

JERSEY / JUDGMENT

AG -v- Goss [2005] JRC 132 (27 September 2005)

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JUDGMENT

THE DEPUTY BAILIFF: 1. Because this is the first time that the Court has had to consider the new statute which deals with minimum terms of imprisonment, we are going to explain our decision in rather more detail than would normally be the case. 2. Mr Goss you killed Michelle Gibson because you lost your temper when you were clearly under the influence of alcohol. As a result of what you did, her life was cut short, her children have to face life without their mother, and her family and friends are left to grieve for her. Members of the Court wish to express their sympathy to Michelle Gibson's children and to her family. 3. You have admitted the offence of murder. The law provides only one sentence for that offence, namely life imprisonment. But the law also now requires us to fix the minimum period of imprisonment that you will serve. Now it is important that both you and the public should appreciate exactly what that means. It does not mean that you will be released at the end of the period which we fix. It means only that you will not be released before the end of that period. Once that period has expired you can apply to the parole board and it will be up to the parole board to decide whether you should be released at that stage or whether you should spend longer in prison. 4. Under this new statute we must first consider the starting point. The Law dictates that there are 3 categories, that of a whole life, 30 years or 15 years. The Crown accepts, and we agree, that this case falls within the 15 year bracket. 5. Next we must consider whether there were any aggravating and mitigating circumstances which would cause us to move from that 15 year starting point. Again we agree with the Crown that there are no aggravating features present in this case. As to mitigating features the Court finds that there are three: (i) There was no premeditation in this case. This was not a case of somebody who planned to kill. We accept that it occurred on the spur of the moment during an argument. (ii) We accept that there was an element of provocation. We accept that the first physical contact may have been initiated by Miss Gibson and that during the altercation she called you 'useless and only a sex toy'. (iii) We also accept the opinion of the forensic physiologist, and the two forensic psychiatrists, that you are particularly sensitive to criticism and that as well as the amount of drink which you had consumed your personality contributed to your loss of temper. 6. However, we do not accept that you acted to any extent in self-defence, and we therefore reject Mr Gollop's suggested fourth category of mitigation. 7. We take into account that you had been of previous good character. We have read the references from your family and others. We note in particular

that your ex-wife and former girlfriends all say that you were not violent to them in your relationship with them. We accept that you are remorseful and that you came back voluntarily. We have considered everything in the reports before us. The fact remains that you took a life and this has to be reflected in the sentence the Court passes. 8. The structure of the way in which we must sentence was set out in the case of *R -v- Kluk* (2005) EWCA Crim. 1331 to which we have been referred. We must first decide on the minimum sentence after allowance for aggravating and mitigating factors, and we must then deduct anything that is appropriate for the fact that you have pleaded guilty. 9. The rule in England, which we are willing to accept here, is that up to a maximum of one-sixth may be allowed for an early plea of guilty and the Crown has accepted that, on the unusual facts of this case, because of the outstanding appeal of *Holley*, we should treat your plea as having been made at the earliest reasonable opportunity. 10. Mr Gollop says that we must also articulate the intermediate point from which we deduct for mitigation for the guilty plea. Mr Whelan on the other hand says that we do not have to do that. The case of *Kluk* might be thought to suggest that we should but it is not entirely clear; but that case was an English case where there is a statute which emphasises the position in relation to a guilty plea. 11. In Jersey there is an authoritative decision of a five man Court of Appeal which is to the opposite effect. At Paragraph 92 of *Harrison -v- A. G.* [2004]JCA046 the Court of Appeal said: "In this regard the Attorney General has suggested that the two stage process would or might require the Royal Court to specify in relation to each piece of mitigation what allowance or discount had been given. *Kenwood* was referred to in this connection. In that case the Court of Appeal made it clear that in future when considering mitigating factors the Royal Court should calculate a single comprehensive discount for all the relevant factors including a plea of guilty and all other personal mitigation. We agree." 12. We endorse that and therefore we do not propose to articulate the intermediate figure. But we say this. We have followed the process set out by *Kluk*

- in deciding the amount to be allowed off, in this case for mitigating factors, there being no aggravating factors, and we have then deducted from that the allowance for the plea of guilty, which the Crown has accepted and we endorse, should be at the maximum level. 13. On that basis we conclude, because Mr Whelan has accepted that the full one-sixth should be allowed, that the Crown has allowed very little for the other mitigating factors; a matter of six months or so. 14. We have carefully considered all the matters put forward. We accept of course the grievous loss for the family, but we must apply the new rules conscientiously. We think in all the circumstances a little more must be allowed for the mitigating factors than has been allowed for by the Crown. We repeat that we have allowed for them and then deducted the allowance for the guilty plea. 15. The sentence of the Court is that you be sentenced to life imprisonment and we say that the minimum period which you must serve is one of 11 years' imprisonment, and of course, time spent so far will count towards that. Authorities *R -v- Kluk* (2005) EWCA Crim. 1331. *Harrison -v- A. G.* [2004]JCA046. Page Last Updated: 14 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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