5 pages.

YOUTH APPEAL COURT

24th July, 1995

143.

Before: The Deputy Bailiff, Mr. A. Le Maistre,
Mr. P. Pearce, Mrs. C. Audrain

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B

- v -

The Attorney General

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On 6th July, 1994, the appellant was placed on Probation for 2 years after pleading guilty in the Youth Court to:

1 count of — taking and driving away a motor vehicle without consent or other lawful authority, contrary to Article 28(1) of the Road Traffic (Jersey) Law, 1956, as amended (count 1).

1 count of — driving uninsured, contrary to Article 2, as amended, of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948 (count 2).

1 count of — driving without a licence, contrary to Article 3, as amended, of the Road Traffic (Jersey) Law, 1956 (count 3).

1 count of — theft (count 4); and

1 count of — causing malicious damage (count 5).

On 28th June, 1995, following an admitted breach of the Probation Order, the appellant was sentenced to 6 weeks' Youth Detention with 3 weeks' disqualification from driving and the Probation Order was discharged.

Appeal against sentence imposed on 28th June, 1995.

Appeal dismissed.

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J.G.P. Wheeler, Esq., Crown Advocate.
Advocate S.J. Fitz for the Appellant.

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**JUDGMENT**

**THE DEPUTY BAILIFF:** B was sentenced by the Youth Court on 28th June, 1995, to 6 weeks' Youth Detention. He was disqualified from driving for three months and his Probation Order was discharged.

The charges, briefly, concerned taking and driving away a motor vehicle without consent or lawful authority; driving whilst uninsured and without a licence authorising him to drive that vehicle; and then, strangely, causing malicious damage to the vehicle estimated at £434.27.

When the offences were committed B was in breach of a Probation Order. He is still very young - only 17 years old, but he has already faced two similar charges.

He was placed on probation for two years by the Youth Court on 6th July, 1994, and he committed similar offences during this Order and was ordered to complete 36 hours at the Attendance Centre. He was returned to Court having missed three consecutive appointments at the Probation Office on 5th, 13th and 18th April. His attendance before that had been inconsistent and unreliable and he had failed to give any reasonable excuse for his non-attendance at the Attendance Centre on 22nd April, 1995.

Let us say immediately, and it was conceded by Crown Advocate Wheeler, that there is a procedural error in the Court below. It is a statutory requirement that the Court states its reasons for imposing a sentence of Youth Detention. Article 4(2) of the Criminal Justice (Young Offenders) (Jersey) Law, 1994, reads as follows:

> ***"A court shall not pass a sentence of youth detention unless it considers that no other method of dealing with him is appropriate because it appears to the court that -***
>
> ***(a) he has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them; or***
>
> ***(b) only a custodial sentence would be adequate to protect the public from serious harm from him; or***
>
> ***(c) the offence or the totality of the offending is so serious that a non-custodial sentence cannot be justified".***

The statute as we understand it intends to focus the Court's mind on any alternative punishment that might be available and to

leave no doubt in a young offender's mind as to why he faces prison, perhaps for the first time.

We have decided today not to remit the matter back to the Youth Court, but we are going to proceed as the Court did in Prior, Reed, McLean v. A.G. (16th February, 1995) Jersey Unreported CofA: we shall deal with this case *de novo*.

We are able to concentrate our minds, particularly on Article 4A and in that regard we have had the great assistance of Mr. Heath whose prognosis on B responding to probation was not encouraging.

Miss Fitz, who has, as always presented her case with great clarity before us, said that there was no evidence of unwillingness on B's behalf and in fact he had stated that he was willing to subject himself to community service.

We are agreed in Court today that there are in fact two matters that we have to take into account and this is helped by the fact that the Jersey Statute is very clearly based on provisions of the Criminal Justice Act. In order to assist us we have looked at the case of Fisher & Manlow (1989) 11 Cr.App.R.(S). 302. The report in the headnote says this:

> ***"Section 1(4A)(a) ("he has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them") required two factors to be taken into account - a history of failure and an inability or unwillingness to respond to non-custodial penalties. When F's record was considered, although he had received non-custodial penalties in the past, it was not a fair inference that because of his record it could be concluded that he was unable or unwilling to respond to a non-custodial sentence, particularly as the social inquiry report recommended that he be considered either for a probation order or a community service order".***

We think, having regard to that case, and to the arguments before us today that the test is objective rather than subjective and, as we say, having heard Mr. Heath, the Probation Officer, in Court today and after reading the very careful report of the Court Officer who was dealing with this matter, Mr. Trott, we feel that the possibilities of B responding to any form of Attendance Centre is not good.

We have concentrated our minds on sub-paragraph (a) but we must also remind ourselves of course that the offences with which B was charged are serious ones. It probably does not need to be said in this Court that driving a motor vehicle while uninsured can have awesome consequences if an innocent member of

the public just happened to be injured with no recourse then in civil damages at all.

We are somewhat disturbed that we can find nowhere in the papers before us a question of remorse. B appears to be determined to follow his own course. We have given the matter very careful consideration but, sadly, we can see no alternative to Youth Detention and we cannot see that a decision to impose that sentence was flawed in any way at all, particularly when we look at the words of the learned Assistant Magistrate when sentencing. This is not a question of someone stealing for financial gain; that would have been bad enough, but there might have been some reason for an offence of that nature. There appears to us to be no reason for these offences other than a peculiar form of ill-disciplined self-gratification.

B , stand up. We find that the offences with which you are charged are serious and particularly serious because you appear to have refused to comply with orders that have been made against you in the past. Because you have failed to comply with those orders and because we regard the matters as serious, we can see no alternative in the circumstances but to confirm the sentence that has been passed upon you. We are therefore going to uphold the sentence passed upon you of 6 weeks' Youth Detention less of course what you have already served on remand. We find the matter particularly distressing as Miss Fitz has told us that you are in gainful employment at the moment and we can only hope that when you come out of Youth Detention that that employment will still be there for you. You really must take this opportunity - hard though it may be - to get your thoughts together and try to become a decent citizen. I have also to explain to you that when you have served your sentence you will be liable to supervision by a Probation Officer or other Officer of the Court.

## Authorities

Criminal Justice Act, 1982.

Criminal Justice Act, 1988.

Criminal Justice (Young Offenders) (Jersey) Law, 1994.

Prior, Reed, McLean v. A.G. (16th February, 1995) Jersey Unreported CofA.

Davison (1989) 11 Cr.App.R.(S.) 570.

Fisher & Manlow (1989) 11 Cr.App.R.(S.) 302.

Parsley (1990) 12 Cr.App.R.(S.) 498.

Littler & Ors. (1990) 12 Cr.App.R.(S.) 143.

R. v. Southwark Crown Court *ex parte* Ager (1990) 12 Cr.App.R.(S.) 126.

Slee & Worgan (1990) 12 Cr.App.R.(S.) 136.