

ROYAL COURT
(Samedi Division)

167

22nd August, 1997

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

The Attorney General

- v -

Stephen James Hendry

Application for a review of the Magistrate's decision to refuse bail on 21st August, 1997.

- On 21st July, 1997: the applicant reserved his plea in the Magistrate's Court to:
- 1 count of refusing to leave licensed premises, contrary to Article 17(3) of the Licensing (Jersey) Law, 1974;
 - 1 count of being disorderly on licensed premises, contrary to Article 83 of the Licensing (Jersey) Law, 1974;
 - 1 count of acting in a manner likely to cause a breach of the peace; and
 - 1 count of obstructing police officers in the due execution of their duty.

The applicant was remanded in custody and a bail application was refused.

[On 3rd April, 1997, the applicant had been placed on probation for 2 years, with 200 hours of community service by the Royal Court, following a guilty plea to 1 count of conduct likely to cause a breach of the peace; 1 count of attempted breaking and entry with intent; and 1 count of grave and criminal assault].

On 23rd July, 1997: the applicant entered not guilty pleas to the charges laid on 21st July. A bail application was refused.

On 20th August, 1997: a bail application was adjourned until 21st August, 1997, by the Relief Magistrate, with the suggestion that the Parish Constable might be able to exercise his powers under Article 15 of the Mental Health (Jersey) Law, 1969.

On 21st August, 1997: the Magistrate refused the application for bail.

Application granted.

A.R. Binnington, Esq., Crown Advocate.
Advocate S.E. Fitz for the accused.

JUDGMENT

THE BAILIFF: This is an application by Stephen Hendry for a review of the Magistrate's decision, yesterday afternoon, to refuse him bail in respect of four charges which have been laid against him. On 21st July, 1997, he was charged with refusing to leave licensed premises and of being disorderly on licensed premises, in contravention of the Licensing (Jersey) Law, 1974. He has also been charged with acting in a manner likely to cause a breach of the peace and with obstructing police constables in the execution of their duty by refusing to obey their orders.

The facts, briefly, appear to be that he was disorderly on licensed premises on 25th June. He also refused to leave his mother's house on 18th July, with the result that his mother called the police and he obstructed them by refusing to comply with instructions.

The applicant is at present subject to a Probation Order which was imposed by this Court on 3rd April, 1997, for more serious offences.

A number of applications have been made to the Magistrate and the last one was made, as we have said, yesterday, 21st August.

The applicant has been in custody since being presented before the Magistrate's Court and has thus now been in custody for six weeks and five days, on remand.

The learned Magistrate refused the application on the ground that the applicant was at risk. We think the Magistrate had in mind the risk that the applicant might do some damage to himself. Apparently, the Magistrate also took the view that the risk of re-offending was high, bearing in mind the medical evidence which he had received.

We mention in passing that the applicant has not got a good record. It is clear that he is an unhappy young man, for reasons which we need not describe, and that his mental health is not as it should be. He has been seen by Consultant Psychiatrists. When the learned Magistrate made his decision he was in possession of a short report from a Consultant Psychiatrist which recorded that the applicant had witnessed a horrendous scene of aggression in the prison, about a year ago, which had had a traumatic effect upon him. The Consultant Psychiatrist expressed the opinion that *"this young man is not well at this moment and will not be able to appear in Court in the near future."*

As the Crown Advocate has correctly reminded us, this is a review of the Magistrate's decision and it is not for us to express our own view as if it were an application *de novo*.
5 However, we have reached the conclusion that the learned Magistrate did err in his consideration of the application and failed to take sufficient account of the length of time which this applicant has already spent in custody, on remand, for relatively minor offences.

10 The applicant has pleaded not guilty to the charges laid against him, but even if he were to be convicted, there is doubt in the mind of this Court as to whether the sentence which would be imposed would be as great as the length of time which he has
15 already spent in custody on remand. That is a material matter to which we feel the learned Magistrate gave insufficient consideration.

20 We have great sympathy with the careful approach that the learned Magistrate took. He was clearly concerned about the mental health of the applicant and no doubt believed it was in the best interests of the applicant that he should be detained at the prison pending trial for these offences. However, we must make it
25 clear that the prison is not to be used as a receptacle for individuals suffering from mental distress, who should be treated - if they are to be dealt with at all for these problems - within the hospital system. Accordingly, we quash the decision of the Magistrate refusing bail and we grant the application. We remand the applicant upon his own recognizance for his next appearance
30 before the Magistrate's Court whenever that may be.

35 Before parting with the matter, we express the hope that the Probation Service, under whose care the applicant already comes in relation to other offences, will closely monitor the situation and make any necessary recommendation to the Consultant Psychiatrist which they may think appropriate.

No Authorities.