

JERSEY / JUDGMENT

AG -v- G [2011] JRC 214 (04 November 2011)

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JUDGMENT

THE bailiff: 1. The defendant in this case was sentenced in July 2009 to 4 years' imprisonment for sexual offences in connection with two girls under the age of 16. On 26 th May, 2011, after his release, the Court made certain restraining orders against him under the Sex Offenders (Jersey) Law 2010 . The relevant orders for our purposes today were as follows:- "1. That he be prohibited from contacting or approaching, directly or indirectly, any person identified in Appendix A of this order, other than any contact which is inadvertent or unavoidable, and ... 4. That in circumstances where he finds himself in contact with any persons named in Appendix A, or finds himself alone with a person under the age of 16, that he has a positive duty to remove himself from that situation as soon as reasonably possible." 2. On 12 th August of this year the defendant breached that restraining order in the manner described by the Crown Advocate and by Advocate Pearmain. He arranged to meet A; unknown to him B, C and D, who are three of the people listed in Appendix A, were also there. We will come in a moment to the exact circumstances of the breach. 3. This is the first breach of a restraining order under the 2010 Law and Advocate Pearmain has asked us if we could give some general guidance. We are a little cautious about doing so because the only assistance we have had is the production by Mrs Pearmain, which is very helpful, of a section from Archbold Magistrate's Court Criminal Practice 2012 and in particular paragraph 14 - 299 which reads as follows:- "In Fenton

[2007] 1 Cr. App. R. (S) 97 it was held that where the breach does not involve any real or obvious risk to the section of the public sought to be protected by the order then a community penalty would be an appropriate sentence. Where there are repeated breaches of any order a custodial sentence may be appropriate. Where the person or persons sought to be protected are, as a result of the breach, put at a real and obvious risk then the breach should be treated more seriously." There is then reference to another case Byrne

[2010] 1 Cr App R (S) 65 , where a 2 year sentence was imposed for a breach of an order on seven occasions. The orders spoken of there are sexual offences prevention orders but they are the English equivalent of our restraining orders under the 2010 Law. 4. We have to say that, in our respectful opinion, that passage does not treat a breach sufficiently seriously but we do emphasise that we have not been referred to the cases themselves, and therefore we are relying entirely on Archbold 's summary of them. But one starts from the position that a restraining order is made because an offender poses a risk of serious sexual

harm. The order is therefore made for the protection of others because of the risk of that harm. For a person who poses such a risk then to flout the order of the Court is, in our judgement, very serious. Furthermore, Jersey is a small community and is very different in size and scale from England and Wales. There is a considerable risk of an offender coming into the same area as a person he is prohibited from contacting and it is too easy for him to say that it was unavoidable. A strong message therefore needs to be sent that offenders must take all reasonable steps to avoid breaching the order. 5. Furthermore, the probation report prepared for us in this case suggests that there is a view among offenders of this nature that breach of a restraining order is not a matter which will be taken particularly seriously. We wish to make it clear that that is not the case and to disabuse any persons who hold such a view. For the reasons we have given, we consider that breach of a restraining order will be treated seriously and in most cases is likely to result in a prison sentence, certainly if there is any deliberate breach of any significance. 6. But the Court must consider the facts of any particular case and we accept, as does the Crown in this case, that the breach here was at the very bottom of the scale. The defendant did not know that B, C or D would be present and therefore the breach was completely unpremeditated and not the subject of any deliberation. B and D are tiny youngsters; C is now 16, although he was not when the order was made. The essence of the breach in this case lies in the fact that the defendant did not leave the scene as soon as he could. Having met them all inadvertently because they were in company with A, he turned to speak briefly to the two toddlers and also received a hug from C who is, as we say, now over 16. The whole incident lasted a matter of a minute or two and took place in a public street. The mother of the toddlers was present throughout. As we say, the essence of the breach was that he did not remove himself as soon as reasonably practical as ordered by the restraining order. 7. In all the circumstances this is one of those rare cases therefore where a breach does not merit a sentence of imprisonment. It would have merited a sentence of community service. However, the defendant has served the equivalent of 4 months' imprisonment on remand and therefore it would be wrong to impose community service as this would amount to double punishment. Advocate Pearmain has asked us to impose a probation order and this is also referred to in the probation report. This will formalise the support which the defendant is already voluntarily seeking from the Probation Service and we think it would assist him in resettling and that can only be for the benefit of the community as a whole. 8. In all the circumstances we impose a Probation Order of 6 months. 9. The defendant is still subject to the notification requirements and of course subject to the restraining orders and, whilst on this occasion the Court has accepted it was a brief inadvertent breach, should there be any repeat breach he can expect a much harsher penalty. Authorities Sex Offenders (Jersey) Law 2010. Archbold Magistrate's Court Criminal Practice 2012. Byrne

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