

JERSEY / JUDGMENT

AG v Duchesne [2004]

JRC 044 (12 March 2004)

[2004] JRC 044

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JUDGMENT

THE DEPUTY BAILIFF: 1. Mr Duchesne, blackmail is a very serious offence. In every case to which we have been referred an immediate custodial sentence has been imposed. In this case you attempted to obtain £5,000 from the victim by threatening to expose what you said he had done to you by way of sexual abuse when you were in care as a young child. 2. The Crown say that we should proceed on the basis that the allegations of sexual abuse against Mr X may or may not be true. We do not think that that is a practical or possible way of proceeding. If these allegations are true then this is clearly a strong mitigating element in your favour, notwithstanding that blackmail remains a very serious offence. 3. If, on the other hand, there was no such abuse, then this was an even more serious offence because you will have made false allegations against a person in order to obtain £5,000. Although in some cases the making of a true allegation is more serious than a false one, in this particular case we think it works the other way round. 4. It seems to us, therefore, that we have to proceed on one version or the other. Your version is being investigated and is clearly not incredible. We do not think it right to adjourn this case for a lengthy period pending a possible criminal prosecution against Mr X if there were to be one; therefore, we must proceed on your version of events. 5. Turning to the offence itself, it is against a background that you were abused for a number of years when you were perhaps aged 6 - 9 at a time when you were in care. You had no contact with Mr X until you met him by chance last year. There was an altercation. Shortly afterwards he offered you £5,000 but then failed to pay it. It was at that stage that you then determined to try and extract £5,000 from him which you did by sending three letters and a parcel and by making two telephone calls to him. In the end a place was fixed for Mr X to pay you money but he did not do so because in fact he had gone to the police by then. 6. Nevertheless, it is fair to point out - as your advocate has done - that he did not pay you anything and notwithstanding that, you did nothing further for a full three weeks, until indeed you were arrested. So it appears that you had let the matter drop. 7. In terms of personal mitigation, you have your guilty plea which is of value, and your co-operation. You have overcome what, on any view, is an extraordinarily difficult background. Although you had a bad record in your youth, you have committed no offences - other than a minor motoring offence - since 1993, and we agree that you can properly be described as a reformed character. You have overcome the difficult background that you suffered. You have a good work record. You are

married now. The Probation Report assesses you at being of low risk of re-offending. You have the support not only of your wife, but also of your former wife who has written, and of your family and we have noted all the references and letters we have received. 8. There is another important aspect of mitigation in this case. You had an accident shortly before this offence and, although not seriously injured physically you suffered what is described as "a very severe post-traumatic stress disorder". We have seen a report from your general practitioner and from Mr Hollywood, the consultant psychologist. We can indeed quote from what Mr Hollywood said - "Mr Duchesne's reactions at this time were undoubtedly a symptom of his disturbed psychological state. Had the encounter (by which he means the encounter with the victim) occurred one year earlier the subsequent events would have been less likely to have occurred..... Mr Duchesne's behaviour, including his criminal behaviour, in relation to Mr X is best interpreted in the context of a psychologically fragile personality experiencing a recognised psychological/psychiatric condition, which impairs his normal inhibitions. Whilst this does not exonerate his behaviour it is probably a significant mitigating factor." 9. We agree. We think there is no doubt that the fact that you were suffering from post traumatic stress disorder to a serious degree undoubtedly meant that when you encountered the victim you reacted in a way that you might well not have reacted otherwise. 10. We said earlier blackmail is a serious offence. Your counsel has suggested the possibility of community service. An offence of blackmail is too serious for that. It must therefore be a sentence of imprisonment and we think - taking account of all the circumstances - that a little bit more can be allowed than the Crown has suggested. We think the correct prison sentence is one of 18 months. The question then is whether we can suspend it. We have concluded that this is truly an exceptional case when one puts together the whole background and all the circumstances we have described; and in the circumstances we think that we can - just - agree to suspending the sentence. 11. The sentence therefore is one of 18 months' imprisonment suspended for 2 years. This means you will not go to prison, unless you commit a further offence within the next 2 years. If you do then not only will you be punished for whatever offence you commit then, but you will in addition have to serve the eighteen months we have imposed today. Authorities Whelan: Aspects of Sentencing in the Superior Courts of Jersey (2 nd Ed'n): p.256. A. G. -v- Sangster & Anor (14 th December 2001) Jersey Unreported; [2001/247A]. Current Sentencing Practice: Part B6-6: Blackmail. R -v- Read (1996) 2 Cr. App. R. (S) 240. R -v- Christie (1990) 12 Cr. App. R. (S) 540. R -v- Daniels (2002) 1 Cr. App. R. (S) 99 at 443. R -v- Davies (2004) 1 Cr. App. R (S) 31 at 209 R -v- Hollingworth & Yates (1994) 15 Cr. App. R. (S) 258. R -v- Stone (1989) Cr. App. R. (S) 176. Criminal Justice (Suspension of Prison Sentences) (Jersey) Law 2003: Article 2. Page Last Updated: 29 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 23 October 2026 · Esheria