

ROYAL COURT

7th February, 1992

16A.

Before: The Deputy Bailiff, and  
Jurats Myles and Vibert

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The Attorney General

- v -

Gerald Edward Coll

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Breach of 1 Year Probation Order imposed on 5th April, 1991.

Plea:

Breach admitted.

Details of Offence for which Probation order was imposed on 5th April, 1991.

See below.

Conclusions on Breach:

6 months' imprisonment in respect of offence for which he had been placed on probation (see below) to follow consecutively sentences of imprisonment imposed by the Police Court on 7th January, 1992.

Sentence of the Court on the Breach:

Conclusions granted.

Indictment of 5th April, 1991 -  
(Coll was charged with a co-accused, Gaughan).

Offence:

Breaking and entering and larceny.

**Plea:**

Guilty.

**Details of Offence:**

Going home in the small hours, very intoxicated, they and a third man broke in a shop door and stole expensive suede and leather clothes, (value £2541) and £25 cash. They were seen by a member of the public and arrested shortly afterwards.

**Details of Mitigation:**

Though initially denied the offence, eventually admitted it. £2003 worth of property recovered. Gaughan young (within the provisions of Article 18 of the Children's Law). Miveld (aged 20 and first offender) given 70 hours Community Service by the Police Court. Theft opportunist.

**Previous Convictions:**

Coll: previous for dishonesty, had served a number of short prison sentences.

Gaughan: two for larceny, had served one short prison sentence.

**Conclusions:**

6 months each.

**Sentence and Observations of the Court:**

Coll: 1 year's probation plus attend alcohol study group.

Gaughan: 1 year's probation plus attend offending behaviour group.

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H.M. Attorney General.

Advocate N.F. Journeaux for the accused.

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**JUDGMENT**

THE DEPUTY BAILIFF: The Court is not bound by the decisions of the English Court of Appeal regarding the period spent on remand, although, of course this Court always pays close attention to the decisions of that Court. But this Court, whilst taking the remand period into account as one of the many factors to be considered, does not consider itself bound to give credit for that period. To that extent it respectfully disagrees with Stocker LJ, in R. -v- Needham (1989) 11 Cr. App. R (S). The matter is one of discretion, not duty.

In this case the Crown, in respect of both Coll and Gaughan, asked for 6 months' imprisonment. The reason is simple to appreciate. Gaughan was 20, that is to say under 21 at the time of sentence. The restrictions in Article 18 of the Children (Jersey) Law, 1969, still applied to him.

The correct bench mark sentence for breaking and entering commercial premises by night is of the order of 12 to 15 months' imprisonment. Coll was very fortunate indeed. He benefited from the disparity rules.

Both Coll and Gaughan breached their probation - Gaughan was re-sentenced to 6 months' imprisonment, appealed and the Superior Number dismissed the appeal. What Mr. Journeaux is asking us to do is to create a disparity between them to Coll's further benefit, with the result that the adult would in effect receive a shorter sentence for the original serious offence than the young person has done; notwithstanding the fact that he has twice before breached the probation order without attracting a reference to this Court. We do not criticise the exercise of discretion in those two instances - indeed we approve - but it means that the contempt shown by Coll to orders of the Court is all the greater.

The result we have described is not our idea of justice. The conclusions are upheld. Coll, you are sentenced to 6 months' imprisonment consecutive to the Police Court sentence imposed on the 7th January, 1992.

Authorities

R. -v- Needham (1989) 11 Cr. App. R (S).