

ROYAL COURT

9th July, 1990

96.

Before: The Deputy Bailiff, sitting with
the Superior Number of
the Royal Court

The Attorney General

- v -

AL

AS and

GC

Defendants sentenced in respect of the following:

AL and AS : breaking and entering and
larceny (whilst armed with weapons);

AS : one infraction of Article 28
(as amended) of the Road Traffic (Jersey) Law,
1956; one infraction of Article 2(1) of the Motor
Traffic (Third Party Insurance) (Jersey)
Law, (1948), as amended; and a breach of a Royal
Court Order; AL : allowing himself to
be carried in a vehicle without the consent
of the owner or other lawful authority;
GC : one count of receiving stolen property.

The Attorney General,

Advocate S. Meiklejohn on behalf of AL

Advocate D. Lang on behalf of AS

Advocate A.D. Robinson on behalf of GC

JUDGMENT

DEPUTY BAILIFF: We deal firstly with AL . The Court agrees with the learned Attorney General. This offence would have been terrifying for anyone, but in the case of an elderly, crippled lady living alone - and we have no doubt that both AL and AS knew the circumstances well - it was a cold, callous, pre-planned offence aggravated by a number of factors enumerated by both the prosecution and the defence. We commend Miss ✓ for her courage and robust reactions - she has our total admiration - but that does not in any way mitigate the offence.

These two young men were armed with weapons - of course the degree of threat and fear would be less than that caused by the accused in R -v- Funnell & ors. (1986) 8 Cr. App. R. (S) 143 where an imitation firearm and blank cartridges and a certain amount of manhandling was involved - but in that case the Court of Appeal imposed six years and the Court is convinced that a reduction of two years to four years as asked for by the learned Attorney in this case is a sufficient reduction to mark the difference between the two.

The only factor that has caused us some anxiety is the age of AL but we are convinced that the proper course is a substantial custodial sentence which contains at least an offer of psychiatric treatment which would be found at H.M. Young Offenders' Institution Glen Parva.

Therefore the conclusions are granted.

AL you are sentenced on Count 1 to four years' imprisonment; On Count 2A to six months' imprisonment concurrent, thus making four years' imprisonment in total; and the Court adds a recommendation that you should receive psychiatric treatment at H.M. Young Offenders' Institution Glen Parva.

AS , we have considered with some anxiety whether or not we should reduce the conclusions. But those who embark on joint ventures must accept joint responsibility unless there is a very real disparity.

The Court takes the view that the pre-planning must have been a joint venture in the full sense because it was AS who took the car that was used. On arrival at the property, one dealt with the breaking-in, the other, AS , cut the telephone cable to deny any communication to the outside world to the victim.

He was never further away than the doorway of the bedroom - he was not outside the building as the co-accused in the Funnell case.

AS was armed with a brush or broom - thus with a weapon. He showed the same persistence in returning to the property and in the duration of the time spent at the property by both accused. And above all he locked the victim into her bedroom, which meant that she was imprisoned for a time by him in the knowledge that he had already prevented communication by cutting the telephone cable. Also he is eight months older than AL :

There is the additional factor that AS is in breach of Probation and in breach of a Community Service Order. If the Court wished to mark a disparity we should be fully justified in adding a consecutive sentence for the original offences. But we have regard to the totality principle and we are satisfied that four years is the correct total.

Therefore, AS , on Count 1 you are sentenced to four years' imprisonment;

On Count 2, to nine months' imprisonment concurrent;

On Count 3, to six months' imprisonment concurrent.

In respect of the breach of the Probation and Community Service Order, The Court discharges that Order, but for each of the original offences you are sentenced to twelve months' imprisonment concurrently with each other and with the sentences imposed on today's indictment. Thus to a total of four years' imprisonment.

The Court is unanimous in its suspicions of the conduct of GC - but we have to, and do, disregard them. He has not been charged with conspiracy and although he admits knowledge of a plan to steal a motor car, for which he even supplied a wire hook, he has not been charged with aiding and abetting the taking and driving away.

Therefore, albeit very reluctantly, we treat his offence as that of a simple receiving of £200.

The learned Attorney has asked for a Probation Order with the condition of 180 hours of Community Service - equated by him to twelve months' imprisonment. Mr. Robinson says that that is too long.

The table which we have, prepared by the Probation and After Care Service, equates six months' imprisonment to 120 hours and says that over six months at the discretion of the Royal Court up to 240 hours can be imposed - to be completed within twelve months - thus we equate 180 hours of Community Service with nine months' imprisonment, which we consider to be fully justified.

Thus, GC, you are placed on Probation for a period of one year on the usual conditions that you will both live and work where required by your Probation Officer. That you will be of good behaviour throughout that time; and in addition that you will perform 180 hours of Community Service to the satisfaction of the Community Service Officer.

Authorities

- A.G. -v- Sheldrake (7th February, 1985) Jersey Unreported C.A.
A.G. -v- Reucroft and ors. (30th April, 1990) Jersey Unreported.
A.G. -v- Allo & Collins (1983) J.J. 85 C. of A.
Thomas: Current Sentencing Practice: p.p. 2318-2320; 3011-3012.
Thomas: Principles of Sentencing (2nd Ed'n.): p.p. 20-23.

