

JERSEY / JUDGMENT

AG v Bulpin 15-Dec-2020 [2020]

JRC 260 (15 December 2020)

[2020] JRC 260

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JUDGMENT

THE DEPUTY BAILIFF: 1. Leslie Bulpin you are 37 years old and you fall to be sentenced today for two serious sexual offences; Count 1, making indecent photographs of children and Count 2, sexual grooming of a child. As to Count 1, you were convicted after a trial in July of this year, with the Jurats being sure that 13 of the images that you deliberately searched for on the internet were children aged under the age of 16 years. As to Count 2, that involved sexual grooming of a 15-year-old child in Jersey whom you knew. You pleaded guilty to that offence at the 'eleventh hour' on 10th July, 2020, only ten days before your trial and accordingly you receive significantly reduced credit for that plea. 2. You were arrested for the offences in May 2019. Your phone was seized from you, and it was on this phone that the images were found. It was clear that you were downloading images using the search term "little girls" repeatedly on dates in early May including 1st, 5th and th May, 2019. We accept the defence submission that you did not know that the images you viewed were then stored in your cache and that you could not easily access them. 3. We have seen the images and two of them are in category 4 of the Copine scale, Category A of the new scale identifying seriousness. As I have said the members of the Court were forced to view these images as you denied that they showed children under the age of 16, which they plainly did. In interview you denied searching for the indecent images or possessing indecent images. As to the grooming offence that occurred just 5 days after you last searched for "little girls" on the internet, this offence was a very serious matter in itself. You knew the victim, a girl you had met on a number of occasions, and she was the friend of a son of a woman with whom you had had once a relationship. You indicated in the contact with her that you wanted to meet her for the purpose of sexual intercourse with her. This included a telephone call when you were talking to a friend of hers, also 15, believing that you were talking to the 15 year old victim of this offence, and when the friend said that she was 12 you said no, she was 15 which in your words was "plenty old enough" and you also said "hey listen, you got a little pussy and you gotta get on top." 4. You failed to answer your bail in July 2019 and accordingly the proceedings against you were delayed by several months. When you were interviewed in relation to the grooming offence you denied that. You spoke in interview of your mental health difficulties to which we will return and protested that you were not interested in children. Your victim's mother has made a statement and said that since the incident the child has been locking herself in the house, her

education has been affected and she is now quieter than she was. Her appetite has been adversely affected too. Although its not referred to in the statement of the mother of the victim, the victim would have been under the expectation that she would be giving evidence against you for well over a year owing to the lateness of your guilty plea. 5. You have a number of previous convictions including offences of assault, drugs matters and one offence of indecent exposure involving you exposing yourself to some adult women. 6. We have been furnished with a number of reports which have been of assistance to us. You first came to the attention of the Mental Health Services when you were 17 and your current diagnosis is of paranoid schizophrenia. Your psychotic episodes, when they occur, are exacerbated by alcohol and drug use including cannabis. You have been admitted in the past both voluntarily and under the provisions of legislation, under "section" as it is known, to special hospitals both in Wales and Jersey. You still fail to admit the offence in respect of which you were convicted by the Jurats and the Probation Officer assess you at high risk of general reconviction and at significant risk of sexual reconviction. The Probation Service supported you being subject to a forensic psychiatric assessment. The Court has before it a number of reports, including that of David Briggs, a forensic psychologist and clinical psychologist, Professor Marshall, a consultant psychiatrist, Dr Vivek Bisht of Brockfield House where he works as a consultant forensic psychiatrist, and Dr Kaushal a consultant psychiatrist who works as a general adult psychiatrist for Jersey Adult Mental Health Services. All have assessed you and agree that you are suffering from schizophrenia. 7. As to your disposal today, we have been invited to consider various provisions in the Mental Health (Jersey) Law, 2016 ("the Law") and the Crown argue that if we accede to the submission that you need to be sent to an approved establishment, namely Brockfield House today, then the appropriate order is to make a "transfer order" under Article 69 of the Law. We have considered Article 69 and certainly in relation to a serving prisoner and indeed possibly in your case Article 69 is available to the Court for the purpose of making a transfer order. 8. The defence have drawn our attention to Article 67 of the Law which deals with the directions which may be given where a sentence of imprisonment is to be served in an approved establishment. Article 67(1) says: "(1) A court may impose any sentence of imprisonment which it has power to impose in respect of the offence in question, and in addition to that sentence may give one or more directions such as are specified in paragraph (3)," Paragraph 3 includes provision that the defendant may instead of being removed to and detained in a prison be removed and detained in a specified approved establishment. 9. The Crown say that Article 67 is limited in effect by virtue of the provisions of Article 60(4) of the Law which provides that: " The powers conferred by Article 67 may be exercised in relation to a defendant who is convicted by the court of an offence punishable with imprisonment, the sentence for which is fixed by law." If the Crown is right, that would in effect mean that Article 67 can only be used in relation to offences such as murder. 10. We do not agree with the Crown's submissions in this regard and we regard the provision of Article 60(4) as simply permissive, so as to make it clear that Article 67 is available in a wide range of circumstances. Article 60(4) does not say that Article 67 shall or must only be used or available to the Court in circumstances in where the sentence is fixed by law. 11. Accordingly, the Court is considering making an order today, under Article 67, as we have said, and if we are wrong about that then we would have made an order under Article 69. Under Article 67, as we have said: "(1) A

court may impose any sentence of imprisonment which it has power to impose in respect of the offence in question, and in addition to that sentence may give one or more directions such as are specified in paragraph (3)" where the court is satisfied - (a) on the evidence of 2 medical practitioners, at least one of whom is an approved practitioner, that - (i) the defendant is suffering mental disorder of a nature or degree that warrants admission to and detention in an approved establishment for treatment, and (ii) appropriate treatment is available for that defendant in that establishment; and (b) on the written or oral evidence of the responsible medical officer or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 28 days of the date of the directions." 12. Pausing here, we have heard evidence today from Dr Kaushal and Dr Bisht, the latter being the "approved" medical practitioner for the purposes of the Law, who have given evidence to the effect that you are suffering from a mental disorder warranting admission and that appropriate treatment is available for you at Brockfield House and we have heard that from Dr Bisht that a place at Brockfield House, is now available to you. We are also satisfied of all the other relevant statutory criteria under Article 67 and we note that we are entitled under Article 67(b) to give such further directions as we think fit for the conveyance of you to the establishment in question or a place of safety pending admission to the establishment and we also note the following in respect of a prisoner who is detained under Article 67(7): "(7) A prisoner whose sentence of imprisonment has not expired may be discharged from the approved establishment to which he or she has been transferred under this Article - (a) on an application made to the court by - (i) the prisoner, or (ii) the Attorney General; (b) on the grounds that, in the opinion of the responsible medical officer, it is no longer necessary for the prisoner to be detained in such an establishment by reason of mental disorder." In those circumstances, you would be conveyed/returned to La Moye after the end of such treatment. So that deals with the statutory provisions empowering the Court to make the order which it has in mind making in this case. 13. Returning to the medical evidence, Dr Briggs says that you are hebephiliac which means you have a sexual interest in children in their early rather than later teenage years. As to Dr Bisht, we have paid significant attention to his report as he works at Brockfield House. He speaks of the difficulties which you had in your childhood, particularly when your parents separated and the psychiatric symptoms of your disorder. You have limited mental health input in prison although you are currently compliant with your anti-psychotic medication. You have a long history of mental health difficulties and it is well recognised that emotional trauma experienced in childhood can interfere with normal psychological social and moral development. Dr Bisht describes your diagnosis of paranoid psychotic illness as being well established and describes paranoid schizophrenia as "a severe and enduring mental health disorder". Your illness is characterised by auditory hallucinations persecutory and grandiose delusions, symptoms of catatonia and disordered thinking. You have also exhibited sexually disinhibited behaviour. Dr Bisht says that he is of the "firm view" that your mental disorder is of a nature and degree as to warrant attention in hospital and that the admission is necessary "in the interest of his own health, safety and the protection of others", and although he knows that you have had several admissions to in-patient psychiatric services before, Dr Bisht says that it is "unclear to me if he has ever engaged in any robust psychological work addressing his insight, awareness of his

mental illness and relapse prevention work." He believes the hospital admission could assist you, and he strongly recommends that you should receive a number of psychological therapies including improving insight and psychoeducation, offending behaviour work and substance misuse work. A bed, as we have said, is available to you at Brockfield House but nonetheless you would be attending there as directed by this Court and pursuant to a sentence of imprisonment. 14. Dr Bisht told us that although there is no direct connection between this offending which we are dealing with today and your underlying health issues, the therapy you need would make offending in the future less likely and could address the various risk factors present in your case. He says the level of disorder, in a case such as yours, warrants 12 months of treatment at Brockfield and possibly more, and in his evidence Dr Kaushal said that intensive and protracted therapy may assist you in fixing the boundaries that you need in relation to drugs, sexual matters and other issues, and these should be your target areas. He said that you may be more receptive to this therapy in a hospital setting. 15. We have read the Crown's Conclusions with care and listened to what your counsel has said on your behalf. We note the case of AG v Godson and Crowley

[2013] JRC 091 and agree with the Crown that this is a case with a starting point for the images offences is one of 3 years' imprisonment. We note what has been said on your behalf, in particular in relation to the storage of these images which we have touched on already and the fact that you were not deliberately searching for Category 4 images, the ones that were identified on your phone. 16. As to the grooming of the child we agree that this was a serious offence. You had direct contact with a real child. You intended to commit a serious contact offence and the contents of your contact with the child were explicit. Young people are entitled to the full protection of the law in these circumstances and they are entitled to be protected from people like you who wish to exploit them. We agree that it is an aggravating feature that you knew the victim's family and where they live. 17. We have given serious consideration as to whether or not the offences should result in consecutive or concurrent sentences. There is certainly an argument that we should reduce the two sentences sought somewhat and then impose consecutive sentences upon you and we note the words of Commissioner Sir Michael Birt giving the judgment of the Royal Court in the case of AG v Sousa

[2019] JRC 236 at paragraph 14 when he said "14. Having regard to the totality principle we think that the 3 years moved for by the Crown is correct and indeed, given not only the indecent images of children offending, but the fact that you committed the offence of attempting to meet a child after grooming at the same time, the conclusions could have been higher." We agree with those observations but nonetheless we have been persuaded that concurrent sentences should be imposed and we grant the Crown's Conclusions resulting in a sentence of 3 years' imprisonment on Count 1 and 2½ years' imprisonment, concurrent on Count 2. 18. We order that the iPhone be destroyed. 19. We order that you be subject to the notification requirements under the Sex Offenders (Jersey) Law 2010 ("2010 Law") for a period of 7 years. 20. As to the restrictive orders that are sought, we find as required that you, on the balance of probabilities, pose a threat of serious sexual harm to a particular

section of the public, namely children and accordingly we make the restrictive orders sought under Article 10 of the 2010 Law. We make them for the period of 10 years as sought by the Crown and not opposed by your Advocate, and make them in the terms sought by the Crown save that the word should be "defendant" and not "accused" in paragraphs 2 and 4 of the orders. 21. So we order today that, if I turn to Article 67 of the Law, that you be sentenced to a total of 3 years imprisonment, but that you be removed as soon as convenient from La Moye prison to be detained in Brockfield House under the care of Dr Bisht. 22. Mr Bulpin, the members of the Court all hope that at Brockfield House you will receive the treatment that you need - do you understand that? And we hope that you will take all the opportunities offered to you at Brockfield House and do your best to challenge the matters that have led to the offending that we have dealt with today.

Authorities Mental Health (Jersey) Law, 2019. AG v Godson and Crowley

[2013] JRC 091 . AG v Sousa

[2019] JRC 236 . Sex Offenders (Jersey) Law 2010 Protection of Children (Jersey) Law 1994. AG v W

[2016] JRC 235 AG v De Freitas

[2019] JRC 197 AG v De Freitas

[2019] JRC 186 R v Smith and Ors

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