

JERSEY / JUDGMENT

AG -v- Fernandes [2017] JRC 208 (08 December 2017)

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JUDGMENT

THE BAILIFF: 1. You are here to be sentenced on an Indictment which charges you with 12 counts of offences of dishonesty committed over a two-month period. There are at least five victims and you have stolen, through your frauds, a sum in excess of £7,000. The cheque frauds against your employers were committed in breach of trust and it is well established in Jersey that where you have a substantial fraud, and for this purpose the sums that you took amount to a substantial fraud committed in breach of trust, there is a custodial sentence unless there are exceptional circumstances. 2. Your counsel suggest that there are two exceptional circumstances. The first one, she says, is that the amount involved is not great. That is not a view that we share where the amount involved in these two cheques is over £6,400. Secondly, she says that you have been in custody for a period and that ought to be taken into account because you have experienced the clang of prison doors twice. We do not think that is an exceptional circumstance which relates to the offences which have been committed and so we are going to send you to prison. 3. The remaining offences which you have committed might not of themselves justify a prison sentence but we will deal with them with concurrent sentences as the Crown has suggested. What they do reveal is that you have engaged in some deeply dishonest behaviour over the period in question. Furthermore, it was obvious from your response to the investigation of the police that you were not straightforward with the police, you told them lies, and there were no early admissions. Indeed the guilty pleas which have been entered to the two important counts on the Indictment, Counts 1 and 3, were entered as late as the day of trial and so you are not entitled to anything like a full discount for those guilty pleas. But we do give you some credit for them and we give you credit for the guilty pleas on the other counts on the Indictment. We also give you credit, as your counsel has suggested, for the fact that you appear to have no previous convictions. But at the age you are you have lived quite long enough to know that this conduct is completely unacceptable and the Court has no hesitation in sentencing you to prison in accordance with the Crown's conclusions which are granted. 4. You will go to prison for 18 months in respect of Counts 1 and 3; and 12 months, concurrent, on Counts 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, all concurrent with each other, making a total of 18 months' imprisonment. 5. The Crown suggest that we should make an order under the Criminal Justice (Forfeiture Orders) (Jersey) Law 2001 in respect of the iPhone and iWatch upon the basis that these items were used

to store the card numbers for the card frauds which you committed. We think that that is justified and we therefor make forfeiture orders in respect of those two items. 6. We now turn to the question of deportation. In accordance with the authority which is binding on us *Camacho-v-AG*

[2007] JLR 462 we need to consider first of all whether your conduct is such that your continued presence in Jersey would be detrimental to the community. We are satisfied that it is and it clearly has been very detrimental to a number of members of the community so far. 7. Having reached that conclusion we need to consider whether there are any Convention rights which ought to be taken into account which outweigh that fact that your continued presence in the Island is detrimental to us. We take into account that you have not been in Jersey for very long yourself having had a period of some 2 years, when you came aged 16, and that you have been back on two occasions since then. We also have taken into account that you were prepared to leave the Island more recently and in the circumstances we do not think that your own personal convention rights outweigh the fact that your continued presence here is detrimental to the Island. 8. We then look at the other convention rights which might have been argued. It does not appear that your relationship with your direct family is sufficiently strong that we should take their rights into account particularly in circumstances, as I say, where your own presence in the Island has not been consistent over the last ten years. 9. We turn next to your girlfriend and her son and we do not think that the length of that relationship is such that we ought to take those convention rights into account. They do not outweigh the detriment which the island community suffers and accordingly we make the recommendation for your deportation. Authorities Criminal Justice (Forfeiture Orders)(Jersey) Law 2001. *AG v Esnouf*

[2016] JRC 108 . *AG v Jones*

[2015] JRC 105 . *AG v Mortlock*

[2010] JRC 099 . *AG v Shore*

[2010] JRC 064 . *Camacho v AG*

[2007] JLR 462 . Whelan on Aspects of Sentencing in the Superior Court of Jersey (Third Edition). *R v Barrick* (1985) 7 Cr. App. R (S.) 142. Page Last Updated: 18 Dec 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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