

JERSEY / JUDGMENT

AG v Bacon 08-Oct-2019 [2019] JRC 201 (08 October 2019)

[2019] JRC 201

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JUDGMENT

THE COMMISSIONER: 1. In March 2017 you were sentenced to 5½ years' imprisonment for seven counts of indecent assault and one of procuring an act of gross indecency, committed between 1979 and 1983, with six different boys aged between 11 and 15 who attended the school where you were a music teacher. 2. The assaults on five of the boys were committed in the context of corporal punishment. You had a spanking fetish and the spanking was done to satisfy that fetish and to give you sexual pleasure rather than for any proper disciplinary reason. The sentences for the assaults on the complainants in relation to those spanking offences varied from 9 months to 2 years. 3. Since 2017 four more victims have come forward. Their complaints also relate to indecent assaults on them in the context of your administering corporal punishment. The victims were boys at the same school and they were aged between as young as 11 and 14 and the offences were also committed between 1979 and 1983. 4. As with the previous offences this was a gross betrayal of trust. You were a teacher and the boys were entrusted to your care. We have been provided with psychological reports on two of the victims with a personal statement from a third. It is clear from the psychological reports that two of the victims have been significantly affected by what you did to them. And the third states in his personal statement that he completely lost his trust in teachers as a result of what you did, which affected his educational achievements. 5. We take into account the following matters of mitigation which were put forward by Advocate Harrison who has said everything that could possibly be said on your behalf. First, your guilty plea. Unlike last time you have pleaded guilty and therefore the victims have not had to come to court and give evidence and relive their experience. Secondly, you have committed no offences since 1983. Thirdly, we have read the many references which have been put forward. These relate to your life in more recent times and it is clear that there is a very good side to you and you have helped church and choir groups and others in the musical field in recent times. Fourthly, there is your age, you are now 77 and the fact that your partner has health problems. 6. We consider first the question of the notification requirements and any restrictive order. The Crown has requested that we make an order which in effect extends the current notification requirement period and the current restrictive order but we are not going to do so. We accept Advocate Harrison's submission that there are no proper grounds for doing that because your risk profile has not changed and we do not think the Court would have imposed

longer periods in 2017 even if it had known of the additional offences. 7. The unusual feature of this case is that you are already serving a prison sentence for similar offences and, had they been known about at the time, these offences would have been dealt with at the same time as the offences for which you were sentenced in 2017. It is of course the case that you knew about them but nobody else did at the stage. The prosecution did not at the stage nor did the Court. 8. Advocate Harrison has referred us to two English cases which deal with this topic. They are *R v AF*

[2009] EWCA Crim 1428 and *R v Cosburn*

[2013] EWCA Crim 185. These two cases state that, where the Court is sentencing an offender who is currently serving a sentence the Court should seek to ensure, as a general principle, the defendant does not spend a disproportionately longer period in custody because he is dealt with on two separate occasions than he would have done if all matters had been dealt with at one hearing. However, we emphasise the use of the word *disproportionately*, and the English Court made clear that the principle was not an absolute one in the case of *Cosburn* where it said this at paragraph 14: "14. Having considered the submissions of counsel ... we have come to the following conclusions. First, when considering its approach to sentencing where there have been previous sentences for similar historic criminality, the court should have in mind whether an allowance or adjustment should be made in the case before it. We would not necessarily describe this as the application of the totality principle because the court is not in a position to adjust all the sentences as it would on the application of the totality principle strictly so-called. Secondly, the proper application of the approach, as we have described it, will vary from case to case. In some cases it may have an impact on the later sentence. In other cases it may have no impact at all. Thirdly, the judgment in this appeal is not the occasion to list the factors which may apply to widely differing cases. As the court made clear in *AF* the allowance that may be made will depend on the facts. In some cases it may be very difficult for the later court to put itself in the position of the earlier court in forming a view about the overall criminality of the defendant's conduct. It may indeed be difficult to form an overall view of the criminality when considering the later sentence. The present case illustrates the difficulty. The last offence was the first to be charged and sentenced. ... Fourthly, the starting point and in many cases the end result will be the appropriate sentence for the instant offence." As we say, that passage makes clear that, whilst the Court must always bear in mind that there should not be a disproportionately longer sentence imposed as a result of matters being dealt with on separate occasions, that is not an absolute principle and the Court has to have regard to all the circumstances. 9. In our judgment, the sentence moved for by the Crown gives adequate weight to the principle we have just described. First, the sentences imposed last time for what we referred to as the "spanking offences" were undoubtedly affected by the totality principle because of the more serious offences which were being dealt with at the same time. Had those offences stood alone we have no doubt that a sentence of more than two years would have been passed. Secondly, if the current offences had been known about at the time we

have no doubt that the Court on the previous occasion would have passed a significantly greater sentence for the spanking offences. It would after all have been dealing with nine spanking victims rather than the five that it thought it was dealing with. 10. Accordingly, even making an allowance for the fact that this time the defendant has pleaded guilty whereas the sentences last time were passed following a not guilty plea, in our judgment to impose a consecutive sentence of 2 years on this occasion will not disproportionately increase the sentence beyond that which would have been imposed if all matters had been dealt with together. 11. The sentence of the Court is as follows, on Count 1, 15 months' imprisonment; Count 2, 18 months' imprisonment, concurrent; Count 3, 2 years' imprisonment, concurrent; Count 4, 2 years' imprisonment concurrent, Count 5, 2 years' imprisonment concurrent. All of those to be concurrent with each other but to be consecutive to the sentences which you were passed in 2017. Authorities R v AF [2009] EWCA Crim 1428. R v Cosburn [2013] EWCA Crim 185. Sex Offenders (Jersey) Law 2010 AG - v- Dykes 1999/72 Dykes v AG 1999/126 AG -v- Brewster 2001/3 K-v-AG, AG-v-F

[2016] JCA 219 AG -v- Bacon

[2017] JRC 041A AG-v-T

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[2018] JRC 109 AG -v- Dobrin and ors

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