

ROYAL COURT

12th October, 1988

Before: The Deputy Bailiff and
Jurats Vint and Hamon

Her Majesty's Attorney General

- v -

Gary Poppleton

Appeal against sentence of six months' imprisonment imposed in the Magistrate's Court in respect of a breach of a binding over order and one count of larceny.

Advocate C.E. Whelan for the Crown
Advocate A.R. Binnington for the Appellant.

JUDGMENT

DEPUTY BAILIFF: I deal first with the breach of the binding-over order. We accept that when he sentenced the appellant to a binding-over order, the Magistrate, Mr. Dorey, may have described the offence as a "drunken prank". We would not take that view, but Mr. Dorey thought that he was dealing with a young first offender of previous good character.

In fact, the appellant was using a false identity and in his true name had three previous convictions for offences involving dishonesty and was in breach of an English Probation Order. We have no doubt that if Mr. Dorey had known the truth, the appellant would have received a custodial sentence.

A sentence of two months' imprisonment for entering premises by night and stealing property valued at £244 is very lenient.

Dealing secondly with the offence of theft, for which the appellant received four months' imprisonment, the Relief Magistrate was correct in principle to differentiate between the appellant and his co-accused, Jones, who received six weeks' imprisonment. Jones had only one previous conviction for theft, for which he had been fined £50, and there had been a four-year gap, between that and the current offence.

There is no comparison with the appellant, Poppleton, who had four previous convictions, all for dishonesty, in the last three years. He had deceived the police with two false identities. He had failed to co-operate, and he had shown no remorse.

The Relief Magistrate was entitled to decide that four months' imprisonment for the theft of £100 worth of property was the proper sentence, and to find that in the case of this appellant, there was no mitigation.

Finally, it was correct in principle that the two sentences should be consecutive and on the totality principle a total of six months' imprisonment for a man who effectively twice attempted to pervert the course of justice is not a day too long.

The appeal is dismissed; Advocate Binnington will have his legal aid costs.

Authorities

Thomas' Principles of Sentencing. (2nd Edition) pages 155, 156 & 195.

Jersey Law Reports 1985/86 - Notes 6 & 7.

R. -v- Roth (1980) 2 Cr. App. R. (S.) 65.