

JERSEY / JUDGMENT

AG v Bowman [2024] JRC 232 (01 November 2024)

[2024] JRC 232

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JUDGMENT

THE DEPUTY BAILIFF: 1. We will give full reasons for our decision in due course if requested to do so. 2. The Defendant in this case was sentenced on 9 September 2024 having pleaded guilty to an offence of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of goods, namely in this case a quantity of cocaine which the Crown accepted on sentence was for personal use. Today the case is listed for consideration of confiscation and the statutory background in brief terms is that the Court was furnished with an Attorney General's statement, updated for the purpose of this hearing, which the Defence accept to the extent that they agree that the value of the Defendant's benefit from criminal conduct should be assessed in the sum of £4,200. 3. The draft certificate is to be issued pursuant to Article 3 of the Proceeds of Crime (Jersey) Law 1999 ("the Law"). The certificate invites the Court to certify that under Article 4(2) of the Law the amount that might be realised is less than the value of the Defendant's benefit and it should be determined that that sum is £400, the sum recovered from the Defendant when he was arrested. 4. The Defence say that there should be no determination in the sum of £400 or at all in the relation to the amount to be recovered because of the circumstances of this offence and have produced various authorities for that purpose. 5. The answer to whether or not the Court should make the order sought by the Crown is to be found, in our judgment, from consideration of the terms of the statute. Article 3 makes it clear that the Court is not bound to make an order under Article 3 or proceed under Article 3 for the purpose of determining benefit. The Court is given a discretion under Article 3(1), but in this case the Court did ask the Attorney General to proceed under the Article and the Court has now determined that the Defendant has benefited from criminal conduct in a sum agreed by both parties. 6. In those circumstances, the Court moves onto Article 4 which provides in Article 4(1): "Subject to paragraphs (2) and (3), the amount which a defendant is required by a confiscation order to pay ... shall, except where Article 28B(5)(b)(i) applies, [and that has no application on these facts], be the amount assessed by the Court to be the value of the defendant's benefit from the relevant criminal conduct". 7. So the starting point is that the Court is mandated to make a confiscation order in the sum assessed to be the value of the Defendant's benefit. It is a mandatory starting point. It is only where under Article 4(2) that the Court is satisfied that the amount which might be realised is less than the benefit figure, that the Court may order confiscation in a reduced sum and in the circumstances

of the terms of Article 4 as we perceive it, in those circumstances the proper course for the Court is to make the order sought by the Crown and that is the order that we make. 8. The amount to be realised is £400 and we make an order in terms of the draft supplied by the Crown in the Caselines bundle at page N16. Authorities Proceeds of Crime (Jersey) Law 1999. Page Last Updated: 14 Nov 2024 Back to top About JLIB Accessibility Contacts Copyright Disclaimer Feedback Privacy policy Site map BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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