

COURT OF APPEAL

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28th September, 1993.

Before: A.C. Hamilton, Esq., Q.C., (President),  
E.A. Machin, Esq., Q.C., and  
Sir Louis Blom-Cooper, Q.C.

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Dennis Edmund Barbet

-v-

Her Majesty's Attorney General

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Application for leave to appeal against a total sentence of 18 months' imprisonment, imposed on 21st June, 1993, by the Royal Court (Superior Number) following an admitted breach of a Probation Order imposed on the Applicant on 19th August, 1992, by the Superior Number, to which he had been remanded on 3rd July, 1992, by the Inferior Number to receive sentence following guilty pleas to: 1 count of illegal entry and larceny (count 3 of the indictment laid against him and 2 co-accused), on which he was sentenced to 9 months' imprisonment; 1 count of conduct likely to cause a breach of the peace (count 10), on which he was sentenced to 6 weeks' imprisonment (concurrent); and 1 count of larceny (count 11) on which he was sentenced to 9 months' imprisonment (consecutive).

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Advocate M.C. St. J. O'Connell for the Applicant.  
C.E. Whelan, Esq., Crown Advocate.

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JUDGMENT.

**BLOM-COOPER, JA.:** Dennis Edmund Barbet applies for leave to appeal against the sentence totalling 18 months' imprisonment imposed by the Superior Number of the Royal Court, constituted by the Bailiff and seven Jurats on 21st June, 1993, on three counts; one of illegal entry and larceny; another count of conduct likely to cause a breach of the peace; and a further count of larceny. The sentence was made up of 9 months, 6 weeks concurrent and 9 months consecutive respectively.

Those sentences arose in the following manner:

Mr. Barbet had pleaded guilty on those counts when he appeared before the Royal Court on 3rd July, 1992, and the case

was adjourned to allow the Probation Service to investigate the possibility of a placement in a hostel in England which specialises in treating sufferers from alcoholism.

Mr. Barbet, now aged 54, has a record of petty offending against the criminal law going back over the last 30 years. His criminal career has almost invariably been drink related. He has been put on probation once in 1987, otherwise he has been fined or sentenced to short terms of imprisonment. Last year, for example, (1992) he appeared three times before Jersey Magistrates for property offences for which he received prison sentences of two weeks, one week and three months.

On 19th August, 1992, the Royal Court made a Probation Order for two years in the following terms:

- "(1) That you be of good behaviour and appear before the said Court when called upon so to do;*
- (2) That you be under the supervision of a Probation Officer appointed under the Law of 1937 on Probation;*
- (3) That you reside in such a place and work in such employment as a Probation Officer shall direct;*
- (4) That you reside at the Glyndhurst Probation Hostel, Gloucester, for as long as the authorities at the said Hostel require you to do so".*

It is unnecessary for the purposes of this application to say anything about the offences for which Mr. Barbet was being sentenced, save that he, with two others, had breached the elementary security of the Royal Court and had stolen archival material relating to the German Occupation of Jersey during the last War. Most of the material has been recovered.

Mr. Barbet was escorted to the hostel in Gloucestershire in early September by his Supervising Officer, Mr. Cutland, who continued to keep in touch with the hostel manager.

The start was encouraging but quickly Mr. Barbet was in trouble over an intake of alcohol by him, and on 9th November, 1992, the hostel manager sent a fax message to Mr. Cutland which stated as follows:

*"Throughout his stay at Glyndhurst Mr. Barbet has drunk on four separate occasions thus breaching the hostel rules". He went on to add: "On 4th November, 1992, Mr. Barbet again presented at the hostel very drunk and as often has been the case potentially quite difficult. Given the extent to which he was unable to respond to the no-drinking rule, I took the view that his elastic had snapped. Indeed we were doing*

*little to assist. If someone is not prepared to trust, take risks and then make a significant effort to cease abusing alcohol then our programme becomes meaningless".*

It is to be observed that there was no suggestion that Mr. Barbet had committed any act of violence, or indeed any criminal offence, but the hostel rules state that failure to comply with any rule may lead to eviction, and indeed the document which is the contract of residence which is given to residents at the Glyndhurst Hostel is headed: "The hostel runs on a behaviour pattern acceptable to all", and then in large print: "ALCOHOL/DRUG ABUSE/OR OFFENDING OF ANY KIND IS NEITHER ALLOWED OR ACCEPTED AND WILL RESULT IN YOUR IMMEDIATE EJECTION".

To complete the chronology of events Mr. Barbet was then proceeded against for breach of the Probation Order, the breach being that he failed to be of good behaviour as required under the Probation Order.

He was arrested and detained in custody in respect of the offences to which he had pleaded guilty in the summer of 1992. Thus, on 21st June, 1993, before the Royal Court Mr. Barbet admitted the breach of the Probation Order. In amplification of his admission Mr. Barbet accepted that he had drunk too much on some occasions and that in his opinion the hostel was not going to work for him. He suffered from chronic alcoholism, and felt that he had no chance at the particular hostel. Because it contained mostly young men on remand, he had been by far the oldest inmate and that had had a bearing on his ability to respond. There had been a high degree of criminal activity and drugs and drink had been easily accessible. There had been no real structure for treatment or guidance; with that mixture it was hard to see how he could have succeeded. Mr. Barbet went on to explain that the institution had regarded him as "a Jersey problem".

This explanation that he gave for his behaviour at the hostel from September to November, 1992, has been repeated and amplified by Mr. O'Connell in his helpful submissions before us.

Mr. Whelan, Crown Advocate, submitted that the Probation Service has done everything it reasonably could have been expected to do, and sadly there was no alternative for the Royal Court but to send Mr. Barbet to prison for the original offences. The Royal Court, he submitted, cannot be said to have erred in principle. In his judgment, on sentence, the learned Bailiff said:

***"The Court has given anxious consideration as to whether the complaints advanced by your counsel concerning the hostel in which you were placed last time were justified. After hearing your Probation Officer, Mr. Cutland, we do not think that any purpose would be served in sending you to another hostel. You did not appear to get in touch with Mr. Cutland***

*here until you had started drinking again, and unless you are prepared to overcome your problem by helping yourself, no amount of voluntary guidance in hostels will be of much assistance to you.*

*Accordingly we cannot find that you should have a further chance. You were warned very clearly last time as to what would happen if you did not respond to the chance we were giving you. The conclusions of the Crown are granted and you are sentenced to a total of 18 months' imprisonment".*

While we would agree that no useful purpose would be served in sending Mr. Barbet to another hostel, whether for treatment or otherwise, we conclude that ruling out any question of a hostel disposal does not mean that the only alternative left to the Court is imprisonment.

We have not found this case easy to determine. What ultimately has persuaded us to allow this application and, with the consent of counsel, to deal with the appeal today is the doubt we entertain as to whether the undoubted breach by Mr. Barbet of the hostel rules, about any involvement by him with alcohol, constituted such a serious breach of the requirement in the Probation Order to be of good behaviour as to warrant the imposition of a prison sentence.

The basis of the alleged breach was contained in the letter from the Chief Probation Officer to the Constable of St. Helier, which was passed on to the applicant. This is a letter dated 16th November, 1992, and I read the second paragraph:

*"In accordance with Article 5 of the Loi sur l'atténuation des peines et sur la mise en liberté provisoire 1937, I have to report that Mr. Barbet has failed to be of good behaviour. On four occasions he has returned to the Glyndhurst Hostel having consumed alcohol which is against hostel rules. Due to this behaviour the hostel authorities have asked Mr. Barbet to leave and he has now found alternative lodgings".*

The significant feature of that is that it is the basis of the alleged breach; it is entirely related to the four occasions when Mr. Barbet had consumed alcohol, which is against the hostel rules, but there is no suggestion that that was accompanied by any act of violence, or indeed any criminal offence.

We remind ourselves that the prison is not a social dustbin into which human beings, who present difficult behavioural problems, should be tipped. Some means of caring for and treating such individuals has to be found outside the penal system. We view with some disquiet the apparent absence of any unit within the Island dedicated to the care and treatment of alcoholics.

In the circumstances this application for leave to appeal will be granted, and with counsel's consent, the appeal succeeds. We will substitute a Probation Order for two years without any other conditions than the ordinary conditions of a probation order.

Mr. Barbet, would you stand up. Do you understand the provisions of the Probation Order, that you have to be of good behaviour, and that you have to comply with all the requirements of your Supervising Officer?

THE APPLICANT: Yes, Sir, I do understand that.

And do you also understand that the effect of any breach of that Probation Order will mean that you will be brought back to this Court, or rather brought back to the Royal Court and will be dealt with for the original offences committed in 1992, which of course are the subject of this appeal?

THE APPLICANT: Yes, Sir.

Very well. And do you accept those conditions, in other words do you consent to your being subject to the Probation Order?

THE APPLICANT: Yes, Sir, I accept it, Sir. Thank you.

**AUTHORITIES.**

Criminal Proceedings (Computation of Sentences) (Jersey) Rules,  
1968.

A.G. -v- Coll (7th February, 1992) Jersey Unreported.

Wiltshire (1992) 13 Cr.App.R.(S.) 642.