

ROYAL COURT
(Samedi Division)

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5th December, 1994

Before: The Bailiff and Jurats
Vibert and Rumfitt.

Police Court Appeal
(T.A. Dorey, Esq., Relief Magistrate)

Michael Leigh Ashford

-v-

The Attorney General

Appeal against a sentence of 2 months' imprisonment passed on 27th October, 1994, following a guilty plea to:

1 charge of theft.

Appeal allowed; sentence quashed; case remitted to the Magistrate's Court with direction that the offence which gave rise to today's appeal be considered with other offences when these are tried.

Advocate J.P. Speck for the Appellant
J.G.P.Wheeler, Esq., Crown Advocate

JUDGMENT

5 THE BAILIFF: The Court would like to endorse what the Deputy Bailiff
said in de Mouilpied (14th November, 1994) Jersey Unreported. It
is undesirable that offenders should be dealt with piecemeal
before any court, because the offender is then under the
disadvantage that the totality principle cannot be applied, and it
10 is important that that principle should be available to a
sentencing court. As Mr Speck, for the appellant, has rightly
pointed out if cases like this are dealt with piecemeal, then on
the second occasion the question of a concurrent sentence cannot
really arise.

15 We think that there is prejudice to an accused in such
circumstances. We can well understand the Magistrate's feeling
that there was nothing he could do but to impose a custodial

5 sentence because, as he rightly pointed out, the appellant has a
very bad record. However, there is a second matter. There was no
background report, though one has now been prepared and we are
unable to say that, had that background report been prepared
10 before the Magistrate imposed sentence, he would necessarily have
imposed the same sentence - it is quite likely that he might have,
but we are unable to say for certain. Furthermore, as Mr. Speck
has pointed out, the appellant was unrepresented; it is of course
not a necessity that he should be; it is entirely up to each
15 accused person to ask for assistance if he or she wants it. In a
very serious case - and this was quite a serious case - the Court
feels, of course, that it would be undesirable for a person not to
be represented, but this is not such a case. Nevertheless, it is
one other matter which we have taken into account on the question
of prejudice.

20 Therefore we are going to allow the appeal, quash the
sentence, and send the case back to the Magistrate's Court with a
direction that they consider the offence in question today when
the other offences are tried.

Mr. Speck, you will have your Legal Aid Costs.

Authorities

Bowicz-v-A.G. (1981) 41 P.C. 473

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Lelliott-v-A.G. (29th November, 1989) Jersey Unreported

Ashford-v-A.G. (5th December, 1994) Jersey Unreported.

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de Mouilpied-v-A.G. (14th November, 1994) Jersey Unreported.