

JERSEY / JUDGMENT

AG v Kittleson [2011]

JCA 052 (08 March 2011)

[2011] JCA 052

COURT
COURT OF APPEAL

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

COURT OF APPEAL

th

March 2011

Before

:

Sir John Nutting, Bt., Q. C., President;

Dame Heather Steel, D. B. E., and;

M. S. Jones, Q. C.

The Attorney General

-v-

Allan Kittleson

Application of the Attorney General under

Article 45A of the

Court of Appeal (Jersey) Law 1961

for leave to refer

the case to the Court of Appeal for it to review the sentence imposed by the

Inferior Number of the Royal Court on 8

th

October, 2010, on a charge

of:

1 count of:

Unlawful sexual intercourse, contrary

to Article 4(1) of

Loi (1895)

Modifiant Le Droit Criminel

(Count 1).

S. M. Baker, Esq., Crown Advocate, for the
Attorney General.

Advocate M. Preston for Kittleson.

JUDGMENT

THE president: 1. On 4 February 2010 the Attorney General applied to this Court for leave to refer a sentence on the grounds that it was unduly lenient. The Reference is made pursuant to Article 45A of the Court of Appeal (Jersey) Law 1961 . In England, where this regime has been in place for several years, it is the practice of the appellate court usually to grant leave in such applications (see Attorney General's Reference Nos. 31, 45, 43, 42, 50 and 51 of 2004, (2005)

(2004) EWCA Crim 1934 at paragraph 6). We saw no reason to depart from this practice and so we granted leave. However we declined to alter the sentence and we indicated that we would give reasons for our decision at a later date. We now do so. 2. Article 45A and Article 45B, which prescribe the Court's powers, as far as is material are in the following terms:-

"Article 45A. Reference to Court of Appeal for review of sentence

- (1) This Article applies to any case in which sentence is passed on a person for--
 - (a) an offence for which the person is liable to imprisonment for a term of 12 months or longer... ..
 - (3) If it appears to the Attorney General -
 - (a) that the sentencing of a person in any proceeding in the Royal Court has been unduly lenient; and
 - (b) that the case is one to which this Article applies, the Attorney General may, with the leave of the Court of Appeal, refer the case to the Court of Appeal for it to review the sentencing of that person.
 - Article 45B. Court's powers on reference under Article 45A by Attorney General
 - (1) On a reference under Article 45A, the Court of Appeal may -
 - (a) quash any sentence passed on the person for the offence...; and
 - (b) in place of it pass such sentence as the Court thinks appropriate for the case and as the Royal Court had power to pass when dealing with the person."
3. These provisions are to all intents and purposes indistinguishable from the provisions in Section 36 of the Criminal Justice Act 1988 . The only difference is that while on the mainland the Court of Appeal invariably makes due allowance for the impact of "double jeopardy", the Court of Appeal in this jurisdiction is expressly forbidden to have regard to that principle. Article 45B of the Law continues in the following terms:- "(2) In deciding under paragraph (1) the appropriate sentence to pass on a person for an offence, the Court of Appeal shall not make any allowance for the fact that the person is being sentenced for a second time in relation to the offence." 4. The Respondent in these proceedings was indicted in the Royal Court. On 3rd September 2010 he pleaded guilty to an offence of Unlawful Sexual Intercourse, contrary to Article 4(1) of the Loi (1895) Modifiant Le Droit Criminel . He was remanded until 8th October 2010 when he was sentenced to serve two years imprisonment suspended for two years. 5. The particulars of the offence alleged that on six occasions between 1st August 2009

and 26th March 2010 he had intercourse with a 15 year old girl who, for the purposes of this judgment, we shall refer to as Miss X. The terminal date in the count fell shortly before Miss X's 16th birthday. 6. During the period of these offences the Respondent was 54 years of age. Miss X was a schoolgirl at the time. She first met the Respondent during the course of 2008. She had obtained part time employment in a business in which the Respondent was a manager. The business has two premises in St Helier. During the summer holidays of 2008 Miss X worked at one, the Respondent being employed at the other. However they encountered each other occasionally both during the summer holidays and during the autumn term when Miss X continued to work part time on Saturdays. They became better acquainted during the Christmas holidays when she was asked to fill an employment gap at the other premises due to illness and she was invited to the staff Christmas party that year, an occasion on which she and the Respondent had what she later described as a "passionate" kiss. She was three months short of her 15th birthday at the time. 7. During the course of the next eight months the Respondent and Miss X contrived to see more of each other and regularly had drinks and meals together. No doubt Miss X was flattered by the attention of this much older man and the Respondent asserted later that, notwithstanding the forty year age gap between them, he much enjoyed her company. 8. On various occasions during the period of time when Miss X was employed part time at the shop, her parents visited the premises and were encouraged that the environment in which their daughter worked seemed safe and pleasant. Indeed it was not until August 2009 that they began to become concerned about their daughter's relationship with the Respondent. During that month, which constituted the starting point of the allegations in the indictment, they became suspicious when they learned that Miss X planned to go to London for the day at the end of August with two colleagues at work including the Respondent. When Miss X asked permission to go on the trip her parents, not unnaturally, refused. 9. Evidence later recovered during this period from the memories of the mobile telephone of Miss X and from Facebook, revealed messages between Miss X and the Respondent of an explicit and intimate kind. On 3rd September 2009, as a result of what he learned, Miss X's father contacted the police. By this date Miss X had returned to school for the autumn term of 2009 and police attended the school with a social worker to interview her. Miss X showed a marked reluctance to say anything about her relationship with the Respondent and after the police had left, she telephoned the Respondent at work to warn him of what had occurred. The Respondent immediately returned home and put the sheets on his bed into a washing machine. 10. The police began to make enquiries. The Respondent was interviewed on four occasions during the next nine months in the course of the somewhat protracted police enquiry. On the first of those occasions, on 3rd September 2009, the Respondent confirmed that he knew Miss X to be only 15 years old and that they had socialised together regularly during that year but he denied having intercourse with her. At the end of the interview the police advised the Respondent to avoid contact with Miss X. Telephone text messaging records later revealed that he ignored this advice. When later, on 2nd October and 21st December 2009, more detailed allegations were put to him, culled in part from the telephone records, he persisted in his denial of any intimate relationship with Miss X. He

continued to do so in the last interview, held on 25th May 2010. He claimed that the relationship had not become sexual until after Miss X had passed her 16 birthday on 27th March. 11. Three days after her birthday, Miss X asked the Respondent whether she could move to his address. The circumstances of the move are plainly, and most regrettably, a matter of intense dispute between Miss X and her parents. The Respondent contends that he encouraged Miss X to mend relationships with her parents, the rupture of which he had been the originating cause. In the event Miss X moved in with the Respondent shortly after her birthday and has lived with him ever since. 12. The Respondent was charged on 25th May 2010 and committed to the Royal Court on 5 August. 13. For her part Miss X also denied to Police that sexual intercourse had taken place between her and the Respondent in the summer of 2009, although the account she gave to her parents was markedly different. Throughout the police enquiry she refused to cooperate and maintained a steadfast, albeit misplaced, loyalty to the Respondent. 14. The deterioration in the family relationship has had a devastating effect on Miss X's father and mother. We have read with sympathy and concern reports of a psychologist who interviewed the parents prior to the hearing before the Royal Court on 8th October 2010. The reports were submitted to the Court as Victim Impact statements. 15. At the outset of his reports Dr Shobbrook points out that "it is important to note that different people employ different strategies to cope psychologically with different events. It is reasonable to assume that psychological responses to the same set of circumstances will differ from person to person and that these variations can be quite significant". 16. For their part Miss X's parents reacted with intense anger and a desire for vengeance for what the Respondent had done to their daughter. These feelings were compounded by Miss X loyalty to the Respondent, her refusal to cooperate with the police to ensure a criminal prosecution and her determination not to abandon her relationship with him. At one point Miss X's father contemplated suicide and her mother was so upset when she learned what had happened between her daughter and the Respondent that an altercation, wholly uncharacteristically on her part, proceeded to a violent confrontation. For Miss X's father, the fact that his daughter is living with the Respondent and that he no longer enjoys the close relationship with her which once existed between them, has resulted in feelings akin to bereavement. He told the psychologist that he considered that the Respondent had "raped" his daughter and then "stolen" her from him. Dr Shobbrook also reported that Miss X's mother feels that she has "lost" her daughter. Although there is still contact between the three, both parents fear that the relationship will never be the same again. 17. Miss X in a letter submitted to the Royal Court insists that she much regrets the estrangement with her parents and claims she moved to the Respondent's address because of the increasingly fraught relationship with them and because she had become unhappy at home. She emphasised the beneficial influence which the Respondent has had on her life including, particularly, her studies and her recent excellent GCSE exam results. Her account of matters which have occurred since August 2009 is factually at variance with the version which her parents related to Dr Shobbrook and the interpretation which she puts on these events bears little relationship to the conclusions which her parents draw. 18. We do not wish to aggravate the difficulties between Miss X and her parents in this judgment by

referring to them in any further detail. Suffice it to say it is impossible to read their respective accounts without real anguish and we express the hope that time will gradually heal the wounds incurred by both sides in the past 18 months or so. 19. The Respondent has no previous convictions. He first came to Jersey at the age of 17 years. His work record is consistent. He has had three main employments during his working life. He was employed for a period of 16 years by British Midland Airways before being made redundant in his mid-thirties having reached a relatively senior position in the company. He then joined Securicor where he worked for 11 years. A letter of commendation from his former employer at that company expresses in warm and appreciative terms the contribution he made during his time with them. He quitted his position to take up a position as manager of the menswear shop to which we have referred earlier having been offered a share in the equity. 20. He has been married twice. The first marriage ended after five years. He married again about twenty years ago. He and his wife separated in March 2010. It is to the Respondent's credit that prior to his sentencing hearing, both his first and second wives wrote letters to the Royal Court expressing their appreciation, affection, admiration and compassion for the Respondent. His stepdaughter, a young woman of 29 years who has known him for a quarter of a century, also provided a short but obviously heartfelt character reference for him. These letters found echoes in other testimonials written by friends which were before the lower court. 21. That Court also had the advantage of considering a detailed Social Enquiry Report prepared in September 2010 for the adjourned hearing. The Respondent sought to explain his relationship with Miss X to the Probation Officer on the basis that as it developed in 2009 she began to relate to him increasingly on an adult level and that he found her company refreshing. In the summer the relationship become sexual as he realised that his feelings for her, and hers for him, had become increasingly fixed. He acknowledged that to others his conduct appeared predatory and abusive and said he greatly regretted having intercourse with Miss X before she became 16 years of age. However he insisted that he and Miss X retained very strong feelings for each other. 22. He admitted that the age difference between them probably constituted a major obstacle to the long term future of their relationship, a realistic appreciation which is echoed in the letter of Miss X to the Royal Court to which we have alluded earlier. But both he and Miss X insist they are in love with each and are happy with the current situation. 23. In the light of all that is known of this Respondent, it is perhaps not surprising that in the opinion of the Probation Officer, the chances of him re-offending are low. The RM 2000 assessment indicates no evidence of emotional identification with children, deviant sexual preference, poor life coping skills or general negative attitudes, all of which are considered positive indicators of a risk of re-conviction. 24. In the Royal Court the Crown submitted that the following aggravating features were present and the Attorney General urged this Court to consider the same features, first the significant age gap between the Respondent and Miss X, second the breach of trust inherent in the circumstances of their early association and third the Respondent's destruction of potentially incriminating evidence and his denials to police of any sexual intimacy with Miss X during the period when such intimacy with her was illegal. The essence of the submissions below and before us was that sexual intercourse with a girl under 16 years is

properly regarded by the Courts both here and in England as a serious offence which should be marked by imprisonment in the absence of exceptional circumstances, none of which are present in this case. 25. There can be no doubt that this offence exists to protect children and that a girl under 16, no matter how developed and no matter how mature for her age, is still a child who must be protected even from herself. As Silber J. said in *R. v Goy*

[2001] 1 Cr. App. R. (S.) 13 "The aim of this legislation is to ensure that girls are protected from sexual intercourse even if they have consented." 26. We were also reminded during submissions of what Lawton L. J. said in *Taylor and Others*

(1977) 64 Cr. App. R. 182:- "What does not seem to be appreciated by the public is the wide spectrum of guilt which is covered by the offence of having unlawful sexual intercourse with a girl under the age of 16. At one end of the spectrum is the youth who stands in the dock, maybe 16, 17 or 18, who has what started off as a virtuous friendship with a girl under the age of 16. That virtuous friendship has ended with them having sexual intercourse with one another. At the other end of the spectrum is the man in a supervisory capacity, a schoolmaster or social worker, who sets out deliberately to seduce a girl under the age of 16 who is in his charge. The penalties appropriate for the two types of case to which I have just referred are very different indeed. Nowadays, most judges would take the view, and rightly take the view, that when there is a virtuous friendship which ends in unlawful sexual intercourse, it is inappropriate to pass sentences of a punitive nature. What is required is a warning to the youth to mend his ways. At the other end, a man in a supervisory capacity who abuses his position of trust for his sexual gratification, ought to get some sentence somewhere near the maximum allowed by law, which is two years imprisonment. In between there come many degrees of guilt." 27. We were referred by Advocate Baker to a number of authorities at first instance in this jurisdiction dating back to 1994. Most of them predate the option of suspending a sentence of imprisonment which was introduced to this jurisdiction in 2003. Some of the cases to which we were referred bear some similarities to the instant case, some less so. But, as Lawton L. J. observed in the authority we have quoted, this offence involves a wide spectrum of criminal behaviour and, as has been observed on many occasions by this Court, an attempt to read across from one set of facts by way of comparison to another set is invariably a vain exercise. What is important is to distil the principles of sentencing to be applied to the instant offence from relevant authorities and although cases at first instance are not, of course, binding on this Court, nonetheless we would naturally regard them in most circumstances as being of persuasive effect. 28. The principles to be distilled are clear. In the absence of exceptional circumstances those who have intercourse with girls under 16 must expect to be sent to prison; *A. G. v Queally* 1996/132. The principle of deterrence must be born in mind, the need to deter others and the need to deter the offender from re-offending; *A. G. v Clark* 1994/182. Older men in particular should be aware of their responsibilities to young girls; *idem*. Even though the girl fully consents to intercourse, those under 16 must be protected from themselves; *A. G. v Godfray* 1997/134. 29. Since 2003, on two occasions the Royal Court has imposed a sentence of imprisonment (in conformity with the general

principle) but has suspended it in the light of the mitigation; see *A. G. v Bobr* [2005] JRC 173 and *A. G. v Duckworth*

- [2009] JRC 058. In the latter case the Royal Court, in explaining the reasons for suspending a prison sentence of 15 months, said at paragraph 4:- "...offences of this nature are always serious. The whole purpose of the law is to protect young girls from themselves and it is the responsibility of the older man to exercise restraint. Despite all the very powerful mitigation, if we had felt that this is a classic breach of trust case and that you had used your position to take advantage of the victim or groom her in any way, an immediate custodial sentence would be inevitable. But we do not believe that is the position.... we think that this was a case of a virtuous relationship in the beginning turning into a sexual one. So we do not regard this as a classic breach of trust case." 30. The power to suspend sentences of imprisonment in this jurisdiction derives from Article 2 Criminal Justice (Suspension of Prison Sentences)(Jersey) Law 2003 . Materially the Article reads:- "(1) ... a court that has sentenced an offender to a term of imprisonment of not more than 2 years may order that the offender shall not be imprisoned in accordance with that sentence unless -
- (a) during a period specified in the order, being not less than one year and not more than 2 years, the offender commits in Jersey a further offence punishable with imprisonment; and
 - (b) the court that convicts the offender for that offence makes an order under Article 3 that the offender shall be imprisoned, either for the original term or for a lesser term.
- (2) A court shall not make a suspension order unless it is satisfied that if it did not have power to do so a sentence of imprisonment would still be an appropriate sentence." 31. The Law is in similar terms to the provisions of Section 118 Powers of Criminal Courts (Sentencing) Act 2000 save that, although Article 2(2) above is similar to Section 118(4)(a) of that Act, nonetheless the section of the Act includes (4)(b) which is to the effect that the exercise of the power to suspend in English courts can be justified only by the "exceptional circumstances of the case" . The Jersey Law includes no such provision. Thus Courts in this jurisdiction have a wider and more general power to suspend. 32. Advocate Preston who appeared for the Respondent submitted that the circumstances where a court was entitled to consider suspending a sentence of imprisonment were especially apt to fit the circumstances of this case where, as he submitted, a person of mature years and of previous good character has committed a relatively serious offence, one involving breach of trust, which would normally result in immediate custody. If that person is unlikely to re-offend it is appropriate for a court to consider allowing such a person to continue to make a contribution to the community rather than to become a burden upon it. 33. The Bailiff, who articulated the reasons of the Royal Court, having retired with the Jurats for a substantial period of time, made it clear in his sentencing remarks that the Court was of the view that there were no exceptional circumstances which would justify the Court in imposing any sentence than one of imprisonment. On behalf of the Jurats he disavowed the recommendation of the probation Report that an appropriate penalty was a community

service order. 34. But the Royal Court identified those features of the case which, it concluded, justified the suspension of the prison sentence. The Bailiff tabulated them and it is tolerably clear that the Court took the view that, although no single feature would have been sufficient to result in suspension of the prison term, the collective presence of the features identified, justified the course which the Court took. 35. The first feature was the consensual nature of the relationship. It was conceded by the Crown at the sentencing hearing that there was no question of oppression. There is no doubt that Miss X was mature for her age. We were shown a photograph of her taken at a time when the offending took place and we are satisfied that there was cogent evidence before the Court, including the text messages which passed between her and the Respondent, that at that time Miss X was physically and mentally advanced for her age. 36. The second consideration was that, in the language of the Bailiff, "We do not consider this to be a classic case of breach of trust". We conclude that the Court meant that the Respondent was not in one of those positions of trust identified by Lawton L. J. (see above) and that the Court intended to reflect the fact that Miss X was not a full time employee directly answerable to the Respondent for her job and who owed her prospects of advancement and promotion, and even her continued employment, to the man who had seduced her. 37. The third aspect was the consideration that the facts did not bear the interpretation that the Respondent had groomed Miss X in order to have sexual intercourse with her, also identified by Lawton L. J. as a significantly aggravating feature of such a case (see above). In so far as a relationship between a man in his mid-fifties and a girl in her mid-teens can be said, to use the Bailiff's words, to develop "mutually in a natural way", the time lag between Christmas 2008 when intimacy first took place and the summer of 2009 when intercourse first occurred, would seem to contradict any suggestion that the Respondent had deliberately groomed Miss X in order to have sex with her. It is clear the Royal Court concluded the Respondent was motivated by a genuine love for Miss X rather than by the gratification of his sexual desires. There was evidence before the Court to justify this conclusion. 38. The fourth matter was the fact, as confirmed by the Social Enquiry Report, that the Respondent was not a danger to young girls and revealed no paedophile traits. Moreover the Court was plainly influenced by the letters from those who supplied character references for the Respondent to which we have already referred. 39. The fifth and sixth considerations emphasised the "genuine emotional relationship" which had arisen between the Respondent and Miss X over a considerable period of time as well as the fact that they had begun to live together at the time of Miss X's 16th birthday and since, a period of nearly seven months by the time of the sentencing hearing in the Royal Court. 40. Finally and relevantly, the Bailiff emphasised the Respondent's guilty plea and remorse expressed to the Probation Officer. 41. In the written submissions made on behalf of the Attorney General this chain of reasoning was roundly condemned. It was asserted to this Court that these considerations neither individually nor collectively justified the suspension of this well merited period of imprisonment. In his address to us Advocate Baker, among other points, suggested that the distinction between a breach of trust and a classic breach of trust did not exist. He said that to allow as a consideration what had developed between the Respondent and Miss X since March 2009,

and particularly since August 2009, was wrong since the relationship was the product of unlawful acts by him from which he should not be permitted to profit in mitigation.

Advocate Baker asserted that there were really no circumstances in which a relationship with so large a gap in age could justify any sentence other than one of immediate custody.

42. Since this is the first case to come before this Court involving a sentencing Reference by the Attorney General we must look to guidance from elsewhere to decide whether this case falls within the ambit of "undue" leniency. The mainland jurisdiction contains some helpful dicta in this connection. 43. We have reminded ourselves of the seminal judgement of Lord Lane L. C. J. in Attorney General's Reference (No 4 of 1989)

(1990) 90 Cr. App. R. 366:- "The first thing to be observed is that it is implicit in the section that this Court may only increase sentences which it concludes were unduly lenient. It cannot, we are confident, have been the intention of Parliament to subject defendants to the risk of having their sentences increased--with all the anxiety that this naturally gives rise to--merely because in the opinion of this Court the sentence was less than this Court would have imposed. A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection regard must of course be had to reported cases, and in particular to the guidance given by this court from time to time in the so-called guideline cases. However it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature." 44. Lord Lane 's reference to the position of a trial judge in England surely applies with equal force in this smaller jurisdiction where the sentence is decided by members of the public, the Jurats, who may be considered to be well capable of weighing the competing considerations to which Lord Lane referred. 45. As the European Court of Human Rights pointed out in *Snooks v The United Kingdom* (4)

[2002] JLR 475 at para 19:- "Jurats are ... elected by a special electoral college whose members include the Bailiff, the Jurats, Advocates and Solicitors of the Royal Court and members of Jersey's legislature, the States Assembly. Jurats do not necessarily have a legal qualification but are usually individuals with a known history of sound judgment and integrity, which has been consistently demonstrated throughout a lengthy professional, business or civic life." This passage was recently quoted with approval by Lord Hoffman in *AG v Edmond-O'Brien*

[2006] JLR 133 . 46. We have also born in mind what Potter L. J. said in giving judgement in Attorney General's Reference (No. 132 of 2001) (*Bryn Dorian Johnson*)

[2002] EWCA 1418:- "...we think it right to add that, despite having found that the sentence imposed was unduly lenient, there is a line to be drawn, and which should be born in mind, between the leniency of a sentence in any given case and a sentence which is "unduly" lenient in the words of the statute.... The purpose of the system of Attorney

General's References in particular cases seems to us to be the avoidance of gross error, the allaying of widespread concern at what may appear to be an unduly lenient sentence, and the preservation of public confidence in cases where a judge appears to have departed to a substantial extent from the norms of sentencing generally applied by the courts in cases of a particular type." 47. We have also considered what Lord Phillips of Worth Matravers L. C. J. (as he then was) said in Attorney General Reference Nos. 31, 45, 43, 42, 50, and 51 of 2004 (supra) at paragraph 3, ".....this Court will not interfere with a sentence on an Attorney General's reference unless it is manifestly not sufficiently severe." 48. We consider that on the facts of this case a sentence of imprisonment was necessary. We have carefully considered whether in the exercise of their very wide discretion to suspend the sentence the Royal Court passed a sentence which cannot be categorised as "reasonably....appropriate" , or one where the Court can be said to have fallen into "gross error", or one where it departed "to a substantial extent from the norms of sentencing generally applied by the courts" in cases of this type, or one which was " manifestly not sufficiently severe" . Whatever phraseology is used we believe the essence of the test is clear. 49. The conclusion of the Probation Officer was that the case was "an unusual and delicate one" . We agree with that assessment and we have concluded, not without some hesitation, that the sentence passed cannot be said to be unduly lenient in any of the senses described above. In our view in the light of the power granted to Courts in 2003 the Royal Court was entitled to suspend this prison sentence. 50. We do not consider that the Court in their disposal of this case took into account any feature which they should have ignored nor that there is any warrant for the conclusion that they failed to take into account a factor which ought to have weighed more heavily with the Court than it did. It is clear that the Royal Court knew what would be the normal sentence and that the Jurats recognised that they were taking an unusual course. There was therefore no point of principle involved, see Attorney General Reference Nos. 31, 45, 43, 42, 50 and 51 of 2004 at paragraph 33 per Lord Phillips (supra). 51. We also have in mind what Lord Phillips said in this same authority at paragraph 86:- "If the sentence would not have been unduly lenient or one which would have affronted the public, does the fact that the sentence was suspended alter the position? We do not think it does, at least, if it was lawful to suspend the sentence. It is still a sentence which involves imprisonment and the sentence, if activated, will be activated in full unless it is unjust to do so..." 52. The Royal Court had a very wide discretion to suspend the sentence. It was unfettered by the statutory consideration contained in Section 118(4)(b) of the Powers of Criminal Courts (Sentencing) Act to which we have referred above. 53. Advocate Baker submitted the principal vice of this sentence was that "it amounted to no sentence at all." He said that the Respondent had successfully avoided the consequences of his wrongdoing in acting on his attraction for a teenage girl, and he asserted that the public would consider that the Respondent had got away with it, a response, he said, which would not be conducive to the preservation of public confidence in justice. If this was to be regarded as a proper criticism, it would call into question the validity of the imposition of any suspended sentence of imprisonment. We cannot agree with the submission. As Lord Phillip's

emphasised in the passage we have just quoted a suspended sentence is nonetheless a sentence of imprisonment. The very language of the 2003 Law makes plain that the offender who has been sentenced in accordance with Article 2(1) will go to prison for the relevant period unless he satisfies certain conditions. 54. We add this. We have read with care the additional material which has been supplied to the Court since the imposition of the sentence on 8th October 2010. We are satisfied that we are entitled to consider such material in view of the terms of Article 45B(1)(b) (see above) and on the basis of the principle outlined by Lord Lane L. C. J. in Attorney General's Reference No 4 of 1989 (supra). That case was one in which a suspended sentence had been imposed and, as we have seen, the circumstances of suspension could only be justified in England if, in accordance with statute, the Court could find exceptional circumstances. In giving judgement Lord Lane said "In all the circumstances we do not consider that it has been shown that this sentence was unduly lenient. We emphasise the exceptional nature of the case. Moreover, even if on the material before the judge, the sentence was unduly lenient, we have no hesitation in saying that, in the light of events since the trial and the additional information before us, this is not a case in which the court should increase the sentence" 55. So, too, in this case even if we had determined that the sentence was unduly lenient, in the light of the additional material which has been put before us, we would not have altered the sentence imposed by the Royal Court. Costs 56. We have considered carefully the written submissions of both the Applicant and the Respondent in relation to costs and we have decided to make no order. Authorities Court of Appeal (Jersey) Law 1961. Criminal Justice Act 1988. Loi (1895) Modifiant Le Droit Criminel. R. v Goy (2001) 1 Cr. App. R. (S.) 43. Taylor and Others

[1977] 64 Cr. App. R. 182. A. G. v Queally 1996/132. A. G. v Clark 1994/182. A. G. v Godfray 1997/134. A. G. v Bobr

[2005] JRC 173. A. G. v Duckworth

[2009] JRC 058. Criminal Justice (Suspension of Prison Sentences)(Jersey) Law 2003. Powers of Criminal Courts (Sentencing) Act 2000. AG v Kittleson

[2010] JRC 184 . Attorney General's Reference No 4 of 1989 (1990) 90 Cr. App. Rep. 366. Snooks v The United Kingdom (4)

[2002] JLR 475 . AG v Edmond-O'Brien

[2006] JLR 133 . Attorney General's Reference No. 132 of 2001 (Bryn Dorian Johnson) (2002) EWCA 1418. Page Last Updated: 07 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2011/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-kittleson-2011-jca-052-08-march-2011>

Prepared on 25 October 2026 · Esheria