

JERSEY / JUDGMENT

AG -v- De Barros [2013]

JRC 079 (19 April 2013)

[2013] JRC 079

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JUDGMENT

THE DEPUTY BAILIFF: 1. You are here to be sentenced on an Indictment which contains six counts - drunk and disorderly; conduct likely to cause a breach of the peace; larceny; grave and criminal assault; larceny and a second charge of grave and criminal assault. The two most serious charges there are the two charges of grave and criminal assault. They took place in the early hours of the morning on the streets of St Helier and they involved kicks and punches, the kicks being delivered to two different men and were delivered to the face when the victim was crouched close to or on the ground. One victim suffered nasty injuries, although they do not appear to have been permanent, the other victim fortunately suffered no serious injury. You told the police at the time that you were drunk. The Court has seen CCTV footage of the second assault which took place about an hour after the first one and, like the first assault, it was completely unprovoked and, the Court thinks, vicious. We add that both you and the victim are lucky that the injuries were not more serious. 2. The Court has said on many occasions that it expects to impose sentences of imprisonment where the charge involves drunken violence on the streets of St Helier at night, unless there are exceptional circumstances. In this case we have noted carefully the mitigation which has been very fluently advanced by your counsel; you have pleaded guilty at an early stage; you have cooperated with the police; you are of previous good character; you have a good work record and a reference which we have read carefully when we retired. You have relative youth on your side because you are aged only 22 and, of course, we have looked carefully at the background report which has been prepared. In our view none of this amounts to exceptional circumstances and we think that the custody threshold is very firmly crossed. 3. The offences which form the different counts are all capable of giving rise to consecutive sentences but on grounds of totality we are not going to treat them in that way. We think the Crown's conclusions are broadly right in terms of the quantum. 4. You are sentenced on Count 1; 1 week's imprisonment, on Count 2; 1 month's imprisonment, on Count 3; 1 month's imprisonment, on Count 4; 18 months' imprisonment, on Count 5; 2 months' imprisonment and on Count 6; 2 years' imprisonment. However, they will all run concurrently except Count 2, which is to run consecutively. Accordingly, you are sentenced to a total of 2 years and 1 month's imprisonment. 5. We are not going to impose a Compensation order despite being invited to do so by your counsel, because you are being sent into custody and it does not appear that you have

the means with which to pay it. 6. We have gone on to consider the question of deportation as invited by the Crown. The law here is that following the case of the Court of Appeal decision of *Camacho-v-AG*

[2007] JLR 462 , and indeed the practice that has been adopted by this Court for many years, we have regard to two tests. Is the continued presence of the offender in the Island to the detriment of the Island, and, secondly, what effect would the order recommending deportation have upon others not before the Court and who were innocent persons. The second test is not material in this case because, as your counsel conceded, there are no family members whose interests need to be considered, who live in Jersey. 7. As to the first part of the test, it was said in *Camacho* that the first limb has seldom given rise to difficulty. The continued presence of the offender being "to the detriment" and other formulations such as not in the public interest or not conducive to the public good, have been applied in England broadly, in line with the dictum of LJ Judge, as he then was, in *N (Kenya)-v-The Home Secretary*

[2004] INLR 612 where he said this:- "The "public good" and the "public interest" are wide-ranging but undefined concepts. In my judgment ... broad issues of social cohesion and public confidence in the administration of the system by which control is exercised over non-British citizens who enter and remain in the United Kingdom are engaged. They include an element of deterrence ... so as to ensure that they clearly understand that, whatever the circumstances, one of the consequences of serious crime may well be deportation." The Court of Appeal went on in *Camacho* to say:- "In the Bailiwicks, similar principles are applied. In Jersey, the courts have sometimes expressed it in terms of abuse of privilege." 8. There is no rule that there must be more than one offence for the first part of the *Camacho* test to be satisfied. The Court has to have regard to the public good and the public interest, as mentioned by LJ Judge in the quote which I have cited, and that is a test which has been frequently applied here. The Court has absolutely no hesitation in making a recommendation for deportation. People who come to our community should live by our rules and we have no time for conduct of this kind; it was a vicious assault and, in our view, deportation is entirely appropriate and we make that recommendation accordingly. 9. Accordingly you are sentenced to 2 years and 1 month's imprisonment and there will be a recommendation for deportation. *Authorities Licensed Premises (Exclusion of certain Persons)(Jersey) Law 1998. Camacho-v-AG*

[2007] JLR 462 . *N (Kenya)-v-The Home Secretary*

[2004] INLR 612 . *Harrison-v-AG*

[2004] JLR 111 . *AG-v-Miller*

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