



MC/CRIM/03/24

SENTENCING REMARKS

Rex

v

Coban ERIKSEN

before
HHJ Malcolm Simmons

SENTENCING REMARKS GIVEN ON

Monday 18 November 2024

Heard on Monday 18 November 2024

Representation

Stuart Walker, Crown Counsel
Damian Sabino, Bird & Co Solicitors

Prosecution
Defence

These sentencing remarks will be published until 17 September 2028 for this reason:

- As per Schedule 10 of the Criminal Procedure Evidence Ordinance, 2014, the conviction of the defendant will be considered spent.*

Any concerns about the publication or content of this document will be placed before the Judicial Officer(s) for consideration.



IN THE FALKLAND ISLANDS
MAGISTRATES COURT

Case No. MC/CRIM/03/24

BETWEEN:

REX

-v-

COBAN ERIKSEN

Before

HHJ MALCOLM SIMMONS

SENTENCING REMARKS

Introduction

1. Mr. Erkisen, you appear before the court today for sentencing, having been convicted on 25th September 2024 after trial of an offence under section 354 (1) (a) of the Crimes Ordinance 2014 that on 8th February 2024 you entered a dwelling, namely [address], Stanley as a trespasser with intent to steal or do unlawful damage to anything therein.

2. The maximum sentence for an offence under section 354 (1) (a) of the Crimes Ordinance 2014 is 14 years imprisonment or a fine or both.

Guidelines

3. The appropriate sentencing guidelines are the Domestic Burglary guidelines. I also have regard to the Overarching Sentencing Guidelines.

Victim

4. I have seen a victim personal statement from the complainant dated 30th October 2024 in which she describes the shock and emotional trauma that she felt when she discovered her home, and the place she was entitled to feel safe, had been violated. She said that on the night in question, following the discovery, she could not remain in her home alone and had to stay with a friend. She said that returning to her home after the incident had been extremely difficult emotionally. On the first night home she said she suffered a panic attack. She described constantly being on alert and was left feeling vulnerable and nervous. She could not sleep and felt anxious. She described how, 9 months after the incident, she still feels violated and concerned for her safety. She says she has lost her sense of security and wonders if she will ever regain it.

Defendant's Personal Circumstances and Probation Report

5. You were born on 16th October 1997. You are now 27 years of age.
6. You are currently unemployed. It appears you have been in some, irregular, work but you have difficulty sustaining employment. You live in accommodation provided by the Falkland Islands Government. You have no savings and some debts. You clearly have difficulty managing your finances.
7. You have previous convictions for burglary of a dwelling. You have also been convicted of others offences. You were convicted of Handling Stolen Goods in 2023 for which you received a Community Order.

8. The Community Order that was imposed on 22nd November 2023 will expire shortly and it is not my intention to deal with that.
9. I have read the Pre-Sentence Report of the Probation Service dated 11th November 2024. It is an extremely thorough report.
10. [the Sentencing Judge considered Mr Eriksen's medical, psychology and psychiatric assessments.]
11. I recognise that you may not fully understand the impact of your behaviour on your victims; that while you may comprehend the immediate consequences of your actions, you may find it difficult to process the longer term, more abstract consequences.
12. I note from Ms. Robinson's report that you have received substantial input from the Probation Service to help you address your offending behaviour, yet you continue to display behaviour of concern that may cause harm to the community.
13. Ms. Robinson describes your intellectual disability being such that it makes it difficult for you to learn and to regulate your emotions, both of which can be challenging in terms of rehabilitative work and that you struggle to learn from your mistakes and avoiding such mistakes in the future.
14. I should say at this stage that I agree that it would be beneficial to have an assessment undertaken by an independent psychologist, along with a plan to address risks and needs in a disability-informed way.
15. Mr. Eriksen, you are assessed as posing a high risk of general offending, and a high risk of offending with a sexual motivation. You are assessed as posing a high risk of serious harm to the public, particularly females that either live alone or are alone in their house, and as a high priority for intervention
16. I have also read the report of a psychiatrist, Dr. C M Green, dated 13th June 2024. [redacted].
17. I should, for completeness, note that you have received significant support from various agencies.
18. I have read the letter from Mr. Eriksen's mother. I understand her concerns which I have considered and taken into account.

SENTENCE

19. I have the benefit of sentencing notes from Mr. Walker and Mr. Sabino.
20. I have carefully considered the various sentencing options available to me.
21. Mr. Eriksen, burglary of a dwelling is a serious offence and the sentence must reflect that. Most people attach importance to the privacy and security of their own home. It is not only an offence against property; burglary can also have very distressing consequences for the occupiers of that property. It is clear to me that the impact of your offending on the complainant has been profound.
22. You went to [the address] because it was the home occupied by the complainant, a young woman in whom you had an interest. You entered the property, went through clothing in the kitchen and then went into a bedroom where you opened drawers and rummaged through items of clothing. The complainant lived alone at that address. You targeted a vulnerable victim. There was planning that went beyond 'some' planning but I would not regard it as significant. I recognise that your mental health was such that it had an impact on your ability to fully understand the consequences of your actions or to limit impulsivity or exercise self-control. Balancing the categories, I am satisfied that your offending falls in Category B.
23. In terms of harm, having watched the complainant give evidence and having read her victim personal statement, I am sure that your actions had a substantial emotional impact upon her.
24. There was no damage and limited disturbance to the property. In stating that, I do not in any way seek to trivialise the effect that your offending has had upon the complainant.
25. Balancing the factors of this case, I am satisfied that harm falls comfortably within category 2 and, in my view, at the top end. The starting point for an offence in category 2B is 18 months custody with a category range of 6 months to 3 years custody.
26. Your offending occurred at night – and I recognise the property was unoccupied. When the complainant returned to the property and discovered what had happened, she felt compelled to leave her home. I have taken those factors into account in assessing harm. I have been careful to avoid double counting.
27. You have previous convictions for burglary of a dwelling. These were offences committed when you were a youth. I recognise that there has been a hiatus in this type of offending since your last conviction almost 10 years ago and that the sentence must reflect the seriousness of the current offence.

28. You have shown remorse as demonstrated by your letter dated 13th November 2024, that I have taken into account. I have considered carefully and taken into account the submissions made by Mr. Sabino in mitigation.
29. Ms. Robinson has comprehensively described in her report the challenges that you experience in terms of your mental health. These are also described by Dr. Green. I have taken all of that into account.
30. I have very carefully considered both aggravating and mitigating factors and I have taken these into account in sentencing.
31. The sentence that I impose is one of **22 months custody**.
32. I have to consider whether an immediate custodial sentence is inevitable. I have carefully considered the guidelines for suspending a sentence.
33. Mr. Eriksen, there are various purposes of sentencing that I must consider. In her report, Ms Robinson has gone into quite some detail about your medical history and the challenges you have faced and continue to face and how these may be managed both in the community and were you to be sentenced to a term of imprisonment. I have also considered the report of Dr. Green. I recognise your very obvious complex mental health needs. You clearly need comprehensive support that I hope can be identified through a thorough psychological assessment. However, in my view, you pose an obvious risk to the public, particularly single females living alone.
34. I am satisfied that your [medical and mental health needs] could be appropriately managed within the prison system.
35. Therefore, after very careful consideration, I have decided not to suspend the sentence.
36. Given everything that I have read about you, I recognise that the impact of a custodial sentence will be serious. However, I have to impose a sentence that, while proportionate, reflects the seriousness of your offending.
37. I am not making a compensation order nor costs order because of the immediate prison sentence.
38. The prosecution seek a sexual harm prevention order under section 321 of the Crimes Ordinance 2014. I make that order in the following terms: *You are not to enter the grounds of a private dwelling (including driveways, gardens and surrounding land) without the express permission of the occupier.* That order shall last for 10 years and shall be supervised by the Royal Falkland Islands Police.

39. You will be subject to the notification requirements for **10 years**. You must keep the police informed at all times of your personal particulars, the address at which you are living, and any alteration in the name you are using.

HHJ Malcolm Simmons

Senior Magistrate

18th November 2024