

JERSEY / JUDGMENT

AG v De Freitas [2022]

JRC 166 (05 August 2022)

[2022] JRC 166

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

JUDGMENT

THE Lieutenant BAILIFF: 1. Maria do Carmo Fernandes De Freitas, over a period of some seven years you deceived the Social Security department by denying that you owned a property in Madeira. Over this seven- year period you dishonestly received Income Support in the total sum of over £108,000. 2. On the initial form, by virtue of which you applied for income support, against the question whether you owned any property or land anywhere in the world, you answered, "No" . Let us not mince our words, Mrs De Freitas: this was a lie. You had owned your Madeiran apartment for some five years by this time, and despite the fact that you had told this lie you signed a declaration of truth at the end of the form. Had you been honest with Social Security right from the outset you would not have been entitled to payment of any Income Support at all. 3. This is not a case such as AG v Browne

[2018] JRC 070 , where circumstances changed, such that you were entitled to the award at first, but later lost that entitlement. No, your claim was dishonest from day one and that is a factor that puts your offending into the more serious category, and no doubt your Advocate has told you that. 4. As we have said, you embarked upon a dishonest course right from the start, but your dishonesty did not end there. Social Security became suspicious and wrote to you in April 2019 asking if you or your partner owned any property in any part of the world that you had not yet disclosed. You responded that you had previously owned a property in Madeira, but no longer did. This was another lie, but you and your partner signed a declaration that the information that you had provided was complete and correct. You knew this to be false, just as it had been seven years before, when you first dishonestly claimed the benefit. 5. You then ignored further correspondence from Social Security for some two years. We have read in the pre-trial report that you admit to being an avoidant person, but that is in our judgment no excuse for effectively compounding your dishonest behaviour. 6. We take into account the mitigation that is available to you, which has been so ably presented to us by Advocate Tremoceiro. We give you full credit for your guilty plea, which was entered at the first opportunity in the Magistrate's Court. We note that you are repaying the debt, having now repaid £15,264.60, though we also note that you still owe over £93,000, and that at the current rate of repayment it would take you nearly 10 years to clear it. 7. We understand that you have finally decided to sell your apartment and indeed

we hope that you do in order more quickly to clear the outstanding balance. It is a debt to this society, Mrs De Freitas, and we hope that you have finally come to realise that. 8. Your Advocate has urged upon us amongst other things that you were cooperative in interview. We are more inclined to agree with the Crown's assessment that you were broadly cooperative. The pre-trial report at paragraph 4 describes you as, "accepting limited responsibility for this offence", and it seems from other parts of this report that some of your answers to the Probation officer's questions were not as truthful as they might have been. There is a significant difference between being an avoidant person and an untruthful one; the extent of your true remorse unfortunately remains questionable. 9. You have no previous convictions and are therefore to be sentenced on the basis that you are a person of good character. That is a major mitigating factor. You seem to have a fine work ethic, and in the letters of support from your family and friends that we have read, you are described as likeable, trustworthy, hardworking and in similarly complimentary terms. 10. All in all, the mitigation that is available to you is substantial, and as we have said we have taken it carefully into account in determining the appropriate sentence. But as was observed by the Court in AG v Good and Moody

[2015] JRC 027 : "...income support fraud is extremely serious. The legislature lays down a maximum of seven years' imprisonment, which shows how seriously the legislature treats it and it is, for the absolute avoidance of doubt, as bad a fraud as any other form of fraud. You are cheating every member of our community by taking monies to which you are not entitled. It is an affront to everybody who is just as badly off as you are, but they do not cheat and they tell the truth." 11. To that quotation we would add this: you were not and are not as badly off as some others. You have an apartment that is up for sale for over €130,000. 12. In the case of Good it was only because of exceptional circumstances that the defendant did not go to prison. As you have heard the Crown Advocate tell us, "benefit fraud is an affront to all who pay their contributions and as a result", he says, "the starting point must be a custodial sentence". 13. True it is that, in a very few cases, a custodial sentence is not passed, but these cases have all featured exceptional circumstances, such as AG v Goncalves

[2022] JRC 097 to which Advocate Tremoceiro has invited our attention. The Court in that case was able to find exceptional circumstances taking a number of factors into account, the most singular of which was the very significant delay that had occurred prior to the case being brought to Court. There has been no delay in your case; if there had been, we might very well have considered it to be an exceptional circumstance. 14. We have taken careful note of the impact that a custodial sentence would have upon your 12-year-old child. In AG v Galluzzi

[2021] JRC 265 , the defendant had three children and the Court said this at paragraph 2(vi) of its judgment: "The impact on her youngest child in particular, aged 10, is desperately unfortunate, but it is frequently the case sadly that offenders of this type have families who inevitably suffer the consequences" 15. In your case we cannot find exceptional

circumstances. When all is said and done, this was a calculated act of serious dishonesty by which you tricked your community - and it is your community, Mrs De Freitas, for we are not going to recommend your deportation - out of a large sum of money over a prolonged period, despite being given every opportunity to put matters right. 16. Not only must you be punished appropriately for what you did, and judging by the conclusions of the pre-trial report you seem to accept that, but also the message must once again go out loud and clear from this Court, that those who commit Income Support frauds or indeed any other serious Social Security fraud, will face an immediate custodial sentence, unless there are exceptional circumstances. 17. It follows, not without regret, that a custodial sentence in your case is inevitable, but we do find that the mitigation justifies us in reducing the Crown's conclusions considerably. This is not to criticise the Crown in any way - the Conclusions were quite right and proper; but as an act of mercy, principally because of the family circumstances, we are going to reduce those conclusions. 18. The sentence will be one of 15 months' imprisonment. 19. We make no recommendation for your deportation. 20. We make no compensation order, and there will be no order as to costs. Authorities Income Support (Jersey) Law 2007. AG v Browne

[2018] JRC 070 . AG v Good and Moody

[2015] JRC 027 . AG v Goncalves

[2022] JRC 097 . AG v Galluzzi

[2021] JRC 265 . AG v Bradley & Bradley

[2021] JRC 285 . AG v Vieira

[2019] JRC 226A . AG v Gouveia

[2019] JRC 224 . AG v Bradshaw

[2017] JRC 119 . AG v Turner

[2012] JRC 147 . AG v Such

[2012] JRC 155 R v Graham and Whatley

[2005] 1 Cr App R(S) 115 . Page Last Updated: 26 Oct 2022 Back to top About JLIB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001- This website is not compatible with your web browser. You should install a newer browser . If you live in Jersey and need help upgrading call the States of Jersey web team on 440099. 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/2022/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-de-freitas-2022-jrc-166-05-august-2022>

Prepared on 23 October 2026 · Esheria