

ROYAL COURT
(Assise Criminelle)

BEFORE: The Deputy Bailiff
Jurat Perrée
Jurat Vint
Jurat Baker
Jurat Myles

26th October, 1987

R -v- Alfred Yates McGurk and Gordon Gilbert McDonald.

Sentencing, following conviction on 7th October, 1987, of McGurk on 1 count of breaking and entering and larceny; and of McDonald on 1 count of illegal entry and larceny.

Advocate S.C. Nicolle, Crown Advocate, for the Crown.
Advocate C.J. Scholefield for the accused.

Judgment

The Deputy Bailiff: We have given consideration to all the mitigating factors submitted to us and Mr. Scholefield very properly covered every possible point. McGurk has a serious record which affects mitigation and, of course, he did not plead guilty which again would have been a strong mitigating factor. Nevertheless, having regard to the 'gap' principle and having regard to the 'jump' effect and I need not describe those further because they have been fully covered by the

extracts from Thomas, and having regard to the sentences imposed in other cases such as Sambor and Taylor and the considerable differences in the sums involved between those cases and this, the Court considers that the proper sentence in this case is one of two years imprisonment. So McGurk you are sentenced to two years imprisonment. Now, our interpretation of the verdict, however much we may disagree with it, is that the jury decided that McGurk alone was involved with the breaking and the handling of the safe, and we propose to sentence McDonald on that basis. It was on that basis that he was granted bail immediately after verdict and we cannot change that view now, notwithstanding the fact that McDonald was extremely fortunate as a result. Therefore McDonald, applying that principle, we sentence you to six months imprisonment, by which, of course, we mean your immediate release. Take them away.

Cases cited in the Judgment.

A. G. -v- Sambor and others: 7th September, 1987: Jersey Judgments as yet unreported.

A.G. -v- Taylor: 28th November, 1985: Jersey Judgment as yet unreported.

Other cases referred to.

A.G. -v- Pouton: 17th July, 1985. Jersey Judgment as yet unreported.

A.G. -v- Wherry & Sharman: 23rd August, 1985: Jersey Judgment as yet unreported.

Texts cited:

Thomas "Principles of Sentencing" (2nd Edn).

pp. 149 -150: Burglary: Sibley (17 Jan'75: 3680/C/74);
McGarrity (22 May'75: 902/B/75);
Gluckstead (22 July'75: 1044/C/75);
Cashmore (10 Apr' 73: 2607/A/72);

pp. 209 -210: Drink: Halcro (09 Dec'74: 3714/A/74)

pp. 42: The Persistent Offender: Mills (24 May'73: 6436/B/72);

Hyde (01 Mar'73: 3454/A/72)

p. 197: The Offender's Record.

pp. 200-201: The effect of a gap in the offender's record.

pp. 204: The 'Jump' effect.

pp. 20 - 21: The Intermediate Recidivist: White (05 May'75: 173/C/175).