

JERSEY / JUDGMENT

AG v Howes [2020] JCA 147 (29 July 2020)

[2020] JCA 147

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Court of Appeal 29 July 2020 Before : George Bompas, Q. C., President; Lord David Anderson Q. C., and; Sir Michael Birt. The Attorney General -v- Paul Howes S. C. Thomas Esq., Crown Advocate for the Appellant. A. E. Binnie for the Respondent.

JUDGMENT

BIRT JA: 1. This is an appeal by the Attorney General against a Confiscation Order imposed on Paul Howes on 23 rd May, 2019 (AG v O'Connor Smitton Arrowsmith Howes Heskin Templeton-Brown

[2019] JRC 093A). Leave to appeal and an extension of time in which to bring the appeal were granted by myself as single judge. 2. The background, very briefly, is that on 23 rd May, 2019, Mr Howes appeared before the Royal Court for sentence, having pleaded guilty to an offence of possession with intent to supply cannabis. He was sentenced to 3 years' imprisonment, but on the same occasion the Royal Court imposed a Confiscation Order in the sum of £109,315 and he was ordered to pay that amount within 12 months, with a 5 year sentence of imprisonment in default. 3. The Attorney now appeals to vary that Confiscation Order so as to allow 3 years to pay the amount under the Confiscation Order. He also requests the Court to give the Viscount power to sell Mr Howes' real property, which is currently held under a saisie, should this become necessary. 4. The background is that Mr Howes has worked hard since his release from prison to pay off the Confiscation Order. We have the advantage of material provided by the Viscount as well as the Attorney, which shows that all concerned are satisfied that he has applied himself diligently to repay the amount, but that his efforts to do so within the timescale have been hindered by the Covid-19 pandemic and his resulting inability to work to pay off the Confiscation Order. 5. One might have expected that an application for an extension of the period would be brought back before the Royal Court by Mr Howes. However, there is no provision in the Proceeds of Crime (Jersey) Law, 1999 ("the 1999 Law") for the Royal Court to vary the time to pay element of a Confiscation Order. Whilst one might have thought that perhaps there would be some inherent power, the Attorney has referred us to an English decision *Revenue and Customs Prosecution Service v Kearney*

[2007] EWHC 640 Admin which held that the court which imposes a Confiscation Order has no power to vary the time to pay provisions. It follows that, if that were to be applied here, the only remedy in such circumstances, where an extension of time is sought, is for the Crown to appeal out of time under the provisions of the 1999 Law which give the Attorney power to appeal. 6. We would wish to say that it seems to us unfortunate that there is no power in the Royal Court to vary the time to pay under a Confiscation Order. It has entailed unnecessary work to bring this matter before the Court of Appeal out of time. We would recommend that the legislature give consideration to inserting a short provision in the 1999 Law conferring power on the Royal Court to vary the time for payment of a Confiscation Order where the interests of justice so require. 7. Nevertheless, the present appeal is brought by the Attorney General and supported by Mr Howes. We are satisfied that he has been making real efforts to pay and we agree that it is reasonable to extend the period. 8. We therefore vary paragraph 3 of the Act of the Royal Court so as to extend the 12 month period to one of 36 months and we confer the necessary power upon the Viscount to sell the real property should this become necessary. Bompas ja: 9. I agree. ANDERSON JA: 10. I agree. Authorities AG v O'Connor Smitton Arrowsmith Howes Heskin Templeton-Brown

[2019] JRC 093A Proceeds of Crime (Jersey) Law, 1999. Revenue and Customs Prosecution Service v Kearney

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Prepared on 23 October 2026 · Esheria