

ROYAL COURT
(SUPERIOR NUMBER)

176.

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

11th September, 1995.

Before: The Bailiff, and
Jurats Myles, Bonn, Orchard, Gruchy,
Le Ruez, Herbert and Potter.

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- v -

The Attorney General

Appeal against a total sentence of 2½ years' imprisonment imposed by the Inferior Number on 2nd June, 1995, following guilty pleas on 7th April, 1995, to:

- 1 count of indecent assault, on which count a sentence of 2 years' imprisonment was imposed; and
- 1 count of procuring the commission of acts of gross indecency, on which count a sentence of 2½ years imprisonment, concurrent, was imposed.

Leave to appeal was granted by the Bailiff on 7th July, 1995.

Advocate Mrs. S.A. Pearmain for the appellant.
A.R. Binnington, Esq., Crown Advocate.

JUDGMENT

5 THE BAILIFF: This appellant appeals against sentences totalling 2½ years' imprisonment which were imposed upon him by the Inferior Number for offences of indecent assault and procuring acts of gross indecency, committed, in relation to the first count, between January, 1984 and December, 1986, and, in relation to the second count, between January, 1985 and December, 1986.

The ground of appeal is that the sentence imposed was manifestly excessive. Counsel for the appellant relies, 10 particularly, upon the fact that when sentence was pronounced in the

Court below, the Deputy Bailiff wrongly referred to the age of the child in question as being twelve rather than thirteen when the offences began. Counsel submits that the Court was influenced by this mistaken belief. What the Deputy Bailiff actually said was this:

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"The offences which we have heard described in this Court can do nothing but inspire revulsion in those who have heard them. The corruption of innocence is bad enough; the corruption of innocence by a father of his stepdaughter of 12 passes belief and understanding".

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It is now clear that the Deputy Bailiff did erroneously state the age of the child as being 12 rather than 13. He has, however, made it clear both in his report and in his contemporaneous note that the sentencing Court was aware that the appropriate age was actually 13. Indeed, the Crown Advocate, who appeared for the Crown in this appeal and who appeared for the Crown in the Court below, made a particular point in his conclusions of drawing the attention of the Court to the fact that the offending started when the child was aged 13.

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We have to ask ourselves whether the sentence imposed by the Inferior Number was manifestly excessive. Having regard to all the circumstances of the case, we do not consider that it can be so described, and in the view of this Court, nothing actually turns upon whether the child was indeed aged 12 or 13 when the abuse began. The undisputed fact is that there was a cynical betrayal of the trust reposed in him by this adopted child, which continued over some two years. In addition, there was the procuring of acts of fellatio by the child, which this Court has said on several occasions, that it regards as more serious than indecent assault.

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The appeal is therefore dismissed.

Authorities

Renouf (1988) 10 Cr.App.R.(S.) 157 C.A.

A.G. -v- Bouhaire (17th July, 1990) Jersey Unreported; (1990) JLR N.21.

A.G. -v- Maguire (26th September, 1991) Jersey Unreported; (1991) JLR N.13.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey": p.p.96-102.

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