

JERSEY / JUDGMENT

AG -v- Anderson and Murphy

[2012] JRC 048 (09 March 2012)

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JUDGMENT

THE DEPUTY BAILIFF: 1. Mr Murphy, you are here to be sentenced on two Indictments, the first one is the Indictment containing the serious charges of breaking and entering; a series of break-ins during the day over a six week period, three into domestic premises. You took goods to the value of £36,000 of which some goods (£29,700 in value) have been recovered. You also have pleaded guilty to the charge of larceny of £90 from commercial premises and possession of a small amount of cannabis. 2. The serious charges which we are having to consider today are the breaking and entering into domestic property and I just wish to remind you of some things which have been said previously; first of all by the Bailiff Ereaut in 1983 in the case of AG-v- Allo and Collins

[1983] JJ 85:- "It is common knowledge that breaking into a private dwelling has the most distressing effect invariably on the occupiers of the dwelling. Sometimes that effect takes the form of fear and in all cases it takes the form of distress. And we believe that this is an element of this offence which is not always sufficiently appreciated by some Courts but certainly it is appreciated by this Court, and this Court has always tried to make clear, and we make clear again today, the distress element, which is an aggravating factor." 3. And then in the English Court of Appeal in the case of R-v-Brewster & Others (2 nd June 1997) Unreported Judgment of the Court of Appeal of England, Lord Bingham said this:- "Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where a victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place;" 4. Some people might be inclined to think these are just the

words of judges but when you look at the victim personal statement that has been made, the first from a lady who is in her seventies, you see otherwise. She says this:- "My biggest problem is that this man has been in my house and invaded my privacy. He took my jewellery which my husband gave to me, it all was sentimental to me especially since my husband passed away. I can't live in this house anymore because I feel unsafe and it angers me that someone who has been inside my home. It is not right that I should have to sell my house, the house where I brought up my children and lived with my husband. All my memories are all here, my engagement ring and my eternity ring were taken and both of these were so sentimental to me. I will never be able to replace them." 5. The tent or canopy that is around this lady's life has been interfered with, indeed has been destroyed. I know you realise that but that is why the offences with which you are charged are so serious. The Court has given careful thought to all the mitigation that has been mentioned and your counsel has spoken extremely well on your behalf; has noted your cooperation to recover goods; your guilty plea; the fact that you clearly are sorry for what you have done, and all the background problems that you have had. We have taken into account that by these offences you have let yourself down and you have let the Island down, where you have lived for the last 9 or 10 years without committing any offences. 6. In all the circumstance we think nonetheless that the conclusions on the First Indictment are correct and accordingly you are sentenced as the Crown moves. On the First Indictment, on Count 1; 3 years' imprisonment, on Count 2; 2 years' imprisonment, on Count 3; 1 month's imprisonment, on Count 4; 3 years' imprisonment. On the Second Indictment there is no separate penalty; that is the possession of cannabis. 7. I do want to add this. While you are in prison you will have the opportunity of considerable help from the authorities and we urge you to take it. There is clearly much that can be done to help you and the Court is confident that the prison sentence that we are now imposing will actually be a constructive sentence as well. 8. Mr Anderson, in your case we have noted that you have had no dishonesty offences since you were a child and that you are here before the Court on one offence of receiving stolen goods which, frankly, was an offence which you did not need to commit because you had money in the bank. It was an offence which is said to have been committed because you were drunk at the time and your usual judgment-taking went astray. But we have looked at all that is set out in the background reports and had regard to your record of regular employment since you have been in the Island and in the circumstances we think that this case can be dealt with in terms of a Probation Order and a Community Service Order. We are satisfied that, as your counsel said, you were not the instigator of these offences on the evidence that we have had and we take that very much into account for the purposes of this sentence. The conclusions were otherwise in relation to the receiving charge correct. 9. We are therefore going to sentence you to 12 months probation and 150 hours' community service, which is the equivalent of 9 months' imprisonment. And you should know that if you do not perform the terms of the Probation Order or if you do not perform your community service then you are liable to be brought back here and sentenced again for these offences and the Court will no doubt then be looking very closely at a custodial sentence, because receiving is a serious offence. There

will be no separate penalty on the possession of cannabis. 10. We order the forfeiture and destruction of the drugs in both cases. Authorities Whelan on Aspects of Sentencing in the Superior Court of Jersey. AG-v- Allo and Collins

[1983] JJ 85. R-v-Brewster & Others (2nd June

1997) Unreported Judgment of the Court of Appeal of England. AG-v-Da Silva

[1997] JLR N14a. AG-v-Da Silva

[1997] JRC 218 . Le Miere and Purden [1997] JRC 212. Wylie-v-AG 2002/13. R-v- Webbe

[2002] 1 Cr. App. R. (S) 82. AG-v- Goncalves , Moreira and Caboz

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