

JERSEY / JUDGMENT

AG v Goncalves [2020]

JRC 108 (05 June 2020)

[2020] JRC 108

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JUDGMENT

THE DEPUTY BAILIFF: 1. You are 31 years old and you appear before us today in respect of 5 offences. The first, Count 1 was an unprovoked assault that you committed upon another man ("Victim 1") at 2am on th May, 2017. This assault took place in St Helier, after Victim 1 and friends of his had left a night club. You did not know Victim 1 well, he had merely purchased a vehicle from you in the past. You were angry with him and Victim 1 thought you wanted to fight him. He asked you to leave him alone and you replied by punching him once in the mouth with your right hand causing his lip to bleed. The victim's girlfriend was upset and she began to cry. This sort of behaviour gives rise to legitimate public concern about the safety of the streets of our town at night, and it is wholly unacceptable. Some months later you were picked out by Victim 1 on a video identification parade. You were interviewed twice both after the offence in June 2017 and in November 2017 after being picked out on the parade, and on both occasions you denied the offence. Indeed you maintained your denials until your appearance in this Court. It took 2½ years for that matter to be charged and that delay was in large measure not your fault and accordingly we reduce the sentence that we will ultimately impose in relation to that count. 2. The facts of Counts 2 and 3 can be taken together. They relate to the breakdown in relationship with your former partner ("Victim 2") with whom you have 3 children (twins aged 5 and a 2 year old who is 3 years old next month). That relationship ended in April 2019 and you became jealous when you heard that she was seeing another man ("Victim 3"). Count 3 relates to your disorderly behaviour on 12 th August, 2019, when in the early evening you attempted to contact Victim 2. The previous day you sent various texts to her demanding to remove your surname from your own children's names. On this day you called Victim 2 fourteen times and eventually decided to use your car to find her it seems. In any event you sounded your horn when you saw her driving on Trinity Hill. You telephoned her in her car and she made it clear that she did not want to speak to you. You followed her in your vehicle and when she arrived at St Helier you alighted from your vehicle and followed her and her uncle. You were agitated, you tried to get her into your car. When she refused you shouted at her and she describes you as visibly shaking with anger. You threw down your phone, punched your steering wheel in your car to which you had returned, jumped on your car bonnet causing it to dent. The incident left Victim 2 concerned for her safety owing to the level of aggression which you displayed. And only 20 minutes later you decided to go to the

restaurant where Victim 2's new partner ("Victim 3") worked. You entered his workplace, you asked to speak to him in private and in the premises you began a heated discussion with Victim 3 and, again in anger, you grabbed his face which resulted in him pushing you away, and that gives rise to another offence of common assault. Victim 3 told the police that he felt threatened by you and described you as intimidating and looking for a fight. 3. Counts 4 and 5 on the Indictment relate to your attempt to prevent Victim 1 from pursuing his complaint. Counts 4 and 5 were offences committed on court bail. You were granted bail on 4 th October, having been charged with the offences at Counts 1, 2 and 3. Offending on bail is always an aggravating feature. Furthermore, at the time you committed the offences at Counts 4 and 5, it was an express condition of your bail that you have no contact with Victim 1. So not merely were you offending on bail you were also offending in breach of your bail conditions. 4. The offences you committed, perverting the course of justice, were crude attempts to prevent Victim 1 from giving evidence against you. The first took place in broad daylight on 12 th December, 2019, when Victim 1 was working. You contacted him via Facebook and then came to find him in his truck. You asked him to withdraw his complaint and you have agreed in your guilty plea that you were threatening when you spoke to him and you implied that you would use physical violence if he did not withdraw that complaint. Unsurprisingly Victim 1 felt intimidated and felt that you might try to hurt him again. Undeterred you did the same on 2 nd February, 2020, the offence at Count 5. This was shortly before you were due to be tried by the Magistrate on 13 th February, 2020, for the offence at Count 1. On this occasion you saw Victim 1 in St Helier between 2 and 2.30am, you approached him near West's Centre and told him that witnesses did not support him and you said " you will see what will happen after Court, I'm going to batter you ." And then you said " if anything happens to me I'm going to smash your face in ". You said this when you were angry and shouting. Unsurprisingly Victim 1 found this threatening and equally unsurprisingly, when this breach of bail was drawn to the attention of the Magistrate's Court, you were remanded in custody and you have now spent over 3 months in custody. 5. Although you had denied the offence at Count 1, you ultimately pleaded guilty to that and the other offences. The Court has read the Victim Personal Statement of Victim 1 which refers to the injury suffered when you assaulted him; it took a week to heal leaving him in pain with an injury that was visible externally with people repeatedly asking him what had happened to him. As to the incidents at Counts 4 and 5, he felt intimidated and threatened and was fearful you would use violence against him. He requests a restraining order against you which the Court will grant. We note from the Probation Report that you are described as being at medium risk of reconviction, we note that most of your family live in Madeira, but you came to Jersey in 2011 and have generally been in employment since that time. We see that you have a good relationship with your children and prior to your remand in custody you saw them twice a week and had them overnight at weekends. We understand that your children miss you and we have heard from Advocate Dix that you and your children have been in frequent contact with each other during your remand in custody. We note that Victim 2 has put aside her concerns in relation to your conduct in the interests of your children and has not chosen to seek a restraining order against you. 6. The Probation Officer says you have a propensity towards violence and aggression when dealing with a conflict or difficult emotions. This is plainly correct and at your age, 31 years old, you should have put such matters behind you. Indeed we see echoes

of these concerns in the references of the individuals who have been prepared to write to the Court on your behalf. Your partner says you worse quality is your bad temper and she says that you can be irrational at times and react without thinking of the consequences of your actions. However, she says that you are a good father and we note from your father's evidence that he regards you as the closest family member he has in Jersey. He says he needs you to help in particularly in relation to a chronic medical condition which he has which may deteriorate in the future. 7. We have listened with care to all that your counsel has said and it needs to be understood that perverting the course of justice is an offence which strikes at the heart of the judicial system. Victims must know that the Court will give them protection if they are threatened and those who are accused of criminal offences must understand that to intimidate victims and witnesses will almost always result in an immediate custodial sentence, and indeed had it not been for the fact that you have spent 3 months on remand already, then you would have been sentenced to an immediate prison term today. But we see the force, in the circumstances, in not sending you back to prison for a short period and, having regard to the contents of the Social Enquiry Report, we are going to impose a non-custodial sentence today, in particular a lengthy sentence of Community Service which as you know is a direct alternative to custody. 8. The sentence that the Court imposes is as follows. On Counts 1, 2 and 3 the Court imposes a sentence of 50 hours' Community Service, the equivalent of 1 month's imprisonment. In relation to Counts 4 and 5 we impose a sentence of 200 hours' Community Service, the equivalent of 14 months' imprisonment. 9. We would like to indicate that we regard the Crown's moving for 8 months' imprisonment as too short in the circumstances of this case, as we regard the offences at Counts 4 and 5 as particularly serious. That will result in you being sentenced to a period of 200 hours' Community Service and in respect of all 5 offences we impose a Probation Order of 1 year. 10. As regards the request for a restraining order, we make the order sought as contained at divider 9 of the bundle, namely: "1. The Defendant is prohibited from having any contact, direct or indirect, with Victim 1. 2. The Defendant is prohibited from approaching or following Victim 1. 3. The Defendant is prohibited from entering any part of the premises known to him to be the home address of Victim 1 or loitering within 50 metres thereof. 4. The Defendant is prohibited from entering any part of the premises known to him to be the work address of Victim 1 or loitering within 50 metres thereof. 5. Should the Defendant see or come into contact with Victim 1 in any public or private place he must take immediate action to avoid any breach of this Order." That order shall remain in force for a period of 5 years and if you breach the order you will be liable for up to 2 years' imprisonment and a fine. 11. As regards the Crown's request for a deportation order, we agree with the Crown's assessment of this case. There is a 2 stage test set out by the Court of Appeal in the case of *Comacho v AG*

[2007] JLR 462 . The Court must ask two questions. First, is the defendant's continued presence detrimental to the island and, secondly, what will be the effect on the defendant and other persons in respect of their Article 8 rights pursuant to the European Convention on Human Rights as incorporated into Jersey law if you are deported. As regards the first part of the test the Court agrees with the Crown that owing to your convictions recorded in this case, that your continued presence in the island is detrimental to the public good.

However, we then have to go on to balance your convention rights and those of your children and indeed your father, and in the circumstances we do not make an order for your deportation. 12. We order you to pay £200 by way of compensation to Victim 1 and we order that to be paid within 3 months of today. Authorities Comacho v AG

[2007] JLR 462 . Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 AG v Vaz

[2019] JRC 090 AG v Dias

[2017] JRC 114 AG v Williamson

[2011] JRC 232 AG v Cummins

[2006] JRC 070 AG v Tucker

[2003] JRC 119 AG v Capuano

[1993] JRC 130 Extract from Whelan - Aspects of Sentencing in the Superior Courts of Jersey Page
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