

ROYAL COURT
(Samedi Division)

157.

6th September, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff,
and Jurats Rumfitt and Potter

The Attorney General

- v -

P
B
O
R

P

- 10 counts of breaking and entering and larceny (counts 1, 2, 4, 5, 8, 9, 10, 11, 13, 16).
- 2 counts of breaking and entering with intent (counts 3, 15).
- 4 counts of illegal entry and larceny (counts 7, 8, 12, 20).
- 1 count of malicious damage (count 14).
- 2 counts of larceny (counts 21, 22).

Plea: Guilty.

Age: 16.

Previous Convictions:

2 convictions for breaking and entering and larceny. 1 subsequent conviction for possession of cannabis.
Had previously committed offences while on probation.

Conclusions:

- Count 1 : 12 months' Youth Detention;
- Count 2 : 12 months' Youth Detention;
- Count 3 : 12 months' Youth Detention;
- Count 4 : 12 months' Youth Detention;
- Count 5 : 12 months' Youth Detention;
- Count 6 : 12 months' Youth Detention;
- Count 7 : 12 months' Youth Detention;
- Count 8 : 12 months' Youth Detention;
- Count 9 : 12 months' Youth Detention;
- Count 10 : 12 months' Youth Detention;
- Count 11 : 12 months' Youth Detention;
- Count 12 : 12 months' Youth Detention;

Count 13 : 12 months' Youth Detention;
Count 14 : 6 months' Youth Detention;
Count 15 : 12 months' Youth Detention;
Count 16 : 2 months' Youth Detention;
Count 20 : 12 months' Youth Detention;
Count 21 : 6 months' Youth Detention;
Count 22 : 1 month's Youth Detention.

All sentences to run concurrently.

TOTAL : 12 months' Youth Detention.

Sentence and Observations of the Court:

Conclusions granted. The Court imposed maximum sentence permissible by virtue of Criminal Justice (Young Offenders) (Jersey) Law 1994. Given that such offences, in the case of an adult, would have justified a sentence of not less than 2½ years' imprisonment imposition of the maximum of 12 months' detention gave sufficient credit for the guilty pleas.

B

- 11 counts of breaking and entering and larceny (counts 1, 2, 5, 6, 9, 10, 11, 13, 16, 19, 23).
- 2 counts of breaking and entering with intent (counts 3, 15).
- 5 counts of illegal entry and larceny (counts 7, 8, 12, 17, 18).
- 1 count of malicious damage (count 14).
- 1 count of driving a motor vehicle whilst under the influence of drugs, contrary to Article 16 of the Road Traffic (Jersey) Law, 1956, as amended (count 24).
- 1 count of using a motor vehicle on the road when the condition of the warning instrument is such that danger is likely to be caused to any person on the vehicle or one or near a road, contrary to Article 53(1) of the Motor Vehicles (Construction and Use)(Jersey) Order, 1956 (count 25).
- 1 count of using a motor vehicle on the road when the direction indicators are not maintained in good and efficient working order, contrary to Article 56 of the Motor Vehicles (Construction & Use) (Jersey) Order, 1956 (count 26).
- 1 count of using a motor vehicle on the road when the stop light is not maintained in good order and efficient working order, contrary to Article 56 of the Motor Vehicles (Construction & Use) (Jersey) Order, 1956 (count 27)
- 1 count of using a motor vehicle on the road when the braking system is not maintained in good and efficient working order, contrary to Article 56 of the Motor Vehicles (Construction & Use) (Jersey) Order, 1956 (count 28).
- 1 count of using a motor vehicle propelled by an internal combustion engine so that the exhaust gases from the engine escape into the atmosphere without first passing through the silencer, contrary to Article 57(1) of the Motor Vehicles (Construction & Use) (Jersey) Order, 1956 (count 29).

Plea: Guilty.

Age: 16.

Previous Convictions:

Previous convictions for aiding and abetting, breaking and entering and larceny and taking a motor vehicle without consent. Had previously committed offences while on probation. Present offences committed while on probation.

Conclusions:

Count 1 : 12 months' Youth Detention.
Count 2 : 12 months' Youth Detention.
Count 3 : 12 months' Youth Detention.
Count 5 : 12 months' Youth Detention.
Count 6 : 12 months' Youth Detention.
Count 7 : 12 months' Youth Detention.
Count 8 : 12 months' Youth Detention.
Count 9 : 12 months' Youth Detention.
Count 10 : 12 months' Youth Detention.
Count 11 : 12 months' Youth Detention.
Count 12 : 12 months' Youth Detention.
Count 13 : 12 months' Youth Detention.
Count 14 : 6 months' Youth Detention.
Count 15 : 12 months' Youth Detention.
Count 16 : 12 months' Youth Detention.
Count 17 : 12 months' Youth Detention.
Count 18 : 12 months' Youth Detention.
Count 19 : 12 months' Youth Detention.
Count 23 : 12 months' Youth Detention.
Count 24 : 12 months' disqualification from driving; £200 fine; 1 month's Youth Detention in default of payment.
Count 25 : £20 fine; 1 week's Youth Detention in default of payment.
Count 26 : £20 fine; 1 week's Youth Detention in default of payment.
Count 27 : £20 fine; 1 week's Youth Detention in default of payment.
Count 28 : £20 fine; 1 week's Youth Detention in default of payment.
Count 29 : £20 fine; 1 week's Youth Detention in default of payment.
All sentences, including default sentences, to run concurrently.
TOTAL : 12 months' Youth Detention; 12 months' disqualification from driving; £300 fine.

Sentences and Observations of the Court:

Conclusions granted. The Court imposed maximum sentence permissible by virtue of Criminal Justice (Young Offenders) (Jersey) Law 1994. Given that such offences, in the case of an adult, would have justified a sentence of not less than 2½ years' imprisonment imposition of the maximum of 12 months' detention gave sufficient credit for the guilty pleas.

5 counts of breaking and entering and larceny (counts 10, 11, 13, 19, 30).
1 count of aiding, assisting or participating in breaking and entering and larceny (count 16A).
4 counts of illegal entry and larceny (counts 12, 17, 18, 20).
1 count of malicious damage (count 14).
1 count of breaking and entry with intent (count 15).

- 1 count of attempted breaking and entry with intent (count 31).
- 1 count of driving whilst under the influence of drugs, contrary to Article 16 of the Road Traffic (Jersey) Law, 1956 (as amended) (count 32).
- 1 count of using a motor vehicle without being the holder of a licence, contrary to Article 3(1) of the Road Traffic (Jersey) Law, 1956 (as amended) (count 33).
- 1 count of using a motor vehicle uninsured against third party risks, contrary to Article 2(f) of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948 (count 34).
- 1 count of possession of a controlled drug, (cannabis) contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978 (count 35).

Plea: Guilty.

Age: 16.

Previous Convictions:

Previous convictions for larceny and being drunk and disorderly.

Conclusions:

- Count 10 : 12 months' Youth Detention.
- Count 11 : 12 months' Youth Detention.
- Count 12 : 12 months' Youth Detention.
- Count 13 : 12 months' Youth Detention.
- Count 14 : 6 months' Youth Detention.
- Count 15 : 12 months' Youth Detention.
- Count 16A : 12 months' Youth Detention.
- Count 17 : 12 months' Youth Detention.
- Count 18 : 12 months' Youth Detention.
- Count 19 : 12 months' Youth Detention.
- Count 20 : 12 months' Youth Detention.
- Count 30 : 12 months' Youth Detention.
- Count 31 : 12 months' Youth Detention.
- Count 32 : 12 months' disqualification from driving; £200 fine; 1 month's Youth Detention in default of payment.
- Count 33 : £50 fine; 2 weeks' Youth Detention in default of payment.
- Count 34 : 6 months' Youth Detention.
- Count 35 : 1 week's Youth Detention.

All sentences, including default sentences, to run concurrently.

TOTAL: 12 months' Youth Detention; 12 months' disqualification from driving; £250 fine.

Sentence and Observations of the Court:

Conclusions granted. The Court imposed maximum sentence permissible by virtue of Criminal Justice (Young Offenders) (Jersey) Law 1994. Given that such offences, in the case of an adult, would have justified a sentence of not less than 2½ years' imprisonment imposition of the maximum of 12 months' detention gave sufficient credit for the guilty pleas.

R

First Indictment.

3 counts of breaking and entering and larceny (counts 1, 2, 4).

1 count of breaking and entry with intent (count 3).

Plea: Guilty.

Age: 16.

Previous Convictions:

Previous convictions for breaking and entering and larceny and driving whilst under age. Had previously committed offences whilst bound over.

Conclusions:

Count 1: 1 year's Probation.
Count 2: 1 year's Probation.
Count 3: 1 year's Probation.
Count 4: 1 year's Probation.

Sentence and Observations of the Court: Conclusions granted.

Second Indictment:

1 count of driving without due care and attention, contrary to Article 15(1) of the Road Traffic (Jersey) Law, 1956, as amended (count 1).

1 count of driving a motor vehicle without a licence, contrary to Article 3(1) of the Road Traffic (Jersey) Law, 1956, as amended (count 2).

1 count of using a motor vehicle uninsured against Third Party risks, contrary to Article 2(1) of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948 (count 3).

Plea: Guilty.

Conclusions:

Count 1: 1 year's Probation.
Count 2: 1 year's Probation.
Count 3: 1 year's Probation.

Sentence and Observations of the Court: Conclusions granted.

Details of Offences: All Accused:

A spate of break-ins over a nine month period including both commercial and residential properties. Approximately £1,000 worth of theft. Some property recovered. Further items damaged. One break-in of residential property particularly unpleasant as kitchen was ruined by throwing various foodstuffs over the walls, ceiling and furniture in addition to scratching kitchen table and dresser with a knife.

Details of Mitigation: All Accused:

Youth. Plea of guilty. R had a lesser involvement in the offences. B and P had failed to respond to Probation Orders in the past. O was reluctant to co-operate with a Probation Order.

A.R. Binnington, Esq., Crown Advocate.
Advocate C.J. Scholefield for P
Advocate S.J. Crane for B
Advocate S.E. Fitz for O
Advocate D.J. Petit for R

JUDGMENT

THE DEPUTY BAILIFF: The string of offences to which these four accused have pleaded guilty makes sorry reading. They largely concern breaking and entry and larceny committed, in the main part, over a period of one year between March, 1995, and March, 1996.

P and O were arrested after a motorcycle accident in Grouville. When searched they were found to be in possession of items of stolen clothing from a house at Le Bourg broken into by them shortly before the accident. They were both unfit through drink and drugs.

The same day B was arrested, after a suspected hit and run accident in Pontorson Lane, for being involved in the burglary at Le Bourg. He, too, was found to be unfit to drive a motor vehicle through drugs.

Within the next few hours P, B and O made admissions. This led to the police attending at R's home and he, too, later made admissions in relation to several of the break-ins.

P is charged with some 19 offences, involving, as I have said, breaking and entry and larceny from his former school and from private houses and commercial premises. One offence involves larceny from an occupied dwelling at night. Many of the private houses broken into were occupied at the time of the break-in.

B, with one exception - he faces 18 such offences - is similarly indicted. R faces four offences of this type but these involved the four break-ins at Le Rocquier School where money was stolen on each occasion and in one of the forced entries £2,000 and some account books were stolen from the school and the damage caused there totalled some £2,000.

B faces, amongst the charges brought against him, motoring offences and O also faces a breaking, entry and larceny charge. In the property broken into at Rue de Carteret, a substantial amount of jewellery valued at over £6,000 was stolen and disposed of.

R, who played a relatively minor rôle in these offences, also faces charges which involve motoring offences, including the serious charge of driving whilst uninsured. There is another charge laid against O who was found to be possession of a small amount of cannabis and evidence which showed that he had probably smoked that cannabis.

As we said when we started this is a criminal spree which the Court finds extremely disturbing. The four accused are each aged 16 and they all were or are students at Le Rocquier School and seem to be, in part, motivated by a need to gain money, but, perhaps in other cases, by the sheer excitement of what they were doing.

P has two previous convictions for breaking and entry and larceny for which he was sentenced in August, 1995, to six months' probation. I mention that because some of these offences occurred while he was subject to that probation order.

B has two previous convictions for aiding, assisting, or participating in breaking and entry and larceny for which he was sentenced on one offence in November, 1994, to one year's probation; and on the other in August, 1995, to one year's probation. So he, too, then was in breach of the probation order when some of these offences were committed.

O has two previous convictions for larceny for which he was sentenced in June, 1995, to one year's probation. Again, some of the present offences were committed while he was subject to that probation order and to cap it all R has one previous conviction for breaking, entry and larceny for which he was fined £150 in August, 1995, but since November, 1995, he has been the subject of a binding over order and again some of these offences were committed whilst those binding over orders were in force.

Let us deal with the point of law that was argued on behalf of P by Mr. Scholefield. Article 5(4) of the Criminal Justice (Young Offenders) (Jersey) Law 1994 states as follows:

"Where a person under seventeen years of age is convicted of any offence punishable in the case of a person aged twenty-one or over with imprisonment for fourteen years or more, not being an offence for which the sentence is fixed by law, and the court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the offender to be detained for such period, not exceeding the maximum term of imprisonment with which the offender is punishable in the case of a person aged twenty-one or over, as may be specified in the sentence and, where such a sentence has been passed, the person so sentenced shall be detained in such place and under such conditions as the Secretary of State may direct".

These offences - because the Larceny Act and other English statutes of course do not apply in this jurisdiction - are, as Crown Advocate Binnington has very clearly set out in the cases that he cited to us, and of which we have taken careful note, common law offences. There is then in theory no restriction on the length of imprisonment that may follow as the consequence of someone offending these common law offences. The matter is very clearly explained by Whelan: "Aspects of Sentencing in the Superior Courts of Jersey": 1994-1995 Noter Up, at p.29:

"Youth custody is not a sentence of imprisonment so that the Rowe principle (which says that a young offender should not be

imprisoned save in exceptional circumstances) is not offended, and as to length of sentence the statute provides, very broadly, that a young offender may be sentenced to youth detention for a term the maximum of which is the same as the maximum prison term which could have been imposed on an offender aged 21 years or over".

The heading to Article 5 of the 1994 Law, of course, reads "Custody where Life Sentence fixed by Law and Sentences for serious offences". We need only to remind ourselves that Article 4(5) of course is subject to Article 5.

The circumstances of these offences are as disturbing as can be. We have no doubt that had these offenders been young adults then, following the case of AG -v- Aubin (14th May, 1987) Jersey Unreported, and taking all the mitigation which has been very ably pleaded on their behalf by their individual counsel this morning (their pleas of guilty, the fact that in part they wrote their own indictment and the references supplied either in writing for O or verbally) would have meant a reasonably substantial discount. As far as we are concerned, had we been dealing with adult offenders that could well have been one year. But they could not - had they been adult offenders - in our view, have faced a sentence of less than 2 1/2 years' imprisonment, having regard to the extreme seriousness of the offences that were committed. The distress which they caused must have been very great. We only have to itemise one particular incident - the malicious damage caused at "The Cottage" was appalling - £1,238.70 had to be spent on repairs and cleaning after they had left.

We have read very carefully all the background reports, particularly as these are very young offenders, but nothing leads us to depart from the conclusions of the learned Crown Advocate. Article 4(2) requires me to say to these offenders - will the four of you please stand up. P, O and B, it is not only because you have a history - albeit a short history - of failure to respond to any custodial penalties, but, more particularly, because we regard the totality of the offences which you have committed as so serious that we consider that a non-custodial sentence cannot be justified. Therefore, P, following the conclusions of the learned Crown Advocate we are sentencing you to twelve months' youth detention on counts 1 to 13 and 15 & 20; to six months' youth detention on counts 14 & 21; to two months' youth detention on count 16; to one month's youth detention on count 22. All sentences are concurrent. B, we are sentencing you to twelve months on counts 1 to 13 and 15 to 24; to six months' youth detention on count 14; to a £200 fine or one month's youth detention in default with 12 months' disqualification from driving on count 24; to a £20 fine or one week's youth detention in default on each of counts 25 to 29; all these custodial sentences and default sentences are concurrent. O, we are sentencing you to twelve months' youth detention on counts 10 to 13 and 15 to 32; to six months' youth detention on counts 14 & 34; to a £200 fine or one month's youth detention in default with 12 months' disqualification from driving on count 32; to a £50 fine or two weeks' youth detention in default of payment on count 33; and to one week's youth detention on count 35; all those custodial sentences and default sentences are concurrent. R, because you played a lesser part in these offences and because your

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counsel did not demur from the conclusions you are sentenced to 1 year's probation, concurrent on all the charges laid against you.

We order, should it be necessary, Mr. Crown Advocate, that the drugs such as they are to be destroyed and we require you please to write to the Station Manager of Radio Jersey for a written explanation to the Court of what appears to be a contempt of Court, as you explained to us this morning.

Authorities

Whelan: Aspects of Sentencing in the Superior Courts of Jersey: pp.64-71.

Whelan: Ibid: 1994-1995 Noter Up: pp.28-29.

Current Sentencing Practice: pp.50109-50118/3.

A.G. -v- Aubin (14th May, 1987) Jersey Unreported.