

JERSEY / JUDGMENT

AG -v- A [2015] JRC 011 (19 January 2015)

[2015] JRC 011

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JUDGMENT

THE commissioner: 1. On 11 th November, 2014, the Court found the defendant unfit to plead pursuant to Article 1(3) of the Criminal Justice (Insane Persons)(Jersey) Law 1964 ("the 1964 Law") but ordered his immediate release. We now set out our reasons. 2. On 26 th May, 2010, the Magistrate's Court imposed a restraining order upon the defendant, pursuant to Article 3(1) of the Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008 which included a restriction upon him entering any part of the Columbus Street Corner Shop in Columbus Street, St. Helier or loitering within 50 metres thereof. 3. On 24 th and 25 th May, 2014, the defendant was seen by witnesses within 50 metres of the Columbus Street Corner Shop. When interviewed by the police, he explained that he did not realise there was a restraining order still in force, as he had just come out of prison due to breaking another part of it, and he thought that this cancelled the restraining order out. 4. The defendant was brought before the Magistrate's Court on 27 th May, 2014, charged with these two alleged breaches of the restraining order. Concerns had been expressed by a number of sources as to his mental health and the issue of his fitness to plead was raised by the defence. The issue was formally raised on 18 th June, 2014, when the case was committed to the Royal Court, pursuant to the decision of the Royal Court in AG v O'Driscoll

[2003] JLR 157 that the Magistrate's Court had no jurisdiction to determine whether an accused is fit to plead. 5. The defendant was indicted before the Royal Court on 5 th September, 2014, at which time he reserved his plea. Pursuant to Article 1(1) of the 1964 Law, the case was referred to the Superior Number of the Royal Court to try the question of whether he was fit to plead. The hearing took place on the 11 th November, 2014. 6. Whilst there has been no delay in the conduct of this prosecution, the lack of jurisdiction of the Magistrate's Court and, in turn, of the Inferior Number of the Royal Court to deal with the issue of fitness to plead has resulted in this prosecution for two relatively minor offences being referred up through no less than three Courts, giving rise to an unavoidable but unacceptable delay and disproportionate use of resources. 7. The test of unfitness to plead was laid down by the Royal Court in AG v O'Driscoll

[2003] JLR 390 (and confirmed by the Court of Appeal in Harding v AG

[2010] JLR 239) as follows:- "an accused person is so insane as to be unfit to plead to the accusation, or unable to understand the nature of the trial if, as a result of unsoundness of mind or inability to communicate, he or she lacks the capacity to participate effectively in the proceedings. "In determining this issue, the Superior Number shall have regard to the ability of the accused - (a) to understand the nature of the proceedings so as to instruct his lawyer and to make a proper defence; (b) to understand the substance of the evidence; (c) to give evidence on his own behalf; and (d) to make rational decisions in relation to his participation in the proceedings (including whether or not to plead guilty), which reflects true and informed choices on his part." 8. Both the prosecution and the defence had commissioned reports from psychiatrists, on the issue of the defendant's fitness to plead and also whether or not he was "insane" for the purposes of Article 2 of the 1964 Law at the time of the alleged offences. The prosecution had instructed Dr P Myatt and in his report of 2 nd September, 2014, he explained that the defendant's problems stemmed from cerebral damage caused by alcoholism and exacerbated by a grave illness in February 2014, such that, in his opinion, the defendant was insane for the purposes of Article 2 of the 1964 Law at the time of the alleged offences. However, in his view, that impairment may at least have been partially reversed by subsequent enforced abstinence from alcohol whilst in custody, and judging from the way he performed at the assessment, he concluded that the defendant was now fit to plead. 9. The defence had instructed Dr S Bruno, and her examination of the defendant indicated a global cognitive impairment involving memory, executive functions and visuo-spatial abilities, such that in her view, as set out in her report of th October, 2014, he was unfit to plead. She felt unable, on the information she then had, to give an opinion as to his mental state at the time of the alleged offences, but thought it possible that his cognitive decline would have rendered him insane for the purposes of Article 2 of the 1964 Law at that time. 10. Both psychiatrists accepted that it may be possible that the defendant's mental state fluctuated and it was agreed therefore that they would jointly assess the defendant on the day of the hearing. Following that joint assessment, both psychiatrists were of the opinion that the defendant was unfit to plead. 11. On the basis of the advice given by the two psychiatrists, which was confirmed in evidence and accepted by the Court, the defendant was therefore found to be unfit to plead for the purposes of Article 1 of the 1964 Law. In terms of the order that the Court should make, Article 1(3) of the 1964 Law is in the following terms:- "(3) If the Superior Number of the Royal Court finds the accused to be so insane as aforesaid, it shall be lawful for the original court to order the accused to be detained during Her Majesty's pleasure; and until Her Majesty's pleasure is known, the accused shall be detained in such place and in such manner as the court shall order and any such order may be varied from time to time as the court thinks fit." 12. The problem facing the prosecution was that the defendant had been in custody for the equivalent of 7 months and 20 days on account of these two relatively minor offences, which carried a maximum sentence of 12 months' in prison. On the two days in question, he had been seen standing outside the Columbus Street Corner Shop, but he had made no attempt to make contact with the person protected by the restraining order and there was no violence. Both psychiatrists confirmed

that there was no requirement for the defendant now to be admitted for observation or treatment, pursuant to Article 6 or 7 of the Mental Health (Jersey) Law 1969 and the prosecution was concerned that for him to now be detained indefinitely pursuant to Article 1(3) of the 1964 Law would be disproportionate and potentially a breach of his rights under Article 5 of the European Convention on Human Rights 2000 . A detailed care package had been put in place for the defendant for his release, with considerable input from the prison chaplain, Mr Henry Le Ruez, to whom the Court expressed its appreciation. 13. In the circumstances, the prosecution, with the support of the defence, moved for an order for the defendant's immediate release. We were satisfied that Article 1(3) of the 1964 Law was permissive "...it shall be lawful for the original court to order the accused to be detained ...". It did not prevent the Court from making other lawful orders, such as an order for the defendant's immediate release. In the circumstances, the Court accepted the conclusions of the prosecution and ordered the defendant's immediate release. 14. Article 1(3) makes reference to the "original court" being able to order the defendant to be detained where there has been, as here, a finding of unfitness to plead and, in this context, the original court was the Inferior Number of the Royal Court. It was not in the interests of the defendant for the matter to be further delayed by a reference back to the Inferior Number. The Court proceeded therefore on the basis that the Inferior Number was deemed to have referred to the Superior Number not only the issue of whether the defendant was fit to plead, but also the order that should then be made, and this pursuant to Article 18 of the Royal Court (Jersey) Law 1948 . Authorities Criminal Justice (Insane Persons)(Jersey) Law 1964. Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008. AG v O'Driscoll

[2003] JLR 157 . AG v O'Driscoll

[2003] JLR 390 . Harding v AG

[2010] JLR 239 . Mental Health (Jersey) Law 1969. European Convention on Human Rights 2000. Royal Court (Jersey) Law 1948. Page Last Updated: 18 Jan 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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