

ROYAL COURT

2nd March, 1990

33.

Before: The Deputy Bailiff, and
Jurats Coutanche and Orchard

Attorney General

- v -

SW and SH

Numerous counts of larceny, larceny by
finding, attempted larceny, taking
a motor vehicle without consent, using
an uninsured motor vehicle and
driving without a licence.

Advocate S.C. Nicolle for the Crown,
Advocate C.R. de J. Renouf for the accused.

JUDGMENT

DEPUTY BAILIFF: On the question of time spent on remand counting or
not counting towards a sentence of Borstal Training converted into a
sentence of Youth Custody, we are satisfied that, as between the two
defendants, there cannot be any sense of grievance, because they
were both given the same information.

As between SH and the Court the position is that the Court
of Appeal has consistently stated that remission is not to be taken into

account by a sentencing Court. That is to prevent a Court from inflating a sentence to ensure that the term which its members think ought to be served is served. The task of the Court is to fix the correct kind of sentence and the correct term of the sentence and then to leave all other matters of remission, parole, and what counts or does not count towards them to the legislators.

We have applied the principles of the case of R -v- English (1967) CAR 119, cited to us by Mr. Renouf and we have considered what would be the proper sentence apart from Article 18 of the Children (Jersey) Law 1969. We have dismissed, without hesitation, all non-custodial forms of sentence. We are driven to the view, having regard to the seriousness of the offences and the characters of the two defendants, that a sentence of imprisonment is the only appropriate sentence.

Having considered the matter very carefully, including the differences in culpability and the previous sentences imposed on these two, we have come to the conclusion that the correct sentence for SW would be a total of eighteen months' imprisonment and that the correct sentence for SH would be a total of twelve months' imprisonment.

But we then come up against the provisions of Article 18 and the legislature has said that for someone of Borstal age, whether or not eighteen months or twelve months is correct, the sentence must be one of Borstal Training. We are not permitted to make the disparity which we would otherwise think it proper to make.

Therefore both these defendants, by operation of Law, have to be sentenced to Borstal Training. We have asked on so many occasions for the repeal of Article 18 that it seems hopelessly futile to make the request again.

We are not persuaded by the Jersey cases of Cook and Cassin. Every case turns upon its particular facts and particular circumstances. Cassin was a pathetic case and he was in prison at all only because of the inability of the authorities to provide facilities for

his proper treatment in a psychiatric hospital. We sent for the papers on Cook. By the time Cook was sentenced his co-accused had been placed on probation for one year with a Probation Hostel living-in condition. So disparity was a factor. But also we have examined the background report. Cook had been a psychiatric patient for long periods from the age of 9 years. He was of dull intelligence, clumsy, academically retarded, inarticulate and something of a social outcast. There were cycles of depression and alcohol abuse. We find no similar facts calling for special treatment in the case of SW & SH.

Therefore SW , on Counts 1, 2, 3, 4, 5A, 6, 7A, 8, 9, 10, 11, 12 and 13 of the indictment; you are sentenced concurrently to Borstal Training; and on Count 14, you are bound over to be of good behaviour for a period of three years.

SH , on Counts 1A, 2A, 3A, 4A, 5, 6A, 7, 15, 16, 17, 18 & 19 of the indictment, you are sentenced concurrently to Borstal Training; and on Counts 20 & 21, you are bound over to be of good behaviour for a period of three years.

Authorities referred to:

AG -v- Paul Andrew Cassin (11th July, 1989) Jersey Unreported

AG -v- Anthony John Cook (24th February, 1989) Jersey Unreported

R -v- AJH English (1967) CAR 119