

ROYAL COURT
(Samedi Division)

16.

24th January, 1997

F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Le Ruez and Rumfitt

The Attorney General

- v -

Stephen James John Moore
Kevin McCaffrey

STEPHEN JAMES JOHN MOORE

1 count of assault (count 1).

1 count of possession of a controlled drug, contrary to Article 6(1) of the Misuse of Drugs (Jersey) Law, 1978:
Count 2 : cannabis resin.

1 count of breaking and entering and larceny (count 5).

Plea: Guilty.

Age: 30.

Details of Mitigation:

Age, guilty plea and co-operation. Suffering from severe drink problem for which he had voluntarily sought help upon being granted bail. On night of break-in he was out of work and experiencing problems with his girlfriend.

Previous Convictions:

Breach of peace by fighting, receiving stolen goods, malicious damage, possession of cannabis, none of which resulted in imprisonment.

Conclusions:

Count 1 : 6 months' imprisonment.

Count 2 : 1 week's imprisonment, consecutive.

Count 5 : 12 months' imprisonment, consecutive.

Sentence:

Count 1 : 6 months' imprisonment.
Count 2 : 1 week's imprisonment, consecutive.
Count 5 : 6 months' imprisonment, consecutive.

KEVIN McCaffrey

3 counts of breaking and entering and larceny (counts 3, 4, 5).

Plea: Guilty.

Age: 31.

Details of Mitigation:

Age, guilty plea, co-operation, was unemployed at time of offences and committed offences to obtain goods to sell to raise money for food and accommodation.

Previous Convictions:

Larceny and possession of cannabis. No previous sentence of imprisonment.

Conclusions:

Count 3 : 18 months' imprisonment.
Count 4 : 18 months' imprisonment, concurrent.
Count 5 : 18 months' imprisonment, concurrent.

Sentence:

Count 3 : 12 months' imprisonment.
Count 4 : 12 months' imprisonment, concurrent.
Count 5 : 12 months' imprisonment, concurrent.

Details of Offence:

Moore assaulted a member of the public in Waterloo Street, St. Helier, by kicking the victim twice in the genitals. Moore alleged that having asked him for a light the victim had asked him if he wanted to "go round the corner with him", which he interpreted as a sexual advance. The prosecution evidence did not support this assertion although it was contended that in any event even if true this did not amount to provocation sufficient to affect sentence. On being detained at Police Headquarters Moore was found to be in possession of a small quantity of cannabis. McCaffrey broke into Le Masurier's Cash & Carry Store, Oxford Road, on three occasions at night. On the third occasion the offence was committed at the instigation of Moore who accompanied him. They were apprehended at the premises on this occasion. The total value of goods stolen by McCaffrey on the first two occasions was £2,398.49 whilst on the second occasion goods valued at £632.90 were stolen but recovered when Moore and McCaffrey were apprehended.

Observations of the Court, passing Sentence:

The Court referred to Attorney General -v- Gaffney as fixing a starting point of eighteen months' imprisonment for breaking and entry and stealing from commercial premises at night. The Court felt able to reduce sentence from that starting point given that both defendants appeared to be facing up to their individual problems. Moore's assault was described as a nasty and unprovoked assault and the Court reiterated previous comments to the effect that members of the public are entitled to walk the streets of St. Helier without fear of being assaulted.

A.R. Binnington, Esq., Crown Advocate.
Advocate P.C. Harris for S.J.J. Moore.
Advocate P.M. Livingstone for K. McCaffrey.

JUDGMENT

5 THE DEPUTY BAILIFF: The two accused are linked by one count of breaking into a warehouse by night using an instrument - which perhaps they did not take with them - akin to a crowbar. The damage cost £424.56 to repair. The two accused stole cigarettes to the value of £632.90.

10 Moore is also charged with a nasty and unprovoked assault on a member of the public by kicking him and when arrested he had a small amount of cannabis resin in his possession.

15 McCaffrey made two break-ins at night to the same premises on separate occasions. On the first occasion he stole spirits together with two holdalls valued at £247.49; and on the second occasion a considerable amount of cigarettes and two bottles of spirits totalling £2,151.

20 Both men are mature, Moore who is 30, has four previous convictions since 1992 all in Jersey. McCaffrey is 31 and has one previous conviction.

25 You have both been greatly helped by the persuasive powers of your counsel but I must say this: if members of the public are entitled to walk the streets of St. Helier without being assaulted, so owners of commercial property are entitled to have their properties not broken into for financial gain.

We have examined the case of AG -v- Gaffney (5th June, 1995) Jersey Unreported (the Superior Number) where we said this:

30 *"We need, for a moment, to consider whether we have to set a guideline for criminally breaking and entering commercial premises at night. We have examined very carefully all the authorities that have been cited to us but we must say that we find it extremely difficult in*
35 *this particular case to set a benchmark. Each case will have an infinite number of variations and will depend, for example, on the amount of force used, the quantity of goods stolen and their value, the time of day, and whether the act was impulsive or planned".*

40 We went on to say that in 1995 we felt the term of imprisonment should be in the region of 18 months. We said that

we did not intend to take the matter any further than that despite the urging that had been made upon us.

5 We are not talking about a starting point in Gaffney and we wish to say that the circumstances indicated by us in that case might lift that figure of 18 months to a higher level but, if there were mitigation, then it might be applied for its reductive effect.

10 We have to say that there is much personal encouragement to be derived from the fact that both of you appear to be facing up at last to your individual problems. For that reason, that is to say because of your particular efforts since these matters came to light we are going to reduce the Crown's conclusions, but you
15 will still face a prison sentence.

20 Moore, on count 1, you are sentenced to 6 months' imprisonment; on count 2, you are sentenced to 1 week's imprisonment, consecutive; on count 5, you are sentenced to 6 months' imprisonment, consecutive, making a total of 12 months' and 1 week's imprisonment.

25 McCaffrey, on count 3, you are sentenced to 12 months' imprisonment; on count 4, you are sentenced to 12 months' imprisonment, concurrent; on count 5, you are sentenced to 12 months' imprisonment, concurrent, making a total of 12 months' imprisonment. We order the forfeiture and destruction of the drugs.

Authorities

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

AG -v- Gaffney (5th June, 1995) Jersey Unreported.

AG -v- Arden (23rd February, 1996) Jersey Unreported.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
Noter-up (May 1995-1996): pp.20-24.