

JERSEY / JUDGMENT

AG v E [2023] JRC 044 (17 March 2023)

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JUDGMENT

THE COMMISSIONER: 1. I am going to deal first of all with the notification requirements under the Sex Offenders (Jersey) Law 2010 at Section 2. We make an order that a period of 13 years should elapse before the Defendant be permitted to apply to no longer be subject to the notification requirements as we consider that to be the proportionate length of time. 2. We are grateful for the careful exposition by the Attorney General of the facts of this case and the principles of sentencing for offences of rape in this jurisdiction. We are also grateful for Advocate Dale who appears on behalf of the Defendant for her submissions. 3. The Court does not intend to set out at any length the principles of sentencing that we have applied as we believe they are clear. Firstly and importantly the Court has decided what is the appropriate sentence to fit the individual facts of this case. Every case of rape is different. Secondly we are entitled to and have taken into account the sentencing guidelines for England and Wales in the following ways. We have paid attention to the structure of the guidelines. In this Court's view it provides a logical and structured way to approach any sentencing exercise, in particular we have adopted the separate consideration of harm and culpability and considered the aggravating and mitigating features of the three offences. Every case, as I have said, is different on its facts so no guideline can or intends to cover every possible permutation of aggravating and mitigating factors. 4. Where it comes to the suggested starting points and ranges of sentence in the guidelines, the Court has recognised that, in general, Jersey courts have regarded those ranges as being appropriate while not feeling bound by them. They have not adopted an unduly mathematical approach which can be the result of a rigid application of the guidelines. It is important that there should be some guidance as to the length of sentence to ensure there is consistency in sentencing. The Court has paid attention to the necessity when considering the guidelines, to avoid the possibility of double counting. 5. The brief facts are these. The Defendant and his Victim had a very intense relationship between the beginning of January 2021 and the end of March 2021. It was physically very intense and at least for the Victim very emotionally intense. Both parties enjoyed the sexual part of their relationship for the first part of the three month period. While the Court does consider that the Victim had vulnerabilities as a result of a previous abusive relationship the Court is not satisfied so it is sure, that the Defendant set out from the outset to exploit those vulnerabilities, but it is sure that as the relationship developed the Court is satisfied that he did. 6. In early March the Victim had to go into hospital for treatment. It was just before then that she said that the Defendant's behaviour became more controlling. That continued after she returned

from hospital a few days later. The Defendant had, up until then stayed at her house for about three nights a week because if he stayed longer that could affect the Victim's benefit payments. He now stayed for five days saying that he needed to be there to assist her with looking after the children and help with household duties. His controlling behaviour included trying to limit the contact that the Victim was able to have with other people including her family which caused a serious family rift which has even now not been completely healed. 7. The Defendant is not charged with controlling behaviour but the Court is satisfied that the offences of rape were part of controlling behaviour on his part. The Defendant did what he wanted with the Victim despite her protestations. 8. We are satisfied that the sentences in this case should be concurrent. They were part of a course of conduct over a relatively short period of time, but that does mean that the sentence on Count 1 will be increased to reflect the Defendant's overall conduct. 9. We consider that Count 1 is the most serious charge. The Victim had made it clear at all times to the Defendant that she was not prepared to have anal sex with him. She was disgusted at the idea and when he forcibly raped her it was extremely painful and no doubt humiliating. It happened in her own house while her children were in a next door bedroom. While that is not, in the Court's view, an abuse of trust in the sense in which that phrase is used in the Sentencing Guidelines for England and Wales, the Defendant was a visitor in the Victim's house and she had every right to expect that he would not behave in that way whilst a guest in her house. 10. The other two offences are serious. It was the Victim's right to refuse vaginal sex even though she had consented to it on other occasions and we consider that the Defendant's refusal to take no for an answer was further evidence of his controlling behaviour. The Defendant pleaded not guilty and had a trial. That is his right, but it does mean that he gets no discount for plea which would have been significant in a case like this, nor can we give him any credit for any remorse. 11. We have considered harm and culpability separately. The evidence shows that the Victim has suffered considerable harm as a result of the Defendant's treatment of her. That is demonstrated by the Psychological Report in particular, the Pre-Sentence Report and the Personal Statement from the Victim. The Court considers that the Crown are correct to assess this harm as severe psychological harm rather than extreme psychological harm. 12. Part of that psychological harm was caused by what happened at the trial. Any trial for rape will be an ordeal for any victim but it was exacerbated in this case by the showing of a very intimate video taken on the Defendant's phone. We do not know for sure what the jury made of the incident depicted on the phone, but it is certain that it did not assist the Defendant's case in the end. 13. The Crown allege that another aggravating factor in the case was that the Defendant conducted himself after the police had been called in a way so as to intimidate the Victim into not making a complaint. While the Court consider that his behaviour looked at objectively was intimidating, the Court is not satisfied so as to be sure that the reason for it was to frighten her not to make a statement. 14. We have considered a number of matters put forward in mitigation including several statements which we have read. We accept that they are the genuine views of the people who wrote them but we do not consider that they provide any material which would reduce the sentence except in so far as they make clear that the Defendant is a hard worker. 15. There is one piece of significant mitigation namely the delay in bringing this matter to court. That was caused in this way: after being charged the Defendant spent the equivalent of 78 days in custody before the charges were

discontinued. It was a further year before they were recommenced after an appeal process. We have taken those matters into account in reducing the sentence that the Court will impose, as it is no fault of the Defence that the case was delayed and he spent the equivalent of 78 days in custody. We have taken 78 days in custody into account in the reduction in sentence so we will not be making further allowance for it. 16. Taking all those matters into account the Court has determined that the appropriate sentence on Count 1 is 9½ years' imprisonment, on Counts 2 and 3 there will be concurrent sentences of 6 years. 17. In addition, the Court will make restraining orders without limit of time which prohibit the Defendant from approaching or contacting directly or indirectly the victim and her children. It is hoped that those orders will provide the Victim with some reassurance for her own safety in the future. Authorities Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 Sex Offenders (Jersey) Law 2018 AG v F

[2019] JRC 182 AG v B

[2020] JRC 110 AG v Vieira

[2021] JRC 293 English Council Sentencing Guidelines

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Prepared on 27 October 2026 · Esheria