

ROYAL COURT
(Samedi Division)

233.

9th December, 1996

Before: Sir Philip Bailhache, Bailiff, and Jurats
Blampied and Le Ruez

The Attorney General

- v -

Ralph Edward Queally

- 3 counts of sexual intercourse with a girl under 16 years of age, contrary to the Loi (1895) modifiant le droit criminel, Article 4(1) (counts 1, 2, 3).
- 1 count of Indecent assault (count 4).
- 2 counts of taking indecent photographs of a child, contrary to the Protection of Children (Jersey) Law, 1994, Article 2(1)(a) (counts 5, 6).

Plea: Guilty.

Age: 34.

Details of Offences:

34 year old man formed sexual relationship with 15½ year old girl. Specimen counts. 3 month relationship with some 6 or 8 episodes of sexual intercourse, several episodes of oral sex, taking of several indecent photographs, including video footage of oral sex.

Details of Mitigation:

Girl had pursued accused; had initially told him she was of the age of consent then blackmailed him into continuing the sexual relationship. Photos and video footage had been her idea. She was physically developed and sexually experienced. Had demonstrated the same sort of conduct with other males in the past. History of emotionally disturbed behaviour. Her family had written in support of the accused, whose wife was standing by him. Girl psychologically disturbed before these events. Not possible to form assessment about any further damage caused by the events.

Previous Convictions: Nil.

Conclusions:

- Count 1: 18 months' imprisonment.
 Count 2: 18 months' imprisonment, concurrent.
 Count 3: 18 months' imprisonment, concurrent.
 Count 4: 2 years' imprisonment, concurrent.
 Count 5: 15 months' imprisonment, concurrent.
 Count 6: 15 months' imprisonment, concurrent.

Sentence and Observations of the Court:

Custodial sentence correct in all but exceptional circumstances. In this case the child was only 6 months from the age of consent, was sexually experienced and had coerced the accused into continued participation. Sentenced to enable immediate release having spent 6 months in custody, therefore sentence of 9 months on all counts concurrent.

C.E. Whelan, Esq., Crown Advocate.
Advocate S.E. Fitz for the accused.

JUDGMENT

5 THE BAILIFF: We agree with the Crown Advocate that cases of unlawful sexual intercourse involving a mature man and a girl under the age of consent will usually attract custodial sentences. It remains true that - even if the girl concerned is promiscuous and the instigator of sexual activity - the man has a duty to resist temptation and to avoid taking advantage of the immaturity of the girl.

10 The penalty, however, must be commensurate with the criminality and each case must be examined on its merits. One of the most important factors is the age of the girl; in this case, the girl concerned was six months short of her sixteenth birthday. She was sexually experienced and initially pursued the defendant until he agreed to engage in sexual activity. At first he
15 believed that the girl was sixteen, because she told him that that was her age, but shortly after the first act of sexual intercourse he became aware that she was in fact only fifteen.

20 The sexual activity continued over the period covered by the indictment in part because of threats by the girl to expose him, either to the police or to his wife. In the event, matters eventually came to light because the girl reported the matter to the police. This is not a case where there was a breach of trust. The defendant was immediately co-operative with the police and
25 admitted what had taken place.

30 Unusually, perhaps, there has been placed before the Court letters of support from members of the girl's family testifying to the character of the defendant. Last, but by no means least, the defendant has the support of his wife, who is present in Court.

35 The defendant has been in custody since 6th June, 1996, and has served over six months' imprisonment on remand. In all the circumstances, we think that the justice of the case is met by the imposition of such a sentence of imprisonment as will mean his immediate release and we impose a sentence of nine months' imprisonment on all counts, concurrent.

Authorities

Thomas: Principles of Sentencing (2nd Ed'n): pp.54, 122, 123.

Forsyth (1987) 9 Cr.App.R.(S) 126.

Asher (1995) 16 Cr.App.R.(S) 708.

AG -v- Clark (9th September, 1994) Jersey Unreported.

AG -v- McCormick (2nd June, 1995) Jersey Unreported.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp.98-102.

Ibid: Noter-up: May, 1994 - May, 1995: pp. 42-43.

Ibid: Noter-up: May, 1995 - May, 1996: pp. 41-42.

Current Sentencing Practice: section B4-3.3: pp. 22402-22408.

AG -v- Webb (21st June, 1996) Jersey Unreported.