

JERSEY / JUDGMENT

AG v Ferreira [2002] JRC 172 (20 September 2002)

[2002] JRC 172

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JUDGMENT

THE COMMISSIONER: 1. As the Crown Advocate has quite rightly stated this was a serious case of indecent assault with a number of aggravating features. Those of us who sat through the Assize trial where Ferreira was found guilty by a unanimous verdict of the Jury have no doubt that the complainant went through a terrifying experience, which had to be relived by her having to give evidence at trial. 2. For a woman asleep in bed to be wakened by an unknown male pinning her down must have been a terrifying experience. She was indecently assaulted; and her every action after she had been so assaulted was evidence, in our view, of the fear that she was in. At trial, the Court heard independent evidence from those who were able to witness her mental condition after the assault had taken place. 3. Even at trial it was put to the complainant on Ferreira's instructions that she had initiated the sexual activity. Those in court saw the effect of that question on the complainant in the witness box. 4. There are aggravating features: the accused had been drinking heavily and, he entered private property where the complainant worked, in the very early hours of the morning. He has shown no remorse and in fact still claims innocence. 5. There has been no psychological assessment of the complainant so that her present mental state, as a result of this frightening assault is not known, but in my view her distress in the witness box was apparent and genuine. 6. As was said in *A. G.-v-Hanby* (20 th March, 2002) Jersey Unreported; [2002/66], sentencing in these cases is difficult. Because the Court of Appeal has indicated that a starting point is preferable we can only say that the Crown's reasonable conclusion of 4 years as a possible starting point is acceptable. If there are aggravating features there are also strong mitigating factors as Advocate Deacon has so clearly pointed out to us. Ferreira has no criminal record, he is still comparatively young, there were no threats, no weapon, no clinical evidence of injury, he was not in a position of trust, he had drunk perhaps six pints and one red bull, and there was no forced entry to the premises. 7. The Probation Officer says that the strong denial of the offence could be indicative of an increased future risk of re-offending. We are not certain that we entirely follow the logic of that argument. 8. The cases cited in Mr Whelan's work "Aspects of Sentencing in the Superior Courts of Jersey" (2 nd Ed'n): pp.331-7) lead us to feel that the conclusions are possibly correct, but we are going to reduce them slightly in the light of Advocate Deacon's arguments to us. You are sentenced to 2 years and 6 months imprisonment. Having regard to the case *A. G.-v-Mendes* (25 th January, 2002) Jersey

Unreported; [2002/25] and in the absence of any objection from Advocate Deacon we will recommend to the Lieutenant Governor that the accused be deported from Jersey at the conclusion of his sentence. Authorities Whelan Aspects of Sentencing in the Superior Courts of Jersey (2 nd Ed'n): pp.331-7). A. G.-v-Hanby (20 th March, 2002) Jersey Unreported; [2002/66]. A. G.-v-Mendes (25 th January,

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Prepared on 26 October 2026 · Esheria