

JERSEY / JUDGMENT

AG -v- McLean [2018]

JRC 090 (18 May 2018)

[2018] JRC 090

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JUDGMENT

THE BAILIFF: 1. Mr McLean, you are here to be sentenced on an Indictment which contains 3 counts, a count of common assault, a count of acting in a manner likely to cause breach of the peace, and a count of obstructing a police officer in the execution of his duty. 2. The circumstances were that in a domestic incident which took place on 25 th January, 2018, you found your partner's 16 year old son asleep in the sitting room. You swore at him and then apparently assaulted him by sitting on his legs and grabbing his throat, and when officers attended they noted that there was some reddening around the throat. You apparently suffer from Korsakoff syndrome and you had not taken medication that morning and you had no recollection of the incident. 3. Some two days later, the second count refers to your returning to the premises and trying to get into them, and on the same occasion you refused to obey the lawful orders of a police officer. I say the same occasion, it was the same day about two hours later. 4. For reasons that you could not recall what had taken place, the counsel who is representing you thought that perhaps there was an issue about your fitness to plead and as a result you were remanded to this Court for offences that could certainly have been dealt with by the Magistrate. The Crown now seeks a sentence of a total of 7 months' imprisonment and a Restraining Order and the Court has been out considering both of those conclusions. 5. Any domestic assault is serious because as has been said on previous occasions it is not just the assault which is a violation of the personal freedom of the person you have assaulted, it is the fact that you do so in the context of a relationship, and on this occasion in your partner's home and that makes it more serious. Having said that we also have regard to the injuries which were suffered and the nature of the assault. We think that your counsel has it right when he says, " that you should be sentenced to time served ", and that is the order we are going to make, so you have served that sentence and you will be released today. 6. It is said in the papers that you realise that your relationship with your former partner is over but they have both signed, both she and her son have signed, statements in which they assert that they are worried about your returning to the home in the future. 7. We think that they are entitled to some protection and they are entitled to feel secure, and the fact that you have committed an assault in, as I say domestic circumstances, reinforces that. At the same time the fact that you suffer from Korsakoff syndrome causes us some concern that if you do not take your medication you may not

remember that the order is in place and we note what Advocate Bell has said on your behalf, that putting the Restraining Order in place will set you up to fail. 8. There are two things to say in relation to that. The first is you must take your medication because it makes it less likely that you will find yourself in that position, and the second is, you must see what you can do to avoid succumbing to drink because that is clearly aggravating the position as far as you are concerned. Nobody else can do those things but you. You have got to take control of your own life, in that respect and I just want to say this to you. Although you have a number of previous convictions it is clear that you are able to take control of your own life because you have done so quite satisfactorily in the last 15 or 20 years with one exception. 9. Because we think that there must be some additional protection given to victims and in particular it will assist the police if they do find you in the area that they will have additional powers to move you on we are going to impose the Restraining Order, not quite as requested because the Crown has sought it for 5 years, we think that is far too long but we are going to impose a Restraining Order for the next 12 months. 10. The draft order is in the file and we are going to grant it in the form of the draft Order except that, as I say it will be for 12 months and not for 5 years. So that means that you are prohibited from having any contact, directly or indirectly with either your former partner or her son. You are prohibited from approaching or following them, from entering or loitering within 50 metres of any premises which you know to be their home address, from entering or loitering within 50 metres of any premises known to be their work address, and if you do see them or come into contact with them in any public or private place you must take action to remove yourself from the situation as soon as reasonably possibly and as I say, that order remains in place for the next 12 months. 11. If you breach it, you are liable to imprisonment for a term of 2 years', that I must warn you about and it is because of that liability and because we are concerned about the possibility of your being set up to fail that I have made the comments about the reasons for imposing the order in the first place. The reasons are to give the victims some additional security and to give the police some extra powers; and we do not expect you to breach the orders, you must remember and take what steps you can by taking your medication, desisting from alcohol as far as you can and that you should remember that these orders are in place. We are impressed with the reference which you have provided from the Grace Trust and acknowledged that support which is very good to note indeed. 12. So, time served, Restraining Order 12 months. Authorities Extract from the Magistrate's Court Sentencing Guidelines. Crime (Disorderly Conduct And Harassment) (Jersey) Law 2008. AG v Horn [2010] JRC 104. AG v McDougall

[2017] JRC 098A . Extract from Whelan, Aspects of Sentencing in the Superior Courts of Jersey, 3rd Edition. Page Last Updated: 18 Jun 2018 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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