

ROYAL COURT  
(Samedi Division)

163.

22nd November, 1993

Before: The Bailiff and Jurats Bonn and Vibert

---

Police Court Appeal

Gary Michael McKenna

- v -

The Attorney General

---

Appeal against a sentence of 6 months' imprisonment imposed in the Magistrate's Court on 31st September, 1993, following a guilty plea to:

1 Count of breaking and entering with intent to commit a crime.

---

Advocate Miss D.M.C. Sowden for the Appellant.  
Advocate A.D. Robinson on behalf of the  
Attorney General.

---

JUDGMENT

**THE BAILIFF:** This is an appeal from a sentence of 6 month's imprisonment imposed on the appellant for breaking and entry with intent. The circumstances are quite clear: he had been drinking; he had some tools for his work; he drove a van with an acquaintance whom he met in a pub to Tantivy Motors, where they climbed in through a window and after showing his acquaintance how to work the tools, the acquaintance endeavoured to break open the

safe. They did not succeed; they were surprised; the appellant ran off and was arrested.

This was a serious offence and unless there are exceptional circumstances merits the tariff sentence. It was at the request of his then Counsel that the Magistrate dealt with him rather than remanding him to the Royal Court.

The appeal this afternoon is not based on the argument that the sentence was manifestly excessive: we think if it were, we would be obliged to say that it was not excessive. The Magistrate exercised his discretion to deal with the offence within his jurisdiction, notwithstanding that in April of this year the Appellant had already received a sentence of six months imprisonment for dishonesty involving twelve offences. Shortly after he was released, with remission for good behaviour, on 3rd September, he committed the present offence.

Counsel, however, invited us to decide that, even if we were satisfied that the appeal itself ought not to be allowed, we should, as an act of mercy, allow the Appellant to return to England to see his girlfriend who has suffered a miscarriage. He has given an undertaking that he would not return within three years.

We think it would be unfortunate if the message went out from this Court that circumstances like this merit an individualized sentence. Individualized sentences should only be imposed where there are exceptional circumstances. We cannot find that there are exceptional circumstances today and therefore the appeal is dismissed with legal aid costs.

Authorities

A.G. -v- Wheatley (5th January, 1990) Jersey Unreported.

Lynch -v- A.G. (24th July, 1991) Jersey Unreported, C.of A.

McLees -v- A.G. (17th February, 1992) Jersey Unreported.