

JERSEY / JUDGMENT

AG -v- Olivotti [2014] JRC 126 (06 June 2014)

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JUDGMENT

THE commissioner: 1. On 26 th June, 2013, the defendant was sentenced to 270 hours' community service and 18 months' probation for some 35 counts comprised in four Indictments including the importation of cannabis, larceny, malicious damage, inciting the making of indecent photographs of a child and sexual offences. The sexual offences involved a consensual relationship with a 15 year old girl and the sentencing court felt there was substantial mitigation which would allow a community based sentence. Quoting from the judgment of the sentencing Court at paragraphs 5 and 6:- "5 Turning to the sentence, we agree that if it were to be prison, the Crown's conclusions are correct, despite the mitigation; therefore the total sentence would have been one of 21 months. But we have, as I say, been persuaded that the best course in this case is not to send you to prison but to impose a Probation Order of 18 months', concurrent on all counts, and also a 12 month Treatment Order on all the counts in order to give you the assistance which you will benefit from. We hope in particular that you mean what you say about wishing to change and we strongly urge that you try and find work, because work will change things dramatically. You do need also to be punished though for these offences, so we are going to impose community service as well." Then at paragraph 9 the court gave this warning:- "9 You have been given a chance. When we read the papers it seemed likely that you would go to prison, so you have been fortunate. We hope you take advantage of it, but you must understand that if you do not do exactly what the probation officer says, if you do not turn up for the community service and work properly and work hard, if you reoffend, if you do not turn up to Drug and Alcohol Services, then you will be brought back here and at that stage the likely course is that you would go to prison, because you failed to comply with these sentences which we have imposed today. So it lies entirely in your hands. If you perform all these properly, then we hope that we will not see you again before the Courts. If you fail to, you will be back here." And the defendant is indeed back here. The Attorney General has made a representation saying that he has failed to comply with both the Probation Orders and the Community Service Orders and those breaches are admitted by the defendant. 2. It is quite clear to us that the Probation Department and the Community Services Manager have bent over backwards to help and assist the defendant in order to give him every chance. Reading from the conclusion to Miss Urquhart's report at paragraphs 12 and 13: "12 As can be seen from the above, it has been very difficult to supervise both the Probation and the Community Service Orders in this case since the outset due to Mr Olivotti's lack of motivation, unwillingness to address his offending behaviour and disengagement from

those Services designed to assist him. A substantial amount of work has been undertaken in relation to encouraging him to comply with the structure of the Orders including three compliance meetings with Senior Management at the Probation Service and one meeting with the Solicitor General and this has met with little or no success. Risk assessment and management meetings have also been held and despite the formulation of clear action plans little or no progress has been made. Consequently, the identified risk levels in the attached Social Enquiry Report remain. In view of the foregoing information, I regret to inform the Court that I am unable to offer a further community-based disposal in this case and would ask that the matter is dealt with on its legal merits." Miss Urquhart has this morning confirmed those conclusions having heard the plea in mitigation by Advocate Grace. As was mentioned in that report the steps taken to assist the defendant have included a meeting with the Solicitor-General on 23 rd January, 2014, where he was given yet a further chance. 3. Advocate Grace was only instructed yesterday but she has, in our view, made a very comprehensive plea in mitigation in respect of what she described as a "vulnerable and inadequate person". She has also explained to us the family situation which we note helpfully has recently improved. She applied for an adjournment to enable updated reports to be obtained but we agree with Advocate Gollop that such a delay would serve no purpose. The Court is left with no option. These are serious offences. The Court, the Probation Department, and the Community Services Manager have given the defendant every chance. We are not prepared to return him to probation and community service against their clear advice. Those agencies which do such valuable work in the Island need to be supported. As to the defendant's mental health issues it is clear that from the psychologist, Ruth Emsley's report, that his treatment and medication can continue in prison. 4. We order as follows: the Probation, Treatment and Community Service Orders imposed by the Royal Court on 26 th June, 2013, shall be discharged and you are sentenced to a total period of imprisonment of 8 months and 5 days, apportioned in this manner; under the First Indictment you will be sentenced to 73 days' imprisonment, that is concurrent on each count, on the Third Indictment to 46 days' imprisonment, that is concurrent in respect of each count but consecutive to the First Indictment, on the Fourth Indictment to 37 days' imprisonment, on each count concurrent but consecutive to the earlier Indictments and finally on the Fifth Indictment to 92 days' imprisonment, concurrent on each count but consecutive to the earlier Indictments, which makes a total of 248 days or 8 months and 5 days' imprisonment. The defendant's inclusion on the Sexual Register remains unaffected by the change in sentencing. Authorities AG-v-Olivotti

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Prepared on 26 October 2026 · Esheria