

JERSEY / JUDGMENT

AG -v- Brown [2013]

JRC 100A (23 May 2013)

[2013] JRC 100A

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JUDGMENT

THE commissioner: 1. The defendant, who has attended this trial by video link, has led a conviction-free pro- social life bringing up two children and acting as a loving grandmother to two grandchildren and with a solid work record until she was 47, when a number of events occurred which led to near-total collapse of her well-being and the onset of serious mental ill health, which underlies all of the offending with which we are now concerned. She was taken into custody in December 2011 when it was, or should have been clear, it seems to us, that she needed treatment in a secure mental health facility of which there is none in Jersey, but it took 8 months, during which she was kept in isolation for part of the time and refused to take her psychiatric medicine, for her to be placed at Brockfield House. 2. In the view of Dr Bisht , the resident psychiatrist at Brockfield House, this period on remand had an adverse effect on her mental health which deteriorated, and it was during this period that she committed the two grave and criminal assaults on the two female prison officers. In his report of 30 th April, 2013, he referred to paragraph 3 of the recommendation contained in Lord Bradley's report (2009) that people who need urgent mental health treatment should be transferred from prison within 14 days. 3. It is not for this Court to seek to apportion blame for this very regrettable delay as we have not heard from those responsible and it is not, in any event, the role of the sentencing court, but we feel strongly that this should be investigated so that lessons can be learnt and damage to the mental health of prisoners in the future can be avoided. 4. In April 2012 Dr Dale Harrison, Psychiatrist, confirmed an earlier diagnosis of Dr Gavin Hendricks, also a Psychiatrist, that the defendant suffered from an emotionally unstable personality disorder, in which there is a marked tendency to act compulsively, without consideration of the consequences, together with affective instability. He noted that such disorders usually appear in late childhood or adolescence, whereas for the defendant it first presented when she was about 47. He concluded that she was not then fit to plead, but following the test laid down in AG-v-Prior

[2002] JLR 11 her unsoundness of mind at the time of the offences did not affect her criminal behaviour to such an extent that a jury would consider that she ought not to be found criminally liable. 5. In October 2012, Dr Bisht advised that the defendant remained unfit to plead and he subsequently confirmed that in his view she had a psychotic illness, namely Paranoid Schizophrenia, since at least November 2010, i.e. before all of these offences.

There was abundant evidence, he said, that the prison environment, when on remand, worsened the symptoms of this disorder. In his view her mental illness was "extremely disturbed" at the time of the grave and criminal assaults in February 2012. 6. On 7th February, 2013, Dr Philip Joseph, a psychiatrist instructed by the Crown, advised that in his opinion the defendant was not suffering from Schizophrenia but there was a possibility that she suffered "transient psychotic symptoms in association with her borderline personality disorder". He found her fit to plead and that she was criminally responsible at the time of the offences, following the test in AG-v-Prior . 7. In his report of 15th February, 2013, Dr Bisht maintained his diagnosis of Paranoid Schizophrenia which he said was shared by the whole of the multi-disciplinary team at the female secure services at Brockfield House. He agreed that the defendant was criminally responsible at the time of her offences, following the test in AG-v-Prior , and that she was "just about" fit to enter a plea. This the defendant has done hence the sentencing hearing today. 8. Whether the defendant ought to be found criminally responsible for these offences on account of her unsoundness of mind pursuant to Article 2(1) of the Criminal Justice (Insane Persons)(Jersey) Law 1964 is, of course, a question for a jury not psychiatrists, if that question is put before the court. There is a presumption of sanity and the burden is upon the defendant of proving otherwise. The defendant is fit to plead and that question has not been placed before us. We have proceeded, therefore, on the basis that the defendant is criminally responsible for her acts. Even so it is clear the defendant's mental ill health, brought upon her at the age of 47, underlies all of her offending and that if we had the power to do so the most suitable disposal would be to order her detention at a secure mental health facility, but we have no such power and there is no such facility in Jersey. 9. We have received a very helpful letter from the defendant's two daughters expressing their despair at the loss of the mother they and their children know, and cataloguing the defendant's deeply disturbing behaviour leading up to her admission at Orchard House. They are extremely critical of the care the defendant received there, to the point that they were relieved when she was placed in custody in December 2011. Again, it would not be appropriate for us to comment upon those complaints, save to say that it is open to them to make a formal complaint to Mental Health Services about their mother's treatment, so that those complaints can be investigated, if they have not done so already. They have great praise for the compassion of the prison officers at the prison in Jersey and all the work now being undertaken by Brockfield House. Quoting from their letter they say this:- "We have been delighted with the small steps of progress mum seems to be making over there. It is very hard knowing we cannot see her often. We go every month and each time we are there, we see a little bit more of our old mum." At the end of their letter they make this plea:- "Please take note of this letter. We have begged for help before and we are doing it again. Mum needs to remain in the safe and progressive environment of Brockfield House, in the care of the wonderful doctors and staff there who treat her with such empathy and humanity that we did not see in Jersey. We would like her sentence to be seen out at Brockfield House until the doctors are happy she can be discharged without being a threat to herself or others." 10. We note in passing that the

psychiatrists who have diagnosed the defendant appear to have relied upon the medical records and interviews with the defendant herself, but do not appear to have interviewed her daughters, who as her immediate and clearly loving and supportive carers, would, we think, be able to give a very detailed account of her behaviour in the period leading up to the intervention of Mental Health Services. It seems to us that this independent account from those close to her, assuming good faith on their part, would at the very least be helpful in her diagnosis and, very possibly, far more accurate than the historical information that the defendant herself was able or willing to give. We do not understand why they do not appear to have been included in the process. 11. In the excellent social enquiry report the Probation Department helpfully suggests that there are three options available to the Court, given the gravity of the offences and the absence of alternative options, and we think it helpful to quote from that report at paragraph 30:- "30. Given the gravity of the index offences and the absence of alternative options, it is clear the Court will be considering a custodial sentence in Mrs Brown's case. It is unusual for the Probation Service to comment on the length of custodial sentence the Court may consider imposing. However, in this case there are particular considerations which the Court may feel of relevance. For the sake of clarity, I have summarised these considerations into the following scenarios: Scenario A : Custodial sentence shorter than time already served on remand i.e. "time served" In this instance, Mrs Brown would be theoretically released from custody today. However, given her current condition, it is inevitable that she would then be immediately further detained in hospital under Section 3 of the UK Mental Health Act until her health improved to the point that she could be safely discharged - this decision can only be approved by the responsible Psychiatrist or a mental health tribunal. Scenario B : Custodial sentence longer than time already served on remand but shorter than treatment period. (e.g. approx. 30 months) Mrs Brown would continue to be detained for treatment in hospital as a "transferred prisoner" until she reached her notional release date. At this point, if the severity of her mental illness continue to warrant it, she would be further detained for treatment as outlined in Scenario A. Scenario C : Custodial sentence longer than time already served on remand and longer than treatment period. (e.g. approx. 6 years) In this instance, should Mrs Brown respond positively to treatment and her mental health reach a point where it is considered she can be discharged from hospital, she would be returned to prison to serve the remainder of her custodial sentence.

31. In making its decision, I would respectfully but strongly recommend the Court impose a sentence which best avoids Scenario C. The possibility of detaining an individual for treatment and recovery from illness only to return them to the environment which exacerbated that illness in the first place could, in my opinion, only be considered counter-productive and would inevitably serve to increase the various risks in Mrs Brown's case." 12. We have taken into account all of the mitigation ably put forward by Advocate Marks on behalf of the defendant, and we agree that the circumstances here are exceptional. The gravity of the offences however, for which the defendant is criminally responsible, do not, in

our view, permit us to go down the route of an absolute discharge or binding-over order with conditions and so we agree with the Probation Department that a custodial sentence is the only option available to us. 13. Of the scenarios put forward, we conclude that Scenario A is the appropriate approach and we have tailored the individual sentences therefore to give rise to a sentence totalling 2 years and 1 month, which is the time spent. We do so on the basis the defendant will now be sectioned civilly in England where she will continue to be treated, and we express the hope that when she has recovered sufficiently to be allowed back into the community, she will receive appropriate support whether in England or Jersey. 14. Therefore turning to the sentences and the Indictment: on Count 1 the defendant is sentenced to 2 years' imprisonment, on Count 2; 1 week's imprisonment, concurrent, on Count 3; 1½ years' imprisonment, concurrent, on Count 4; 6 months' imprisonment, concurrent; that gives rise to a total sentence of 2 years' imprisonment under the Indictment. In relation to the suspended sentence for the malicious damage, she is sentenced to 1 month's imprisonment, the second charge of malicious damage to 1 month's imprisonment, concurrent, to the assault to 1 month's imprisonment, concurrent; giving rise to a total of 1 month's imprisonment which will be consecutive to the sentence under the Indictment and giving rise to a total sentence of 2 years and 1 month's imprisonment. Authorities Criminal Justice (Insane Persons)(Jersey) Law 1964. AG-v-Prior

[2002] JLR 11 . AG-v- Coutanche

[1989] JLR N 11b. AG-v-Coutanche [1989] JRC 089. AG-v-Brown

[2000] JLR N57a. AG-v-Brown

[2000] JRC 035. Harrison-v-AG

[2004] JLR 111 . AG-v-Bevis

[2001] JLR N43. AG-v-Watts

[2005] JLR N49. AG-v-Watts

[2005] JRC 171 . AG-v-Aubin 2002/18. AG-v- Fortun 2002/205. AG-v-Dewhurst

[2007] JRC 098 . AG-v-Corbel

[2010] JRC 151B . AG-v-Faulkner

[2011] JRC 046C . AG-v- Letchford 2000/173A. AG-v-Picot

[2009] JRC 196 . AG-v-Baker

[2011] JRC 103 . AG-v-George

[2012] JRC 216B . AG-v- Ratcliffe

[2010] JRC 082 . AG-v-Egan

[2009] JRC 162 . AG-v-Capuano

[2004] JRC 099 . AG-v-Capuano

[2013] JRC 084 . AG-v-Hasson and Hubbard

[2008] JRC 076 . AG-v-Davis 2002/1. AG-v-Michel 2000/25. Page Last Updated: 16 Sep 2016 BAILII:
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