

JERSEY / JUDGMENT

AG -v- McCullagh [2016] JRC 154 (02 September 2016)

[2016] JRC 154

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

JUDGMENT

THE commissioner: 1. The Crown accepts that this was not a deliberate glassing. During an altercation, the victim moved suddenly towards you, causing you instinctively to strike out at him, forgetting that you had a glass in your hand. It is not clear apparently from the CCTV whether this was more in the nature of a punch or in the nature of a shove. 2. However, even in such cases, the Court's policy is that a prison sentence is normally required in order to discourage violent behaviour, and to reflect the risk of serious injury which conduct like this carries. As the Court said in AG-v-Viveiros

[2014] JRC 162A at paragraph 6:- "We want to emphasise the mere fact that a person forgets he is holding a glass when he tries to punch someone is not sufficient to lead to a non-custodial sentence whether or not it is technically called a glassing. On the contrary, such an assault will inevitably lead to a prison sentence if it is unprovoked, and may often do so even where there is provocation. It all depends on the level of provocation and the other mitigation available. But a defendant must take the consequences of his actions whether or not they were intended." 3. Now Advocate Bell submits that putting together the facts of the offence, including provocation and the exceptional mitigation, means that we can proceed by way of a non-custodial sentence. 4. As to the offence itself, in the absence of anything to the contrary, the Court proceeds on your version of events, namely that the victim made homophobic remarks towards you. On this basis there was considerable provocation. 5. As to mitigation, Advocate Bell has referred to a number of matters including the following. First your guilty plea, second the fact that you have no previous convictions, thirdly, much more than that, he points to your excellent character. We have read of the voluntary and charitable work which you have undertaken, which for someone of your age is extremely commendable. We have read of your excellent work record. We have read the character references from a substantial number of people, all of which speak powerfully of your many good qualities. 6. We are satisfied that this was wholly out of character. Your Advocate described you as mild-mannered, affable and sociable. We think from the evidence before us that is probably a fair description. You have been described by somebody who knows you well as timid. The Court thinks that that is, again, probably a fair description and we have noticed your presentation in Court before us

today. 7. Fourthly, Advocate Bell refers to your remorse. Defendants quite often say they are remorseful. More often than not they mean they are sorry that they have been caught and are now facing punishment. But in your case we are satisfied that there really is genuine remorse. That is put forward by the social enquiry report and we are satisfied that you are indeed extremely sorry for what has occurred and have reflected on events since. We note, for example, that you have not consumed alcohol since this incident. 8. Next, Advocate Bell referred to the low risk of re-offending and we note there is no suggestion of any need for a Probation Order. 9. Next he referred to your own mental health issues, and we do note that you had (just before this incident) started taking a new drug which was prescribed, and that that has a particularly adverse effect on some people when combined with alcohol. Foolishly you took alcohol with it, but we are willing to accept the combination of that drug and alcohol may have contributed to what occurred that night. 10. So putting all these matters together, we have come to the conclusion that, notwithstanding the Court's clear general policy on violence, the public interest does not, on this occasion, require us to send you to prison. 11. We think the conclusions moved for by the Crown were perfectly correct and therefore we are going to impose community service as a direct alternative to prison, and we are going to impose 210 hours' Community Service Order, which is the equivalent of fifteen months imprisonment, which is the sentence which we would have imposed. 12. As to an Exclusion Order, we think it is right to make the Exclusion Order asked for, for a period of 12 months, but we will build in an exception that you can go on licensed premises if your presence is necessary for your work or for any of the charitable purposes which you are supporting. 13. Finally, in view of your financial position as disclosed in the background report, we make no orders to costs. Authorities Licensed Premises (Exclusion of Certain Persons)(Jersey) Law 1998. Costs in Criminal Cases (Jersey) Law 1961. Harrison-v-AG

[2004] JLR 111 . AG-v-Cummins

[2006] JRC 070 . AG-v-Saville

[2007] JRC 110 . AG-v-Cameron

[2016] JRC 107 . AG v Viveiros

[2014] JRC 162A . AG-v-Abreu

[2014] JRC 077 . AG-v-Furzer

[2013] JRC 103 . Page Last Updated: 17 Oct 2016 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/2016/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-mccullagh-2016-jrc-154-02-september-2016>

Prepared on 26 October 2026 · Esheria