

JERSEY / JUDGMENT

AG -v- Cook [2011] JRC 068 (29 March 2011)

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JUDGMENT

THE DEPUTY BAILIFF: 1. We are required, before going to sentence, to consider the provisions of the Sex Offenders (Jersey) Law 2010 and as a result of your plea of guilty to these offences you are automatically subject to the notification requirements contained in that legislation, unless very special circumstances existed, which they do not in this case. We are required, therefore, to consider what period we should fix before you can apply to have the notification requirements dis-applied to you. The Crown has suggested a figure of 5 years and we think that that is the appropriate figure. So under the legislation it will be 5 years before you can make any application to have those notification requirements dis-applied. 2. The Crown have also submitted that restraining orders should be imposed. We note that the Risk Matrix 2000 risk of re-conviction test has been applied to you and you have been found at medium risk and we also note that the LSIR risk of re-conviction puts you at a medium general risk of recidivism. In the circumstances we are satisfied, in accordance with Article 10 of the legislation, that it is necessary to impose a restraining obligation upon you to protect the public or particular persons from serious sexual harm. We make it plain that there is no evidence of any direct serious sexual harm, the evidence that is applied here is that there is a risk of re-conviction for sexual offences of the kind to which you have now pleaded guilty and that that is therefore capable of being a cause of serious sexual harm to young children who are made, usually by force, to participate in these films. For that reason we are going to impose the restraining order under paragraph (a) that from a period of 5 years from today you are prohibited from acquiring or using any computer software which is designed to destroy, delete or disguise internet activity on any device which may access the internet, or any computer software which is designed to encrypt data held on such a device save for any encryption which may be demonstrated to be for a legitimate purpose by the provision of any password or access code to a police officer. 3. The Crown have asked us to impose a second restraining order that you permit access to your place of residence or vehicle by a police officer at all times for the purposes of inspection of any computer present there. We have not heard full argument on this today but we do not consider, on what we have heard, that there is sufficient here to impose that restraining order upon you in the circumstances of the case and we therefore do not impose that restraining order. But we have noted that the Court has power to amend any order on the application of the Attorney General or the offender and therefore it is, if the Crown consider it can be justified, possible for the Crown to bring the matter back for argument at a later stage. 4. Those are the orders which we make under the Sex Offenders legislation which we

are required to do before coming on to the question of sentence. 5. You have pleaded guilty to 27 offences of making indecent photographs of children and 17 offences of having attempted to make indecent photographs of children. Most of the images were at level 1 of the Copine Scale. There were 92 images at that level, 10 at level 2, 14 at level 3, but much more seriously, 20 at level 4. 6. We have considered very carefully all the mitigation which has been put forward, fully and carefully, by your counsel, and considered whether or not a non-custodial sentence is possible. We have certainly taken into account your guilty plea, albeit it came rather late; the relatively good record, and you are treated as being of good character for these purposes; and we have recognised too that there was some delay in bringing the matter on to trial. In particular we have recognised the personal circumstances which existed both prior to the committing of the offences and they exist today. 7. Nonetheless you have to be sentenced for what you have done, and we know from the letter which you have written to the Court, which we accept to be a letter genuinely reflecting your remorse, that you understand that you must be sentenced for what you have done. The Courts have said, as in the case of AG-v-Le Marquand

[2003] JRC 043 , to which the Crown referred:- "Such offences are serious, not only because of the revulsion which the community feels about them, but also because of the suffering and degradation caused to the unfortunate young children who have been forced, usually, to participate in the making of such photographs." And in the case of AG-v- Gavey

[2011] JRC 203 we made it plain that it is almost inevitable that offences of this kind should be met with a custodial sentence. 8. The Court has looked carefully at all of these matters and in the circumstances we think that the Crown's conclusions are correct and you will go to prison accordingly for a total period of 12 months' imprisonment. That will be imposed in accordance with the Crown's conclusions set out in Court today, so the formal record will reflect that there are different periods of sentence on the different counts but the total will be 12 months' imprisonment. 9. In the course of serving that sentence you will have the opportunity for some help in prison from Dr Emsley. We appreciate that it is not the same detailed help that might have been available to you otherwise, indeed this is what was said by the Court in Gavey , but we strongly suggest to you that this is help that you take up as far as you can. You say that you are looking for some hope and the Court's view is that the remorse you have expressed is a starting point to rebuilding your life and we are impressed by your determination to give something back to society. The way, and a place to start, is by taking advantage of such help as you can get in prison while you serve your sentence. 10. We order the forfeiture of the two computers mentioned in the Indictment and for the record we direct that a formal not guilty finding be entered on the 18 counts to which you have pleaded not guilty. Authorities Sex Offenders (Jersey) Law 2010. Protection of Children (Jersey) Law 1994. Criminal Justice (Forfeiture Orders)(Jersey) Law 2001. AG-v-Le Marquand

[2003] JRC 043 . AG-v- Gavey

[2010] JRC 203 . AG-v-Sunderland

[2005] JLR N 38. AG-v- Velosa

[2011] JRC026. AG-v-Roberts

[2011] JRC 050 . R-v- Hemsley

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