

JERSEY / JUDGMENT

AG v Ferguson [2020]

JRC 164 (14 August 2020)

[2020] JRC 164

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JUDGMENT

THE lieutenant BAILIFF: 1. On 20 th July last year, the defendant rode his motorcycle the wrong way against a one way system at night. The standard of his driving evidently left something to be desired in other respects as well; a witness reported that the motorcycle "almost fell over as it slipped on the gravel" . The defendant was almost twice over the prescribed limit for alcohol, he had no insurance and he had been disqualified from driving a motor vehicle only some two months previously. He was carrying a pillion passenger. 2. The defendant maintained that which could fairly be described as a 'cock and bull' story for many months following his arrest. He sought to implicate another inmate at HM Prison La Moye as the driver. He maintained this wholly mendacious version of events, even after his pillion passenger had given a statement to the police some seven months later, in which she said that the defendant had been driving that night and she had been the passenger. The other inmate at the prison later denied driving the motorcycle and it was established by the police that he had been working at a hotel in St Helier that evening. He subsequently refused to have anything more to do with the case. It was not until nearly the end of May this year, some 10 months after the commission of the offences, that the defendant finally entered pleas of guilty. 3. Not only was he driving whilst disqualified as we have said, but he was also in breach of a Community Service Order that had been imposed upon him but a few weeks earlier. The defendant has an appalling record for a variety of offences including robbery, burglary, violence, drugs, dishonesty and, more relevantly for today's purposes, motoring offences. He has been convicted of nine offences of driving whilst disqualified, three for driving over the prescribed limit of alcohol and seven for driving without insurance. 4. The mitigation in regard to the offending includes that no injuries or damage were caused, there is no evidence of any speeding, it was a remote area and there was little traffic. Nonetheless, the overall offending was very serious indeed. We have carefully considered the Social Enquiry Report and the psychiatric substance abuse report and have listened with equal care to all that Advocate Binnie has said on the defendant's behalf. It is clear beyond peradventure that the events that occurred when the defendant was only nine or ten years old have had a profound and damaging effect upon him. 5. The Crown has moved for a total sentence of 16 months' imprisonment, being 12 months concurrent in respect of the five counts on the Indictment and 4 months consecutive in respect of the breach of the Community Service Order. In regard to that,

in AG -v- Nafkha 2000/86 the Court stated that as a matter of policy Community Service Orders made in respect of previous offending, which has not been completed, should be sentenced on a consecutive basis where an accused is sentenced for new offences. At paragraph 10 of the judgment the Learned Deputy Bailiff, as he then was, said "...each case must turn on its own facts but, in general, if an offender has not completed community service and is then sentenced to imprisonment for a new offence, we see no reason why the defendant should not receive a consecutive prison sentence to reflect the community service that he has not done. Otherwise by re-offending he serves a lesser sentence than the Court originally thought he should for the original offence". And we note that that proposition in regard to a consecutive sentence is agreed by defence counsel. The Crown invites us to revoke the Community Service Order and substitute an equivalent sentence of 4 months' imprisonment for the remaining 100 hours of community service. 6. We have been out for a long time because the Court has been giving anxious consideration to the possibility of a standalone Probation Order; but we conclude that the offending in this case is so serious that a custodial sentence cannot be avoided. We note that many of the benefits and interventions under a Probation Order are available to the defendant at Her Majesty's Prison La Moye, and we urge him to avail himself of them as we understand he has already done to some extent already and we commend him for that. All that said, it is the judgment of Court that the conclusions moved for by the Crown are too low and in particular do not take account of the fact that driving whilst above the prescribed alcohol limit, is a different type of offence. A consecutive sentence will therefore be imposed in respect of Count 3. 7. Can you stand up please Mr Ferguson. The sentence of the Court is as follows:- (i) Count 1, 6 months' disqualification but no other penalty. (ii) Count 2, 5 months' imprisonment, concurrent with Count 4 and 12 months' disqualification. (iii) Count 3, 2 months' imprisonment, consecutive, and 4 years' disqualification. (iv) Count 4, 12 months' imprisonment, concurrent with Count 2 and 12 months' disqualification. (v) Count 5, no separate penalty. All periods of disqualification are to be concurrent. 8. The Community Service Order of May last year is revoked and a period of 4 months' imprisonment will be substituted, consecutive. 9. The total sentence is therefore 18 months' imprisonment in all, and 4 years' disqualification, and by virtue of Article 35(1) of the Road Traffic (Jersey) Law 1956, we order that you to take the required test to drive again once the period of disqualification has expired. 10. Mr Ferguson, we urge you to use your time remaining at the prison wisely, with the stability that it gives you, and to take full advantage of all the interventions and treatments and training that are available to prepare you for when you are released. We also strongly recommend that you follow the course that your counsel offered us and refer yourself to the Probation and Aftercare Service when you are released from custody. Authorities AG -v- Nafkha 2000/86. Road Traffic (Jersey) Law 1956 Page Last Updated: 10 Sep 2020 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 23 October 2026 · Esheria