

JERSEY / JUDGMENT

AG -v- Coelho [2018] JRC 052A (07 March 2018)

[2018] JRC 052A

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JUDGMENT

THE Commissioner: 1. This is an appeal by the Attorney General by a way of case stated, against a decision of the Relief Magistrate Advocate Le Cornu, on 25 th October, 2017. 2. The appeal is brought on the ground that the sentence imposed by the Relief Magistrate was beyond the jurisdiction of the Magistrate's Court. 3. The facts are very straight forward. On the th June, 2017, the defendant was sentenced to 160 hours' community service, and a Probation Order of 12 months in respect of one offence of grave and criminal assault. 4. On 15 th September, 2017, he was presented for a breach of the Community Service Order on the basis he had not carried out the work as directed, but on that occasion the Magistrate's Court directed simply that the Order should continue. 5. On 25 th October, 2017, he was presented for a further breach. Again this was by way of non-compliance in not carrying out the work as directed. Having heard the circumstances and the mitigation put forward by the advocate on his behalf, the Relief Magistrate decided he did not need to revoke the Community Service Order and impose a prison sentence, but held that the justice of the position could be met by varying the Community Service Order so as to impose an additional period. He, thereupon imposed a further period of 35 hours. 6. The difficulty is that this was in excess of the powers of the Magistrate's Court. Under Article 4(2) of the Criminal Justice (Community Service Orders) (Jersey) Law 2001 , the maximum amount of Community Service which the Magistrate's Court may impose is 180 hours. Article 7(4) of the 2001 Law, provides that on a breach of a Community Service Order, the Court may vary the Order, and Article 9(2) of that Law provides that a variation may include an increase in the number of hours. However Article 9(2) also specifically provides that the power of variation is subject to Article 4(2), which imposes a maximum total amount. 7. In other words the Magistrate's Court may only impose a total order as varied, up to 180 hours. In this case the original sentence was a 160 hours and the additional period ordered was 35 hours. This makes a total of 195 hours which is, of course, in excess of the maximum amount which the Magistrate's Court may impose. 8. The Relief Magistrate very properly accepted this in his case stated, once the matter was drawn to his attention. As the sentence imposed by the Relief Magistrate was in excess of jurisdiction this Court must, therefore quash the additional sentence of 35 hours. 9. The question then arises as to what sentence we should pass instead. Whilst giving the defendant a strict warning that this was his last chance, the Relief Magistrate had decided not to impose a prison sentence and in the

circumstances it would not be right for us now to impose a prison sentence, even though the defendant can perhaps consider himself quite fortunate given that it was his second failure. 10. In the circumstances we vary the original sentence of community service by adding a further 20 hours, making 180 hours in total. To that extent the appeal is allowed. Authorities Criminal Justice (Community Service Orders) (Jersey) Law 2001. Page Last Updated: 06 Apr 2018 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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