

JERSEY / JUDGMENT

AG -v- N [2013] JRC 052 (08 March 2013)

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JUDGMENT

THE DEPUTY BAILIFF: 1. You are here to be sentenced on two Indictments; on the first Indictment, two counts of making indecent photographs, contrary to Article 2(1)(a) of the Protection of Children (Jersey) Law 1994, and on the second Indictment, breach of a restraining order that was imposed on an interim basis in August 2011 and then agreed by consent on 28 th September, 2011, and the breach either took place while the interim order was in place or it took place immediately after that. 2. We are going to send you to prison for a total period of 18 months and I am now going to explain the reasoning which takes us to that point. 3. We treat the third offence, the count on the second Indictment, a breach of the restraining order, very seriously. The restraining order is put in place in order to ensure that the police are able to monitor your performance in not offending in areas where you have been shown to have a weakness. In a sense, the order is put in there for your own benefit, and to breach it five times within really a very limited time of the order being imposed is a very serious matter as far as we are concerned. We, of course, do not know what you were looking at and that is, in a sense, the vice of the offence which you have committed. You might have been looking at images which are at a relatively low level, such as the Oliver scale 1, or it might have been at Oliver scale 5; it might have been something that was not actually criminal at all. But the gravamen of the offence is we simply do not know what you are looking at. The Court treats the breach of the restrictive orders that have been imposed extremely seriously and we think a sentence of 18 months' imprisonment on that charge is right. 4. We then looked at the two offences of making indecent photographs. In so far as they are concerned, we have adopted the approach which was set out by the Court of Appeal in the Guernsey case of Wicks and Ors-v-the Law Officers of the Crown (Guernsey judgment 14/2012). The first count on the Indictment is, in our view, a charge which brings you within what is then called in the Wicks classification, a category 4 offence of an offender having made an image or possessed an image for distribution or show, falling within Levels 4 or 5. The Wicks approach says there should be an initial figure of 3 years' imprisonment but that is after a trial. We think the right sentence on that count would be 18 months' imprisonment. We reached that conclusion by taking account of your guilty plea and taking account of the relatively low number of images which are at Oliver Level 4. 5. As far as the second count is concerned, we think that that falls into category 6 on the Wicks scale and that is where an offender has made an image of material falling within Level 1, a final community penalty, preferably with a condition of treatment would be appropriate, where there are one or more aggravating factors than the

custody threshold and the custody threshold is passed, then the Court may be looking at a sentence of up to 6 months' imprisonment and we think the right sentence on Count 2 is 6 months' imprisonment. 6. Now normally the offences would call for consecutive sentences but we think that would be too high and, on totality grounds, we are going to make the order that each sentence should run concurrently, so the total sentence of imprisonment is 18 months' imprisonment. 7. You have already taken up the offer of help from the probation service on a voluntary basis and your counsel says that you have found that helpful; we earnestly hope that you will continue to take up that offer, which the probation officer has confirmed today, is available. It is absolutely essential that you recognise, first of all, that the offending has to be treated by this Court with the seriousness with which we have treated it because these are serious offences and secondly, that there is a hope for you if you do take advantage of the assistance which is given to you. 8. We are going to change the restraining orders, as has been suggested by the Crown, to reduce the age from 18 to 16 so that is the age which is going to be referred to in paragraphs 3(b)(i), 3(b)(ii) and 3(e) of the restraining orders which otherwise remain in place exactly as they are, and we extend the period to 10 years from today's date as far as the notification and restraining orders are concerned. The 10 year period means that you will not be able to apply to have the notification requirements disapplied to you for that period but they continue until the Court orders otherwise. Authorities AG-v-N

[2011] JRC 157 . Protection of Children (Jersey) Law 1994. Oliver, Hartley & Baldwin [2002] EWCA Crim 276. Wicks and Ors-v-the Law Officers of the Crown (Guernsey judgment 14/2012). AG-v-U

[2011] JRC 219 . AG-v-Cardy

[2011] JRC 096 . AG-v-De Nobrega

[2012] JRC 182 . AG-v-G

[2011] JRC 214 . R-v-Byrne

[2010] 1 Cr App R (S) 65 . R-v-Smith and Ors

[2012] 1 Cr App R (S) 82 . Page Last Updated: 03 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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