

ROYAL COURT  
(Samedi Division) 130.

12th July, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff, and  
Jurats Le Ruez and Qu er e

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The Attorney General

- v -

M  
L  
G

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**Applications for review of the refusal of bail by the Relief Magistrate, Mr. G.R. Boxall, on 8th July, 1996.**

**On 1st July, 1996,** the applicants (before the Relief Magistrate, Mr. R. G. Dorey) reserved their pleas to 1 count of grave and criminal assault or with having aided, abetted or participated in the said criminal act.

The applicants were remanded in youth custody, without bail option, to 23rd July, 1996.

**On 8th July, 1996,** the applicants applied to the Magistrate's Court, (the Relief Magistrate, Mr. G. R. Boxall) for bail, which was refused.

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J.G.P. Wheeler, Esq., Crown Advocate.  
Advocate Lewis for M  
Advocate G. Le Sueur for L  
Advocate S.A. Meiklejohn for G

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JUDGMENT

**THE DEPUTY BAILIFF:** These are three bail applications arising from a grave and criminal assault. Two of the applications are, to some extent, exceptional. Due to an understandable confusion, Judge

Boxall, who sat on 8th July, 1996, appeared to have considered that Judge Day had heard L's application for bail. In fact, Mrs. Pearmain probably did not deal with that application, although the transcript is confusing. She appears to have been interrupted by Judge Day before she could fully address him on that subject.

Judge Boxall, when it came before him on 8th July, said that there were no changed circumstances, but in fact if an application for bail had not been made the remark was, perhaps, not very apposite. We have now put the matter straight and we deal with that application *de novo* so that all the facts are now available to us together with the fact that no previous application had been made when Judge Boxall came to consider it.

There is one other exceptional factor and that is that M is only 16 and Article 14 of the Criminal Justice (Young Offenders) (Jersey) Law, 1994 says, of course, that a Court shall not pass a sentence of youth detention unless it considers that no other method of dealing with the youth is appropriate because it appears to the Court that he has a history of failure to respond to non-custodial penalties, is unwilling or unable to respond to them, or only a custodial sentence will be adequate to protect the public from serious harm from him, or the offence or the totality of the offending is so serious that a non-custodial sentence cannot be justified. Analysing that, there is clearly a policy to keep young people out of custody as far as possible, but against that bail is clearly not to be given to those who are in some way a threat and we really have had to consider all three applications in more or less the same way.

For what reason then did Judge Boxall - for it was he who had the final decision on 8th July - keep these three men in prison? The assault was a grave and criminal one; it was an assault on a man in his own home that required him to be detained in hospital overnight. The assault involved punching and kicking. M, surprisingly, is only just out of youth detention. He received six months' youth detention on 3rd April, 1996, and he has apparently committed these offences whilst on licence.

There is no doubt in our minds, from reading the transcript, that Judge Day was well aware of the provisions of the Young Offenders Law. We have no doubt in our minds that he addressed his mind to those problems.

The Court must look to Makarios (1978) J.J.215 and A.G. -v- Heuzé (7th October, 1994) Jersey Unreported, and have regard to the nature and gravity of the accusation that is made against the applicants. We must also consider, of course, whether the applicants will surrender into custody after their bail is surrendered and whether or not they might interfere with witnesses. In this case there appears to be only one witness, the

complainant, Mr. H and the police appear to have had no doubt that Mr. H was in danger of being interfered with.

5 We have given this matter our very deep consideration but we have no doubt that as regards M and G the Magistrate was correct. We have looked at the way in which he reached his decision and we have looked at the nature of the accusations; the evidence such as we have heard; and, of course, the severity of the punishment which conviction will entail.

10 For a 16 year old, however, we are more concerned but unfortunately when we look at his record it has let him down and, indeed, Mr. Day was clearly concerned about this because he said at one stage to the Probation Officer when he dealt with the matter on 1st July: "you see, supervision, without having his  
15 *bodily movements restrained, appears not to work. That's really what that meant, isn't it?*" to which the Probation Officer replied "yes, Sir". Judge Day made the remark: "He is under supervision now, you see". As we have said, he was under licence when he  
20 committed the grave and criminal assault.

We have been very grateful to counsel for the help that they have given us but these applications are refused. It will be two weeks, I think, before the matter comes up before the learned  
25 Magistrate again and when a decision has been made as to what will happen we can only advise that a further application can safely be made at that time.

Authorities

Makarios (1978) JJ 215.

A.G. -v- Heuzé (7th October, 1994) Jersey Unreported.