

JERSEY / JUDGMENT

AG v Bourke [2018] JRC 134 (23 July 2018)

[2018] JRC 134

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JUDGMENT

THE commissioner: 1. We agree with the prosecution that this is one of the most serious cases concerning the making of indecent images of children to come before the Court. We are required first to deal with the requirements of the Sex Offenders (Jersey) Law 2010. This is the defendant's second offence and on the last occasion in 2012 the Court ordered that 5 years needed to elapse before the defendant could apply to lift the notification requirements. 2. In the light of this latest offending we consider that 15 years from the defendant's conviction must elapse before he can make that application, bearing in mind that he will be spending a considerable amount of that time in custody. 3. Turning to the offences for which he is to be sentenced today, the defendant is a sophisticated computer user who has amassed a significant collection of indecent images and movies. Applying the guidelines in AG v Godson and Crowley

[2013] JRC 091, this is a category 4 case with an initial figure of 3 years. Adjusting that for aggravating and mitigating factors for the offence we agree with the prosecution that this offending is aggravated by the following features:- (i) the high volume of indecent material; (ii) the defendant's previous conviction; (iii) the period of 8 to 10 years over which he possessed this material; (iv) his attempts to dispose of or conceal evidence; (v) the sexualised stories created by him; (vi) the guides and manuals contained on his NAS device on grooming young children, how to have sex with young children and how to evade detection. We note in this respect that the Crown has not come across disturbing material of this kind before. This material provides detailed guidance on physically preparing young girls for sex and penetration techniques, illustrated with photographs of young girls being abused in the manner discussed. 4. We cannot identify any mitigation for these offences and agree with the prosecution that we should take a starting point of 7½ years for the most serious charge which is Count 4. As a matter of principle the prosecution is correct in submitting that the sentence for breaches of the restraining orders should be consecutive in order for the sentence to have a deterrent effect. 5. The defendant is assessed at a high risk of committing further sexualised offences and of posing a significant risk of harm. Allowing for personal mitigation and taking into account the totality principle the prosecution therefore have moved for a sentence of 5 years for the indecent images charges and 2 years for the breaches of the restraining orders making a total of 7 years' imprisonment. 6. In terms of mitigation the defendant has pleaded guilty. We have a letter from him in which he expresses remorse, but Advocate Addis has

candidly accepted that there is little mitigation available to him. He has instructed her not to make any observations on the sentence which we are about to impose and which he accepts. 7. As has been said on many occasions in the past the making or possession of indecent images of children is not a victimless crime. Children have actually been abused. For example, there are images of a naked child of approximately 3 to 4 years of age bound by both arms and legs with a leather gag over her mouth. There are also images or movies of predominantly female children being masturbated on, made to perform or have oral sex, and being forced to have intercourse and anal sex. The perpetuation of these images in photographic or moving picture form renders the abuse more lasting and fuels the demand for this kind of pornography, encouraging the production of more images and consequently the further physical abuse of children. We agree therefore with the conclusions of the Crown and we will deal first of all with the sentence and then move on to the restraining order. 8. On Count 1 you are sentenced to 3 years' imprisonment; Count 2; 3 years' imprisonment; Count 3; 2 years' imprisonment; Count 4; 5 years' imprisonment; Count 5; 2 years' imprisonment; Count 6; 2 years' imprisonment. The making of the indecent images of children sentences to run concurrently with each other but consecutively to the breach offences making a total of 7 years' imprisonment. 9. Before moving to the restraining orders we are going to deal with the forfeiture and destruction of the devices. We grant the order for the forfeiture and destruction of all the electronic devices containing indecent material, the Samsung 850 EVO solid state hard disk, the Samsung Momentus hard disk, the PlayStation 4 games console and the Buffalo network attached storage device, but we also wish to add any typed or handwritten sexualised stories. 10. Moving onto the restraining orders under the Sex Offenders (Jersey) Law 2010 firstly we are satisfied that the test under Article 10(4) is met, namely that the defendant does pose a threat of serious sexual harm to the public or any particular person or persons. 11. The prosecution acknowledge that the proposed order 2 could be considered draconian, that is the order which says that he must inform the police of any devices he obtains, and his internet activity must be monitored. Previous restraining orders aimed at monitoring the defendant's internet activity have failed and in view of the defendant's technological know-how and his ability to avoid detection the prosecution say it is the only realistic way of preventing the defendant accessing indecent images of children. We note that such an order was made in the case of AG v Lafolley

[2017] JRC 058 , a defendant who also had previous convictions for this kind of offence. We think this restriction and indeed the remaining restraining orders sought by the Crown do meet the test of necessity and clarity and in these circumstances are proportionate. 12. Therefore, turning to the restraining orders we are going to read those out so that it is clear. They will take effect for a period of 15 years from today's date which bearing in mind the time the defendant will be in custody is in effect the same period sought by the Crown. Reading those orders:- (i) That the defendant be prohibited from: (a) Living in the same household as any person under the age of 16 unless with the express approval of the Offender Management Unit of the States of Jersey Police; (b) Contacting or attempting to

contact, via any form of social media, internet or telecommunications system, any female he knows or believes to be under 16, unless there is a parent, guardian or responsible adult present who is over the age of 21, who is aware of the defendant's convictions, and who does not have a conviction which would render him/her liable to notification under the Sex Offenders (Jersey) Law 2010 ; (c) Being alone with any female child under the age of 16 years, aside from such contact which is inadvertent or unavoidable. They will be considered to be alone if there is not a parent, guardian or responsible adult present who is over the age of 21, who is aware of the accused's convictions, and who does not have a conviction which would render him/her liable to notification under the Sex Offenders (Jersey) Law 2010. (ii) That the Defendant be prohibited from: (a) Possessing any device capable of accessing the internet unless he has registered the device with the Offender Management Unit of the States of Jersey Police; (b) Accessing the internet on any device unless his internet activity is monitored by an adult over the age of 21 who is aware of the accused's convictions and who does not have a conviction which would render him/her liable to notification under the Sex Offenders (Jersey) Law , and the history of that access is recorded, and he takes no steps to disguise, delete or otherwise conceal that history. (iii) That the Defendant provide advanced notification details of any proposed changes of address or employment that will have to be approved by the Offender Management Unit of the States of Jersey Police; (iv) That in circumstances where the defendant finds himself alone with a person under the age of 16, that he has a positive duty to remove himself from that situation as soon as reasonably possible; (v) That the Defendant cannot refuse access to police officers who are monitoring or checking on his restraining orders, and he must allow officers entry to any premises he occupies or is in control of for the purposes of searching for relevant devices; (vi) That the Defendant may not knowingly contact or associate with anyone he knows to have been convicted of any offence which would render them liable to the notification requirements of the Sex Offenders (Jersey) Law 2010 other than in the context of any treatment he may undertake (this order not to come into force until the defendant is released from custody and to remain in force for so long as the restraining orders are in force). Authorities Sex Offenders (Jersey) Law 2010. AG v Godson and Crowley

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