

JERSEY / JUDGMENT

AG -v- Da Costa [2015]

JRC 139 (26 June 2015)

[2015] JRC 139

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JUDGMENT

THE DEPUTY BAILIFF: 1. You are to be sentenced today for three charges, all quite separate. The first charge is that you obstructed a police officer in the execution of his duties by refusing to obey his order; the second is the possession of a controlled drug, specifically 107 diazepam tablets with a street value of £107, and the third is one of breaking and entry and larceny of a dwelling. 2. You pleaded guilty to the first two charges but not guilty to the breaking and entry and larceny and you were tried before the Assize Court and were convicted of that charge. During the course of your trial you maintained that the reason for your fingerprint being found in the victim's flat was because you had smoked cannabis there together. Clearly the Jury did not believe you. You demonstrate no remorse for this last charge as you continue to maintain your innocence. 3. In short, therefore, the Court is faced with the fact that firstly, in respect of the most serious count, you do not have the benefit of a guilty plea and you show no remorse. Secondly, you do not have a good record with a number of relevant previous convictions including illegal entry on one occasion, and thirdly, you are assessed as posing a high risk of reoffending. Accordingly, the Court believes that the Crown's starting position of 3 years is correct and that a custodial sentence is, in this case, inevitable. 4. We have however considered the mitigation available to you as put forward by your counsel, and all of the reports and the documents available to us and, taking all of that into account, we feel able to reduce the Crown's conclusions. 5. In our view, the correct sentence, taking all of the mitigation into account, but including our concern for the challenges faced by police officers in trying to police the streets of St Helier at night in difficult circumstances, the appropriate sentence is as follows:- In respect of Count 1; 1 month's imprisonment, in respect of Count 2; 1 month's imprisonment, concurrent, and in respect of the breaking and entry and larceny; 2 years' imprisonment, the 2 years' imprisonment to be consecutive to the penalty on Count 1, making a total of 2 years and 1 month's imprisonment. 6. We also order the forfeiture and destruction of the drugs. 7. We now turn to the recommendation made by the Crown for deportation and we apply the well-known two-stage test set out by the Court of Appeal in AG-v-Camacho

[2007] JLR 462 by asking ourselves two questions. Firstly, whether your continued presence in Jersey is detrimental to the community and, secondly, whether or not deportation would be disproportionate, considering your rights and that of others under the European

Convention of Human Rights and especially Article 8 which is that of respect for family life. 8. On the first stage we are wholly satisfied that your continued presence would be detrimental to the Island for the reasons set out by the Crown in its conclusions. We have given anxious consideration to the second stage of the test but we do not see how the interests of innocent others would be adversely affected by the recommendation sought by the Crown nor, in all of the circumstance known to us and set out in the social enquiry report and referred to by the Crown, would, at this point, your human rights be disproportionately affected. 9. Accordingly, we recommend that you are deported from the Island at the conclusion of your sentence. Authorities AG-v-Camacho

[2007] JLR 462 . European Convention of Human Rights. AG-v-Da Silva

[1997] JLR N 14a. R-v-Nazir [1980] 2 All ER 880. Page Last Updated: 27 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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