

ROYAL COURT

181.
87/67.

23rd October, 1987

Before the Bailiff, assisted by Jurats Vint and Myles.

Her Majesty's Attorney General

-v-

Franz Wickenhauser.

Appeal against sentence in Police Court
of 2 months imprisonment for 2 counts of assault.
Imposed on the 3rd September, 1987.

^{C.E. W. Reelan}
Advocate ~~S.C. Nicolle~~ for the Crown.

Advocate M.E. Whittaker for the Appellant.

The Bailiff: It is a general rule of practice that it is unusual for a first offender to be sentenced to prison without the courts having the benefit of a background report. But there are circumstances where it is envisaged that does, and can happen, and this was such an occasion, indeed Mrs. Whittaker has not raised the point that the Magistrate erred in not obtaining a background report, but at least he knew that the appellant had only recently come to the Island, a matter of six months or so, had been in Europe, was a Swiss national, and had a good character. It is unlikely in our opinion that any additional information would have been such as to influence the Magistrate into imposing a Community Service Order, rather than a sentence of imprisonment, if he reached the conclusion that a prison sentence was the appropriate sanction for an offence of this nature. Having heard Mr. Halliday, and we are very grateful to him for having come forward to give his additional evidence, in the exercise of our discretion under the Police Court Appeal

(Miscellaneous Provisions) Jersey Law, 1949, we are of the opinion that there were no provocations such as that urged by Mrs. Whittaker, and that the assault itself was sufficiently grave to merit a sentence of imprisonment. Moreover, there was the point that at least one of the victims, if not both, were pursued by the appellant in the public street, there is also the deterrent factor which has to be taken into account, and we cannot find that the Magistrate was wrong in principle to sentence the appellant to two months as he did, nor that the sentence was manifestly excessive. The appeal is dismissed with legal aid costs.

Authorities cited.

Langford v. Attorney General - 1985 - 1986 J.L.R.

R -v. Gingell (1980) Cr. App. R. (s) 198.

R v. Williams (1980) 2 Cr. App. R (s) 150.