

JERSEY / JUDGMENT

AG v Davison [2019] JRC 235 (06 December 2019)

[2019] JRC 235

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JUDGMENT

THE COMMISSIONER: 1. The defendant stands to be sentenced for one count of illegal entry and larceny. He had been employed at the Pomme D'Or, but that employment had terminated on 18th August, 2019, after a missing laptop and projector had been located in his room. Within a couple of days he had secured a new job with The Royal Pub in St Martin, but he says that fell through after his respective new employer spoke with the management at the Pomme D'Or. 2. Under the influence of alcohol and he says " as an act of revenge" he entered the Pomme D'Or at 3:14 in the morning of 24th August, 2019, using a staff key card which had been created in the name of a manager at the Pomme D'Or whilst the defendant was employed there. He was wearing a fur lined hooded parka jacket with the hood up and he was caught on CCTV looking down causing his face to be shielded from the camera. He used the same key card to gain access to a manager's office where he stole a safe containing cash and other documents. The cash, amounting to £3,334.32, belonged to the staff and not to the Pomme D'Or. The defendant was then arrested boarding a flight to the United Kingdom the next day and £1,463 in cash was recovered from him. 3. The defendant, who is 31, has a bad record including convictions for burglary, theft and robbery; the most recent being in 2018 for which he was sentenced to 16 months' imprisonment by the Guernsey Magistrate's Court. He is assessed at a moderate risk of reconviction and the prosecution seek a sentence of 2 years' imprisonment for this offence. 4. The case of AG v Gaffney

[1995] JLR Note 22b identifies 18 months as the appropriate tariff for this kind of offence on a guilty plea, and we have also been referred by Crown Advocate Hollywood to AG v Frescata

[2018] JRC 202 and AG v O'Shea

[2011] JRC 136A . Crown Advocate Hollywood says that this offence is aggravated by the defendant's previous convictions for dishonesty, the fact that he was under the influence of alcohol, disguised his identity from the CCTV and the use of the key card which involves a breach of trust. 5. In terms of mitigation the defendant has pleaded guilty and he has expressed remorse and it is correct that there have been periods during his life of gainful employment. Advocate McCormick says 2 years is too high a sentence to impose but we disagree. In our view this offence was premeditated and the money stolen belonged to employees at the Pomme D'Or who are still, as we understand it, out of pocket.

Furthermore, as we have just said, he has a bad record for dishonesty being sentenced for burglary and theft as recently as April 2018. 6. Despite our sympathy with the employees the defendant has no money, no connection with the Island and has said that on release will be returning to England. The Court in our view should not make a compensation order unless it is satisfied that it can be enforced, and we are not satisfied that in these circumstances any compensation order that we make could be realistically enforced against the defendant, so we decline to make a compensation order. 7. You are sentenced to 2 years' imprisonment. Authorities AG v Gaffney

[1995] JLR Note 22b. AG v Frescata

[2018] JRC 202 AG v O'Shea

[1997] JRC 218 . Criminal Justice Compensation Orders (Jersey) Law 1994. AG v Da Silva

[1997] 218. AG v Lynn

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