

JERSEY / JUDGMENT

AG -v- Cardy [2011] JRC 096 (06 May 2011)

[2011] JRC 096

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE DEPUTY BAILIFF: 1. Before I come to imposing sentence in this case I wish first of all to mention that we were asked by Advocate Baglin to defer sentence on the grounds that it may be that the accused will be charged shortly with offences under Article 51 of the Telecommunications (Jersey) Law 2002 where the alleged offending might be, if charged, that he breached that law by sending abusive texts to his former partner. This conduct, if it took place, is alleged to have taken place last month. 2. We do not consider that there is any reason why we should not proceed to sentence on the present Indictment as already indicated. We consider that any totality principle is not going to be applicable. We note that the maximum sentence under the Telecommunications Law is 6 months' imprisonment and of course, if there is a guilty plea and other mitigation would reduce that, and in the circumstances the interests of the efficient administration of Criminal Justice suggests to us that we can continue with the sentence of this accused; we do not consider he will suffer any prejudice having regard to all the circumstances of the case. But we also note that if such charges are to be brought that it will be the second time that conduct of this nature has been brought to the attention of the Court in the last few weeks and we think there is a case for the Attorney General to consider, with the relevant authorities, whether the maximum sentence on such a charge should not be increased. Obviously that would not affect this particular accused and in any event we do not know a) whether this accused is going to be charged, or b) whether he is going to plead guilty or be convicted of it, and so these are preliminary remarks; I wish to make it absolutely plain that I only address them in the context of the request that we do not proceed to sentence today, and we have not taken into account any of these matters in relation to the sentence which we are now going to impose. I emphasise again we have not seen the charges, the accused may or may not be guilty of them, no admissions are made today understandably and there is no basis for adjourning sentence. 3. You have pleaded guilty to three counts of making indecent photographs of children contrary to Article 2 of the Protection of Children (Jersey) Law 1994 . The offending took place between April 2006 and June 2010, which is therefore a period of just over 4 years. There were 66 images in total of which 18 were at Copine Level 4. I mention the Copine Level 4 images for this reason. At Copine Level 4 or 5, the lives of those children who have been subjected to this conduct will be blighted for their entire life time and when we read in the background reports that you do not really think you are culpable of some of the offending, we think that that point needs to be emphasised to you. Looking at these images encourages the circulation of these images on the

internet and encourages offending which will, as we say, blight these children's lives forever. It is for that reason that making images at Copine Level 4 and 5 is particularly serious and images at this level will be treated by the Court as giving rise to sentences of imprisonment in almost every case. 4. We have been asked to apply the R-v-Oliver, Hartley & Baldwin

[2003] 1 Cr. App. R. 28 guidelines and we find the case of Oliver to be helpful, first of all in the provision of the Copine Level and also in the categories of offending, the nature of offending as set out in the Crown in its conclusions. The penalties which are suggested by the Court of Appeal in England in relation to those categories of offending are not, however, guidelines which we in terms approve, although obviously we have regard to them. 5. There is an argument, we think, to be put for deterrent sentences in cases such as yours and the Court has, certainly on two previous occasions, indicated that it considers that sentences which will be imposed will be of a higher level because there appears to be a prevalence of this offending in Jersey. The amount of this kind of offending is increasing and therefore the Court must mark, in a deterrent way, the sentences which are imposed. There is a view that the Oliver guidelines in this respect may be too low and that the message needs to be sent out that this kind of offending will be treated very seriously by the Court. However, that is not a matter to be dealt with by this Court today. 6. We have looked at the offending which you have committed; we treat you as in the categories of offending identified by the case of Oliver as being in the possession of a small amount of Level 4 images. And so while we think that there may be a substantial case for saying that the bracket should be higher than 6-12 months for this offence, we are not in fact going to increase the Crown's conclusions today. 7. We have taken account of the mitigation which you put forward through your counsel who has said everything that can be said on your behalf. The most important part of that mitigation is your guilty plea which you have rightly made. The next most important part is to note the relatively small number of Level 4 images, but we point out that that simply takes us into that category of offending which is described in Oliver and so within that bracket we think that 12 months' imprisonment, which was the Crown's conclusions, is correct. We take into account particularly the long period of offending. We take into account the fact that within that bracket the small number of Copine Level 4 pictures nonetheless represents a significant proportion of the illegal images found. We take into account that more than one piece of computer equipment was used. And we take into account that you had the use of peer to peer programmes to download the images. There is no evidence that this led to sharing the images and we absolutely do not sentence you on the basis that you did, but we note that the use of these programmes would make such sharing possible. We have taken into account the mitigation that you have advanced through your counsel; we do not that think it is helpful to refer to other individual cases because each case falls to be dealt with on its merits. 8. In the circumstances, in your case, we sentence you to 12 months' imprisonment on each count, concurrent, making a total of 12 months' imprisonment. 9. We order the forfeiture of the computer equipment under Article 2 of the Criminal Justice (Forfeiture Orders)(Jersey) Law 2001 . 10. As a separate matter which is not connected

with the sentencing at all, we are required to address the question of the Sex Offenders Register which we have. Theoretically I should have addressed this at the outset of my remarks because the Law requires it to be dealt with separately and prior to sentencing, but I emphasise that we have treated the matter as not part of the criminal process. Under the Sex Offenders (Jersey) Law 2010 you are subject to automatic notification requirements and I understand from Crown Advocate Yates that these have been explained to you and you have already complied with those. The Law requires that we should fix a period of time before which you cannot apply to the Court to have these notification requirements disapplied to you and we agree with the Crown that the right period is five years before you can bring such an application. We apply the principles which are set out in the case of AG-v-Velosa

[2011] JRC 026 and we take into account in this case all the information which is contained in the background reports which show that there is at least on some of the tests a medium risk of re-conviction in connection with sexual offences. And that seems to us to mean that the risk of serious sexual harm to the public as such that a 5 year period should elapse before you can bring any application to be released from the notification requirements under the Law. Authorities Telecommunications (Jersey) Law 2002. Protection of Children (Jersey) Law 1994. R-v-Oliver, Hartley & Baldwin [2003] 1 Cr. App. R 28. Criminal Justice (Forfeiture Orders)(Jersey) Law 2001. Sex Offenders (Jersey) Law 2010. AG-v-Velosa

[2011] JRC 026 . AG-v-Gavey

[2010] JRC 203 . Page Last Updated: 18 Aug 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2011/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-cardy-2011-jrc-096-06-may-2011>

Prepared on 22 October 2026 · Esheria