

JERSEY / JUDGMENT

AG -v- H [2011] JRC 206 (24 October 2011)

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JUDGMENT

THE BAILIFF: 1. This is an application for a retrospective notification order under Article 13(2) of the Sex Offenders (Jersey) Law 2010 ("the 2010 Law"), the defendant having been sentenced for his offences prior to the commencement of the 2010 Law. 2. The defendant pleaded guilty to offences of unlawful sexual intercourse with a teenage girl and of making indecent photographs of children contrary to Article 2(1)(a) of the Protection of Children (Jersey) Law 1994 ("the 1994 Law") by downloading images from the internet. He was sentenced to community service and placed on probation in the Magistrate's Court. He was 17 at the time of the offences. 3. The probation report indicates that the defendant carried out his Probation Order to the complete satisfaction of the Probation Department. He is described in the report as being "... highly motivated to avoid future re-conviction". He is assessed as being at moderate risk of sexual re-conviction, but it appears that this is because of his youth coupled with the fact that he has committed the offences in question. There is no other particular factor which suggests a risk of re-offending on his part. 4. The first issue we must consider is whether this application may be heard in private, as requested by Advocate Hall. We are informed that there were considerable consequences as a result of publication in the newspaper at the time of his original conviction. He lost his employment, his then girlfriend terminated their relationship and there were other consequences. 5. In support of the application we have received a number of documents from which it is clear that he is extremely remorseful about the offences and has responded extremely positively to the Probation Order. His parents have written outlining in detail the consequences of the previous publicity and the likely consequences of any repetition of that publicity. We have also received a report from his general practitioner advising that a repetition of the publicity could have a serious adverse affect on his mental well-being. The probation officer also indicated that further publicity might adversely affect the excellent progress which he has made. 6. We bear in mind the strong public interest in matters such as this being dealt with publicly but we are satisfied that in the particular circumstances of this case, the potential adverse effects described above outweigh that interest and accordingly we ordered that the hearing be in private and that this judgment be anonymised. 7. As to the substance of the application, Article 4(1)(a) of the 2010 Law provides that, in relation to offences committed after the commencement of the Law (where the notification requirement is automatic), the Court may decline to order notification where the defendant in question has been convicted of unlawful sexual intercourse with a girl over 13 but under 16 and at the time of the offence he was under 20. That was the

situation here and, in view of the circumstances of the offending and the defendant's conduct since then, we would have been minded to have made no order had that offence stood alone. However, the existence of the offence under the 1994 Law means that that article would have had no application had the offending occurred after the commencement of the 2010 Law. 8. Article 5(4) of the 2010 Law provides that the minimum period before a defendant can apply for the notification requirement to be lifted is five years, but that the Court has an ability in exceptional circumstances to order a lesser period. 9. The Crown in this case has moved for a period of 2½ years. The defendant does not oppose the request although Advocate Hall has raised the possibility of giving credit for the time spent on probation. We are satisfied that there are exceptional reasons for ordering a period of less than 5 years, namely:- (i) The defendant was only 17 at the time of the offences. The unlawful sexual intercourse was carried out in the context of a relationship between the defendant and the victim, albeit that she thought the relationship was more profound than he did. In relation to the offence under the 1994 Law, that was one offence and it was towards the lower end of the scale. (ii) He has carried out the Probation Order to the complete satisfaction of the Probation Department and, as already mentioned, is assessed by them as being highly motivated to avoid reconviction. He is clearly extremely remorseful. (iii) He has a secure and happy family background with very supportive parents, he has regular employment and has recently obtained promotion, and he is now in a relationship with a new girlfriend. These all militate against his re-offending. (iv) Although he is assessed as being at moderate risk of sexual re-offending, this is, as already stated, a consequence of the assessment tool used to consider the risk. Thus, somewhat counter-intuitively, the fact that he has not had an intimate co-habiting relationship for a period of at least 2 years is considered a risk factor. We suspect that most people of the defendant's age have not had such a co-habiting relationship. Given the contents of the probation report prepared for this application and the general background as we find it to be, coupled with our assessment of the offending itself, we think that in reality the defendant is unlikely to re-offend and we should be very disappointed if he does. 10. In all the circumstances we agree that there are exceptional circumstances to justify a reduction from the 5 year period before the defendant can apply for the notification requirement to be lifted. However, we do not think it would be right to go below the 2½ year period suggested by the Crown and accordingly we declare that that is the relevant period in this case. Authorities Sex Offenders (Jersey) Law 2010. Protection of Children (Jersey) Law 1994. Page Last Updated: 07 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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