JERSEY / JUDGMENT

AG v Grihault [2023] JRC 162 (08 September 2023)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an appeal against a decision by the Magistrate to decline to admit the Appellant in this case to bail. Under Article 16 of Criminal Procedure (Bail) (Jersey) Law 2017 ("the Bail Law") the Appellant may appeal to the Royal Court against a decision by the Magistrate to deny him bail and an appeal under that article may only be made on the grounds that the Magistrate's decision was unreasonable in all the circumstances of the case and the Advocate for the Appellant agrees that this is a "high hurdle" for any Appellant to overcome. This is not a re-hearing but a review of the decision and this Court, on appeal, will only interfere if the decision of the Magistrate was unreasonable. 2. The Appellant is 21 years of age and until recently was a man of good character without relevant previous convictions. He suffered a head injury some 4 years ago when he was subjected to a serious assault and it is said on his behalf today that the relationship between that injury and the offences that he has recently committed has not yet been identified and that there is a real possibility that the connection between the two will provide him strong and possibly exceptional mitigation relevant to the question of his culpability for the offences committed this year. But we do not know at this stage what the effect of that head injury was in the context of this offending. 3. The offending we will summarise briefly for the purpose of this judgment. On 5 April the Appellant is alleged to have committed an offence of common assault and resisting arrest. The assault arose out of an argument between the Appellant and his then partner and was captured on closed circuit television. The Appellant has pleaded not guilty to those offences. He was charged with them on 23 June and released on Court bail and is due to be tried in relation to those offences in December by the Magistrate. It is said that date may be brought forward and in our view, if at all possible, it should be brought forward so that all matters which the Appellant faces can be dealt with together by the same court at the same time. But, if that is not possible, then we have made clear in the course of argument and we repeat, that the offences that the Appellant has admitted as at today should, in any event, be dealt with by this Court as soon as possible. 4. The second batch of offences were driving offences principally committed between 13 and 19 June this year. There were a total of 6 offences, the most serious were offences of driving without insurance and careless driving. Those were collectively resolved by the Appellant pleading guilty between 11 August and 6 September. Most of the offences were resolved by way of pleas of guilty entered on 11 th September save for the offence of careless

driving which the Appellant admitted on 6 September. He was released on Court bail after entering pleas on 11 August and accordingly he was on Magistrate's Court bail in relation to two sets of offences when he committed the offences which led to his remand in custody. Those offences were committed on 23 August, and on any view, as accepted by counsel for the Appellant today, these offences cross the custody threshold. 5. In short, on that day (23 August) the Appellant committed an offence of affray, possession of an offensive weapon and malicious damage. At the time of committing the offence of affray he was wielding a kitchen knife and a hammer. The offences arose whilst the Appellant was living with his mother and the complainants were a woman and her son who lived two doors away. As I have said we do not propose to particularise all the circumstances of these offences but they culminated in an argument in which the Appellant told the persons to whom we have referred that he was going to " shank them" which meant stab them and was going to get a knife. This he did returning 5 minutes later with the knife and the hammer. He threatened to " shank " or stab the Complainants, moving within 5 steps of the woman to whom we have referred, holding a large kitchen knife with a dark handle and a silver blade, he waved the hammer above his head threatening to stab the Complainants and indeed he used the hammer to smash the living room window of the house where the Complainants lived. One of the Complainants described the appellants as " fuming " and " angry " and another person present said that they were " scared" . In fact the knife was not used as a weapon and the Appellant, when interviewed after arrest made largely no comment replies, and denied having a knife but by his plea accepts that was untrue. These are serious offences. 6. The Appellant pleaded guilty at the first appearance on 25 August and he was remanded in custody until the 6 September when a full bail application was made on his behalf. The Magistrate found that there were substantial grounds for believing that the Appellant, if granted bail, whether subject to conditions or not, would commit an offence whilst on bail and the Magistrate also considered it likely but not inevitable that the Appellant would receive a custodial sentence in due course and accordingly his application for bail was refused. 7. We have been referred to the Criminal Procedure (Bail) (Jersey) Law 2017 , Article 7 of which provides that any Defendant has a right to be granted bail whenever they are brought before the Court. Article 8 provides that Schedule 1 sets out the exceptions to the right to be granted bail, and these include where there are substantial grounds for believing that the Defendant if granted bail would commit an offence on bail and/or interfere with witnesses or otherwise obstruct the course of justice and a further ground for refusing bail is if a Defendant has been convicted of an offence punishable with imprisonment and is awaiting sentence. In respect of this provision we were reminded of the well known policy of the Royal Court, which is followed by the Magistrate's Court, as set out in the case of AG v Dixey and Pereira

[2017] JRC 066 in which the Court said " The Court's general policy, once a guilty plea has been entered on an Indictment containing charges which are likely to result in a custodial sentence, is to have a remand in custody. ... it will be the policy for the future and one would expect exceptional circumstances to be provided if the Court is going to grant bail after a guilty plea to an offence which is likely to carry a custodial sentence." 8. In this case the Crown has indicated that in view of the offences committed on 23 August, their current

view is that they may be moving for a sentence of at least 18 months' imprisonment, in relation to those matters. 9. It is said on behalf of the Appellant today that the Magistrate when declining to admit the Appellant to bail did not give sufficient weight to his previous good character, his guilty plea, the mitigation that might arise from the injury to his head to which we have referred, and in those circumstances he should not have been remanded in custody, that any concerns in relation to further offending could be met by the conditions of bail he offered including moving to a bail address some distance and several parishes away from the home of the Complainants. Counsel drew to our attention the fact that the Appellant is motivated to comply with stringent bail conditions owing to his experience of custody which he has found difficult, which we accept, and it was said in the circumstances that the decision to deny the Appellant bails was unreasonable. 10. Certainly, we are concerned about there being any significant delay in this case and it was suggested in the papers before us that in view of the Appellant's outstanding trial before the Magistrate in December that the cases against him could not be determined by way of sentence until January 2024. That would be unacceptable, but is not going to happen. The cases which have been resolved, to which we have already referred, are listed for sentence in the Royal Court on 9 October. We have been told by the Probation Service today via enquiries made by the Greffier, that the Probation Report will be ready for 9 October. The Probation Officer in question agrees that it is appropriate for there to be a psychological report prepared in this case too and Defence counsel has asked that we order such a report. We do order such a report today and we order that if at all possible it be prepared on an expedited basis so that it is ready for the hearing on 9 October. Counsel for the Appellant has said that they have yet to firmly identify an expert to carry out that report, but said in the course of submissions that possible candidates for preparing for this report are Dr Englebrecht and Dr Julie Moignard. In any event we order that steps are taken to identify an expert as soon as possible who can prepare a report in short order and hopefully by 9 October. 11. With those remarks in mind and in any event we have stood back from this case and have concluded without any hesitation that the Magistrate was entitled to reach the conclusion that she did on the evidence before her; that she made, so far as we can tell, no errors in directing herself as she did in relation to the relevant legal principles, having regard to the circumstances in front of her. Accordingly she was entitled to conclude that there were substantial grounds for believing that the Appellant, if granted bail, would commit further offences on bail and was entitled to conclude that the sentence that the Appellant may receive in due course was likely to be a custodial one and in those circumstances she was entitled to decline to admit the Appellant to bail and we cannot and do not interfere with her decision. Authorities Criminal Procedure (Bail) (Jersey) Law 2017. AG v Dixey and Pereira

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Prepared on 30 October 2026 · Esheria