Human Rights, (incorporated into Guernsey legislation by virtue of the Human Rights (Bailiwick of Guernsey) Law 2000), not to be deprived of his liberty, except in the circumstances provided for by that Article and such an Order without a finding would, therefore, be unlawful. This hearing was also deferred until the Full Court could determine whether any orders were necessary which were in its powers to make.
6. The making of a DAHMP Order for YP's detention when he has no need for treatment would also be a breach of his Article 5 Rights and would, in his case, be unlawful. The fact that its effect might be mitigated by the application of Section 5 of the 1961 Law, which allows for temporary release or possibly by release by the medical professionals is of minimal legal comfort in YP's case. Fortunately, the requirement to make the DAHMP Order is not the end of the process as Section 1 goes on to provide that the DAHMP Order is made "...until further order" which the Judge has interpreted to mean that the Ordinary Court is able to make a further and different order. This is all a matter of Law and procedure and, under the terms of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950 Section 6, such matters are for the Judge alone.
7. The Judge explained that, once the Jurats had made the DAHMP Order, it was her intention to sit alone to discharge DAHMP Order and to make "no order" which is the appropriate order

ultimately for this Court to make in YP's case. The Jurats having made the DAHMP Order, the Judge sat alone.

Judge Alone

8. In the circumstances of this case where the Full Court has made a Supervision Order and there are Notification and MAPPA processes in place to assist YP and to protect the public, I am prepared to make a further Order under Section 1 of the 1961 Law as follows:
 - (1) to discharge the DAHMP Order which is therefore discharged; and
 - (2) to make a final "No Order". The ultimate Order of the Ordinary Court in this matter is, therefore, "No Order".

9. The legal issues raised in this matter are complex and the process for YP has been a long one as we worked through the issues and the law and the procedure were interpreted and developed as best they could be to meet the needs of YP's case. That process was only possible with the huge assistance of Counsel, not just Advocates Watson and Lockwood but also Crown Advocate Dunford, others from the Law Officers' Chambers and other members of the private Bar and the process is continuing. The Law Officers are fully aware that urgent reform of the Law is needed in this area and I have been assured that work is under way to achieve that reform. That reform cannot come soon enough.

10. YP, this is the end of the Court process for you. Be sure to carry on working with Youth Justice and I wish you well in your job and, I mean this in the nicest way, I hope to never see you in my Court again.

Catherine Maureen Fooks
Judge of the Royal Court

28th October, 2024