

JERSEY / JUDGMENT

AG -v- A [2018] JRC 079B (27 April 2018)

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JUDGMENT

THE BAILIFF: 1. The defendant is charged with two counts of breaching a restraining order that was imposed on his sentence for other offences on 16 th March, 2012. Those two offences were committed on 11 th and 15 th July, 2017, by him downloading a computer application named Crazy Booster and Cleaner and on the second occasion Auto Clear Memory. 2. In both cases those applications would delete, disguise or destroy internet history contrary to the restrictive orders imposed by the Court. Those orders, as I say were imposed in 2012 to run for a period of 10 years. 3. The basis of a guilty plea was first communicated to the Prosecution authorities in August 2017 i.e. within 6 weeks or so of the offences having been committed. And the basis of plea which we deal with today is in these terms. He confirms he pleads guilty to Counts 1 and 2 on the Indictment on the basis he accepts he downloaded the two applications to his tablet device, in anticipation that the applications would speed up the performance of the device and did not know that the way these applications work appears to include deleting some of the memory cash of the device in order to potentially improve the performance of the device and accepts the police assertion that he has, albeit unintentionally contravened the terms of the restraining order. The Crown have accepted that basis of plea, so the Crown have accepted in particular that the defendant did not intend to contravene the terms of the restraining order although the Crown accept that he has, in fact done so and the guilty plea has been entered, I think on the basis of recklessness. 4. The defendant has spent some time in custody following his arrest until he was granted bail by this Court and he served the equivalent of just over 10 months' in custody had that been imposed by this Court. The court considers that in the circumstances of this case, in the round, including the fact that the basis of the guilty plea was provided right at the very outset, it would be appropriate not to impose a further sentence of imprisonment upon him for the breach of the restraining orders, and accordingly he is sentenced on those two counts on the Indictment to run concurrently to time served. 5. The Crown also raises with us the question of a revision to the restraining orders. In that context the Court has jurisdiction to amend the terms of the restraining orders, both in the sense that there is a sexual offence created now, but also in any event under Article 10(11) of the Sex Offenders (Jersey) Law 2010 . 6. What we need to look at is the basis for the restraining orders in the first place by Article 10 (4) (4) "Where - (b) a court is satisfied on the balance of probabilities that the person poses a threat of serious sexual harm to the public or any particular person or persons, the court may make such as order in respect of the offender as it is satisfied as necessary to protect the public or any particular person or

persons from serious sexual harm from the offender". 7. And, as it is clear from many Authorities both here and in England and Wales where there is a similar but not identical statute it is necessary for the court to approach that issue with proportionality. There should be an interference with the defendant's European Convention Rights only as far as is necessary for the purposes of protecting the public, and we have had that in mind. 8. In this particular case the court has had a very full report from the Jersey Probation and After Care Service which has prepared for this hearing. It has been read to the defendant in April this year. We note from paragraph 20 that the defendant continues to "maintain his innocence for the Rape and Gross Indecency offences" and that he "disengaged from Probation through care within the prison," and when he was released. he was as an "untreated sexual offender who did not wish for Probation voluntary after care support." 9. The report goes to make it plain that the defendant is assessed as having a raised risk was sexual reconviction and overall this is deemed to be high. There are key areas set out in the background report which is not necessary for us to go into now but we have had regard carefully to paragraphs 34 to 38 of the Social Enquiry Report which emphasise the assessment of the defendant as having a high risk of sexual reconviction. 10. We will just quote from paragraph 37 that the Psychologist's Report included a description of risk factors in the defendant's case as including and I quote "reckless use of software and breach in breach of a restraining order, use of disturbing search terms indicative of child sexual abuse, incest and bestiality, failure to take responsibility for offending behaviour, concerns regarding loss of libido/impotence, reports self to be a 'loner', boredom and very limited support network". And those factors clearly do justify the assessment of a high risk of sexual reconviction. 11. So the purpose of the restraining order being to protect the public, we consider that, first of all it is necessary to revise the terms of the existing restraining order, and secondly that we also think it is appropriate to extend the terms to run for a period of 10 years from today. 12. We have noted that if circumstances should change, of course either the Attorney or the defendant can apply for an amendment to the order in the future and that will be a matter for the court, if it receives such an application, to deal with it on the evidence which then produced, but on the evidence which is available to us today we have regard to the high risk of sexual reconviction. 13. As to the terms of the revised order the Court is going to make them in the terms proposed by the Crown and I am going to say just two things. The first is that we make the order in the terms proposed by the Crown subject to one amendment which is in paragraph (5) the prohibition is going to be in these terms not to refuse access to any accommodation which he occupies to police officers who are monitoring or checking on the restraining orders. That paragraph is about ensuring that police officers monitoring or checking on the restraining orders have access to premises which the defendant occupies. 14. The second point we wish to make in relation to the restraining order is this: there is a prohibition from downloading any software or applications from the internet unless the defendant has prior approval from the OMU. Now it is said to us by Advocate Bell on behalf of the defendant that it is very possible to download software applications without meaning to do so, and therefore the defendant is at risk committing an offence by involuntarily downloading of software and applications of this kind. 15. That is not our understanding the way in which these programmes and software updates work. We think that the device can be set not to accept automatically any updates, and if so then the defendant will have a choice as to whether

he downloads the update or application, or not. If we are wrong in that, that is a matter for the defendant to produce technical expert evidence to put before the court and it can be reconsidered but we are not prepared to depart from the terms of the restraining order as proposed, simply on the assertion by counsel that there may be a problem. We need to have some evidence that there will be, because the court's understanding of the way this works is that it is clear that the defendant can so arrange his internet access, that he has a choice before downloading software or other applications in the future. 16. And in the light of the convictions which are entered in relation to these two charges the obligation fairly rests on the defendant to make sure he makes whatever enquiries need to be made to keep himself from offending, that is where the obligation lays, even though the burden of proof in relation to the offences of course remains with the Crown in the future. 17. For those reasons we sentence the defendant to time served. 18. We amend the restraining orders as I have indicated and they are to last for 10 years from today's date. Authorities Sex Offenders (Jersey) Law 2010. AG v 'A'

[2012] JRC 058 . 'A' v AG

[2012] JCA 104 . AG v 'G'

[2011] JRC 214 . AG v 'N'

[2013] JRC 052 . AG v Laffoley

[2017] JRC 058 . Page Last Updated: 18 Jun 2018 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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