4 pages.

ROYAL COURT
(Superior Number)
exercising the appellate jurisdiction conferred upon it by Article 22 of the Court of Appeal (Jersey) Law, 1961.

30th November, 1992

210.

Before: Sir Godfray Le Quesne, Q.C., Vice President of the Court of Appeal and Jurats Vint, Blampied, Myles, Bonn, Orchard, Hamon, Gruchy, Le Ruez and Herbert.

Application of **Joseph Michael McMahon** for leave to appeal against a total sentence of eighteen months' imprisonment passed on him by the Royal Court (Inferior Number) on 28th August, 1992, and made up as follows: a sentence of twelve months' imprisonment in respect of one count of illegal entry and larceny (Count 1 of the first indictment laid against him); of one month's imprisonment in respect of one count of larceny (Count 2 of the first indictment), the said terms of imprisonment to run concurrently; of six months' imprisonment in respect of one count of taking and driving away contrary to Article 28(1) of the Road Traffic (Jersey) Law, 1956, as amended, (Count 1 of the second indictment laid against him); of four months' imprisonment in respect of one count of driving while disqualified contrary to Article 9(4) of the said Law (Count 2 of the second indictment); and of six months' imprisonment in respect of one count of driving without insurance contrary to Article 2 of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948, as amended, (Count 3 of the second indictment), the said terms of imprisonment to run concurrently with each other, but to follow consecutively those imposed in respect of the first indictment.

Leave to appeal was refused by G.M. Dorey, Esq., a Judge of the Court of appeal on 6th November, 1992.

Advocate S.J. Crane for the applicant.
C.E. Whelan, Esq., Crown Advocate.

JUDGMENT

THE VICE PRESIDENT: We have given a great deal of consideration to the submissions put to us, and our conclusion is that the application must be dismissed. We should like to make one or two observations to explain that.

Mr. Crane did not make any complaint of the individual sentences passed on the second indictment for the motoring offences, nor of the sentence passed on the second count of the first indictment. He based his argument on the contention that

the sentence of twelve months' imprisonment on the first count of the first indictment was in all the circumstances excessive. And on the second ground that the total of eighteen months' imprisonment, which is achieved by adding together the sentences on the first indictment and those on the second, was also, in all the circumstances, excessive. He submitted that the Inferior Number in passing sentence had not considered the resulting total - as it is well established to be their duty after imposing separate sentences - and asked themselves whether in totality the sentence was excessive.

We think it is important to remember that the purpose of adding together sentences in such a case is to arrive at a judgment whether the resulting total sentence is just and appropriate. That must mean just and appropriate in all the circumstances of the case with which the Court is dealing, and those circumstances for this purpose must clearly include not only the circumstances of the offence itself but also the record of the offender.

In this case the Court was dealing with a defendant whose record included one offence of burglary (we do not know anything about that offence but it is perhaps right to include it because it seems, to judge from the sentence passed, not to have been a serious case of burglary); two offences of attempted illegal entry upon premises, both of those committed, or at least considered by the Courts here in Jersey in 1990; two offences of breaking and entering with intent to commit a crime; three offences of theft; and when one comes to consider the second indictment, two previous offences of taking and driving away a motor vehicle; one previous offence of driving while disqualified; and three previous offences of driving without insurance.

This is clearly a bad record for a man of the age of 24, and it is against the background of that record that the circumstances of this offence had to be considered.

The principal offence charged in the first indictment consisted of a breaking into residential premises at night. As the Court has observed on more than one occasion, that is an offence of which serious notice must always be taken.

A further point which it is relevant to consider in this case is the way in which the Court has dealt with this defendant in the past.

In England in August, 1989, he was given a sentence of Community Service. This was for a number of offences - burglary, theft from an unattended motor vehicle and four cases of criminal damage. The criminal damage seems not to have been trivial to judge from the sums ordered in compensation, and the defendant was ordered to serve 180 hours. That was in August of 1989, but by

June of 1990 he was already failing to carry out the Order which had been made.

Here in Jersey in December, 1991, the Magistrate at the Police Court put the defendant on probation for five motoring offences and a very minor case of larceny.

What happened after that chance had been given? Within less than a month the defendant was in breach of a condition of the Probation Order.

We think it also apposite to bear in mind that the offences which are the subject of the second indictment in this case were committed, not merely while the defendant was on bail awaiting trial for the charges in the first indictment, but within only two or three days of that bail having been granted.

In all these circumstances it is, in our judgment, impossible to say that the aggregate sentence which was passed by the Inferior Number was not just and appropriate. We have not overlooked Mr. Crane's argument on what is known as the "jump" principle. It seems to us clear that the difference between the sentences previously passed on this defendant and the sentence which has been passed in this case is explained by the circumstances to which we have just referred.

We would add one further point. Mr. Crane has told us that comparison of his own case with an earlier case of another man has led the defendant to feel some sense of grievance. We therefore think it important to reiterate what has been stated in this Court many times before: It is helpful and indeed important to look at earlier cases in order to see the range of sentences which the Court has thought appropriate for a particular type of offence. It is neither appropriate nor helpful to take a single previous case and try to judge on the basis of that what the sentence in the instant case ought to be. That is because even with the best reporting that one can achieve it is impossible to know all the circumstances and considerations which influenced the Court in the earlier case to arrive at the decision which it did. We think it important to emphasise this because not only may much time be consumed, but very misleading ideas may be derived from a comparison between all that is known of an earlier case and the case which is instantly before the Court.

We have thought it desirable to make these observations to explain the decision which, as I have said, is that this application must be dismissed.

Authorities

A.G. -v- Marie (24th April, 1992) Jersey Unreported.

Marie -v- A.G. (11th June, 1992) Jersey Unreported C.of.A.

Mière (Police Court Appeal) (5th February, 1990) Jersey Unreported.

A.G. -v- Beedles (19th October, 1990) Jersey Unreported.

A.G. -v- Sanguy (22nd July, 1991) Jersey Unreported.

Thomas: Principles of Sentencing (2nd Ed'n):
p.p. 195-6: Age and History of the Offender.
p.p. 51-61: Totality Principle.
p.p. 204-5: The "Jump Effect".

Thomas: Current Sentencing Practice: Section A5-2F01: R. -v- Young (16th March, 1973); R. -v- Hunnybun (23rd November, 1979).

Lawson (1987) 9 Cr.App.R.(S.) 52.

Olumide (1988) 9 Cr.App.R.(S.) 364.

de Havilland (1983) 5 Cr.App.R.(S.) 109 at 114.