

JERSEY / JUDGMENT

AG -v- Gilbraith [2018]

JRC 116 (02 July 2018)

[2018] JRC 116

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JUDGMENT

THE commissioner: 1. On 22 nd September, 2017, AG-v-Gilbraith and Rawlinson

[2017] JRC 155 , for various drug offences the defendant was sentenced to 180 hours of community service concurrent on six counts. 2. On 8 th June, 2018, the Court considered the Attorney General's representation that the defendant had failed to comply with the requirements of the above community service order. The alleged breach was denied by the defendant. Having heard evidence on the matter, the Court found to the criminal standard that the defendant had failed to comply with the requirements of the order and was accordingly in breach. The Court gave brief reasons at the time but said that it would give fuller reasons at a later date. 3. Following its finding that the defendant was in breach, the Court went on to consider what course of action to take as a result. For the reasons given at the time, AG-v-Gilbraith

[2018] JRC 099A , the Court revoked the community service order and imposed concurrent prison sentences of six months imprisonment on each of the six counts. 4. What follows constitutes the fuller reasons for the Court's finding that the defendant had failed to comply with the requirements of the community service order. The Law 5. Article 5 of the Criminal Justice (Community Service Orders) (Jersey) Law 2001 , provides, so far as relevant as follows: "5. Obligations of offenders subject to community service order

(1) An offender in respect of whom a community service order is in force shall -

(a) ...

(b) perform, to the satisfaction of the relevant officer and for the number of hours specified in the order, such work at such times as the offender may be instructed by the relevant officer." 6. Article 7 of the 2001 Law provides as follows:-

(1) If at any time while a community service order is in force, it appears on written information to, in the case of an offender sentenced by the Royal Court, the Attorney General ... that the offender has failed to comply with any obligation under Article 5, the Attorney General may ... present the offender before the court which made the order. ...

- (4) If it is proved to the satisfaction of the court before which the offender appears or is brought or to which the offender is committed that the offender has failed to comply with any obligation under Article 5, the court may:-
- (a) continue the order, with or without variation and with or without the imposition of a fine; or
 - (b) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence by the court which made the order."

The facts 7. We received a statement headed ' Information for Court' prepared by Mr A Le Marrec, the Assistant Community Services Manager within the Probation Service. We also heard oral evidence from Mr Le Marrec and from Mr Trevor Renouf, a Community Service Supervisor within the Probation Service. 8. We would summarise Mr Le Marrec's evidence as follows. 9. He emphasised that the approach of the Community Service section of the Probation Service was that the team wanted offenders to succeed in undertaking the required work. If there was a problem, Mr Le Marrec liked to meet with an offender to find out what was wrong. However offenders were warned that if they did not comply with the requirements of the order, they would be given a final warning and if the Service felt that the situation had become unmanageable, they would be referred to the Solicitor General for possible referral back to the Royal Court. 10. He said that he held the usual introductory meeting with the defendant on 29 th September, 2017, at which he explained all the relevant requirements. He said that the defendant was five minutes late for that interview but was polite throughout the interview. 11. The defendant duly attended the first work session on 3 rd October and worked satisfactorily, but he failed to report at the next work session on 10 th October by reporting late. The transport taking offenders out to work was due to leave at 9:00a.m. but the defendant did not arrive until 9:10a.m., by which time the transport had left. The defendant apparently disputed that he knew the time it was to depart but Mr Le Marrec did not accept the truth of the excuse, particularly given that the defendant had reported on time the previous week. As a result of this failure, the defendant was issued with a final written warning. 12. Between 17 th October and 12 th December, 2017 the defendant reported as instructed and completed over 65 hours of work satisfactorily. However matters changed in January 2018. On nd January, the defendant was brought back from work as he said he had a bad back. The job involved sweeping leaves at Durrell. He said that he was unable to attend on 9 th January because of a continuing bad back and was told to get a medical certificate. This was duly produced on 12 th January and was effective for the period 10 th

- 17 th January. Mr Le Marrec saw him on 16 th January to discuss the matter and the defendant explained he had lost his job. He also asked for permission to go on a snowboarding holiday in March. The defendant failed to attend a meeting with Mr Le Marrec on 23 rd January. He told Mr Le Marrec that he was confused about the date and time of the meeting. The defendant also did not attend on 26 th January. He contacted Mr Le Marrec in advance to say that he had a job interview. Subsequently the defendant attended a meeting with Mr Le Marrec on 9 th February and was warned to report for work on 13th

February. He was advised that the Service had given him considerable latitude over missed sessions of work and appointments and that he had been given the benefit of any doubt. He would now need to improve his efforts or he risked compliance and breach proceedings. On 13 th February he contacted the office claiming to be working and therefore unable to attend. He did however report on 14 th and 20 th February and carried out work satisfactorily. He had by then carried out an aggregate of 95 hours. 13. On 27 th February, the defendant reported for work and the party went off to Government House to carry out work in the garden. Mr Renouf was the supervising officer of that work party. 14. At some point during the morning, Mr Renouf contacted Mr Le Marrec. Mr Renouf informed him that the defendant had not been working satisfactorily. He also told Mr Le Marrec that the defendant had said that he had only had three hours sleep the night before. Mr Le Marrec took the decision to remove the defendant from work on welfare grounds. The defendant was issued with an appointment to see Mr Le Marrec on 2 nd March to discuss the incident. 15. At the appointment on 2 nd March, the defendant asserted that he should not have been removed on 27 th February and was clearly unhappy at Mr Le Marrec's decision. Mr Le Marrec felt and continues to feel that he was correct to remove the defendant in view of his lack of sleep. The defendant was re-instated and warned to attend for work on 6 th March. 16. The defendant failed to report as instructed on th March. He contacted the office and said that he had overslept. He was issued with an appointment for a compliance meeting on 9 th March. He failed to attend that meeting. He contacted Mr Le Marrec 20 minutes after its due time to say that he was at the Social Security Department. A final appointment was issued for 16 th March. 17. The defendant attended on that occasion on time and he was polite. He said that he was now in a good place and in full time work. He asked for extra sessions of work in order that he could finish the community service order as soon as possible. Mr Le Marrec agreed to this subject to compliance and attendance. The defendant said that Mr Le Marrec had been more than fair and reasonable but also said words to the effect that he had been "taking the piss". The defendant again requested permission for the snowboarding holiday. This had previously been declined by the Chief Probation Officer because of the defendant's poor compliance and his asserted inability on financial grounds to see a doctor to support his claim of a back problem. Mr Le Marrec rejected this further application. Following this meeting the defendant was told that he was being re-instated on an absolutely last chance basis. 18. The next session was 20 th March. The defendant reported on time and, together with others, was taken to Les Landes race track under the supervision of Mr Renouf. During the morning Mr Le Marrec received a radio call from Mr Renouf which was put on loudspeaker. Mr Renouf was advising that he had a problem with the defendant. Mr Le Marrec could hear the defendant shouting in the background. He was concerned for Mr Renouf and instructed that they should all return. This duly occurred but the other offenders were taken back out to work after the defendant had been dropped in town. We shall refer in a moment to Mr Renouf's evidence of the defendant's conduct but it consisted of abusive language and behaviour. 19. It was following the incident on 20 th March that the decision was taken to refer the matter to the Solicitor General, who in due course decided to refer the matter to the Court. The defendant has been suspended from the scheme since 20 th March.

20. Mr Renouf explained that he was a Supervisor of Community Service for the Probation Service. On 27 th February he took a group of offenders to work in the garden at Government House. The task was to spread compost. The head gardener wished this to be done in a particular way, namely to spread the compost lightly as it was near various plants. 21. Mr Renouf explained that the other offenders managed to do this. However, the defendant was spreading the compost in a more clumsy way and was also standing on flowers with the risk of damaging them. Mr Renouf had already shown the work party how he wished the compost spread but he showed the defendant a second time. When speaking to the defendant, he felt that the defendant was not his normal self. The defendant said that he was high on painkillers and had only had three hours sleep. 22. Mr Renouf contacted Mr Le Marrec immediately. He explained what had happened and that on this occasion the defendant was not as co-operative as previously. Mr Le Marrec instructed that the defendant be removed immediately. This was Mr Le Marrec's decision. The defendant was quite upset at being removed and said he could continue working as he regularly had only three hours sleep. 23. Mr Renouf next gave evidence about the events on 20 th March. Offenders, including the defendant, were working at Les Landes race course using strimmers. At the beginning of the session, the defendant told Mr Renouf that he was wrong to have sent the defendant back from Government House on 27 th February. He said that because of Mr Renouf, he was not now allowed to go on the snowboarding holiday in respect of which he had borrowed money from his mother. Mr Renouf said that he was not prepared to discuss the matter and advised the defendant to get on with his work. During the course of the morning the defendant asked to go to the toilet. He spent in excess of ten minutes there. Mr Renouf asked him if he was ok, to which the defendant replied that he was, although he said he had eaten spicy food the night before which had affected his stomach. 24. At about 12:15p.m. the defendant asked to go to the toilet again. This time he spent about fifteen minutes in the toilet and when he came out Mr Renouf said that he was concerned. The defendant reacted angrily. He threw his gloves on the ground and demanded to speak to Mr Le Marrec. 25. Mr Renouf spoke to Mr Le Marrec on the radio. Whilst this was going on the defendant was shouting at him. Mr Le Marrec instructed that the whole party be brought back to town. On the way to town, the defendant raised his voice towards Mr Renouf and abused him. He called him a bully, a liar and said that he had set the defendant up. He said that the problem had been sorted out with Mr Le Marrec but Mr Renouf had now messed things up. He said that he had thought Mr Renouf was ok but he was just as bad as the other "fucking supervisors". 26. In cross-examination, Mr Renouf accepted that it was possible the defendant's back was hurting on 27 th February but he had not mentioned it. Nor had he mentioned the fact that he had only taken Lemsip and antihistamine. This was only something he mentioned later on 20 th March at the race course when talking about the Government House incident. Mr Renouf said that he was not satisfied with the work which the defendant was undertaking on 27 th February and when the defendant mentioned about having only had three hours sleep, this was when Mr Renouf contacted Mr Le Marrec. 27. In relation to the incident on 20 th March, Mr Renouf said that his concern was either that the defendant was wasting time by spending so long in the toilet or that he was not well. He said

that when he radioed in to Mr Le Marrec, he told Mr Le Marrec that he had had a confrontation with the defendant. The defendant had been agitated from the moment that Mr Renouf had said that he was concerned at the time the defendant was taking in the toilet. The defendant had not become angry only after the session was brought to an end. 28. The defendant gave evidence. He admitted that he had been late on 29 th September but it was only four minutes and it was because he had been unable to work out how to get into the building. He had arrived at the building two minutes before the scheduled appointment time. 29. As to 10 th October, he said that he had arrived at 8:52a.m. but the van had already left. It has to be said that the suggestion that the van had left early had not been put to Mr Le Marrec when he was giving evidence. 30. He explained that in January/February 2018, he had problems with his back and he was not in a fit state to work. However he did not dispute Mr Le Marrec's account of what occurred during that time. 31. He did however dispute that he should have been removed from work at Government House on 27 th February. He said he was using his hands to spread the compost as this did not hurt his back. It was correct that he had only had three hours sleep. This was because of insomnia but it did not prevent him working satisfactorily. It did sometimes mean that he couldn't wake up in the morning and this is what had happened on 6 th March. He said that Mr Renouf had asked him if he was under the influence of any drugs because of how he looked, to which the defendant had responded that he had taken Lemsips and an antihistamine and had only slept three hours. 32. Turning to the incident on 20 th March, he said that he was constipated but he denied that he threw his gloves to the ground. He took them off and placed them on the ground. He said that he had asked for a meeting with Mr Le Marrec at the end of the day but that Mr Renouf had said no, they were giving up work immediately. He said that Mr Renouf had taken the decision to return them to town before he had spoken to Mr Le Marrec. This was quite contrary to the evidence of Mr Le Marrec and Mr Renouf, who both said that it was Mr Le Marrec's decision. 33. He admitted that he had become abusive in the van on the way back but denied that he had become aggressive or that he had been abusive prior to the decision to return them to town. If he was heard shouting on the radio by Mr Le Marrec, this was because he was some distance away from Mr Renouf and was shouting out that he was not getting aggressive. He regretted having behaved in a disgusting manner on the way back to town whilst in the van.

Conclusion

34. There was not a large area of dispute between Mr Le Marrec and Mr Renouf on the one hand and the defendant on the other. However, to the extent that there were differences in the evidence as to what had occurred, we have seen and heard the witnesses and we accepted the evidence of Mr Le Marrec and Mr Renouf. In particular, we note that the suggestion that the van left early on 10 th October was never put to Mr Le Marrec and we accept that it is Mr Le Marrec's decision as to whether a working party should return to town early, not Mr Renouf's. We find therefore that the defendant was guilty of the following failures:- (i) He failed to report on 10 th October by being late and was issued with a final written warning.

(ii) After a number of non-attendances during the course of January and early February in circumstances where the Service showed him considerable latitude because of his possible back pain, he was warned that he would need to improve his efforts. Despite this, he was removed from work on 27 th February because Mr Le Marrec, having heard from Mr Renouf about the defendant's condition and unsatisfactory work performance that day, concluded that the defendant's statement that he had slept for only three hours the night before presented a welfare risk to the defendant. (iii) He failed to report on 6 th March after oversleeping. (iv) He failed to attend a compliance meeting on 9 th March to discuss the matter but was re-instated on a last chance basis on 16 th March. (v) Despite this, on 20 th March, he used foul and abusive language towards the supervisor Mr Renouf and behaved in an unacceptable manner. 35. Crown Advocate Maletroit accepted that Article 5(1)(b) is to be interpreted by inserting 'reasonable' before 'satisfaction' i.e. that the offender must perform the necessary work to the reasonable satisfaction of the relevant officer. He also accepted that before finding a breach of Article 5, the Court must be satisfied to the criminal standard, i.e. beyond reasonable doubt. We agree with both of those concessions. 36. Nevertheless, we were satisfied to the criminal standard that the defendant had failed to perform the work to the reasonable satisfaction of Mr Le Marrec and Mr Renouf. The failures listed in paragraph 34 were quite sufficient to constitute a failure to comply with the requirements of Article 5 and we so find. 37. It was in those circumstances that the Court then went on to consider what course it should take pursuant to Article 7, and that is the subject of a separate judgment which the Court issued at the time of sentence. Authorities AG-v-Gibraith and Rawlinson

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Prepared on 26 October 2026 · Esheria