

JERSEY / JUDGMENT

AG -v- Da Silva [2008]

JRC 033 (03 March 2008)

[2008] JRC 033

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE DEPUTY BAILIFF: 1. This matter came before me this morning having been adjourned from 25 th February for legal argument. The background is as follows: On 17 th August, 2007 the defendant pleaded guilty before this Court to an offence to supplying Class A drugs. Sentence was postponed until 26 th November. On that occasion the Superior Number, Commissioner Hamon presiding, imposed a sentence of 5 years' imprisonment. The Court adjourned the Attorney General's application for a Confiscation Order until 26 th February, 2008 in order that certain enquiries could be made in Madeira. The matter came before me on 25 th February with a view to adjourning the case until 5 th March because of difficulties in convening the Superior Number for 26 th February. On that occasion it was pointed out to the prosecution that more than six months had passed since the date of conviction, namely 17 th August, 2007. That period is relevant because of the terms of Article 4 of the Drug Trafficking Offences (Jersey) Law 1988 which confers upon the Court the power to postpone determination of whether a confiscation order should be made until after sentencing. Article 4(3) provides as follows:- "Unless it is satisfied that there are exceptional circumstances, the Court shall not specify a period which-

- (a) by itself; or
- (b) where there have been one or more previous postponements under paragraph (1) or (4), when taken together with the earlier specified period or periods, exceeds 6 months beginning with the date of conviction." 2. It is accepted that the Court, on 26 th November was not asked to and did not consider whether there were exceptional circumstances enabling it to postpone the making of a confiscation order beyond the six months period, which expired on 17 th February, 2008. The issue therefore is whether the Court now has jurisdiction to make a confiscation order. 3. This sort of situation caused many difficulties in England in relation to the equivalent legislation in that jurisdiction and led to conflicting decisions, with some divisions of the Court of Appeal holding that jurisdiction had been lost and others holding to the contrary. The matter was authoritatively determined by the House of Lords in R v Sonajee

[2006] 1 AC 340 . It was there held that the rigid distinction between mandatory and directory requirements had outlived its usefulness and the correct test was to concentrate on the consequences of non-compliance with any statutory procedural requirements such as time limits, and accordingly, whether Parliament could fairly be taken to have intended total invalidity in the case of non-compliance. 4. In Sonajee itself, because of listing difficulties a confiscation order had not made until nearly two years after the date of conviction, and it was accepted that the judges who had adjourned the determination on various occasions had given no consideration to the question of whether there were exceptional circumstances. However, the House of Lords held that these breaches of the required statutory procedure did not invalidate the confiscation order eventually made. The House held that the legislature placed a high priority on the making of confiscations orders; that the legislation was to be construed purposively rather than restrictively; that the prejudice to the accused was not great; and that it was decisively outweighed by the countervailing public interest in not allowing a convicted offender to escape confiscation for what were no more than bona fide errors in the judicial process. 5. In my judgment the considerations which weighed with their Lordships in Sonajee lead to a similar approach being appropriate in Jersey. It is true that, in the particular confiscation provisions considered in Sonajee , there was a duty on the Court to determine whether confiscation should be ordered and some of the Law Lords placed some reliance on this. Conversely the 1988 Law merely confers a power on the Court to make a confiscation order. However I do not consider this difference significant. The public interest in confiscating the proceeds of drug trafficking and other crimes is just as strong in Jersey as it is in the United Kingdom. All the other factors mentioned by the House of Lords in favour of not invalidating an order for procedural defects are equally applicable in Jersey and I find them persuasive. 6. Accordingly I hold that, despite the fact that this matter has been postponed for more than six months without consideration of whether there are exceptional circumstances, there is jurisdiction for the Court to make a confiscation order. 7. The question then arises as to whether, as a matter of discretion, the Court should consider whether to make an order notwithstanding the passing of the six months period. I am satisfied that, if the Court on 26 th November had been asked to consider whether there were exceptional circumstances, it would certainly have done so on the grounds that enquiries had to be made in Madeira and these were likely, as turned out to be the case, to take some time. I also note that the six months period has only been exceeded by a matter of days. 8. Accordingly I find that the Court should proceed in its discretion to consider the question of confiscation and I understand a date has now been fixed for the 5 th March, so I adjourn this case until that date. Authorities Drug Trafficking Offences (Jersey) Law 1988. R v Sonajee

[2006] 1 AC 340 . Page Last Updated: 15 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2008/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-da-silva-2008-jrc-033-03-march-2008>

Prepared on 23 October 2026 · Esheria