

Criminal Justice (Special Verdicts) (Guernsey) Law, 1961 and The Human Rights (Bailiwick of Guernsey) Law, 2000, procedure following finding that D is unfit to plead, findings of acts committed, consequences of the making of findings, Notification under The Criminal Justice (Sexual Offences and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (section 54(2)), SOPO made under section 18 of the 2013 Law (the Court having determined that false imprisonment was sexually aggravated) – to be read with the judgment of the Ordinary Court of even date.

[2025]GRC044

Section 45 of The Criminal Justice Sex Offenders and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2013 applies to this case so there must be no publication of any matter including (but not limited to) the name, address of work or school or any photograph likely to lead to the identification of either of the Complainants in this matter in their respective lifetimes. 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 ROYAL COURT OF GUERNSEY
FULL COURT**

THE LAW OFFICERS OF THE CROWN

- v -

WILLIAM KING

Disposal Hearing (Full Court)

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats: Steven John Morris, Marilyn Jasmine King,
David James Mortimer, Tina Jane Le Poidevin, Paul Martin Burnard,
Kay Alison Parnwell and Sally-Ann May David**

Date of hearing: 17th January, 2025

**Advocates for the Crown: L C Roffey and S G Watson
Advocate for Mr King: P T R Ferbrache**

Cases, legislation and texts referred to in Decision:

The Criminal Justice (Special Verdicts (Guernsey)) Law, 1961
The European Convention on Human Rights
The Human Rights (Bailiwick of Guernsey) Law, 2000
The Criminal Justice (Sexual Offences and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013

Law Officers of the Crown v YP [2024] GRC072

Law Officers of the Crown v Blampied Guernsey Judgment 52/2017

R v Collard (2004) EWCA 1664

R v Smith and others [2011] EWCA Crim 1772

JUDGE OF THE ROYAL COURT:

1. This judgment should be read as if delivered at the end of the Full Court sitting on 17 January 2024 when the decisions to grant the SOPO and the length of the Notification period were announced and before the sitting of the Ordinary Court, which is the subject of a separate judgment.

Background

2. Mr King, you were committed to this Court on two Indictments which contained allegations of assault by penetration, rape, false imprisonment and attempted rape by two Complainants. After your committal, your Advocate raised an issue about your fitness to plead in the wider sense of your ability to participate in a trial. The applicable Law is the Criminal Justice (Special Verdicts (Guernsey)) Law, 1961 (“the 1961 Law”) which is out of date and a procedure has been and will be followed so as to ensure compliance with your rights under the European Convention on Human Rights (“ECHR”) incorporated into Guernsey Law via the Human Rights (Bailiwick of Guernsey) Law, 2000. Following the procedure set out in Law Officers of the Crown v YP [2024] GRC072, the Ordinary Court sat to decide whether you were fit to plead, or perhaps more correctly, unfit to plead. On 2nd May 2024, that Court found that you were unfit to plead. Section 1 of the 1961 Law provides that the Ordinary Court should, following that finding, make an order that you be detained at His Majesty’s Pleasure (“DAHMP Order”) which means that you should be detained in an approved establishment which, by definition, means Les Oberlands or certain parts of the PEH. Any order for your detention in such a place without a finding that you had carried out any acts would be a breach of your right, under Article 5 of ECHR, not to be deprived of your liberty, except in the circumstances provided for by that Article and such an order would, therefore, be unlawful. In order to deal first with that issue, I adjourned the proceedings before the Ordinary Court, without the DAHMP Order having been made, so that there could be a hearing before this Court, the Full Court, to decide if you had carried out the acts. Prior to that hearing one of the Complainants withdrew her Complaint and amendment was made to the Indictment in respect of the other Complainant (“C”) so that you were facing allegations of false imprisonment, which is a customary/common law offence, and sexual assault, contrary to section 13 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020, against her. C gave evidence at the hearing and on 24th July 2024 you were found by the Full Court to have committed those acts. Those findings (“the Findings”) are not convictions. You will not, cannot and should not be punished as you have been found unfit.
3. The next issue to be considered was whether you needed any form of treatment or intervention to assist you and to protect the public. The making of a DAHMP Order for your detention in an approved establishment if you did not require treatment would also be a breach of your Article 5 rights.
4. Your case was further adjourned, therefore, for reports to be obtained. The Court ordered a Social Enquiry Report which has been prepared by Ms Golden, Probation Officer, whose qualifications and experience are set out in the bundle. The Court also commissioned a report

from Dr Radley, Consultant Psychiatrist, specialising in learning disability psychiatry. Both have provided reports in which they set out their assessment of the risk that you pose to the public and made recommendations as to the sort of treatment you need to address your sexual behaviour. Dr Bishop, Consultant Psychiatrist and Clinical Director, Guernsey Specialist Mental Health and Adult Disability, has also provided the Court with information as to your possible treatment in Guernsey.

5. The Findings are, by virtue of section 54(2) of the Criminal Justice (Sexual Offences and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (“2013 Law”), the equivalent of a conviction for the purposes of Notification under that Law. You became a Notifier, therefore, on 24 July 2024.
6. Section 18 of the 2013 Law enables the Court to make a Sexual Offences Prevention Order (“SOPO”) if the statutory grounds are met. The power to make this Order does not rely on a conviction or findings but is made on application by His Majesty’s Procureur (“HMP”). In view of the risks identified in the reports, HMP has made application for a SOPO (“the SOPO Application”) dated 9th January 2025 and has provided a draft order. That SOPO Application can be made to the Royal Court and I decided that it was appropriate for the Full Court to be convened as it had made the Findings and because it was the appropriate Court to set the Notification period. I also decided that the procedure and constitution of the Court should be that of the Full Court when sitting as a sentencing Court.
7. Advocate Ferbrache has represented you throughout the proceedings before the Royal Court. Following the Finding that you were unfit, his role was reviewed and he was appointed by the Court to act in your best interests. He has undertaken that role professionally and conscientiously. As part of that role he has made an application dated 26 November 2024 on your behalf for the DAHMP Order to be set aside/revoked and replaced with “no order” (“the No Order Application”). The Ordinary Court will consider that application later today.
8. It is agreed by the two report writers and accepted by Advocate Ferbrache that you need treatment. There is a disagreement as to where you should receive the treatment you need. This Court is not concerned with the details of the treatment. The Ordinary Court, which will sit immediately after this hearing, will be required to make an order for your Detention at His Majesty’s Pleasure (which means an order under which you will be sent to Les Oberlands) and will consider the No Order Application as part of which consideration the Ordinary Court will be concerned with the detail and best approach to your treatment.

The Facts

9. Advocate Watson has outlined in detail the facts of the acts which were found by this Court and so they need only be summarised briefly though I make it clear that the full facts and evidence provided have been taken into account. In the early hours of 23rd April, you, in the form of an unlicensed taxi driver, picked up C (plus another person) from the bus stop at North Plantation and, having dropped off the other person, drove her around for about 2.5 hours which including a visit to his house and swapping cars. Those journeys were consensual. When you picked her up, she was drunk and by the time you parked at Icart, she said she was unconscious. She woke to find you, to some extent, on top of her or at least half in/out of the car next to her, with her pants down and her trousers partly off (“the sexual assault finding”). Your trousers were down. She could not recall seeing your penis. She screamed and you moved, pulled your trousers up and returned to the driver’s seat. She had lost her phone and was screaming at you to give her yours. She called 999 but you grabbed the phone. She was screaming for you to stop the car as she wanted to get out (the false imprisonment finding) but you would not for some time but eventually dropped her where she requested. In the course of the journey you apologised to her. Her evidence was supported by CCTV footage and dashcam footage from your car (which recorded her screaming and is harrowing to listen to), location data and other

digital evidence. You made some comments to yourself which were recorded on the dashcam after C got out and you made some significant comments on arrest. It is of note that you were accessing pornography prior to picking up C which included borderline images of children and a video involving bestiality. It is also of note that these acts were carried out when you were on bail in relation to the complaint of rape from the other Complainant. There is a Victim Impact Statement from C in the bundle which attests to the impact on her of the acts in terms of her health, ability to work and her personal relationships. She often has nightmares. She describes the impact as massive and negative in every aspect of her life.

Reports

10. Ms Golden has explained that her report is limited by the fact that you have not been convicted of offences and your learning difficulties/autism. She has focussed on an assessment of harm to the public, available disposal options and her recommendations in respect of the SOPO and Notification. She has used the Risk for Sexual Violence Protocol RSVPv2 which she considers to be the most appropriate risk assessment tool for the reasons she gives. It takes into account a broad range of material. Her assessment is that you pose a high risk and real threat of serious harm to the public, the risk being to vulnerable females which, in view of your internet search terms, could include female children. The harm is sexual and could include rape. It is high risk because of the seriousness of the behaviour and likely impact on victims. The risk factors of imminence (how quickly you are likely to repeat the acts) are present. Lone vulnerable females are identified as the most likely victims; there is some concern over re-victimisation. You are assessed as having a high likelihood of offending with indecent images of children or child exploitation materials and we have seen some of the search terms. Her view is that you require treatment and should be treated off island in closed conditions in a specialist unit for sex offenders with learning difficulties before release into the community is considered. It is her view that the on island proposals are not adequate as the risk you present is not manageable in the community. She does recommend the SOPO nonetheless as she estimated that it would still have some 3 years to run after completion of your treatment which she estimated could take 18 months to 2 years. She explained in her report, and when she assisted the Court in answering some questions why she is recommending the particular terms, namely to ensure your employment and residence do not provide victim access, to enable disclosures as is necessary to members of the public, to allow for increased monitoring and detection of harmful sexual behaviours and specific protection for the two Complainants to prevent re-victimisation. She also recommends a condition that you comply with any requirements specified by the Probation Service, which will take the lead in the management of the SOPO, to ensure that you address your sexual offending problems and an additional condition was added which requires your specific compliance with the recommendations of those responsible for your psychiatric assessment and treatment and/or offending behaviour.
11. Dr Radley considered that you pose a moderate risk of sexually inappropriate behaviour. Her recommendation, were you in the UK, would be for the specialist supported community placement for adults with learning disability and autism but she considered that it might be possible for you to be treated in the community with an adapted sex offender treatment programme in Guernsey were certain conditions met. Focussing on her risk assessment, in her second report she described her discussion with Ms Golden and the difference between their assess of risk. She said that Ms Golden's assessment of high risk with moderate imminence is a justifiable conclusion if no mitigating arrangements were in place.

The SOPO Application

12. Section 18 of the 2013 Law enables a SOPO to be made where the Court is satisfied on the balance of probabilities that a person who has been found to have carried out an act which is the equivalent of a relevant offence poses a threat of

- (a) sexual harm to children in general or to a particular child or children, or
- (b) serious sexual harm to the public or any particular person or persons, and it is satisfied that an order is necessary to protect:
 - (i) children in general or any particular child or children from sexual harm from the offender, or
 - (ii) the public or any particular person or class of person from serious sexual harm from the offender.

A sexual offences prevention order may –

- (a) prohibit the offender from doing anything described in the order (which includes prohibiting the person from work or activity which may require or be likely to allow the offender to come into contact or be associated with specific persons; and
- (b) require the offender to do anything described in the order.

13. Sexual assault under the 2020 Law is a relevant offence but false imprisonment is not. In order for the SOPO to be made in relation to that act, the Court is asked to certify that it was sexually aggravated. In order to do so the Court must be satisfied, on the information available to it:

- (a) that at, before or after the time of committing the offence, the offender's actions included a sexual element directly connected with the commission of the offence, and
- (b) that the offender poses a risk of sexual harm to the public or any particular person or persons.

Advocate Ferbrache did not dispute that the act of false imprisonment was sexually aggravated and we are satisfied that it was as it occurred after the sexual assault and it is clear from the reports of Dr Radley and Ms Golden that you pose a risk of sexual harm to the public and to females in particular.

14. Advocate Ferbrache did not oppose the making of the SOPO or any of the proposed terms of the SOPO.

15. This Court has considered very carefully the above statutory test for making a SOPO, the relevant case law, the case of The Law Officers of the Crown v Blampied Guernsey Judgment 52/2017, the English cases referred to therein and specifically the test in R v Collard (2004) EWCA 1664 as confirmed in R v Smith and others [2011] EWCA Crim 1772. The Court has considered the gravity of the acts found to have been carried out by you, and the materials in the bundle including the reports of Dr Radley and Ms Golden. The Court has also had the benefit of helpful representations by both Counsel.

16. Although there are differences between the risk assessments of Ms Golden and Dr Radley, we are entirely satisfied that you pose a risk of serious sexual harm to females and of sexual harm to children. Having considered all of these matters and in particular, having looked at the statutory criteria and the factors in the Collard test, the Court is satisfied on the balance of probabilities that:

- the making of an order is necessary to protect the public, and females in particular, from serious sexual harm and to protect female children from sexual harm through the commission of sexual offences
- the terms proposed are necessary, reasonable, not oppressive, proportionate and capable of being both understood and sensibly enforced. In particular we have been

assured by Advocate Ferbrache that you understand them and by Dr Radley that you are capable of understanding them.

17. Were you to be released today, the SOPO is the all-important legal framework to ensure protection of the public including an element of compulsion for you to engage in your treatment so it is beyond question that it is necessary. Although an order of DAHMP may result in your transfer off island, we are satisfied that there is value in the making of a SOPO now so that it is in place on your release. Some changes were made to the terms following questions from the Court.
18. The terms of the SOPO in final form are as follows:

“In accordance with section 18(3) of the Law, the Court hereby prohibits you from doing any of the following:

- a. being in a private vehicle with any female other than your mother unless with the prior approval of the Probation Service; and*
- b. using or possessing any mobile phone (whether internet enabled or not) or any internet enabled device without the prior approval of the Probation Service; and*
- c. deleting or modifying the usage history on any mobile phone (whether internet enabled or not) or any internet enabled device you use or possess; and*
- d. having any unsupervised direct or indirect contact with any female person under the age of 16, other than:*
 - i. Such as is inadvertent and not reasonably avoidable in the course of lawful daily life; or*
 - ii. Without the prior approval of the Probation Service; and*
- e. Approaching, contacting, or attempting to approach or contact, directly or indirectly*
 - i. [Complainant’s name redacted]*
 - ii. [Complainant’s name redacted]”*

Also in accordance with section 18(3) of the Law, the Court hereby requires you to do the following:

- a. “permanently reside at an address approved by the Probation Service and notify them in advance of any proposed change of address or any proposed stay (even for one night) away from that approved address; and*
- b. undertake only such work (including voluntary work) approved by the Probation Service and notify the Probation Service in advance of any proposed change; and*
- c. provide the Probation Service with the make, model and registration number of any vehicle you own, hire or have use of, prior to the first journey taking place in that vehicle.*
- d. allow any mobile phone (whether internet enabled or not) or any internet enabled device you use or possess to be inspected as required by the Police or Probation Service. Such inspection may include removal of the device.*

- e. *comply with any requirements specified by the Probation Service for the purpose of ensuring that you address your sexual offending behaviour problems.*
- f. *attend all meetings and appointments required by those responsible for your psychiatric assessment and treatment, and any other assessment and treatment related to your mental health and/or offending behaviour.*

If you, without reasonable excuse, do anything that you are prohibited from doing under this order, or fail to do anything that you are required to do under this order, you may be found guilty of an offence and liable on conviction to imprisonment for a term not exceeding 5 years, or to a fine, or to both."

The terms were read out to you and you were urged to ask your Advocate and/or mother to explain them to you and to keep looking at them so that you are aware of them.

19. The Court was concerned that the suggested duration of 5 years was not sufficiently long, especially if the effect of an Order by the Ordinary Court is your detention in a secure unit for as long as 2 years. In answer to our questions, Ms Golden was clear that there would be an application to extend the SOPO, were that required, and we were urged by both counsel to consider the issue of proportionality and whether, in circumstances where the outcome in the Ordinary Court is unknown and there is a clear pathway to extension, it would be appropriate to extend the duration beyond 5 years. We accepted those submissions and set the duration of the SOPO at 5 years from today.
20. We note that you are registered as a MAPPA subject.

Notification

21. Notification applies automatically in relation to the sexual assault offence (and has been in place since 24th July 2024 the date of the Findings) but not to the offence of false imprisonment unless we certify that it is sexually aggravated which we have already done so it applies to both offences.
22. We follow the recommendation of Ms Golden that the Notification period should be 5 years, which runs from the date of the SOPO so 5 years from today ie to 18th January 2030. This period is a precaution against any risk you may pose and can be further extended. You will be given a written Notice setting out all the standard requirements of being a Notifier, but in summary they are:
 - if not already provided, you must provide the Police with your personal details as set out on the Notice you will be given.
 - 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.
 - you must notify the Police of any address where you reside or stay for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12-month period.
 - you must notify the Police of your details every 12 months on the anniversary of your initial notification, 24th July 2024 even if there is no change in these details.
 - you must notify the Police at least 7 days in advance of any plans to travel abroad.

If these terms are in conflict with the SOPO, the SOPO terms take precedence. If the effect of the order made by the Ordinary Court means that you go to Les Oberlands or away, your Advocate will explain how the Notification and SOPO will work in those circumstances.

23. I would like to add the Court's gratitude to Counsel in this matter who have greatly assisted the Court in a complex and important case. I also thank your mother, who has supported you through numerous hearings as your Appropriate Adult.

24. Once again, I record that the 1961 Law is in urgent need of reform.

Catherine Maureen Fooks
Judge of the Royal Court

17 January 2025