

JERSEY / JUDGMENT

AG v Fairbrace [2024] JRC 202 (02 October 2024)

[2024] JRC 202

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JUDGMENT

THE COMMISSIONER: 1. Kai Fairbrace you are 21 years old and you appear before us in respect of a review of a community service order imposed by this Court on 3 April 2024. You were indicted and sentenced on 3 April in relation to a grave and criminal assault in respect of which you had pleaded guilty (AG v Fairbrace

[2024] JRC 075). 2. The facts of that offence were briefly that whilst in a nightclub you made an unprovoked attack on a member of the public who was just out enjoying himself and was unknown to you. You punched him to the face knocking him to the floor where he lay unconscious until woken by a friend. As you were thrown out of the nightclub you were noted as laughing and you shouted to a friend of the man you had assaulted " I knocked your mate out sparko" and stuck your tongue out at him. You then sent a number of threatening messages by telephone to a friend of your victim and you said amongst other things that if anything else came back to you in relation to the incident you would " rip his head off his shoulders" . 3. Your victim was left with dental injuries including a fracture to three teeth leading to extraction of one of those teeth and the need for further dental surgery which will be expensive including root canal treatment and implants. He also required revision surgery to a facial scar as a consequence of the assault and the cost of past and previous dental and scar work came to in excess of £5,000. 4. The Inferior Number imposed a sentence of 180 hours' community service which is the equivalent of 12 months' imprisonment and a probation order of 12 months. The Inferior Number also made a compensation order in favour of the Victim in the sum of £5,735 to be paid at £200 a month and an exclusion order for 18 months. 5. When you were sentenced the Court said that: "...we now have a Probation Report in different terms from the one that the Court had before it two years ago. Notwithstanding the high risk of reconviction and the fact that this would be a high risk order, the Probation Officer says that she has discussed matters with you and that you are now motivated in her assessment to carry out a Probation and Community Service Order." The Court said that: "The Court will be taking a risk, but on the evidence before us today we are not satisfied that you are unwilling to carry out a non-custodial order..." It went on to say: "Do you understand that you have been given a chance and the only reason you have had this chance is the support of the

people in Court today and the Probation Service? We do hope that we do not see you again but if we do it will be because you are almost certainly on your way to La Moye." 6. We have read the report from Mr Le Marrec the Community Service Manager who says that your compliance with the community service order is unacceptable. He says that you have completed 35 hours of community service with the remaining balance being 145 hours. Whilst you have carried out some work your performance whilst carrying out the work has been described as poor and you have been said to have been pushing boundaries and not adhering to the rules of the scheme. You have used offensive language on a number of occasions to supervisors on the scheme. 7. To your credit you appear to have recognised on those occasions that behaviour was unacceptable and have apologised. We have read your letter of remorse in which you say " I admit what I said was wrong and isn't tolerated. I know there are rules in place for a reason ... and I can re assure you now I can follow these rules and would do so if given another opportunity." 8. Mr Le Marrec's report includes a report from Ms Wilson who has been supervising your probation order. She notes that your attendance has generally been good and whilst you have missed two appointments you promptly contacted her afterwards in order to reschedule and despite a recent breach you have maintained contact with her and continue to attend your weekly appointments. Ms Wilson further notes that you have demonstrated a clear understanding that you require specialist support to manage your anger which has been a long standing struggle for you and that whilst in the past you have not been ready to accept help she has recently observed a shift in your attitude. As a result, you have been referred to Talking Therapies and your first appointment we understand is scheduled for the end of September. 9. The Court gave you another opportunity when you were sentenced but you have betrayed the trust that they placed in you. The Court made clear that if you appeared in court again you would likely be on your way to La Moye. You say in your letter to the Court that you are "...actively trying to address the underlying issues that may be causing me to act out. I have self referred myself to JTT and Adult mental health through my GP, this is the first time I've ever wanted to actually get help and try and fix the concerns. I really am trying to better myself and fix the issues." 10. The Crown point out that you have a history of failure to respond to non-custodial penalties and note the comments made by the Court when you were sentenced that if you were to appear again before this Court you would almost certainly be facing imprisonment. 11. The sentence that was imposed by the Court had two elements. Firstly the community service order which is by way of a punishment and secondly a probation order which seeks to assist and rehabilitate you. You cannot choose which of the two aspects of the sentence you comply with. The Probation Officer has made clear that you have attended your appointments including since the breach application was made which is to your credit. However, your behaviour towards the supervisors on the community service program was appalling. To your credit you recognised this and apologised. That represents a step forward in your behaviour. It is clear that you need to deal with your anger and recognise the contribution that misuse of alcohol has made to your problems. Both of those will remain a risk that you need to manage throughout your life irrespective of any orders that the Court makes. 12. Your

counsel has put forward very powerfully the arguments against a custodial sentence and we are prepared to maintain the community service order but extend the period for compliance by six months. In addition we wish to bring the matter back to this Court on 7 February for a review as to your progress as we wish to ensure that you are continuing to get the help that you require. 13. We are not going to fine you as we recognise that that would simply increase the difficulties that you face. 14. You have been fortunate in the support that you have been given by the Probation Service and those that know you such as your previous employer. If you fail to adhere to orders of the Court you betray the trust that those people have placed in you and indeed you betray the trust that was placed in you by the Court as has been on this occasion. There comes a time when you will run out of second chances and this occasion could well have been that time. Nevertheless you have shown that you can achieve some progress albeit with occasional setbacks. We urge you to rebuild the trust to which I have referred as you are unlikely to be given a further chance again. 15. So in the circumstances we maintain the existing community service order. We extend the period of the order for an additional six months to enable you to comply with it and as I say we ask that the matter be brought back to Court for review of 7 February simply as to the progress that we hope you will be making. 16. As the Court said on the previous occasions we would not wish to see you before this Court again and as I say we are grateful to your counsel for everything she has said on your behalf. 17. You will be required to appear on 7 February and the remaining orders from the sentencing court such as probation and exclusion orders continue in the meantime. Authorities AG v Fairbrace

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Prepared on 22 October 2026 · Esheria