

JERSEY / JUDGMENT

AG v Czarnecki [2020] JRC 177 (04 September 2020)

[2020] JRC 177

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JUDGMENT

THE BAILIFF: 1. You are to be sentenced for three counts; one of common assault, one of attempting to pervert the course of justice and one of being involved in the fraudulent evasion of the prohibition on the importation of a controlled drug, in this case cannabis resin. 2. We do not need to set out the facts in any great detail because they have been referred to fully by the Crown in the statement of facts. With regard to the common assault, we note this took place in the context of your relationship with your former partner and accordingly this is an instance of domestic violence. 3. The Court has on many occasions made reference to the seriousness of domestic violence, as the Court said in AG v Crabtree

[2017] JRC 143 this is: "in part because the victim is often in a uniquely vulnerable position where the aggressor is concerned, and psychological scarring is often deeper." The violence involved in this case was not of the worst kind. It was a single slap to the face during the course of a prolonged domestic argument between yourself and the victim. You spat at her, called her a "slut" and the argument lasted for some 90 minutes. 4. The attempt to pervert the course of justice is also a serious offence. You sought to fabricate a statement which your former partner was to make withdrawing her allegations against you. We note that this too was, of course, in the context of an incident of domestic violence and we accept the Crown's submission that the public policy articulated in the AG v Dias

[2017] JRC 114 in connection with offences of rape or sexual offences should also extend to those of domestic violence where the victim is often in a vulnerable position. We note, with approval, the statements of the Court in AG v Dominguez

[2020] JRC 010 in which the Court said: "Perpetrators of domestic abuse must understand that attempts to intimidate or persuade their victims not to give evidence will be dealt with severely by the courts." 5. With regard to the importation of cannabis we accept that you are dealing with it on behalf of someone else and that you anticipated getting a financial reward. Although your role was relatively minor, nonetheless everyone who acts in connection with the chain of supply in unlawful drugs is playing a significant role in this criminality. The amount of drugs involved takes it below the guidelines of the case of Campbell v AG

[1995] JLR 136 and we note that you provided the police with assistance in connection with this offence and that is to your credit. 6. Other than the characterisation which we have given these offences to which we have already made reference we do not think there are any aggravating features that we should take into account accepting, of course, the Crown's suggestion that the attempt to pervert the course of justice is more serious, in other words aggravated, because it occurs in the context of domestic violence, but we have already made reference to that. 7. We have read your letter to the Court and the other letters provided to us through your counsel by your friends and former employer. They speak well of you as a hard worker and show how much this offending is out of character and that you are seen by many as a good and supportive friend. We accept this offending was out of character and that is borne out by your lack of any criminal record for which you are entitled to full credit. 8. Having made all of the allowances for the appropriate mitigation, which is significant in this case, we believe that the correct sentences are: for common assault, 3 months' imprisonment; for attempting to pervert the course of justice, 12 months' imprisonment; and for the importation, 5 months' imprisonment, all consecutive resulting in a total of 20 months' imprisonment. 9. We also order the forfeiture and destruction of the drugs seized in this case. 10. We turn now to the question of deportation. We apply the tests set out in *Camacho v AG*

[2007] JLR 462 by asking ourselves the two questions set out for in that case: (i) Is your continued presence detrimental to the island? (ii) If so, what will be the effect of the deportation on family rights that you have, pursuant to Article 8 of the European Convention of Human Rights or that others, innocent persons, have who are connected with you. 11. With regard to the first part of the test we are satisfied that it is passed and that indeed is accepted by you through your counsel. The importation of drugs is a serious matter and has the potential to cause harm to members of the community and we also consider the attempt to pervert the course of justice as a material consideration. We are not at all convinced that you have understood the seriousness of the offending or had any appreciation of it when you carried out these offences. In our view the first limb of the *Camacho* test is passed. 12. With regard to the second part of the test you are a national of Poland and although you have some friends in Jersey the only members of your family who live here are your brother and his immediate family. We understand that your ex-partner has returned to Poland and that you have other family, your daughter and a mother, in that country. We do not think that the Article 8 considerations are material in this case and we therefore conclude that the second limb of the *Camacho* test is passed. 13. Accordingly we will recommend that you be deported at the conclusion of your sentence. That is the sentence of the Court. *Authorities AG v Crabtree*

[2017] JRC 143 . *AG v Dias*

[2017] JRC 114 *AG v Dominguez*

[2020] JRC 010 . *Campbell v AG*

[1995] JLR 136 . Camacho v AG

[2007] JLR 462 . AG v Safapour

[2019] JRC 239 AG v Safapour

[2020] JRC 003 AG v Rawlinson

[2019] JRC 121 . AG v Bulpin

[2016] JRC 124 AG v Elvas

[2015] JRC 069 AG v Horn

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