ROYAL COURT

23rd October, 1992. 188.

Before: The Bailiff, and

Jurats Bonn and Hamon

The Attorney General

- v -

A.

---

1 count of indecent assault.

AGE: 60.

PLEA: Guilty.

DETAILS OF OFFENCE:

Accused was the girl's paternal grandfather. The extended family would visit the grandparents each week for a 'family Sunday'. During some of these visits accused would take the child aside, pull down her clothing and rub her clitoris. Original confession, and thus indictment, covered child's age from 9-13. Subsequently accused alleged only took place when child's age 9-11. Sentenced on that basis. Profound and complex effect on the child and her extended family. Offences came to light some years after they ceased, due to child's continuing unhappiness.

DETAILS OF MITIGATION:

First offence; co-operation; guilty pleas; remorse; support from family; model employee.

PREVIOUS CONVICTIONS: None.

CONCLUSIONS: 18 months' imprisonment.

SENTENCE AND OBSERVATIONS OF THE COURT:

Previous judgments are helpful only in so far as they expound principle. D'Avoine and Robinson do so and the Court adopts the principles expressed therein. Despite defence request for hostel/clinic disposal as suggested by Probation Service, the Court has a wider duty i.e. the duty to which the D'Avoine and Robinson cases advert. Conclusions granted. 18 months' imprisonment.

C.E. Whelan, Esq., Crown Advocate.

Advocate Mrs. S.A. Pearmain for the accused.

JUDGMENT

THE BAILIFF: In cases of this nature the Court, of course, has to determine whether today - not at a future hearing of this case - it would be appropriate that a prison sentence should be imposed or not. However, if we were to accede to the request of counsel that there should be an adjournment in order that an assessment might be made of the accused at Graceville, that would be tantamount to saying that if that assessment were to be successful, this Court would then sentence the accused to a non-custodial sanction.

Therefore the Court has to decide this morning, not merely whether it should postpone sentence, but whether this is a type of case in which, if we were to put off sentencing and there were then to be a satisfactory report, it would be proper for us to impose a non-custodial sentence.

In relation to offences of this nature, we are grateful to counsel - but perhaps particularly to Mrs. Pearmain, who has said all that she can say on behalf of her client - for drawing our attention to a number of cases from which we can extract two

principles. The first is found in the case of A.G. -v- D'Avoine (23rd October, 1987) Jersey Unreported; (1987-88) JLR N.21. In that case the Court drew attention to two passages in Thomas' "Principles of Sentencing". I should add here that Mrs. Pearmain has quite properly indicated that some of the cases in Thomas' are of long standing and that therefore there have been changes, not so much in the approach of the courts to this type of case, but in the methods of dealing with individual persons who offend. The passages in Thomas referred to in D'Avoine where the learned author deals with indecent assault in general read as follows:

> ***".....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".***

With that view the Court completely agrees. Thomas also says:

> ***".....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".***

It is quite true that Mrs. Pearmain has urged that the present case goes beyond the D'Avoine decision. She stressed the effect on the family of a prison sentence; whereas a period of training and understanding would be achieved at Graceville that would benefit the whole family. Therefore we have to consider whether the exceptional circumstances urged on us by Mrs. Pearmain are sufficiently cogent for us to depart from our general principles.

I said there were two principles I wanted to mention. The first I have just cited - the two passages from Thomas. The

second is found in the English case of Robinson (1990) 12 Cr.App.R.(S.) 542.

Here, the Appeal Court cited some words of the Judge below whose sentence they did in fact reduce, mainly because his attention had not been drawn to another case. The Court said this:

> ***"It is, as the judge said in his sentencing remarks, the saddest possible case. The appellant is a man of no previous convictions, as I have said now in his 60s, and these events have caused havoc in his own family life. The learned judge said that the breach of trust in relation to his granddaughter was made all the sadder by the fact that there was undoubtedly very genuine fondness between the pair of them. The judge accepted that the appellant had suffered enormously, that his job had gone, his marriage had gone and there was a respectable, successful life in ruins at the age of 60. The judge, quite rightly, pointed out that he had a wider duty, apart from looking at the appellant as an individual, and the court must express its horror of these types of indecent assaults".***

That case is very much on a par with this one, the details of course vary from case to case, but here is a grandfather in a blatant breach of trust over a period of time with a very young granddaughter.

We totally agree with the Judge in that case; we do have a wider duty. Apart from looking at you as an individual, A., we have a duty to express our horror and the horror of society, I have no doubt, at these types of indecent assaults. We do not, therefore, feel that we are able, Mrs. Pearmain, to grant your request and postpone sentencing.

We have therefore come to the conclusion, after comparing this case, as far as we can, with other cases where the Court has imposed a prison sentence, that we must impose the sentence asked for, that is to say, one of 18 months' imprisonment. But I would

add this: other cases are helpful only to try and extract the principle; they do not necessarily mean that this Court must follow the actual sentence imposed in those other cases, because the circumstances differ from case to case. However, we think, after looking at the case of A.G. -v- Aubert (17th March, 1989) Jersey Unreported, (the present case is not as serious as Aubert, but it is more serious than some of the others we have looked at) that the conclusions are right. You are therefore sentenced to 18 months' imprisonment.

Authorities

Robinson (1990) 12 Cr.App.R.(S.) 542.

Thomas: "Principles of Sentencing" (2nd Ed'n): p.p. 128-130.

Thomas: "Current Sentencing Practice": p.p. 2232-2239.

A.G. -v- Aubert (17th March, 1989) Jersey Unreported.

A.G. -v- Hughes (9th October, 1989) Jersey Unreported.

A.G. -v- Mutter (22nd June, 1987) Jersey Unreported.

A.G. -v- D'Avoine (23rd October, 1987) Jersey Unreported; (1987-88) JLR N.21.

A.G. -v- Aubin (26th January, 1990) Jersey Unreported.

A.G. -v- Pestana (13th July, 1990) Jersey Unreported.

A.G. -v- Foster (5th October, 1990) Jersey Unreported.

A.G. -v- Foster (22nd November, 1991) Jersey Unreported.

A.G. -v- Ruaux (7th July, 1992) Jersey Unreported.