

JERSEY / JUDGMENT

AG -v- N [2018] JRC 011 (16 January 2018)

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JUDGMENT

THE DEPUTY BAILIFF: 1. By representation dated 30 th October, 2017, N ("the applicant") applied to be removed from the notification requirements contained under the Sex Offenders (Jersey) Law 2010 ("the Law"). On 13 th November, the Court granted his request. These are our

reasons.

2. On 1 st July, 2015, the applicant was indicted before the Royal Court in respect of six counts. The applicant's pleas of guilty to the charges on the Indictment were accepted by the Crown and the applicant was sentenced on 4 th September, 2015. 3. The case against the applicant was that he entered guilty pleas with regard to counts comprising of incest, indecent assault and procuring an act of gross indecency all against the same victim, his sister. The offences took place when the applicant was between 10 and 13 years of age and the victim would have been between 7 and 11 years of age. Whilst there had been no violence involved in the offending it was accepted and the applicant was sentenced on the basis that the victim was coerced. The offending took place for the most part when the applicant and his brother, who was his co-accused, were together. It was clear that the victim was not a willing participant and in any event was too young to provide any form of consent. The applicant was sentenced on the basis that he was not the main instigator of the offending, and he was led into the offending by his older brother. The applicant admitted the conduct forming the basis of the count of incest occurred at least every other month over the time frame contained in the Indictment. The indecent assault involved the applicant touching the victim's breasts and vagina over and under her clothing and the procuring of an act of gross indecency concerned an incident of oral sex when the applicant was aged 10 and during the course of which ejaculation took place. 4. When sentencing (AG v M and N

[2015] JRC 184) the Court made the following statement:- "N, you too have pleaded guilty and you are entitled the same amount of credit as your brother because he has the same benefit. The Court accepts the genuineness of your remorse and, again, we have had regard to the references. You were led into this initially by your brother and we accept that there was an element of bullying involved within the family relationship. We have also paid particular regard in your case to the psychological reports and the challenges that you have faced in your life and, again, we have taken into account both delay and your youth, both at the

time of your offending and now. The Court has found this an extraordinarily difficult matter to consider. How should the Court approach it? How do we do justice to reflect the abhorrence that right thinking people will feel when they hear about the details of your crime and the effect of your crime upon the victim? How do we balance that against your youth and the difficulties that surrounded the family as a whole when you carried out these inexplicable acts? How do we balance them with the other mitigating factors to which we have made reference? In our view the custodial threshold is passed in both of these cases and also in our view the sentence that we pass must contain a punitive element, an element of punishment to reflect the seriousness. However, we think it appropriate in both of your cases to impose a direct alternative to a custodial sentence. We regard the circumstances of this case as quite extraordinary and exceptional." 5. At the same time the sentencing court imposed a two year period that must expire before the applicant could make an application that he should no longer be subject to the notification requirements under Article 6 of the Law. This expired on 1 st July, 2017. 6. The first application that the applicant made is that the hearing before us should take place in private. The test that must be applied by the Court when considering whether or not it should sit in private was set out in the case of L-v-AG

- [2016] JRC 152 in which, at paragraph 5, Clyde-Smith, Commissioner, said this:- "The test that must be applied as to whether the Court should sit in private is set out in the case of Jersey Evening Post Limited-v-Alfani and Four Others
- [2002] JLR 542 . That case concerned proceedings under Article 47 of the Trust (Jersey) Law 1984 which the Court had ordered to be held in camera, an order challenged by the Jersey Evening Post Limited. Quoting from the headnote:- "(2) The principle of open justice had not yet found statutory expression in Jersey but formed part of the law and an order for proceedings to be heard in camera was only to be granted when it was necessary to do justice in the exceptional circumstances of the case , e.g. to protect specific individuals or prevent the destruction of the subject-matter in issue. Public proceedings ordinarily deterred inappropriate behaviour on the part of the court, maintained public confidence in the impartial administration of justice, made uninformed and inaccurate comment on the proceedings less likely, and could result in additional evidence becoming available. The burden lay with the party seeking an order for hearing in camera to prove that it was the only way in which justice could be done; convenience, potential embarrassment and the parties' preference were in themselves insufficient justifications."" 7. It is accordingly the case that circumstances need to be exceptional to warrant a hearing in camera . There are examples of such exceptional circumstances given in the case of AG v Roberts
- [2011] JRC 050 in which Bailhache, Deputy Bailiff (as he then was) at paragraph 43 of the judgment said this:- "... However, where the Court is dealing with a relevant period which must expire before any application to have the notification requirements disapply to an offender pursuant to Article 5 of the Law, in nearly all cases it appears to us the matter will be dealt with in public as a civil process immediately before the sentencing of the offender

takes place as required by Article 5(1) of the Law. Different considerations may apply in connection with applications for the notification requirements to be retrospectively applied to the offender pursuant to Article 13(2). It is said, for example, that applications under Article 13(2) are not intended to be punitive and indeed cannot be punitive without infringing Article 7 of the Human Rights (Jersey) Law 2000 and further publicity is one of the potential consequences of registration should the hearings be held in public. It is pointed out that there may have been a change in circumstances since the date of conviction - the offender may have married, and the existence of the previous conviction be unknown to his or her spouse and/or children. It is possible that the effect of further publicity would leave the offender to view that he or she could not escape the consequences of a previous offending which might therefore be a disinhibiting factor to further offending. It is said there may be circumstances where the publicity given to the application might be an extremely negative factor in the context of the work being done with the offender by the probation services. This is not necessarily an exclusive list of objections, but these examples are provided as illustrations of the kind of case where the courts might consider the interests of the offender outweigh the public interest and the court should sit in public, or that the court's judgment should be pronounced publicly and without anonymising the offender." 8. The applicant argued that this was an exceptional case in that at the time of the offending he was a child aged of 10 to 13 years of age himself and he was heavily influenced by his elder brother who was the instigator and led his younger brother, the applicant, into committing the acts. In addition, the applicant had been diagnosed with autism in the lead up to his being sentenced by the Court. The reports available to the Court at the time confirmed that such diagnosis " would have been present from birth " and that it is "highly likely that as a child [the applicant] could have been influenced by others, or copied others and would not have thought about or realised the right or wrong of his behaviour in question. " 9. It was also argued that the applicant, as a result of his recent diagnosis of autism, means that he is a vulnerable young person. He is currently 20 years of age and lives in sheltered accommodation which is supervised and he has the support of a key worker. There is serious concern that he would find it difficult to cope with any fallout from the publicity attendant were his application and any judgment of the Court to name him. His diagnosis meant that he would not cope well with such stress. The applicant is trying to move his life forward in a positive way. 10. There is an additional point that the victim was not aware of the application by the applicant to be removed from the sex offenders register. We have seen a report that indicates that she had assumed that once the notification period had expired the requirement to report naturally fell away. It follows that she would potentially herself be subject to stress were publicity to be given about something that she was trying to put behind her. 11. The Crown supports the application that the matter is dealt with in camera for the reasons set out above and further supports the fact that any judgment should be anonymised before being issued. 12. Taking all matters into account we determined that the circumstances of both to the offending and of the applicant were exceptional in nature and that they justified sitting in camera and the anonymisation of any eventual judgment and we so ordered. 13. We turn

to the substance of the application for the applicant to be released from the reporting requirements under the Law. 14. Article 5(5) of the Law states that:- "The court may, on application, make an order in respect of a person (not being a person to whom Article 3(2) applies, but being a person who is subject to the notification requirements of this law) at any time after the expiration of the period specified in respect of the person ..., being an order to the effect that the person should no longer be subject to those requirements." 15. Article 5(6) of the Law provides that the Court must not make an order applied for under paragraph (5) unless it is "satisfied that the risk of sexual harm to the public, or to any particular person or persons, that the persons subject to the notification requirements of this law poses by virtue of the likelihood of reoffending does not justify the persons being subject to those requirements." 16. In accordance with the normal directions given by the Court updated reports had been filed by the States of Jersey Police and the Jersey Probation and After Care Service. 17. The States of Jersey Police report dated 2 nd October, 2017, confirmed that the applicant has adhered to the requirements of his notification order and has completed the relevant paperwork promptly. He has always engaged well with officers during visits to Police Headquarters and as he is classified at low risk his contact with the Offender Management Unit has been minimal. One of the concerns raised in the report, however, is the fact that the applicant has ignored advice to reduce his association with another registered sex offender who was a childhood friend. 18. In terms of risk assessment the report confirms there are no formal risk assessments suitable for use where a sexual offence has been committed by a juvenile under the age of 18. Based on the original assessment by the forensic clinical psychologist at the time of sentencing, Dr David Briggs, the applicant has been consistently managed as low risk and there has not been any reason to elevate the risk level during the notification period. The conclusion of the police report states, at paragraph 10, "in order to be successfully removed from the notification order of the Sex Offenders (Jersey) Law 2010 Article 5(6) states that the court must be satisfied that the risk of sexual harm to the public or to any particular person or persons that [the applicant] poses by virtue of the likelihood of reoffending does not justify the remaining subject to those requirements." And then, at paragraph 11 "although there are a number of concerns in relation to the deregistration of [the applicant] they are not directly linked to his risk of sexual reoffending. ...[The Applicant] has stated that he is willing to continue his voluntary contact with probation in order to gain some help and support in this area." 19. The denotification report from the Probation and Aftercare Service did not of itself reach any conclusion on the applicant's application. It described the fact that the applicant has made tangible progress since he was sentenced and it also notes the fact that there are no standardised tools to specifically assess risk of sexual reconviction in someone who committed sexual offences whilst a youth but who is now an adult. 20. The contents of Dr Briggs' report of 31 st March, 2015, stated, with regard to risk to the victim:- "[The applicant] was unlikely, in my opinion to present an ongoing risk of sexual harm to [the victim] ... I do not believe that she is at undue risk of physical violence from him towards her in the aftermath of her disclosures." 21. He then went on to express the following opinion:- "It is more difficult to make predictions as to whether [the

applicant] is at risk of any form of misbehaviour towards others in the future. Risk assessment is incredibly complicated in this case given that (a) we are dealing, in effect with historical matters, (b) we are dealing with offences that were perpetrated in [the applicant's] adolescence and at a stage where his sexuality was forming rather than crystallised, (c) that he had and has his particular vulnerabilities with regard to the autistic spectrum disorder; and (d) that he is visible in the community by virtue of his disabilities and is subject now, at this stage in his life, to special support and sheltered accommodation." 22. And lastly, at page 19 of his report, Dr Briggs stated:- "My instincts are that any risk he presents with respect to future sexual misbehaviour/sexual boundary violation could be straightforwardly managed in the community." 23. It was clear that the applicant has complied with the notification requirement, there had not been any breaches of these requirements, there had not been any reoffending, and he had been managed throughout as being " low risk ". 24. The fact that he has associated in the past with another sex offender is something that we were informed he intends to address. He had completed the hours of community service which form part of his sentence and he has appeared to be motivated and to work satisfactorily. He had undertaken work under probation supervision which includes work around victim impact, sexual offending and sexual health and consent. The Probation and After Care Service report also concludes, at paragraph 22, that:- "From interview it would appear his sexual interests are age appropriate, there is no evidence of attitudes that condone sexual abuse or evidence to suggest he uses sex as inappropriate coping mechanism." 25. Lastly, that report reflected, at paragraph 25, that any risks had been discussed with Dr Briggs. Dr Briggs, whilst feeling there is some merit in the applicant continuing to be seen by Probation every few months feels, however that this can remain on a voluntary basis and was " in favour of having his notification removed ". Although the Crown expressed its opinion cautiously, the Crown did not oppose the applicant's application for removal from the notification register. 26. In committing the offence, it is clear that the applicant was under the influence of his older brother which, perhaps because of his autistic condition, he was more easily led to commit than might otherwise have been the case. 27. He is now an adult and although he has challenges there is no suggestion that he is other than low risk. In our view it was appropriate to discontinue the notification requirements and we so ordered. Authorities Sex Offenders (Jersey) Law 2010. AG v M and N

[2015] JRC 184 . L v AG [2016] JRC 152. AG v Roberts

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