

JERSEY / JUDGMENT

AG -v- O'Brien [2011] JRC 176 (09 September 2011)

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JUDGMENT

THE DEPUTY BAILIFF: 1. You are here to be sentenced on an Indictment which contains a number of charges. To some of those you have pleaded not guilty and those pleas have been accepted by the Crown, and the Court is sentencing you only on the charges to which you have pleaded guilty. 2. Various matters were raised by your counsel in the course of outlining mitigation, and the Court wants to say something about the delay which has taken place during which you have spent time in custody. Any defendant is entitled to put the Crown to proof of the offences which are charged against him, but a defendant must be clear about what the effect of doing that is. It means that he is unlikely to be able to complain about delay, nor is he able to rely on cooperation with the police as part of the mitigation which he puts before the Court. Furthermore, any protestations of remorse will be measured against the attitude which the defendant has expressed by his lack of cooperation with the police. Those are remarks of a general character, but insofar as they are relevant in your case, the Court takes them into account. 3. The Court has looked at the two brackets of offending and accepts the submission of the Crown that these should result in consecutive sentences. The Court thinks a custodial sentence is entirely appropriate for the offending which you have committed and for that reason we have therefore looked at the totality of the charges and also of the sentences for which the Crown moved and also at the individual charges which have led to the Crown's conclusions. We think the totality of the sentence at 3½ years' imprisonment is too high and we are going to reduce it to a total of 3 years' imprisonment. The mechanism for doing so is to look at Count 9, which is the taking and driving away charge, where the Crown has moved for 18 months. We think 12 months' imprisonment is the right sentence to arrive at for that charge, having regard to the fact that there was at least an element of a contract between you and the owner of the car which led to you having possession of it. As against that you clearly breached the contract because you knew that you were not entitled to drive and he had told you that you were not to drive it. As to Count 10, the charge of driving whilst disqualified, the Court considers that 8 months' imprisonment on that Count is not enough; there is an element of contempt of the Court's orders when a person drives whilst disqualified and we are going to increase that to 12 months, but it has no effect on the overall sentence because the sentence will run concurrently with Count 9. 4. We sentence you as follows, on Count 1; 18 months' imprisonment, on Count 4;

15 months' imprisonment, on Count 5; 24 months' imprisonment, on Count 6; 18 months' imprisonment, on Count 7; 18 months' imprisonment, all those sentences will run concurrently. On Count 9 you are sentenced to 12 months, on Count 10; 12 months, on Count 11; 12 months, on Count 12; £100 fine or 1 week's imprisonment, on Count 13; £100 fine or 1 week's imprisonment, on Count 14; 1 month, on Count 15; 2 weeks, and on Count 16; 4 months. You will serve those sentences concurrently with each other but consecutively to Counts 1-7, making a total therefore of 3 years' imprisonment. In reaching that we have had regard to all the matters which are on the papers before us, including what is in the background reports and, of course, we have had regard to your guilty plea and subject to the comments I have made earlier, had regard to what your counsel has said. 5. In addition you will be disqualified for 3 years from driving. 6. We also order the forfeiture and destruction of the drugs. Authorities Whelan on Aspects of Sentencing in the Superior Court in Jersey. AG-v-Gaffney

[1995] JLR N 22b. Wylie-v-AG 2002/13. R-v-Webbe [2002] 1 Cr. App. R. (S) 82. AG-v-Munks 1999/168A. Page Last Updated: 18 Aug 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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