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ROYAL COURT

24th July, 1989

Before: The Bailiff and
Jurats Vint and Orchard

Police Court Appeal: NW

Appeal against sentence of six months' detention at the Young Offenders' Centre following a conviction on a charge of grave and criminal assault. The appellant was aged 17.

Advocate S.C. Nicolle for the Crown
Advocate D.F. Le Quesne for NW

JUDGMENT

THE BAILIFF: Mr. Le Quesne, Miss Nicolle, we are not satisfied that the Magistrate could possibly have had sufficient evidence before him, whether disputed or otherwise, for him to reach the conclusion there was a fracture, and therefore that is what we find now.

Mr. Le Quesne, you very frankly said, and you were right, that this was a disgraceful episode, and your client quite properly does not seek to say anything but that. It is quite wrong that young girls cannot walk around the streets of this town at night without being subjected to attacks of this nature, and normally we would uphold prison sentences in cases like this. But

we were left with some doubt in our mind as to whether the question of the fracture on the cheek bone did not play a larger part in the Relief Magistrate's decision than is apparent on the face of the record. For that reason we decided to look at the case as if we were sentencing this appellant ourselves to see if the principles which were applied by the learned Relief Magistrate were such that we could follow them.

There is no doubt that in assaults of this nature a deterrent sentence is one that should normally be given, and certainly, NW if you were one or two years older, and were not, according to the reports which have to be accepted, immature and unsophisticated, you would certainly go to prison, as you would deserve. And, indeed, you might even go for longer than six months.

But because of what I have said as to what had been on the mind of the Relief Magistrate in sentencing, and let me say that it is desirable that when evidence is given on a guilty plea that the facts of injuries should be very clearly stated and supported by a report. It is difficult for the Magistrate if he has to rely on the statements of the Centeniers, particularly in a case like this where you have two different Centeniers, each telling a different story. It was very difficult to arrive at a proper conclusion. And had the sentencing Magistrate known of the earlier matter, we really do not know what his mind would have been directed to.

Having said that, and because of his age and his background, we are going to take an exceptional step and allow the appeal, not because someone who assaults a young person does not mean prison, but in these particular circumstances we think that the alternative to prison should be a community service order, with exceptionally - because normally a community service order does not carry with it supervision, but we are going to make an exception - and place you on probation for a year with a condition that you perform 120 hours community service. I want you to understand that this is an exceptional case, you have your youth to thank, and your background, and your own make-up, but if ever you do anything like this again you will most certainly go to prison. You understand that. Very well, the appeal to that extent is allowed. No order for costs.

Authorities referred to:

D.A. Thomas (2nd edition) on Principles of Sentencing:

at p.8 re. "The Primary Decision";

at p.17 re. "Individualization";

at p.18 re. "The Young Offender".