

JERSEY / JUDGMENT

AG -v- Faria [2016] JRC 070A (23 March 2016)

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JUDGMENT

THE BAILIFF: 1. You are here to be sentenced for two offences on the Indictment. I am going to deal with the second offence which is that of arson because it is the more serious. When I say it is serious I can refer to a decision of the Court of Appeal in the case of AG-v-Coutanche 1989/106 where the Court said this:- "On the Court's general approach to the crime of arson, as it is called in England, or the statutory offence with which we are concerned here of maliciously setting fire to material, the general approach is (and here I quote Shaw L. J. in the case of R-v-Slater (1979) 1 Cr. App. R. (S) 34 9): "Arson is always a very serious offence because once something has been set fire to there may be no means of limiting or controlling the consequences of the fire." The judge went on to refer to the case of R-v-Small

(1980) 2 Cr. App. R. (S) 25 where Bridge LJ said:- "The offence of arson is always regarded by the Court as one of great gravity, particularly if it is an offence involving an element either of intent or recklessness in relation to the possible endangering of human life." 2. So that is why we treat this offence so seriously. Here it seems to us there was a quite deliberate setting on fire of the eurobin which we think was probably related to taking revenge in some way on the Havana nightclub and that you were reckless as to what the consequences might be - reckless in the sense that you did not think through what those consequences might be. The fact is that there was a flat not far away and there was a risk to human life. You have said through your counsel that you do not recall why you did what you did because you were drunk and you should know that the Court takes drunkenness as an aggravating factor. So for the future you should take the consequences for you from this case as a real warning about how you tackle your consumption of alcohol in the future. 3. In the case of Coutanche the Court of Appeal suggests that there is a finishing bracket in most cases of arson of 3-5 years imprisonment. We have considered that case and also the cases of AG-v-Faulkner

[2011] JRC 046C and AG-v- Fortun 2002/205 and we have taken the view that the present case is not as serious as those and therefore we think that the conclusions that a sentence of 4 years' imprisonment as moved for by the Crown, are too high. But in reducing the conclusions you should not think for a minute that the offence is not serious, because it is.

4. Having regard to all that I have said and to your good character, your references and indeed everything that has been said by your counsel, we are going to sentence you to 3 years' imprisonment on Count 2. 5. On Count 1 we take the view that this breaking and entering was perhaps not as serious as some other breaking and entering offences and we sentence you to 9 months' imprisonment on Count 1 but it is a sentence which runs concurrently and that means that you will serve a total of 3 years' imprisonment. 6. In addition the Court takes the view that it is right to impose an Exclusion Order and you are therefore to be excluded from 1 st , 4 th , 6 th and 7 th category licensed premises excluding the Multiplex Cinema, Jersey Airport and the ferry terminal at Elizabeth Harbour, for a period of 12 months starting from the day you are released from prison. The reference to those licensed premises are essentially to pubs, off-licenses, shops where you can buy alcohol, the comprehensive licenses and places of entertainment. 7. We are not going to make any recommendations in relation to deportation. As the Crown has said there is a two-part test. Is the offence such that your continued presence is detrimental to the Island? We think that it is and that justifies the statement that I made earlier that the Court takes this offence very seriously but in relation to your connections with the Island we take the view that it would not be proportionate to order you to be recommended for deportation. And so we make no such recommendation. But you should realise that offences of this kind, and indeed any serious offences, lead you to be exposed to a recommendation for deportation so remember that in future. Authorities AG-v-Coutanche 1989/106. AG-v-Coutanche

[1989] JLR N 11B. R-v-Small (1980) 2 Cr. App. R. (S) 25. AG-v-Faulkner

[2011] JRC 046C . AG-v-Fortun 2002/205. Immigration (Jersey) Order 1993. Licensed Premises (Exclusion of Certain Persons) (Jersey) Law 1998. AG-v-Camacho

[2007] JLR 462 . AG-v-Fortun 2002/205. AG-v-Dewhurst

[2007] JRC 098 . AG-v-Gaffney 1995/101. AG-v-McCormick 2001/64. Page Last Updated: 25 Apr 2016
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Prepared on 26 October 2026 · Esheria