

JERSEY / JUDGMENT

AG -v- N [2011] JRC 157 (09 August 2011)

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JUDGMENT

THE commissioner: 1. N was sentenced by the Teesside Crown Court on 10 th July, 2009, to 8 months' imprisonment suspended for 16 counts of making indecent photographs. He was placed on the Sex Offenders Register and made subject to Sexual Offences Prevention Orders (SOPOs) for an indefinite period. Those SOPOs have been breached and there has been further offending. He is assessed at being at a high risk of serious harm to young children. The Attorney General has been given notice of N's intention to come to Jersey to live with his father and his partner and indeed, he arrived in the Island last night and appears before us today alone and unrepresented. He does not oppose the orders being sought. 2. The Attorney General has arranged for him to be brought before the Court at the first opportunity for what is, in reality, an initial hearing pending a substantive hearing on 28 th September, 2011, and during the intervening time N will have the opportunity of taking legal advice. 3. The first issue is whether, in what are civil proceedings, the Court should sit in private and therefore protect the identity of N. It would appear that in all the reported applications for retrospective notification orders there have been applications for anonymity and the principles to be applied are touched upon in AG-v-Roberts

[2011] JRC 050 and considered in some detail in AG-v-TS and R

[2011] JRC 055 . Without in any way fettering the Court's discretion at the substantive hearing in September we do think it right, as the Crown have urged, that this initial hearing should take place in private because the defendant has not had time to properly marshall his case and to receive legal advice and representation. The Court will however revisit the issue afresh at the substantive hearing in September. 4. In terms of the orders sought by the Attorney General today, Article 13 of the Sex Offenders (Jersey) Law 2010 ("the Law") gives the Court a discretion on an application by the Attorney General to order that a person who, outside Jersey, has been convicted of an offence which, if committed in Jersey, would have constituted a sexual offence to which the law applies, shall become subject to the notification requirements of the Law. The defendant is such a person. We note the principles to be applied as set out in AG-v-Roberts and applying those principles determine that such an order should be made. An issue arises however in that there is no provision under Article 5 of the Law for the making of interim orders. Miss Hollywood submits therefore that because N is unrepresented and has had no opportunity to receive advice, it would be wrong for us to specify a period of five years or longer before he can apply to

have the notification requirements set aside. In her view, and we agree, his lack of legal representation constitutes an exceptional reason for applying a shorter period, namely to the 28 th September, before which an application by N can be made. He will then be free to make such an application pursuant to Article 5(5) of the law which, if refused, will enable the Court with the benefit of full argument, to specify a further period. We agree to proceed in this manner. 5. Article 10(5) of the Law empowers the Court to make interim restraining orders if the Court is satisfied that the Article applies to the defendant, which we are satisfied it does, and if we are satisfied, on the balance of probabilities and on the application of the Attorney General, that the defendant poses a threat of serious sexual harm to the public or to any particular person or persons, and it is necessary to make such an order to protect the public or any particular person or persons from that harm. In addition to the relatively recent conviction of N, his subsequent breaches of the SOPO's and his re-offending, we have the benefit of a report from the probation department which concludes that he poses a high risk of serious harm to young children. It goes on to advise as follows at paragraph 32 and 33:- "As a high risk offender, any Risk Management Plan developed in order to try and reduce the risk of harm to the public and particularly children, needs to entail mechanisms to monitor, supervise and control N's behaviour. This is especially important given that N has a post-programme untreated profile. N has also admitted to failing to adhere to the requirements of his SOPO's by way of reoffending, there has to be a concern about his genuine cooperation with the authorities. However, even though there are concerns about his compliance with the conditions he is currently required to adhere to, I believe that those conditions should, as far as practicable, be replaced by the imposition of Restraining Orders under the Sex Offenders (Jersey) Law 2010". The report makes it clear that following his participation in the Internet Sex Offenders Treatment Programme, the risk domains that are reported as remaining largely unchanged relate to his obsession with sex, sexual interest in pre and post-pubescent children and beliefs that support child abuse. N self-reports an attraction to females aged between eight and twelve years. 6. We were given further assistance today by Mrs Ormesher from the probation department who clarified that her conclusion in paragraph 32 of the report is as to the risk to young children refers to children in Jersey with whom N may come into contact, as opposed to children depicted on images that might be downloaded from the internet. 7. Having taken into account all of the information and evidence before us we are satisfied that the threshold in this case is met and that interim Restraining Orders should be imposed. We are mindful of the need for such orders to be clear on their face, capable of being complied with by the defendant without unreasonable difficulty and/or the assistance of a third party and free of the risk of unintended or unintentional breach. 8. The draft submitted to us by Miss Hollywood refers in the main to females under 18 which is inconsistent with the current SOPO which concerns both males and females. We are going to make the Jersey Restraining Order consistent with the SOPO in this respect but do require the Crown at the hearing in September to address again the inclusion of males in any further Restraining Order which the Court might be minded to impose at that stage. 9. We note that in AG-v-Roberts the Court declined to make an order

requiring the respondent in that case to allow access to police officers in order to monitor his compliance with the restraining orders and this on the basis of the evidence in that case did not justify it. In this case N has a record of breaching the SOPO that was imposed upon him in England and we are concerned as to the ability of the police to monitor compliance in the absence of such an obligation. Our preliminary view is that if Restraining Orders are to be made, the police must have the ability to monitor compliance provided of course that the obligations imposed to enable that to be done are proportionate. 10. In view of the short duration of the orders sought today we are going to impose such obligation on N, which is no different to the obligation that he already has under the SOPO in England, but we do require this issue to be addressed fully at the hearing in September upon any renewal of such an order being sought at that hearing. 11. Turning therefore to the Restraining Orders, we therefore, subject to any comments that counsel and N may raise in terms of the drafting, to order as follows, and I am working here from paragraph D of the representation:- "1. That N be prohibited from contacting or approaching, directly or indirectly, any person identified in Appendix A of the order other than any contact which is inadvertent or unavoidable." That Appendix A lists the following persons, "A, B, C and future offspring, D, E, F, G and H." "2. That N be prohibited from:

- (1) living in the same household as any person under the age of 18 unless with the express approval of the Probation and Aftercare Service;
- (2) having any unsupervised contact or communication of any kind with any person under the age of 18, other than
 - (i) such as is inadvertent and not reasonably avoidable in the course of lawful daily life, or (ii) with the consent of the child's parent or guardian (who has knowledge of his convictions) and with the express approval of the Probation and Aftercare Service.
- (3) That N be prohibited from:
 - (1) using any device capable of accessing the internet unless
 - (i) it has the capacity to retain and display the history of internet use, and (ii) he makes the device available on request for inspection by a police officer;
 - (2) deleting such history;
 - (3) having on the device any software designed to disguise, delete or destroy such history; and
 - (4) possessing any device capable of storing digital images unless he makes it available on request for inspection by a police officer.
4. To provide advanced notification details of any proposed changes of address and employment that will have to be approved by the Probation and Aftercare Service.

5. That in circumstances where he finds himself in contact with any persons named in Appendix A, or finds himself alone with a person under the age of 18, that he has a positive duty to remove himself from that situation as soon as reasonably possible." And then we will add a further 6 as follows:- "6 Not to refuse access to police officers who are monitoring or checking on the restraining orders." 12. And finally the notification and restricting orders are to take immediate effect today. Authorities Sex Offenders (Jersey) Law 2010. AG-v-Roberts

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