

JERSEY / JUDGMENT

AG -v- Jima-Otero [2017]

JRC 163 (06 October 2017)

[2017] JRC 163

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JUDGMENT

THE commissioner: 1. The defendant, who is assisted today by an intermediary, stands to be sentenced for one count of uttering a forged document in order to obtain legal ownership of a car, the value of which is not entirely clear but it had been purchased earlier in that year for £12,000. The defendant had come to Jersey from Southampton after meeting her partner in Southampton and they had set up home together in Jersey. The defendant's partner tragically committed suicide in August 2014. His mother was appointed executrix and allowed the defendant to remain in her late son's home for a year rent free. 2. About two weeks or so after his death the defendant approached the mother and told her that she had found a registration document signed by her deceased partner in her favour before his death. The mother accepted that it has been her son's wish for the defendant to have the car and that ownership would be changed into her name. The defendant sent the registration document to the Jersey Driver and Vehicle Standards Department in order to register the car in her name. It had purportedly been signed in three places by the deceased. The defendant later left Jersey with the car. 3.

Analysis

by a forensic document examiner concluded that the three signatures were not that of the deceased. Quoting from her report "there is conclusive evidence that the questioned signatures are not the genuine signatures written by the deceased". "Conclusive" in this context was the highest level in her scale of evaluation ratings. 4. The defendant denies and continues to deny actually forging his signature but accepts that his signature was forged and that she knew it had been forged and of course she has pleaded guilty to the offence of uttering that forged document. 5. The defendant had gone back to Southampton and lives there with her mother. She is assessed at a low risk of reoffending, has no relevant previous convictions and is to be regarded therefore as a person of good character. Concerns have however been expressed about her mental health and stability and indeed we have the benefit of a psychiatric report. 6. The Crown seek a sentence of 9 months' imprisonment relying in the main on authorities involving larceny in breach of trust. We have thought about this carefully and do not see this as a case involving a breach of trust in the sense of an employee or other person entrusted with property and who then steals it as in the case of AG-v-Sheldon 1996/230 and AG-v-Oliveira

[2012] JRC 018 and indeed as in the case of treasurers of thrift clubs. In our view this is a case of dishonesty in which the defendant lied to the mother, the executrix, over the deceased's gifting of the car to the defendant, using the forged document to do so and using that document later to get the car registered in her name. This was done at a time when the mother was very vulnerable having just lost her son in tragic circumstances, and we have every sympathy with her and her husband. We therefore regard this as an offence of dishonesty for which there is little authority to guide the Court. 7. The defendant has very considerable mitigation available to her. She has, as we have said, no relevant convictions, she has pleaded guilty and is assessed at a low risk of reoffending and, of course, there has been a long delay in this matter getting before the Court. She too was vulnerable at the time of this offence; she was a witness to and indeed tried to prevent her partner's tragic suicide. She has been diagnosed with PTSD and the report we have makes it clear that imprisonment would be detrimental to her mental health. 8. Taking into account everything that has been said by Advocate MacDonald and all the documents that we have before us, we think that this is a case that should be dealt with by way of community service, which is a direct alternative to the imprisonment which we would otherwise have imposed. 9. On Count 2 you are sentenced to 150 hours' community service which is the equivalent to 9 months' imprisonment. That is to be undertaken in England and supervised by the National Probation Service and you shall, for the duration of this order:- (i) keep in touch with the relevant officer in accordance with such instructions as you may from time to time be given by that officer and notify the relevant officer of any change of address; (ii) you will perform to the satisfaction of the relevant officer and for the number of hours which we have specified, which is 150, such work at such time as you may be instructed by the relevant officer; and (iii) for the duration of the order, you will not be entitled to return to the Island without first obtaining the consent of the Royal Court or alternatively the Chief Probation Officer of the Jersey Probation Department. 10. In terms of Counts 1, 3, 4, 9 and 10 those are dismissed and we decline to make an order as to costs. Authorities AG-v-Sheldon 1996/230. AG-v-Oliveira

[2012] JRC 018 . Whelan on Aspects of Sentencing in the Superior Courts of Jersey. Page Last Updated: 12 Oct 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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