

JERSEY / JUDGMENT

AG v Harris [2021] JRC 307 (08 December 2021)

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JUDGMENT

THE COMMISSIONER: 1. The Defendant is to be sentenced for three counts of making indecent images of children, 85 still images and 19 moving images in Category A, 145 still images and 7 moving images in Category B and 1,970 still images and 1 moving image in Category C, a total of 2,200 still images 27 moving images. 2. Applying the guidelines in AG v Godson and Crowley

[2013] JRC 091 , where an offender has made images falling within Category A, which is the equivalent of the former levels 4 and 5, an initial figure in the region of 3 years is appropriate, and that takes to account the assumptions in that case which are as follows: - (i) That the offender is an adult; (ii) That he has no relevant convictions; (iii) That the number of images is small; (iv) That the making of any image was for his benefit alone; and (v) The sentencing process results from a contested trial. 3. In this case assumptions 1, 2, and 4 apply. As to assumption 3 the number of images is high, which the Crown treats as an aggravating factor. 4. Having adjusted the initial figure for aggravating and mitigating factors of the offence the resulting figure may then be adjusted to take into account the personal mitigation of the Defendant and his guilty plea. 5. The adjusted initial figure moved for by the Crown is 4 years' imprisonment which it then proposes should be reduced to 3 years' imprisonment for each of the three counts concurrent to take into account the personal mitigation of the Defendant and his guilty plea. 6. The Defendant is assessed at a moderate risk of reoffending in the same way i.e. viewing indecent images of children. He is not assessed at presenting any risk of physical harm to others or any physical risk of committing contact sexual offences. 7. Advocate Pinel has made a number of points of mitigation, but taking the principal points in turn firstly she submits that the Court should deal with each count separately to reach a sentence for each, rather than the approach of the Crown which is to seek the same sentence for each of the three counts. The approach of the Crown was followed in the earlier case of AG v Matthews

[2020] JRC 186A and although not the subject of any detailed discussion at this hearing we accept that approach as being appropriate and reflecting the totality of the images found on the Defendant's device, and of course, it makes no difference to ultimate sentence that he

serves. 8. Secondly, Advocate Pinel submits that the initial figure of 3 years' imprisonment, which she accepts is correct, should only be increased by 1 month in particular to reflect the short period of offending, 4 months, which she says is a mitigating factor for the offence. We disagree. In our view the uplift of 1 year to 4 years is correct to reflect the aggravating and mitigating factors of this offence. In this case there were a total of 2,227 indecent images of which 104 were within Category A. 9. Thirdly, the Crown have not given a full discount for the plea of guilty because it says the plea was inevitable. We agree with Advocate Pinel that a full discount should be given to the defendant to reflect the fact that he volunteered to the police his pin number without which we are told it would be impossible for the police to have gained access to his iPad, and therefore, we agreed that his plea does have value. Applying that full discount that would reduce the sentence from a starting point of 4 years sort by the Crown to 2 years and 8 months. 10. Next Advocate Pinel says that the Defendant's medical condition is a ground for either the Court taking the exceptional step of imposing a suspended sentence, which would only be possible for a sentence of 2 years or under, or of imposing Community Service. We have taken his medical condition and issues very much into account and following the principles set out in *AG v King*

[2019] JRC 079 we agree this justifies a reduction in his sentence, but not the imposition of Community Service. 11. In our view the offence is too serious and requires a custodial outcome. These are not victimless crimes; these are images of children being subjected to the most appalling sexual abuse. Downloading these images, fuels a demand for this kind of pornography which then encourages its production and therefore the further abuse of children. 12. In arriving at the sentence which we are going to impose we have taken into account all of the other matters put forward by Advocate Pinel very clearly, the letter of remorse from the Defendant, and the letter from his parents and the many references that we have received. 13. Before imposing the sentence, we need to deal with the requirements of the Sexual Offenders (Jersey) Law 2010. The Crown consider that a period of 10 years should pass from today's date before the Defendant can apply to lift the notification requirements. Advocate Pinel suggests it should be 5 years. The requirements would only bite in practice after the Defendant has served his sentence of imprisonment. We conclude that the period of 7 years should elapse from today's date before the Defendant can apply to lift the notification requirements. 14. The Crown also seek Restraining Orders for a period of 7 years from today's date as set out in paragraph 21 of the Crown's Conclusions and read out in court. Advocate Pinel has no issue with the Restraining Orders themselves but suggests they should be imposed for 5 years, which would again mean that having served his sentence it would only bite in practice for some 3 years. We conclude that we should and do impose Restraining Orders for a period of 7 years from today's date. 15. Turning to the sentence which we impose upon the Defendant it is as follows; Count 1 he is sentenced to 2 years and 2 months' imprisonment; Count 2, to 2 years and 2 months' imprisonment concurrent; Count 3, to 2 years and 2 months' imprisonment concurrent, which makes a total sentence of 2 years and 2 months'

imprisonment. 16. We order the forfeiture and destruction of the device. Authorities AG v Godson and Crowley

[2013] JRC 091 AG v Matthews

[2020] JRC 186A. AG v King

[2019] JRC 079 Sexual Offenders (Jersey) Law 2010 Page Last Updated: 11 Jan 2022 BAILII:
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