

JERSEY / JUDGMENT

AG -v- E [2016] JRC 222A (30 November 2016)

[2016] JRC 222A

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

JUDGMENT

THE commissioner: 1. Having sentenced the defendant, who is aged 23, to imprisonment for 2 years and 5 months for the reasons set out in the Court's judgment of 29 th July, 2016, (AG-v-E

[2016] JRC 131), the Court adjourned the issue of deportation, because it required more information in relation to the Article 8 Convention rights of his former partner and young son and his mother. 2. The most serious offence for which he was sentenced was a grave and criminal assault upon a stranger in the streets of St Helier which was unprovoked and pursued with real purpose and vigour. Prior to this, the defendant had six convictions for ten offences, including assault, affray and larceny. 3. As it transpires, his former partner decided to leave Jersey with their son to live near her paternal family in mainland Portugal, and in a witness statement, signed by her advocate, she said she had no objection to the defendant being deported and will endeavour to encourage contact between him and their child once they are all back in Portugal. In the circumstances, she believed that the child would have more contact with the defendant if he was deported. 4. As a consequence of the former partner's departure, the Children's Department was unable to prepare the report requested by the Court in relation to the child and the effect of deportation upon him. 5. The Court received an affidavit from the defendant's mother, prepared through the good offices of Advocate Glynn, and she attended the hearing with Advocate Glynn. There was no application from the mother to be heard, the decision of the Court of Appeal in *De Gouveia v AG*

[2009] JLR 169 , making it clear that such an application would not ordinarily be granted, because a recommendation for deportation was part of the sentencing process to which the only proper parties were usually the Crown and the defendant, and the interests of the defendant's family could be put to the Court by the defendant's advocate. 6. The mother, a Portuguese national, is 45 and has lived in Jersey for nine years. She has four children in all, aged 27, 25, 23 (the defendant) and 6. She had separated from the defendant's father and moved from Madeira to Jersey in October, 2007, where she has formed a new relationship with a Mr Sarrao, with whom she lives with their six year old child, leaving the defendant with his grandparents. 7. The defendant moved from Madeira to Jersey in

2009, when he was 16, because it was thought he would have a better future here, and he lived initially with his elder brother. The social inquiry report describes his relationship with his mother as tenuous. 8. The mother, as with the rest of the family, appeared to blame many of the defendant's problems on his relationship with his former partner. She describes the defendant as having a very good relationship with her youngest child, and says this in relation to the possibility of deportation: - "6 Furthermore, I am very concerned that [the defendant] will not have close family support in Madeira. My parents are sadly deceased and [the defendant's] paternal grandparents are elderly and infirm. They will not be capable of supporting [the defendant]. My sisters live in Madeira but they all have children of their own and will not be able to offer much in the way of support. In any case, [the defendant] does not have a great relationship with them. [the defendant's] father will not be able to offer [the defendant] the support he will need; he lives in a rented room, does not have regular work and has an on/off relationship with his alcoholic girlfriend who regularly stays with him in his room. I left [the defendant's] father because of aggressive and destructive behaviour when he had been drinking and I would not want [the defendant] to have to return to that environment. [The defendant] has not seen his father for approximately two years. I am really very worried about the prospect of [the defendant] being sent to Madeira with no money, no job, and no accommodation and no real prospects. There are no opportunities for them there and there will be no financial support either. [The defendant] really will need help to sort out his life, practical things as well as emotional support, which he will not get in Madeira. In Jersey, [the defendant] has his older siblings, and me, to help support and guide him. I am already helping him financially whilst he is in prison (providing money to buy phone cards and food items, buying new clothing for him etc) and will continue to help him with practical matters such as washing and cooking when he is released. His siblings and I can also give him the emotional support and love he needs. His younger brother, loves him and already misses him so much, I cannot bear to think how upset he will be if his brother is sent away and cannot visit him." 9. In his discussions with the Probation Department, the defendant said that ideally he wished to remain in the Island for the purposes of employment, and to be close to his son and family. Should he be considered for deportation, he said that he would reside initially with his father, but added that employment would be very difficult to obtain. 10. At the adjourned hearing, Advocate Landick, for the defendant, expressed a concern that the defendant's former partner, who although of Portuguese parentage had lived in Jersey all her life, had left Jersey to avoid contact with the Children's Department. Since leaving Jersey she had cut off all contact between the defendant and the child. Advocate Landick happened to be in the Magistrate's Court when he witnessed a hearing involving the defendant's former partner and another man accused of assaulting her. She had apparently let this man into her home and left the child alone with him; the implication being that there were welfare concerns in respect of the child. 11. The suspicion, shared by the defendant's family, was that the former partner's move to Portugal was a temporary expedient, to avoid the involvement of the Children's Service, and that in due course she would return here with the child. In that eventuality, and

assuming the defendant's deportation, far from having more contact with the child in Portugal, the defendant would be unable to have any contact with him. 12. Advocate Landick pointed out that the defendant came from Madeira, not mainland Portugal, and any contact with the child in mainland Portugal would involve travel and expense on his part. He stressed the stronger links that the defendant had with Jersey, where he had lived all his adult life, and the progress that he had made in prison. Letters of support were received by the Court from the defendant's mother (in addition to her affidavit), his sister, and his brother *inter alia*. The law 13. The test applied by the law when considering whether to recommend deportation is set out in *Camacho v AG*

[2007] JLR 462 . The Court was required to find:- (i) First, that an offender's continued presence in the Island was detrimental to the public good and (ii) Secondly, that his deportation would not be disproportionate having regard to the relevant Convention rights of the offender and his family to respect for family life under Article 8 of the European Convention of Human Rights ("the ECHR"). As the Court said in *AG v Ben Youcef*

[2009] JRC 014 at paragraph 9:- "The second part of the test requires the Court to balance the interests of the community in deporting the offender against the interests of the offender and perhaps more significantly, members of his family. Their right to respect for their family life must be fully considered." 14. Article 8 of the ECHR is in the following terms: "Article 8 right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." 15. There is no precise definition of family life for the purposes of the ECHR. It is not confined to the nuclear family but incorporates other forms of relationship including unmarried couples, the relationship between an illegitimate child and either parent and the relationship between the adopted child and adopting parent. The existence of "family life" will depend on the nature of the relationship at issue, not on their legal status. It is essentially a question of fact, depending upon the real existence (and practical consequences) of close personal ties (*K v UK App. No. 11468/85* and see paragraph 8 - 025 of Human Rights Practice). 16. Although in the vast majority of cases applicants rely on the safeguards in Article 8 in relation to relationships between parents and children (or within a couple) the jurisprudence shows that "family life" may encompass relationships between children and members of their extended family, such as grandparents (*Marckx [1979-80] 2 E. H. R. R. 330*), siblings (*Boughanemi v France*

[1996] 22 E. H. R. R.228), and uncles and nephews (*Boyle v United Kingdom*

- [1995] E. H. R. R.179). 17. However, the protection afforded by Article 8 in immigration cases is more limited for more distant relationships, requiring an element of dependency beyond emotional and blood ties. This was made clear by the Guernsey Court of Appeal in *De Sousa v Law Officers of the Crown* [27th June 2014] where Logan Martin JA, giving the judgment of the Court, said at paragraph 21:- "Although the applicant has lived primarily in Guernsey for 27 years, the Royal Court was made aware that he has maintained connections with Madeira, not least by visiting there regularly. Whilst he has a number of family connections in Guernsey and Jersey, he does not have any dependent children. We refer to the judgment of the European Court of Human Rights in *Khan* at paragraph 32 where it is said that 'In immigration cases, the court has held that there will be no family life between parents and adult children unless they can demonstrate additional elements of dependence.' The Court does accept that Article 8 will apply to the family and social ties which constitute the private life which the applicant has in Guernsey and Jersey but the absence of dependency between the applicant and his children does suggest that in the balancing exercise less weight may be attached to his Article 8 convention rights than would otherwise be the case. In this regard, we refer to the judgment in *Uner* at paragraph 59 both to demonstrate that social ties may be an aspect of private life and to show that the significance of family life and private life will depend upon the circumstances of each individual case. Taking all of these factors into account, we are satisfied that a recommendation for deportation is justified when the applicant's family and social connections are balanced against the seriousness of the offences of which he was convicted and his criminal record." 18. In *Khan v United Kingdom*
- [2010] 50 EHRR 47, the applicant, an adult, had been sentenced to 7 years' imprisonment for the importation of a Class A drug. He had moved to the United Kingdom when he was 3 years old, had no continuing social, cultural or family ties to Pakistan and had not re-offended following his release. His ties with the United Kingdom were strong and it was held that his deportation would not be proportionate. However, the fact that the applicant was living with his mother and brothers and that the entire family suffered from different health complaints was held not to constitute a sufficient degree of dependence to result in the existence of family life for the purposes of Article 8. Decision 19. Taking the first part of the test, the defendant has admitted to a drug dependency, and has a bad record generally relating to violent behaviour whilst under the influence of alcohol or drugs. His last conviction for grave and criminal assault was a serious offence. He has been assessed at a high risk of re-offending. The Court found that his continued presence in the Island was detrimental to the public good. 20. Turning to the second part of the test, there was no evidence of any dependency between the defendant and his mother and siblings in Jersey, beyond emotional and blood ties. He had seldom lived with his mother and there was no offer of accommodation from her. The defendant's family life with his mother and siblings therefore carried little weight when balanced against the seriousness of his offending. Notwithstanding the comments of his mother, the defendant still has extensive family connections in Madeira where he lived until he was sixteen. 21. The defendant's

relationship with his son was a matter which would have carried much greater weight had he still been living in Jersey, but he was now living with the defendant's former partner in Portugal; indeed, the defendant's former partner was of the view that there would be more contact between the defendant and his son if he was deported. 22. The Court could not reach any conclusions over the suspicion that the former partner's move to Portugal was a temporary expedient. It had all the hallmarks of a permanent move; quoting from paragraph 7 of her witness statement: - "6 I have given up my Andium flat and Income Support and moved in with my mother temporarily whilst I obtain Portuguese citizenship for [the child] as he currently has only British citizenship. I intend for him to have dual nationality as I do. I have bought flight tickets to Portugal for 31 st August, 2016, obtained employment as an administrator in a fruit warehouse and am arranging to enrol [the child] in pre-school in September. [The child] speaks some Portuguese as he is used to speaking it with my family but his knowledge of the language will certainly improve once he starts pre-school. I would like him to be schooled in Portugal. I have accommodation with my extended family for as long as I wish and [the child] will be surrounded by his family who will help me to look after him whilst I am at work. [The child] is excited about this new future for us both as am I." 23. The Court concluded that the interests of the community outweighed those of the defendant and the Jersey based members of his family with whom there was no dependency. His deportation would not be disproportionate having regard to his convention rights and those of his Jersey based family. 24. We therefore recommended to the Lieutenant Governor that the defendant be deported, but we wish to make it clear that we did so on the basis that his son had moved permanently to Portugal. We would not have made that recommendation if his son still lived in Jersey. If the position should change and his son is returned to the Island, then no doubt the Lieutenant Governor will take that material change in circumstances into account when considering the issue of deportation. Authorities AG-v-E

[2016] JRC 131 . De Gouveia v AG

[2009] JLR 169 . Camacho v AG

[2007] JLR 462 . AG v Benyoucef [2009] JRC 014. K v UK App. No. 11468/85. Marckx [1979-80] 2 E. H. R. R. 330. Boughanemi v France

[1996] 22 E. H. R. R.228. Boyle v United Kingdom

[1995] E. H. R. R.179. De Sousa v Law Officers of the Crown [27th June 2014]. Khan v United Kingdom

[2010] 50 EHRR 47 . Page Last Updated: 04 Jan 2017 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/2016/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-e-2016-jrc-222a-30-november-2016>

Prepared on 27 October 2026 · Esheria