

JERSEY / JUDGMENT

AG -v- Frescata [2018]

JRC 015 (19 January 2018)

[2018] JRC 015

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JUDGMENT

THE BAILIFF: 1. You were arrested in August last year and found to have some cannabis on you, a small amount (0.3 grams), but following your arrest your premises where you were staying were searched and a number of medals and coins were found which clearly did not belong to you. You claimed originally that the coins came from Portugal. In fact they had been stolen from a lady who was 89 years old, who lived in a house where you had been doing some painting work only a month before. You have denied stealing the medals and said that they were given to you by a man called David who has subsequently died from an overdose. You did not give that explanation when first interviewed. You have pleaded guilty to receiving stolen property. 2. I have to tell you that the Court has viewed your explanation with some cynicism but you have pleaded guilty to receiving, and it is for that which you are to be sentenced, and we are going to give you the benefit of the doubt in that respect. It has been said many times that if there were no receivers there would be less theft and receiving stolen property is a serious offence. In the case of R-v-Webbe

[2001] EWCA Crim 1217 which is an English Court of Appeal decision, there were a number of factors which are there set out which make the offence more or less serious and that case of R-v-Webbe has been applied in Jersey before. 3. In this case we think the relevant factors are the closeness which you had to the primary offence; the high sentimental value of the goods to the lady in question and the fact that these goods were the proceeds of a domestic burglary. You committed this offence within a relatively short time of coming to the Island to live, although we recognise that you have visited your parents frequently while you were growing up in Madeira and they were living here. 4. We also have taken into account the fact that you have been in work for most of your adult life and that this is your very first conviction anywhere, on the information given to us, although you have reached the age of 33. So we have paid careful attention to what your Advocate has said on your behalf and we think that it is appropriate in the circumstances of this case to impose a sentence of community service and not imprisonment. It is only because of that mitigation that has been put forward; and because we have accepted community service we have also gone on to reach the view that we cannot consider that the first part of the Camacho-v-AG

[2007] JLR 462 test on deportation is passed - that is to say, if we had thought that your continued presence in the Island was undesirable, we would not have given you community service. 5. So we are not going to make a recommendation for deportation in this case but I would like you to know that you have come very close to it. It is a privilege to live in this Island and people who abuse that privilege by committing this sort of offence can expect some treatment from the court which they will not like. 6. In the circumstances, on the charge of receiving stolen property you are sentenced to 120 hours' community service with the alternative of 6 months in custody if you do not perform it. I warn you that if you do not perform it you will be liable to be brought back to Court and then you may be sent to prison. In addition we are going to put you on probation for one year. 7. On the second count of the Indictment which are the two charges of the possession of small amounts of cannabis, we would like to say this. The possession of cannabis may, as your Counsel has said, often be dealt with at Parish Hall level but the possession of cannabis is still a criminal offence and if you wish to stay in this Island you should not commit criminal offences. We are going to put you on probation for 12 months in respect of those two counts because we take the point in the Social Enquiry Report that you need to address your questions of substance misuse generally. 8. We order the return of the medals and coins to the owner from whom they were stolen. 9. That is a total sentence of 120 hours' Community Service Order together with a 12 month Probation Order. Do not let me see you here again. 10. We also order the forfeiture and destruction of the drugs. Authorities R-v-Webbe

[2001] EWCA Crim 1217 . Camacho-v-AG

[2007] JLR 462 . Wylie v Attorney General 2002/13. Attorney General v Bailey

[2009] JRC 077 . Attorney General v O'Brien

[2015] JRC 098 . Attorney General v De Faria

[2017] JRC 139 . Whelan on Aspects of Sentencing in the Superior Court of Jersey, Third Edition.
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