

ROYAL COURT

(Superior Number)

182.

12th October, 1992.

Before: The Bailiff, and Jurats
Vint, Blampied, Myles, Orchard,
Gruchy, Hamon, Le Ruez

The Attorney General

- v -

Florentino Armando de Brito

Sentencing, following guilty plea before the Inferior
Number on 11th September, 1992, to one count of
indecent assault.

AGE: 35.

PLEA: Guilty.

DETAILS OF OFFENCE:

Seaman from Cap Verde Islands. Followed 36 year old female victim from nightclub, engaging her in conversation. She rejected his advances persistently and he was in no doubt that she was doing so. However he forced her down into a flower bed and despite her screams and struggles lowered her trousers and briefs to her knees and unzipped his own trousers. His admitted intention was to have sexual intercourse. Interrupted by passers by. Only superficial injuries.

DETAILS OF MITIGATION:

Victim very intoxicated, could not deny that she might have danced with the accused in the club. The accused and a defence witness added that she had kissed the accused while dancing. The accused therefore received the wrong impression from this earlier contact - it was not an attack on a total stranger.

Non-English speaker. Wife and child living in great poverty - no welfare in the Cap Verde Islands. Difficulty of serving sentence in a foreign prison.

CONCLUSIONS:

2 years and 6 months.

SENTENCE AND OBSERVATIONS OF THE COURT:

21 months' imprisonment. Accept mitigation: initial social contact giving accused wrong impression, not total stranger; foreign prison environment. Guilty plea - remorse.

C.E. Whelan, Esq., Crown Advocate.

Advocate S.A. Maiklejohn for the accused.

JUDGMENT

THE BAILIFF: The Court has to impose a sentence in this case which reflects the gravity of the offence, but at the same time takes into account the substantial mitigating circumstances.

This is not a case where the offence was committed against a total stranger, although the accused had only met the victim that evening.

We accept his version of events up to the time of the offence itself and therefore it may be said that the victim left the premises and willingly accompanied the accused. She did not, of course, consent to what took place later.

We take into account also that he will serve his sentence in what is to him a foreign environment. Although we have little

doubt that he is fortunate not to be before us on a more serious charge, we have come to the conclusion that the mitigating factors and the guilty plea in particular and his undoubted remorse enables us to impose a sentence less than that asked for by the Crown. Accordingly, you are sentenced to 21 months' imprisonment.

The Court would like me to commend, which I do most willingly, Messrs. Priest and Pascual for their timely intervention and I should be glad if you would inform them accordingly, Mr. Whelan.

Authorities

Currie (1988) Cr.App.R. 85.

Thomas: "Current Sentencing Practice": p.11040: L.2.2(e):
Newton (1982) 4 Cr.App.R.(S.) 388.

A.G. -v- O'Meally (19th July, 1991) Jersey Unreported.

A.G. -v- Vibert (25th April, 1991) Jersey Unreported.

A.G. -v- Bouhaire (17th July, 1990) Jersey Unreported.