

JERSEY / JUDGMENT

AG v de Sousa [2005]

JRC 041 (08 April 2005)

[2005] JRC 041

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JUDGMENT

THE BAILIFF: 1. De Sousa, stand up please. You have caused untold distress, quite apart from financial loss, to numerous householders by breaking into their homes and stealing their property. You have an appalling record and you have shown yourself quite unable to respond to non-custodial sentences. We take into account your guilty plea, your relative youth, your co-operation with the Police and your unfortunate

background.

We have read the letters which your counsel has placed before us and it is clear from those that you have still some support from your family, for which you may be thankful because you have let them down. We hope that your remorse is genuine. The conclusions of the Crown Advocate are very moderate and they are granted and you will be sentenced on count one to two weeks' imprisonment, on counts three to seven to two years' imprisonment, on count eight to thirty months' imprisonment and on the remaining counts on the indictment to two years' imprisonment - all of those sentences to be concurrent. 2. You can sit down for the moment please. We turn now to the issue of deportation. On 31 st October, 2003, the defendant appeared before this Court and was sentenced to fifteen months' imprisonment. The decision of the Inferior Number was that the defendant should be recommended for deportation, but that decision was reversed by a majority on appeal to the Superior Number. What the Superior Number said on that occasion was this: "If the interests to be considered were only those of the Applicant, we have no doubt that the recommendation for deportation would stand. He has been warned several times that if his criminal behaviour continued he would risk deportation. The Applicant, in short, deserves to be deported. We are obliged, however, to consider the effect upon the Applicant's family and that involves a close consideration of the interests of his wife and small child. Mrs de Sousa was born in Jersey but she speaks Portuguese and could, other things being equal, move with the Applicant to Madeira if he were deported. The difficulty is that is that things are not equal. As we have stated this young woman has very sadly been afflicted since the age of nineteen by MS and has recently been unable to work. We have received from the Neuro Care Service at Overdale Hospital a letter helpfully setting out in some detail the medical condition. Mrs de Sousa needs, and in all likelihood will need for the foreseeable future,

considerable support both medical and social. The family network which can give that social support is in Jersey and not in Madeira. The medical people by whom she has been treated and with whom she is familiar are in Jersey. We are satisfied that Mrs de Sousa cannot go back to Madeira with the Applicant if he is deported. The Convention rights of the Applicant and his wife to respect for their family life would therefore be severely affected. Against that background, the Superior Number in May, 2004, set aside the recommendation for deportation. We have now to revisit that decision, in the light of all that has happened since May, 2004. 3. Indeed, we have looked at the record in its entirety and it is the case that, since coming to Jersey, the defendant has nine times been convicted of many offences of dishonesty and violence. Most recently, he was sentenced to thirty months' youth detention in 2001, for larceny from a dwelling and for grave and criminal assault and to fifteen months' youth detention in October, 2003, which led, as we have said, to the original recommendation for deportation. 4. On 6 th February, 2004, he was imprisoned for nine months by the Magistrate for breaking and entering and larceny. On 4 th August, 2004, he appeared again before the Magistrate for offences of dishonesty and was placed on probation. During that probation order and indeed within three weeks of the 4 th August he was offending again, breaking into private property and stealing to fund a heroin habit which was costing him, we are told, about £200 a day. 5. He has been a heroin addict for a number of years. He deceived his Probation Officer during the currency of that order by denying that he was still using heroin until 11 th October 2004, when he admitted it and a methadone prescription was arranged. He is assessed by the Probation Service as being, " at very high risk of re-offending ". The report concludes that his offending behaviour cannot be managed in the community. The Alcohol and Drug Service report indicates that his demeanour during interview was surly and nonchalant. The conclusion is that his drug offending behaviour is immutable within a community setting. We have no hesitation whatever in concluding that de Sousa is a menace to this community and that his continued presence in the Island is detrimental to the interests of the community. 6. We have, however, as before to balance that conclusion with the human rights of de Sousa's wife and child and this is more difficult. We recognise that if de Sousa is deported his wife will be faced with a choice as to whether to follow the defendant to Madeira or to remain in Jersey. We assume the circumstances set out in the judgement of the Superior Number to be applicable still today. However, Madeira is part of the European Union and the standards of medical care available to Mrs de Sousa should be, to put it at its lowest, adequate. It is true that her carers would change and that she would lose the support of her extended family but that seems to us to be an unfortunate consequence of her relationship with the defendant. 7. In fact, de Sousa can have given little or no financial or moral support to his family because he has spent much of the past three years in custody. The considerable damage which this defendant has inflicted and - on the advice available to the Court - will continue to inflict on the community and on the rights of other members of this community if he remains in Jersey, outweigh, in our judgment, the possible damage to the human rights of Mrs de Sousa and her son if she elects to stay in Jersey. We will, therefore, recommend to the Lieutenant Governor that de Sousa be deported from Jersey at the conclusion of his sentence. Authorities Whelan: Aspects of Sentencing in the Superior Courts of Jersey (2 nd Ed'n): pp. 182-9. Mendes v AG

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