

JERSEY / JUDGMENT

AG -v- Coughlan [2011] JRC 184A (23 September 2011)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application for review of the decision of the Magistrate to refuse bail to the applicant who was originally granted bail on conditions which included a curfew and which she broke on two occasions. Another of the conditions was that she should not have alcohol at her home and in the course of breaching the conditions (and clearly the intention behind that condition was that she should not be drinking it,) on the information that has been given to us she was apparently drinking alcohol with her aunt. 2. We do not have to decide whether that was or was not a breach of condition in the strict sense but it clearly ran against the intentions of the Magistrate in putting the conditions on which she did. But there was a breach of the curfew on two occasions. The Magistrate had to consider these matters when the matter was referred to her and she chose to reach the view, in the exercise of her discretion, that it was right to refuse any further bail. 3. The test for this Court is whether in doing so, she acted unlawfully or acted so unreasonably that no reasonable Magistrate could have reached that view. Miss Fogarty contends that she acted unlawfully. The current state of the authorities is as set out in LG-v-AG

[2009] JRC 039 , a decision of the Royal Court on 4 th March, 2009. We are certain that that decision was to the effect that it was not unlawful to detain a young woman under the age of 18 in the adult female wing at the prison and we are not prepared, on the basis of the submissions which have been put before us today, to declare that that decision of the Royal Court, on that occasion was wrong. We are going to follow it because we are not satisfied that it was wrong. As a result we are told that there is a pending before the European Court of Human Rights in Strasburg an application in relation to this very decision and of course, that may or may not be successful. We are not going to prejudge that by assuming that it will be. The current state of the authorities is that it is not unlawful to detain a woman of this age in the adult female wing of the prison. 4. That being so, we have to consider whether or not the decision of the Assistant Magistrate was so unreasonable that no reasonable Magistrate could have reached it. Although the Crown does not oppose, for whatever reason, this application, we do not think that the decision of the Assistant Magistrate can possibly be categorised in that way. 5. Accordingly we refuse to review the decision in the way that has been contended for by Miss Fogarty and Miss Coughlan, you must therefore be remanded back in custody in accordance with the

Assistant Magistrate's decision. Authorities LG-v-AG

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