

23rd October, 1987

ROYAL COURT

**Before: Deputy Bailiff**

**Jurat Perrée**

**Jurat Orchard**

**Attorney General - v. Clarence D'Avoine**

**Indecent Assault (1 Count)**

**The Solicitor General**

**Adv. A.R. Binnington for the accused.**

DEPUTY BAILIFF: Despite all that Mr. Binnington has said, this Court is going to impose a custodial sentence and indeed grants the conclusions.

The Court is determined that its Probation Orders shall be meaningful orders and the Court regards the breach of probation as a serious matter. D'Avoine has not made the most of the leniency extended to him last year.

An offence which constitutes a breach of trust to the Court, or an abuse of privilege should in our view attract a tariff sentence. We think too that the repeated offence of indecent assault is a serious matter and we adopt the sentiments of Thomas at page 15 -

".....if the law fails to impose a sentence of substantial severity for a particular class of offence, the gravity with which it is viewed by society will diminish and increasing tolerance lead to more frequent occurrence."

and then -

"The choice of a tariff sentence in cases like these results from a positive determination by the Court that the gravity of the offence and its likely

consequences require to be emphasized, notwithstanding that the effect of the sentence on the offender's future behaviour will not be beneficial."

Now that is our view with regard to indecent assaults on young children.

It is a matter for D'Avoine to decide whether he will help himself or not. The medication can and in our view should be continued in prison, but that is a matter for him. The Probation Service is available to help him there if it is his wish to be helped. He can have visits there from the Reverend Measday, and there is a Prison Chaplain, and his association with the Good Companions Club can be resumed on his release. So far as this Court is concerned - and again I refer to Thomas -

"The primary decision requires to be made, that is the primary decision whether to have a individualized sentence or a tariff sentence and whether the need for a tariff sentence is indicated by the inherent nature of the offence or by the aggravating effect of the offender's status".

Here we have both, we have the inherent nature of the offence (the indecent assault) and we have the aggravating effect of the offender's status as a probationer -

"and the primary decision in all these cases represents a view that the social importance of marking the gravity of the offence outweighs the possibility of influencing the future behaviour of the offender by training, treatment or supervision."

And that is exactly where the Court stands on this case.

All the mitigation has been fully taken into account by the Solicitor General. We have reviewed all the cases and we are satisfied that full credit has been given for the remorse and for all the mitigation - indeed the conclusions if they err at all do so on the side of leniency.

Therefore, D'Avoine, you are sentenced for the offence of June, 1986, to

nine months' imprisonment and for the offence on today's indictment to nine months' imprisonment concurrent, making a total of nine months' imprisonment, and the Probation Order is discharged.

**Text cited:**

Thomas: Principles of Sentencing (2nd Edn) :pp 14 - 17

op.cit. :pp. 128 -129 : *Indecency with small children.*

op.cit. :pp 195 - 197: *The Age & History of the Offence*

Thomas: Current Sentencing Practice: Foreword by Lane, C.J.

op.cit :pp. 2231 - 2236: *Indecent Assault on female.*