

JERSEY / JUDGMENT

AG v Mildren 19-Feb-2021 [2021] JRC 059 (19 February 2021)

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JUDGMENT

THE COMMISSIONER: 1. The defendant is here to be sentenced on charges contained in two Indictments. As a result of that offending, he is in breach of a Probation Order and therefore the Probation Order comes to be reviewed. 2. The facts which are presented to us are that on the First Indictment he is charged with malicious damage, with a common assault on his ex-partner and obstructing a police officer. 3. On the Second Indictment he is charged with attempting to pervert the course of justice. 4. The circumstances around those were that following a night out with friends and drinks the defendant maliciously damaged a door and assaulted the victim, his ex-partner, by grabbing hold of her. There was a scuffle and as set out in his basis of plea he was responsible for the injuries which were noted in the medical report, namely, three abrasions to the left side of the victim's face, the two areas of petechial bruising to her right jaw and bruising above the right clavicle. She was pregnant at the time, as he was aware. He was arrested by police officers, resisted arrest and held in custody. A few days after arrest he was attempting to pervert the course of justice, not only by telephoning the victim himself, asking her to withdraw her complaint of assault but also arranging for others to assist him and contact her with the same suggestion. 5. The defendant's former partner, the victim, has written him a reference which we have considered and taken into account. She describes him as a hands on and very good father and cannot fault his care as a suitable care giver for both sons which they have together and no doubt he would hope to be the same for the daughter which she expecting. 6. Advocate Tremoceiro, who has said everything which could be said on behalf of this defendant, has invited us to impose a non-custodial sentence. He agrees, as we do, that the custodial threshold is clearly passed, so the questions for us are whether we should impose a non-custodial sentence and if not, what is the length of the sentence that we ought to impose for this offending. 7. As far as the assault is concerned, we see clearly that alcohol played an important part in that offending and it is certainly good to read that the defendant is intending to tackle his alcohol problems, if necessary by taking the Antabuse tablets which should assist him in doing so. But of course taking those tablets is only part of the cure, as it were, because what the defendant needs to be sure about is achieving that state of mind which will get him to keep taking the tablets and where he persuades himself that he needs to deal his alcohol problems which clearly he has. 8. There were aggravating factors in relation to the assault. There is unquestionably the aggravation that

comes from the drunkenness and unquestionably the aggravation, the seriously aggravating factor, that the victim was pregnant as the defendant knew. 9. As far as the attempt to pervert the course of justice is concerned it took place over a three day period and the aggravating factor there is that it was not only the defendant doing so himself but also involving other people in the attempt to put the victim under pressure to withdraw her complaint. 10. The defendant has been placed on probation previously and those orders have been regrettably unsuccessful. There comes a time in our view where we simply have to accept that probation has not worked and so in the circumstances of this offending we think that the offending not only passes the custodial threshold but that it is right to impose a custodial sentence. 11. We have considered the length of sentence moved for by the Crown and we think that the Crown has it right and that the length of sentences moved for are the correct sentences to impose. 12. Accordingly, on the Indictments that we have for the count of malicious damage the sentence is two months' imprisonment. 13. On the count of assault, the sentence is 10 months' imprisonment. 14. On the charge of obstructing a police officer the sentence is one months' imprisonment and counts 1 and 3 those sentences will run concurrently with each other, and with the sentence imposed on Count 2. 15. In relation to the attempt to pervert the course of justice the sentence is 12 months' imprisonment which will run consecutively to the sentence on count 2 of assault of the First Indictment that is. 16. That leaves over the Probation Order which was imposed. That order is now revoked, and a sentence of two months' imprisonment consecutive is imposed on that charge, as a result of which the total sentence which the defendant will serve is two years' imprisonment. 17. Mr Mildren, I want to say a couple of things to you. You have said to us through your lawyer, you said all the right things and we accept, that there comes a time in anyone's life when they take stock and this is the time for you to take stock. It really is. We hope that you are going to, the fact that it is a custodial sentence is very significant for you because it means, probably, that you will miss the birth of your daughter and you will not see her for a number of months and your sons you will not see for a number of months. 18. Our view is that you can use this time in prison constructively, in two ways at least. The first is that it gives you the opportunity of more time away from alcohol before you set out to cure that problem when you come out and so you can use that as a positive and we think you should. 19. The second is just to take stock about where you are with your life. You have children that you clearly have a good relationship with and that is great. You need to think about the example you set to them to ensure that they are going to grow up with the benefit that you did not grow up with. 20. We have had regard to everything that is there in the social enquiry report, some of which makes very sad reading indeed. But at the end of the day actions have consequences. You are not being sentenced for what you can do in the future. You are being sentenced for what you have done and that is why we are imposing the sentence that we are. It is not say that we do not think that you can get things right in the future, we really hope that you can and that you use this sentence constructively. I wanted to explain that to you. 21. Two years' imprisonment in all. Authorities *Coelho v AG*

[2020] JRC 216 AG v Czarnecki

[2020] JRC 177 AG v Le Geyt

[2019] JRC 173A AG v Rawlinson

[2019] JRC121 AG v Furlong & Furlong

[2019] JRC 089 AG v Cooney

[2019] JRC 039A AG v Nicolle

[2018] JRC 139 AG v Dias

[2017] JRC 114 AG v Franco 2001/120 AG v McCool 2000/45 Whelan, Aspects of Sentencing (Third Edition) (extracts) . Page Last Updated: 23 Mar 2021 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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