

JERSEY / JUDGMENT

# AG -v- Garcia [2015] JRC 058 (20 March 2015)

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## JUDGMENT

THE BAILIFF: 1. You are here to be sentenced for one count of unlawful sexual intercourse with a girl of the age of 14. It is important to recognise that that is the charge for which you are being sentenced although more serious charges were being considered at one point, those have not been the subject of the count to which you have pleaded guilty, and we are sentencing you on that count of unlawful sexual intercourse. 2. Your counsel agrees with the Crown's conclusions and agrees with the proposed notification period and restrictions under the Sex Offenders (Jersey) Law and we deal with the latter point first. By virtue of your guilty plea you are automatically subject to the notification requirements under the Sex Offenders (Jersey) Law 2010 and you will remain under those requirements for a minimum period of 5 years. You cannot apply to come off the notification list until 5 years have gone by but until you apply to come off it you remain on it and so that continues, as I say, for at least 5 years. 3. We also order that you be subject to Restrictive Orders under Article 10 of the 2010 Law that you are prohibited from being alone with any female you know or believe to be under the age of 16, and you will be considered to be alone if there is not present at the same time an adult over the age of 21 who is aware of your offending history. If you should find yourself alone with a female under the age of 16, accidentally or inadvertently, you have a duty to remove yourself from that situation as soon as reasonably possible. Those restrictions will not apply in respect of your daughter, contact with whom is subject to any restrictions put in place by the Children's Service. Those restrictive orders are for a period of 5 years as from today. We are satisfied that on the balance of probabilities you still pose a threat of serious sexual harm and that these orders are necessary. 4. As to the sentence in this case we recognise that you have had an extraordinarily unhappy childhood and that you were abandoned by your parents at the age of 16 and that is a tragic difficulty which does undoubtedly frame some people's conduct but what you must realise is that tragic upbringings of that kind do not absolve you from responsibility. People have to take responsibility for what they do and you must be sentenced for the offence which you have committed in this case, notwithstanding that at a personal level one might have great sympathy with the difficulties which you have had to date. 5. The fact is that the Courts do protect young girls, whether from themselves or from older people, by the offence which is created under the legislation pursuant to which you are being sentenced. It is undoubtedly the case that unless there are exceptional circumstances, those who

have intercourse with girls under the age of 16 must expect to be sent to prison and we recognise that you do not oppose that. 6. We are going to grant the Crown's conclusions and you will go to prison for a period of 12 months and we note that you expect and you hope to continue to get assistance while in prison and you have expressed a wish to attend in Silkworth Lodge thereafter. We note also that Miss Le Ruez has been giving you some help in prison and is here to support you today, which is good. 7. You must be in no doubt that the effect of your offending is felt, not only by the victim, but also by her family and the Court has had regard to that; there is no doubt at all that, aged 20, and she was 14, you were well aware, your counsel admits it on your behalf, that you were the adult and you should not have behaved as you did and it is for that reason that you should go to prison. 8. We agree with the Crown that the offence comes not at the lowest end of the scale because you are old enough to know better; we think because we are obliged to do so on authority, we have had regard to the 1994 legislation ( Criminal Justice (Young Offenders) (Jersey) Law 1994 ) of the treatment of young offenders even though you are now 21 you were aged 20 at the time of offending and we think that, first of all, this offence is so serious that a non-custodial sentence cannot be justified and, secondly, that in any event your response to non-custodial sentences so far has not been sufficiently good that we ought to impose a non-custodial sentence here anyway. So that is the explanation for the sentence which is being imposed, even though your counsel has agreed it, we have had to consider it on principle ourselves and we think the Crown's conclusions are right. 9. You will go to prison for a period of 12 months. Authorities *Loi (1895) Modifiant le Droit Criminel*. *Sex Offenders (Jersey) Law 2010*. *Criminal Justice (Young Offenders)(Jersey) Law 1994*. *AG v Kittleson*

[2011] JLR N 8. *AG v Kittleson*

[2011] JCA 052 . *AG v Cameron*

[2008] JLR N 44. *AG v Duckworth*

[2009] JRC 058. *AG v Dickinson*

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