

JERSEY / JUDGMENT

AG v Coughlan [2021] JRC 317 (16 December 2021)

[2021] JRC 317

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JUDGMENT

THE Commissioner: 1. The Defendant stands to be sentenced for two offences of importing 3.69 grams of cannabis worth between £120 and £160 and possession of 1.95 grams of herbal cannabis worth between £60 and £80, offences which put him in breach of a Community Service Order imposed on 19th November 2020 for possession of MDMA with intent to supply and possession of cannabis resin, for which he was sentenced to 240 hours' Community Service, which is the equivalent to 18 months' youth detention. 2. The Defendant has an unenviable record of some 50 convictions, 7 for drug offences, the most recent being in March of this year, for which he received a financial penalty. He has breached Orders of the Court on many occasions and committed several offences whilst on bail. He is assessed at a very high risk of re-conviction. 3. The Crown invite the Court to revoke the Community Service Order and impose a consecutive sentence to reflect the Community Service that he has not done, and this following the principles set out in a case AG v Nafkha 2000/86. 4. The Defendant has completed 52½ hours' Community Service out of 240, which is 22%. The equivalent custodial sentence was 18 months' youth's detention and so the equivalent sentence to be imposed now if that were to happen would be 14 months. At the time, he was given a warning that if he committed any further offences, he would be sentenced to youth detention. 5. Turning to the current importation and possession offences, the amount involved is well below the guidelines in Campbell -v- AG

[1995] JLR 136 and there is limited case law to assist the Court. The Crown move for a sentence of 1 month's youth detention for the importation of cannabis and 2 weeks' youth detention concurrent for the possession of cannabis. 6. The Defendant was 17 years old at the time of the offending for the current offence and is now 18 years old and so the provisions of the Criminal Justice Young Offenders (Jersey) Law 2014 apply. Of the 3 limbs of Article 4 of that law it is the first limb that could have application namely, that the Defendant has a record of failing to respond to non-custodial sentences as is clearly the case, but it does go on to say conjunctively that the Defendant is also unwilling and unable to respond and that is significant in this case as we will say shortly. 7. The Defendant was in fact 16 when the breach offences were committed, 17 when these importation offences were committed, and he is now 18. There was a delay of 1 year in the prosecution of the breach offences to which the Court made reference at the time, and then a further 8 months elapsed before

the Defendant could start his Community Service because of his young age. We note that in this case itself, the offences were committed some 10 or 11 months ago, and that is a long time for a person of his age. 8. The breach offences, the supplying of MDMA, were serious, and we have struggled with the submission of Advocate Bell for the Defendant, that the Defendant should be allowed to complete the Community Service sentence imposed upon him in November 2020, particularly bearing in mind the warning that was given to the Defendant by the Court, rather than revoking the Order and imposing a sentence to reflect the hours that he has not completed. 9. However, in what is a finally balanced decision, the Court has concluded that the Defendant should be allowed to complete the Community Service imposed upon him for those earlier offences for a number of reasons:-, (i) By ordering the Community Service Order to remain in place and to continue the Defendant will be serving the punishment imposed upon him by that Court, and he will not be in anyway left off for the punishment for those particular serious offences. (ii) His youth, he was only 16 at the time of those breach offences, 17 at the time that these offences were committed, and he is only 18 today. (iii) The fact that he has spent the equivalent of 3 months' imprisonment already, which is substantially more than the sentence that would be imposed for the recent offences. So, he has served that extra period of punishment. (iv) He has the support of his family, which we think is important in this case. His mother and another member of the family are present in Court. He has a good work record over the last year and has work to go to should he be allowed back into the community. He has accommodation which is also available to him. (v) We have also taken into account his letter of remorse, part of which I am going to read in a moment, which did impress us. We were also impressed by the report from Mr Le Marrec as to his engagement in Community Service. It is clear that he is willing, motivated and able to do Community Service, which deals with the issue raised under the Criminal Justice (Young Offenders) (Jersey) Law 2014 . (vi) We also have the report from Kierra Myles from the Children's Service, who is in Court and who has attended to support the Defendant, confirming that he is committed to building a positive pathway in his life. 10. So, finally we have concluded, and it was very much on balance as it was a very difficult decision, that there is another method of dealing with the Defendant in this case, namely by allowing him to complete the sentence imposed by the earlier Court and allowing him back into the community. 11. Turning to your letter, we wanted to read to you what you said at the end of your letter you say; "if I don't get Custodial and got Probation and Community Service, I will stick to it, attend every time, not commit crimes and get on with my life. I have seen prison it is not a good place to be, and I don't want to be here, so I know if I am given a chance to prove myself one last time, this will be the point to either move on with my life, go back to working or be in prison ruining my life. I have got a job ready for me, if I do get out in December I will be starting in January." 12. We hope that is the case, that you will take the opportunity that has been given to you. We have noticed your views about illegal drugs, and we wish to make the point to you, that whatever your views are, they are illegal, and it is that aspect of your life which you have got to address, because if you do not, you are going to be back here we suspect. Do you understand that? 13. So, we impose the

following sentences upon you; on Count 1, you are sentenced to 1 month's youth detention. On Count 2, to 2 weeks' youth detention, concurrent. In relation to the breach offences, the Community Service Order imposed on 19 th November 2020 will be continued without variation, and finally, we impose a Probation Order for 1 year. 14. We order the forfeiture and destruction of the drugs. Authorities AG v Nafkha 2000/86. AG v Nafkha [2000] JLR Notes-56c Campbell -v- AG

[1995] JLR 136 . Criminal Justice (Young Offenders) (Jersey) Law 2014 Criminal Justice (Community Service Order) (Jersey) Law 2021 Rimmer -v- AG

[2001] JRC 373 AG -v- Picot

[2021] JRC 270 AG -v- Oeillet

[2020] JRC 125 AG -v- Goodchild

[2016] JRC 128B AG -v- Phillips

[2015] JRC 033 Bonnar and Noon -v- AG

[2000] JLR 626 AG -v- K

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