

JERSEY / JUDGMENT

AG v Hilario and Ors

COURT
ROYAL COURT

BEFORE
F.C. Hamon, Esq., O.B.E., Commissioner, and
Jurats Potter, and Clapham.
The Attorney
General
-v-
Lene Pestana Hilario,
Rui Jose Barros Goncalves,
Nelson Mondim Dos Santos.
Lene Pestana
Hilario
1 count of:
Possession of a controlled drug, contrary to

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2001/244
ROYAL COURT
(Samedi Division)
7th December 2001

Before:
F.C. Hamon, Esq., O.B.E., Commissioner, and
Jurats Potter, and Clapham.
The Attorney
General
-v-
Lene Pestana Hilario,
Rui Jose Barros Goncalves,
Nelson Mondim Dos Santos.
Lene Pestana
Hilario
1 count of:
Possession of a controlled drug, contrary to

Article 6 (1) of the Misuse
of Drugs (Jersey) Law
1978 :

Count 2: cannabis resin.
1 count of:
Having an offensive weapon in a public
place, contrary to Article 27 of the Firearms (Jersey) Law 1956. (count 3)
1 count of:
Grave and criminal assault. (count 4)
Age: 19
Plea: Guilty.
Details of

Offence:	Count 4: At approximately 01:00 accused were sitting on a bench. Victim, passing on his way home, looked at them. Goncalves asked if victim had problem. Victim said “no” and continued on. Hilario and Goncalves followed him. Dos Santos followed Hilario and Goncalves. When Hilario and Goncalves reached victim, a scuffle broke out. Victim felled to floor, probably by Hilario. All three kicked victim. Hilario stabbed victim twice with force, inflicting a deep wound. Goncalves and Dos Santos did not know Hilario had knife. Goncalves and Dos Santos left, followed by Hilario. None of the three alerted the emergency services. Count 3: Possession by Hilario of knife used to stab victim. Count 1: Earlier in year, Dos Santos had personal amount of cannabis. Count 2: Earlier in year, Hilario had personal amount of cannabis. Details of
Mitigation:	Hilario: No serious injury. Guilty plea. No serious previous convictions. Difficult family life. Suffers from Krohn’s disease and substance dependency. Behaviour result of aggression stemming from detox programme. Social etc difficulties of young people.
Previous Convictions:	Resisting police (when 16), minor motoring.
Conclusions:	
Count 2:	2 weeks’ Youth Detention.
Count 3:	3 months’ Youth Detention.
Count 4:	4 years’ Youth Detention.
	Sentence

and Observations of Court:	Conclusions granted. Rui Jose Barros Goncalves. 1 count of: Grave and criminal assault. (count 4) Age: 18 Plea: Guilty. Details of
Offence:	See Hilario. Details of
Mitigation:	Joint venture kicking a separate and distinct assault from stabbing. G played no part in stabbing. Unaware H had knife. Horrified by stabbing. Panicked and left scene. Participation limited to two kicks. No significant injuries resulting from kicking. Youthful. Cooperation with police. Out of character. Not particularly bad record. No offences for violence. Reference from employer. Remorse/regret. Had previously been assaulted in youth custody and gave evidence against assailant. Consequent fear of further custody. Headaches and eye aches possibly caused by stress of present proceedings.
Previous Convictions:	Miscellaneous minor motoring, breach of the peace, indecent assault, malicious damage (all dealt with by Youth Court). Three breaking and entry and larceny of £1,228 plus 11 compact discs, one supplying cannabis, one possessing cannabis (Royal Court probation plus community service)
Conclusions:	
Count 4:	18 months' Youth Detention. Sentence
and Observations of Court:	15 months' Youth Detention. Nelson Mondim Dos Santos 1 count of: Possession of a controlled drug, contrary to
Article 6 (1) of the Misuse of Drugs (Jersey) Law 1978 :	Count 1: cannabis resin. 1 count of: Grave and criminal assault. (count 4) Age: 18. Plea: Guilty. Details of
Offence:	See Hilario. Details of

Mitigation: Last
to arrive and first to leave. Only
involved when victim aimed punch at him.
Two kicks with trainers.
Didn't have presence of mind to call emergency services. Did not know H had knife.
Disgusted that knife was used. Cooperative with police. Difficult early life. Remorse.
Low to moderate risk of
re-offending. Wishes to make
positive change to life.

Conclusions:

Count 1: 1 weeks' Youth Detention.

Count 4: 12 months' Youth Detention.
Sentence

and Observations of Court:

Count 1: Absolute discharge.

Count 4: 9 months' Youth Detention.
The Solicitor
General.
Advocate Mrs S.A. Pearmain for L.P. Hilario.
Advocate J.C. Gollop for R.J.B. Goncalves.
Advocate J. Lawrence for N.M. Dos Santos.

JUDGMENT

THE Commissioner: 1. The Solicitor General has faithfully and fairly recorded what must to any citizen have been a very disturbing event. The complainant is a 43 year old married man with four children living in the suburbs of St. Helier. At about 1 o' clock on the morning of Sunday 19th August he was returning home, having celebrated the birth of a friend's child. He had consumed only five or six lagers. He was perfectly contented. 2. The three accused were sitting on a bench by the Cenotaph. It appears that the complainant looked at the group. He was asked, apparently, if he had a problem. He said "No" and continued on his way home. He was followed and viciously attacked. We have little doubt that the assault was unprovoked. The complainant was kicked and then Hilario stabbed him, or in his words "dug him by accident". 3. We have read the various explanations given by the three accused in interview. Hilario stabbed the complainant twice with force. The complainant was unarmed, outnumbered three to one and being kicked, or having been kicked, by the three accused. The three then walked, or ran, off and left the complainant to fend for himself. He was bleeding heavily. He roused someone, fortunately, from a nearby house and the police were called. The complainant was taken to hospital and placed in intensive care. 4. We have studied the medical reports. There were two stab wounds. One of them was near important internal organs and in the words of Mr. Pai, the surgeon, the wounds he sustained were consistent with the alleged mechanism of the assault and he was extremely fortunate not to have sustained any serious internal organ damage that could have proved fatal. 5. As we have said, a knife penetrating skin can be likened to a knife entering a pat of butter. Unless it strikes

bone there is no knowing what damage it will inflict. What is perhaps most disturbing is that, apart from the vicious attack, the three left the complainant lying in the street, apparently without a care whether he lived or died. Had it not been for the CCTV in St. Helier, the tracking down of these three might have been more difficult. 6. We agree that there was a conflict between the statements that were made but, again, we entirely agree with the Solicitor General in taking a view that they are of no relevance. This was a joint venture. A citizen lawfully coming home was savagely attacked and stabbed in that joint venture. We have considered with care the case of Mallet, which is decision of the Court of Appeal. There was clearly, in our view, an intention to cause serious harm. In that light we agree with the Solicitor General that the starting point is in a band of up to eight years. We have studied Kenward and we agree that a comprehensive approach is the way to proceed, deducting each separate mitigating circumstance. 7. Hilario has pleaded guilty. He has his youth and his remorse to be taken into account. He has no previous convictions that are serious, but his was the knife attack. It was horrific. We have to say, Hilario, we have no alternative but to sentence you, because of this very serious offence, to a period of Youth Detention and we will follow the conclusions of the Crown. You are sentenced to 4 years' on count 4 and we also sentence you, for the record, to 3 months' on count 3 and to 2 weeks' on count 2, concurrent. 8. We turn now to Goncalves and Dos Santos. This was a grave and criminal assault that was particularly nasty and frightening. We note that you were wearing trainers, not boots and that the kicks were to the body and not to the head. Advocate Gollop and Advocate Lawrence have said all that they could for both of you. Dos Santos was the last on the scene and the first to leave. Goncalves is 18, Dos Santos is 19. They have both shown remorse and regret and we have, of course, carefully considered all the relevant arguments. Comparing case with case is of little help, but had these three not been together at this time this assault would not have taken place. 9. We are going to follow the conclusions of the Crown as to detention. As we have said, this offence was a joint venture and was, in our view, extremely serious. It is very important that members of the public walking home should not be assaulted in this way.

10. We have listened to counsel. These offences are, in our view, too serious, not to warrant a non- custodial sentence, but we are going to reduce the sentences somewhat. Goncalves, we are sentencing you to a Youth Detention of 15 months' on count 4. Dos Santos, we are sentencing you to a Youth Detention of 9 months' on count
4. Now in that context we give Dos Santos an absolute discharge for the other offence. The knife is forfeited and shall be destroyed. The drugs shall be forfeited and destroyed and we make no other order. We have to tell you that you may be liable to supervision when you come out of Youth Detention. Authorities AG -v- Cole, Prowting and Deuchar (21st September 2001) Jersey Unreported; [2001/198] AG -v- Harris, Sale (7th July 2000) Jersey Unreported; [2000/128] Mallet -v- AG (2000) JLR 256 CofA. Kenward -v- AG (14th July 2000) Jersey Unreported; [2000/137] CofA.

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