

JERSEY / JUDGMENT

AG -v- De Lima [2015]

JRC 167 (14 August 2015)

[2015] JRC 167

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JUDGMENT

THE BAILIFF: 1. This is a very sad case. The defendant, now aged 19, drove a motor vehicle uninsured at the age of 18, at a speed of between 78 and 84 mph along the Five Mile Road. When I say a motor vehicle, it was in fact a Ford Focus RS with a 2.5 litre turbo-charged engine producing some 300 horsepower and was therefore a very powerful motor car. He saw the victim's car first when it was about 60 metres away; he did not slow down appreciably and, at the point of impact, it is assessed he was driving at between 60 and 70 mph. The victim was a young man of 19. As a result of the collision he has become, so it appears, a tetraplegic. The brain damage is such that he has no control over his bodily functions. His eyes are open but he cannot communicate and it is impossible to tell how aware he is of his condition. As far as one can tell no further improvement is anticipated, at least in the short term, if ever. His family is understandably devastated. The 19 year old son, stepson, grandson, brother, nephew has gone, seemingly forever. No sentence imposed on the defendant can begin to equate to their loss or to his. 2. The defendant is a young man of good character; he has made a foolish mistake which has had catastrophic consequences. Many of us have made foolish mistakes of one kind or another, at his age in particular, and it has been a matter of luck as to whether there have been no consequences, mild consequences, or horrific consequences, as in this case and as in the case of AG-v-Sansom

[2004] JRC 101 and no sentencing court can feel comfortable recognising as we do how the sentence is affected by apparently arbitrary factors. On the information before us it is as if the victim had died and, indeed, it may be worse because his family cannot grieve fully as he is still alive. 3. Advocate Grace is right to say that we must focus upon the driving of the defendant and we have done that. In our view it clearly passed the custody threshold and had the defendant been an adult there is no question at all but that a custodial sentence would have been imposed and so our question now is whether or not, as a result of the Criminal Justice (Young Offenders)(Jersey) Law 1994 it is still right that a custodial sentence be imposed. Clearly Article 4(2)(a) and (b) of that Law do not apply and we have had to consider whether or not this is an offence or, given the uninsured driving as well, the totality of the offending is so serious that a non-custodial sentence cannot be justified. 4. After careful consideration, in our view, a non-custodial sentence cannot be justified

and we say that substantially because of the speed at which this vehicle was being driven. There is an all-Island speed limit of 40 mph and it appears that this vehicle was being driven at nearly twice that speed. The speed limits are there for public protection and the speed driven in this hugely powerful motorcar was such that the defendant probably did not have time to react to the situation which came upon him as the victim's car emerged from the side road. This is not a civil case and we are not here to assess any contributory negligence and I therefore just want to say something about some of the contentions from Advocate Grace that we ought to have regard to whether the victim might or might not have been drinking or might or might not have been taking cannabis, or might or might not have been in some way responsible for the accident. 5. For the purposes of the sentence to be imposed we do not consider him to be carrying any responsibility. He may have seen the lights of the defendant's car but he may well have thought, and been entitled to think, that he had time to exit safely. He could not have judged the speed of that approach, the defendant driving at some 80 mph. 6. Having decided that the offence is so serious that a non-custodial sentence cannot be justified, we then have had to consider how long the non-custodial sentence should be. We accept that you have genuine remorse; we accept that you are entitled to the mitigation of the guilty plea, that you are of good character, that you have youth on your side, and we have read carefully the letter which you have put before us and, for our part, although we appreciate how difficult it would be for the family of the victim, we accept that you would like to apologise to them for your terrible mistake on that occasion. But nonetheless, looking at the driving, we have had to decide what is the appropriate sentence having regard to the maximum sentence of 2 years' imprisonment which the legislature has set for dangerous driving. 7. In our view the appropriate sentence in this case is 12 months' youth detention. We were asked to have regard to the case of Sansom but we take the view that that was decided on its own facts with material which we have not seen and cannot be fully set out in the sentencing remarks of the Court on that occasion and, in any event, we note that the Court's task in the case of Sansom was made more difficult by the fact that the Crown moved for a non-custodial sentence. 8. In this case this was driving not with momentary inattention. The defendant took out, as I have said, a hugely powerful car and he used it at speeds which were achieved no doubt very quickly and which were potentially lethal and had terrible consequences in this particular case and, of course, the offence is aggravated by driving without insurance. 9. So you are sentenced accordingly to 12 months' youth detention on Count 1 and 1 month's youth detention, concurrent, on Count 2, making a total of 12 months' youth detention. You are disqualified from driving for a period of 3 years and you are required to pass the prescribed test at the end of that period. 10. I should also warn you that because a period of youth detention is being imposed, at the close of that period when you are released, you will be subject to mandatory supervision for a period in accordance with the Law. Authorities AG-v-Sansom

[2004] JRC 101. Criminal Justice (Young Offenders)(Jersey) Law 1994. Magistrate's Court Sentencing Guidelines 2015. AG-v-Luis

[2007] JRC 233 . Page Last Updated: 27 Sep 2016 BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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Prepared on 24 October 2026 · Esheria