

JERSEY / JUDGMENT

# AG v Galluzzi [2021] JRC 265 (22 October 2021)

[2021] JRC 265

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## JUDGMENT

THE commissioner: 1. The Defendant stands to be sentenced for three counts of benefit fraud committed between the 10 th March 2012 and the 9 th October 2019, by which she received nearly £150,000 to which she was not entitled. Over this period, she withheld information that her husband was living in the family home and providing financial support. 2. The Court has been referred by Crown Advocate Pedley , to the sentencing principles set out in the case of R v Graham and Whatley

[2005] 1 Cr App Rep (S) 115 but not to the tariffs, and we agree with his response to the relevant considerations as follows: (i) Plea . The Defendant has pleaded guilty to all three counts on indictment. (ii) The amount involved and the length of time the offending continued . The Defendant fraudulently obtained £148,999.94 in Income Support payments. The offending of the three counts occurred over seven years and seven months between 2012 and 2019. (iii) The circumstances in which the offending began . The offending results from the Defendant's failure to inform the Department that her husband was living with her and contributing to the family at all three addresses in which they lived. The Defendant states that at the beginning of the claim her husband had moved out of the family home. There is evidence that he had moved out previously but had moved back in prior to the claim being made. (iv) The use to which the money was put . It is not clear how the money was used, but the family lifestyle, was not extravagant. The Defendant's husband purchased high-value items (as seen from PowerHouse documents), including phones, tablets and games consoles, but this appears to be from his legitimate earnings. (v) Previous character . The Defendant has eight previous convictions, five of which were dealt with by the Parish Hall whilst she was a youth, and we agree with the Crown that they have little bearing on the case. She did, however, avoid prosecution for fraudulently obtaining just over £24,000 between the 4th November 2010 and the 4th November 2011. The circumstances of this fraud were the same, in that she failed to notify the Department that she was living with her husband who was then her partner at the time. (vi) Matters special to the defendant, such as illness, disability, family difficulties . The Defendant has three children aged 20, 16 and 10. The impact on her youngest child in particular, aged 10 is desperately unfortunate, but it is frequently the case sadly that offenders of this type have

families who inevitably suffer the consequences. (vii) Any voluntary repayment of the amounts overpaid . The Defendant has repaid £5,083.18 to date and there is still £143,916.76 outstanding. She has entered into a repayment program that will take effect after her release. (viii) The need for deterrence . We agree with the Crown that in a small jurisdiction benefit fraud of this magnitude can have a more serious impact than it would in a larger jurisdiction and is often described as a fraud on us all. 3. We are reminded of what the Court said in the case of Attorney General v Good and Moody

[2015] JRC 027 : "Now, it has been said before and I am going to say it again, that income support fraud is extremely serious. The legislature lays down a maximum of 7 years' imprisonment which shows how seriously the legislature treats it and it is, for the absolute avoidance of doubt, as bad a fraud as any other form of fraud. You are cheating every member of our community by taking monies to which you are not entitled. It is an affront to everybody who is just as badly off as you are but they do not cheat and they tell the truth. It is an affront to everybody who pays their contributions into the fund because they rely on all those who are claiming benefits to claim according to the rules and ensure they do not claim benefits that they should not have... It is not only the obvious sentence that you should go to prison - you should go to prison. ..." 4. In that particular case a prison sentence was avoided. 5. Taking into account all of the mitigation available to the Defendant, the Crown move for a total sentence of 3 years. We have given consideration as we must to whether a sentence of imprisonment is necessary or whether the case can be dealt with by community service as it was in Attorney General v Turner

[2012] JRC 147 and Attorney General v Good and Moody , cases involving much smaller sums, or possibly by suspended sentence as imposed by the Court in Attorney General v Such

[2012] JRC 155 , a case where the Defendant had the care of a six-year-old child. 6. The Crown had moved for a sentence of three years which does equate to the maximum period for which community service can be ordered, and so community service is an alternative to a sentence of imprisonment. The power to suspend a sentence is limited to terms of imprisonment, not exceeding two years and as we have just stated the Crown are moving for a sentence of three years. 7. We have given very careful consideration to the mitigation powerfully put forward by Advocate Burns, some of it we have already covered, but it includes of course the Defendant's guilty plea, her co-operation, her letter of remorse which we find to be a genuine expression of her feelings, her background and difficulties, the support of her family, many of whom are here in Court and the efforts that she has made before being placed in custody to repay. 8. We have great sympathy with the impact of this offending upon the family, but the difficulty with this case is the sheer duration of the offending, nearly seven and a half years, and the amounts involved nearly £150,000, the largest benefit fraud to date. 9. Furthermore, as we have just stated this happened before between 2010 and 2011 and although not charged with an offence resulting from that, the Defendant must have known perfectly well what she was doing over the period of this offending. Indeed, this offending started within months, and during the period of this

offending she filed some 25 changes of circumstances making no mention at all of this change, and the fact that her husband was living in the family home. As the Court said, in AG v Such and it is worth repeating this quote: "In effect, every time a payment of income support is made, the original application is made again and that is why the rule about disclosure of any change of circumstances is so important." 10. In our view, after careful consideration, this case is just too serious to warrant a community outcome. This is not a victimless crime; it is a fraud on everyone on the community. We are however in a position to reduce somewhat the conclusions of the Crown. We think those conclusions were correct and properly moved for, but because of the circumstances of the Defendant and the family we are going to reduce them as an act of mercy. 11. In terms of the sentence: Count 1, you are sentenced to 2 years' imprisonment. Count 2, to 1 years' imprisonment, concurrent. Count 3, to 2 years' 6 months' imprisonment, concurrent. 12. That makes a total of 2 years and 6 months' imprisonment Authorities Income Support (Jersey) Law 2007. R v Graham and Whatley

[2005] 1 Cr App Rep (S) 115 . AG v Good and Moody

[2015] JRC 027 . AG v Turner

[2012] JRC 147 . AG v Such

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