

JERSEY / JUDGMENT

AG v Da Silva [2010] JRC 216 (26 November 2010)

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JUDGMENT

THE BAILIFF: 1. As the Court said in the recent case of AG v Carne

[2010] JRC 178B, the duty to file a tax return is an obligation owed to the whole community in order to ensure that residents pay the appropriate amount of tax on their income, and of course the provision of our public services depends upon the collection of income tax, which in turn depends upon the filing of returns. 2. In this case the defendant failed to file tax returns for the tax years 2005-2008 inclusive, despite some ten reminders including three specific letters reminding him of the penalties and a telephone call. Furthermore in a subsequent telephone call he said that he would file them by the end of the week but he did not do so. 3. In mitigation it is pointed out by Advocate Grace, with considerable force, that this case is very different from all the previous cases. Most of them preceded the introduction of ITIS and therefore the failure to file a tax return meant that there were arrears of tax because it had not been collected; there had therefore been a benefit to the defendant. In the more recent case of Carne, although this was post the introduction of ITIS, the defendant there was self employed and therefore ITIS had no effect, and again the defendant had benefited by not filing tax returns. Advocate Grace points out that this case is very different. The defendant has been paying throughout under ITIS for all the relevant years. Because he hadn't filed a return he was in fact paying at the maximum rate of 20%, whereas, had the returns been filed, he would have been paying at a lesser rate. It transpires therefore that he has in fact overpaid income tax for the relevant years by just over £2,000. 4. The Crown points out that the maximum penalty for failing to file a tax return was increased from £2,000 to £5,000 in May 2009 and that this should therefore be taken into account in assessing the fine to be imposed on this occasion. However, although in one sense these are continuing offences, the fact is that they were complete once the tax returns were not filed when they should have been and all the offences were complete prior to the increase in the maximum sentence. We think, therefore, that Article 7 of the European Convention on Human Rights means that we must proceed on the basis of a maximum fine of £2,000 for these particular offences. 5. Advocate Grace has pointed out the defendant has no previous convictions and that he had always filed his returns and paid his tax prior to the introduction of ITIS. The reason that he had failed for so long to

file returns now, she says, is because he felt he was paying his way and therefore that it was simply an administrative matter which was not prejudicing the public. 6. She has also prayed in aid the question of delay. She says that the Crown has taken too long to prosecute this case. She refers to the comments of the Court in *Carne*, particularly at paragraph 4 where the Court felt that an excessive number of reminders had been issued. It is clear from what the Crown Advocate has said to us this morning that the Comptroller is concerned at the comments of the Court in *Carne* and has interpreted them as meaning that he ought to be moving to a prosecution swiftly. We do not think that the Court in *Carne* was saying that. It is clear that the Court in that case accepted that reminders should be sent, and we would certainly endorse that. We do not think that the Crown should move too swiftly to prosecution, but we entirely endorse the comments of the Court in *Carne* that an excessive number of reminders spread over a long period is doing no one any favours. It is not doing a defendant any favours because, if there were an earlier prosecution, it would reduce the number of years for which offences were committed and therefore the level of fine. Nor is it doing the community any favours because an earlier prosecution would almost certainly result in subsequent returns being filed on time and the appropriate information being made available to the Comptroller. 7. Our view accords with that of the Court in *Carne*, which is that, of course the Comptroller should give people warnings that they are at risk of prosecution and should not rush to prosecute, but the sort of delays which took place in *Carne* and in this case, where year after year passes with repeated reminders, is not satisfactory. It means that people begin to ignore the reminders and then they are taken by surprise when there is a prosecution. So we do urge the Comptroller to strike an appropriate balance between giving reasonable periods of time to file returns, even if they are late, but not letting matters slide for as long as they were allowed to slide in *Carne* and in this case, and indeed in some of the other cases previously. 8. In our judgment the key issue in this case is the fact that the defendant has been paying his tax through ITIS throughout and that there has therefore been no prejudice to the community in this particular case. On the contrary he has overpaid. As against that, it is still necessary for tax returns to be filed so that the correct amount of tax can be assessed. Nevertheless, in all the circumstances, we think the fines are too high. The level moved for is in fact more than that imposed in any of the previous cases and we think this is a less serious case than most of those, for the reasons we have given. 9. The fine, therefore, will be one of £500 on each count, making a total of £2,000. We do not agree that further allowance should be made for the fact that a late filing fee has been paid. Advocate Grace has asked for time to pay and says the defendant can pay at £300 per month. We are willing to accept that and therefore we give 7 months in which to pay the fine. There is 1 month imprisonment in default, consecutive, on each count. 10. Finally we come to the question of costs, Advocate Grace has urged that the costs are excessive. We do not agree. The fact is that it is entirely the defendant's fault that this prosecution has had to be brought. He was given every opportunity to file the returns and indeed if he had filed them at any time before the 8th September, 2010, he would have avoided paying any costs. We are in no doubt that the costs incurred have been well in excess of £2,000 and we

see no reason, therefore, why the defendant should not reimburse the tax payer for the cost which the tax payer has incurred, which would not have been incurred had the defendant fulfilled his duty. We therefore do order him to pay costs of £2,000. Authorities AG v Carne

[2010] JRC 178B . European Convention of Human Rights. AG-v-Blondel 2002/147. AG-v-Warden 2000/153. Page Last Updated: 02 Aug 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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