

JERSEY / JUDGMENT

AG v Cunningham [2021]

JRC 170 (14 June 2021)

[2021] JRC 170

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[2021] JRC 170 [New search] [Help] Appeal - Magistrate's Court appeal by way of case stated. [2021]JRC170 Royal Court (Samedi) 14 June 2021 Before : R. J. MacRae , Esq. , Deputy Bailiff, and Jurats Christensen and Averty The Attorney General -v- Gareth Francis Cunningham Crown Advocate L. B. Hallam for the Crown. Advocate S. E. A. Dale for the Defendant. Extempore JUDGMENT DEPUTY BAILIFF: 1. This is an appeal by the Crown supported by the defence by way of case stated in this matter. We note that pursuant to Article 21 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 (1) Any person who was a party to any proceeding before the Magistrate's Court or is aggrieved by the conviction, order, determination or other proceeding of the Magistrate's Court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Magistrate to state a case for the opinion of the Royal Court on the question of law or jurisdiction involved: 2. And pursuant to Article 22 (1) of the Law: "(1) On an appeal by case stated under Article 21, the Royal Court shall hear and determine the question or questions of law arising on the case and may reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the Magistrate's Court, with its opinion thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as may seem fit." 3. Both parties are agreed that the Royal Court should determine this matter today and not remit it to the Magistrate's Court, and that we are prepared to do. 4. The facts can be taken shortly. On 1 st March 2021 Mr Cunningham was charged by the Centenier with an offence of possession of a Class C drug. He was bailed to appear before the Relief Magistrate on 8 th March 2021. The case was adjourned for him to take legal advice. On 24 th March 2021, Mr Cunningham pleaded guilty to the offence. This offence placed him in breach of a community service and a probation order imposed by the same court on 22 nd December 2020 for other offences. The Relief Magistrate ordered that these orders continue and that there be "no separate penalty" in relation to the drugs offence. 5. We can well understand

why the Relief Magistrate imposed such an order. The point taken by the Crown on appeal with, which the defence agree, is that a court cannot impose "no separate penalty" when no other penalty is imposed on another matter before the Court for sentence on the same occasion. 6. The Relief Magistrate conceded in his reasons, when invited to state a case, that to impose no separate penalty in these circumstances was "invalid". He says, "I should have sentenced the defendant for that offence". 7. Accordingly, Mr Cunningham falls to be re-sentenced on appeal and, in these circumstances, the Court accedes to the submission that he should not be placed in a significantly worse position than he would have been had this appeal not be brought. 8. An absolute discharge is suggested as one of the appropriate sentences that might be imposed by this Court, however such a sentence is only appropriate in quite limited circumstances. 9. We do not have a statutory provision in relation to the imposition of an absolute discharge in Jersey. However, it is a suitable disposal when it is inappropriate to impose any punishment at all on the offender, which may be suitable when the offence is purely technical in nature or there are other exceptional circumstances regarding its commission. No such exceptional circumstances appear to apply in this case. Mr Cunningham has over 33 drugs offences recorded against him. 10. There is previous Jersey authority in respect of the imposition of a conditional discharge. We note, pursuant to the relevant English legislation, which of course has no application here, that a conditional discharge can be imposed for a maximum of three years. The English Court may discharge the defendant from the proceedings on condition that he commits no offence during such a period, not exceeding three years from the date of order, as may be specified in the order. If the offender complies with this condition, then they will hear no more about the matter, but if they re-offend within this period then they may be re-sentenced for the original offence. 11. As we have said the sentence of conditional discharge is known to the Courts of Jersey and has been imposed or referred to by the Court - albeit infrequently - for example in the following cases: (i) In the Court of Appeal decision of *James Reid Fleming -v- AG* (Unreported 7 th April 1986) David Calcutt QC presiding, noted that the appellant's wife had been given a conditional discharge in the Royal Court. (ii) The following year in the case of *AG -v- David Clayton* (Unreported Judgment 13 th February 1987) the Royal Court sentenced the defendant to a conditional discharge for one year: "The conditions being that he shall not re-offend and that he shall pay the sum of £750 by way of costs." (iii) A conditional discharge was imposed by the Court in relation to two offences in *AG -v- Paul David Le Geyt*

[2010] JRC 007 . The condition was that the defendant not re-offend within six months of his release from custody in that case. William Bailhache, Deputy Bailiff, at paragraph 5 of the judgment said; "...on Counts 8 and 9 the Court is going to order a conditional discharge, the condition is that you do not re-offend for six months from your release so it follows that if you do re-offend in that period you are liable to be sentenced for that again ..." 12. We are pleased to hear that Mr Cunningham is complying with the probation order and the community service order imposed in December of last year, that he is looking for work and generally making progress in his life. 13. We have considered the possibility of

making a binding over order, which would have had a similar effect to the order that we propose to make today. 14. In our view, the appropriate sentence to impose today is a conditional discharge for the period of six months. What this means Mr Cunningham is that if you do not reoffend for six months from today then you will hear no more about this matter, but if you do reoffend within the six months from today then you will be resentenced for this offence. Do you understand? Thank you. Authorities Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 James Reid Fleming -v- AG (Unreported 7th April 1986). AG -v- David Clayton (Unreported Judgment 13th February 1987). AG -v- Paul David Le Geyt

[2010] JRC 007 . Page Last Updated: 24 Jun 2021 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: https://www.bailii.org/je/cases/UR/2021/2021_170.html

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