

JERSEY / JUDGMENT

AG v Capuano [2004]

JRC 099 (07 June 2004)

[2004] JRC 099

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Court of Appeal (Jersey) Law 1961 provided that the Royal Court's reasoning is clear; nor do we conclude that the absence of a starting point constitutes a breach of Article 6 of the European Convention on Human Rights." 4. It is clear, therefore, that this Court is free to continue not to use a starting point in non-drug cases but it must nonetheless take full account of the views of the Court of Appeal that that Court regards the process as desirable. 5. This Court has given anxious consideration to these views and is appreciative of the clarification of the proposed process contained in the judgment of the Court of Appeal. However, it is this Court which has to exercise the function of day to day sentencing at first instance. That is a very different rôle from the task of reviewing a sentence upon appeal. 6. Regrettably, despite the analysis contained in the Court of Appeal's judgment in *Harrison*, this Court remains of the view that the starting point mechanism, while of considerable assistance in drug cases where the variables are comparatively few, can be very difficult to apply in non-drug cases. The members of this Court prefer the views expressed by Sir Richard Tucker, Commissioner when considering the judgment in *Harrison* in the case of *A. G. -v- Figueira* [2004]JRC058. 7. Despite these misgivings, however, the Superior Number must respect the judicial hierarchy in this jurisdiction, and, in deference to the views of the Court of Appeal in *Harrison*, should attempt to fix upon a starting point in non-drug cases which come before it at first instance where it thinks that that can reasonably be achieved. However, there will be many cases, e.g. *Figueira*, where to fix upon a starting point would be too difficult and artificial, and/or unseemly and inappropriate, and in such cases the Superior Number feels that it must continue to use the process with which it feels comfortable rather than trying to adopt a system in which it lacks confidence. 8. In the case of sentences imposed by the Inferior Number, appeals lie to the Superior Number where there has been a plea of guilty. That is the position in the vast majority of cases. All the members of this Court are of the view that the arguments against starting points are even stronger in the case of sentences which lie in the lower range. In such cases, similar cases come before the Inferior Number on a regular basis, almost invariably on a guilty plea. In those circumstances the Inferior Number has a strong feel for the bracket of sentences for a particular offence. Exactly where the sentence for a particular case will fall will depend upon the strength of the aggravating and mitigating factors respectively. Accordingly, the Court does not customarily undertake the mental process of fixing upon a starting point and would have great difficulty in doing so. Furthermore, we consider that the adoption of starting points in such cases would lead to great difficulties of comparison in other

cases and would lead to artificial and minor distinctions. 9. Where appeals lie to the Superior Number it will be the case, therefore, that both the Court at first instance and the Appeal Court will be of the view that the starting point process is unhelpful. It will be for the Attorney General to decide whether or not the adoption of a starting point is appropriate in arriving at the Crown's conclusions. For our part we do not propose to employ the starting point mechanism in cases before the Inferior Number. 10. We appreciate that in a few cases where there is also an appeal against conviction an appeal against sentence from the Inferior Number will lie to the Court of Appeal rather than to the Superior Number. We note that the Court of Appeal stated in Harrison that provided the Inferior Number makes its reasoning clear the Court of Appeal will be well able to fulfil its appellate function, notwithstanding the absence of a starting point. 11. We turn now to apply these principles to the case before us this afternoon. We note that Harrison does not afford any guidance as to the proper approach where an indictment contains multiple offences of varying gravity and type and where the totality principle is an important factor to be taken into account. We think that the approach adopted by the Crown Advocate is the sensible approach in this case. We will not adopt a higher starting point for the most serious offence as would be appropriate in drug cases where different classes of drug are involved, but will adopt a separate starting point for each of the offences of robbery and grave and criminal assault on the basis that consecutive sentences are appropriate. 12. Capuano is to be sentenced for a range of offences of which the most serious are, in our judgment, Count 1 (robbery), Count 3 (assault) and Counts 6 and 7 (grave and criminal assault and assault respectively upon prison officers acting in the course of their duties). 13. The robbery involved the snatching of a mobile phone, the head-butting of its owner, a young woman, and a subsequent kneeing of her thigh causing bruising. The victim impact statement makes it clear that the young woman has subsequently suffered severe migraines, nightmares and stress associated with her memory of the attack. We think that the appropriate starting point is one of 3 years' imprisonment. 14. Count 3 involves an unprovoked assault upon another woman who was the manager of a shop in which the defendant caused considerable malicious damage. Capuano threatened her that if she called the police he would come back and "finish the shop". Again the victim has suffered from an after shock and now feels tense and very nervous if she is left in the shop on her own. 15. Counts 6 and 7 involve grave and criminal assault and assault on two prison officers acting in the execution of their duty. That aspect is an aggravating feature of both assaults. Prison officers are entitled to carry out their duties without being subjected to vicious attacks by inmates and the Court wishes to make it clear that prison officers will receive such protection from the Court as it can afford. 16. In this case there was a kicking and punching and a deliberate attempt by the defendant to gouge out the eyes of the prison officers. Fortunately, only one officer was seriously hurt and he has now recovered fully from his injury. We think that the appropriate starting point on Count 6 is one of 5 years' imprisonment. 17. Viewing the offending in the round, the defendant has a long record of convictions involving many offences of violence against persons and property. He has received numerous prison sentences but has also been placed on probation, bound over to be of good behaviour, and has been the subject of other non-custodial penalties. 18. He does suffer from mental illness. We have studied carefully a number of very full reports placed before us. Capuano is said to suffer from three psychiatric disorders: first, bipolar affective disorder; secondly, severe

dissocial personality order; thirdly, harmful use of illicit substances. 19. It is clear, however, that Capuano is fit to plead and was not insane in a legal sense at the time when any of the offences was committed. The Court has been advised in the report of Dr Cox, Consultant Psychiatrist in Jersey, that the Jersey Adult Mental Health Service has exhausted all available options and that Capuano remains a threat both to himself and to others. 20. We have reached the firm conclusion that the public must be protected from the actions of this defendant and that a total sentence should be imposed which will enable Capuano to be transferred to England and to receive treatment in a medium secure hospital as recommended by Dr Paul O'Connell, Consultant Forensic Psychiatrist in the Kent Forensic Psychiatry Service. 21. Capuano is entitled to credit for his guilty pleas. He has also expressed remorse in a letter to the Court. We also take into account that in relation to the earlier offences but not the offences involving the prison officers he may have been suffering from mental illness at that time. We take all those factors into account and grant the conclusions save in respect of counts 6 and 7, where the conclusions are increased. 22. Capuano, the sentence of the Court is that on Count 1, you will be sentenced to 18 months' imprisonment; on Count 2, to 3 months' imprisonment, concurrent; on Count 3, to 6 months' imprisonment concurrent with Count 2, but consecutive to Count 1; on Count 4, (malicious damage) to 1 month's imprisonment, concurrent; on Count 5, (malicious damage) to 2 months' imprisonment concurrent; on count 6, (grave and criminal assault) to 3 years' imprisonment, consecutive to Count 1; on Count 7, (assault on a prison officer) to 12 months' imprisonment, concurrent; and Count 8, (malicious damage) to 6 months' imprisonment , concurrent. The total sentence is 5 years' imprisonment. 23. We strongly recommend to the Prison authorities that Capuano be transferred to England within the prison system and that arrangements are made for him to be placed in a secure mental hospital where he can receive the treatment which in the view of this Court he needs. We hope, Capuano, that you will interpret this sentence as an attempt by the Court to give you the help for which you have asked. Authorities Whelan: Aspects of Sentencing in the Superior Courts of Jersey (3 rd Ed'n): pp. 189-90; 247-55; 324-30. Current Sentencing Practice: pp. 23326/11-23347. Harrison -v- A. G . [2004]JCA046. A. G. -v- Figueira [2004]JRC058 Page Last Updated: 24 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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