

JERSEY / JUDGMENT

AG v Page [2019] JRC 139 (19 June 2019)

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JUDGMENT

THE Lieutenant Bailiff: 1. The fact that we have been out for such a long time is indicative of the anxious thought which we have given to this matter. 2. Andrew Scott Page aged 40, on the 10 th March this year, ran into a bookmaker's premises in pursuit of another male, who managed to get into the staff room and close the door behind him. The defendant tried unsuccessfully to open the door, all the while shouting and behaving in an extremely aggressive manner. It is quite clear that people in the shop were frightened. This was a serious breach of the peace, and constitutes Count 2 of the Indictment. 3. The defendant noticed a box full of cash and started stuffing bank notes down the front of his trousers. In all, and he accepts this, he stole £7,500. He then left the premises and was arrested the following day. That in essence is Count 1. 4. The arresting officers found two lumps of cannabis in the defendant's front trouser pockets. (Count 4 of the Indictment). They also found a total of £489.70 in cash in the defendant's back trouser pocket and wallet. A further £40 was recovered from the taxi driver, in whose vehicle the Defendant had been arrested. 5. Two days later, the officers recovered a further £500 from a friend of the defendant who had concealed the money behind a skirting board in her home. A further £20 was also recovered, the defendant having dropped two £10 notes in the street; a member of the public dutifully returned those monies to the police. Of the £7,500 stolen only this total of £1,049.70 has been recovered. The Crown treats this as an aggravating feature and we accept that. The Crown also points to the aggressive and frightening nature of the offence as an additional aggravating feature, and with this we disagree. We accept defence counsel's submission that the defendant was angry anyway and did not affect an angry demeanour for the purposes of facilitating the offence of larceny. In addition, we bear in mind that the defendant has pleaded guilty to Count 2 (conduct likely to cause a breach of the peace while in the betting shop). 6. The Court accepts that this was an opportunistic theft. It was not a planned robbery of a betting shop; the defendant was not armed, and there were no threats to the staff in the shop. Apart from those observations the court can find no other mitigating factors in relation to the circumstances of the offending. 7. The defendant has a very bad criminal record, aptly described in the full and comprehensive Social Enquiry Report as "unenviable". 8. He has 41 convictions for 228 offences including 111 convictions for theft and kindred offences. He is described in the Social Enquiry Report as being as being at very high risk of reconviction. Paragraph 38 of the report references his previous criminal record, drug use, homelessness, unemployment and peer group, and to quote the paragraph 38 verbatim: "difficulty abiding by boundaries that may be imposed upon him". The

Jurats have taken due cognisance of those words. 9. As to mitigation, the defendant did not plead guilty at the earliest opportunity; indeed at the initial interview he gave to the officers that what can only be described as a cock and bull story, a story which indeed he later changed. But he did plead guilty on Indictment and the Crown has, in our judgment correctly, allowed a full one third credit in this regard. There can be, however, no credit for youth or previous good character. 10. Advocate Harrison, in a thoughtful address to us, has urged us to follow the recommendation of the Social Enquiry Report and to impose an 18 months' Probation Order coupled with a community service order. 11. We listened very carefully to everything that Advocate Harrison had to say. We particularly take account of the tragic circumstances of this defendant's childhood and the huge difficulties that he has had to face. But we have reluctantly concluded that probation probably would not work. In the words of one of the Jurats, "probation might set him up to fail", and in the circumstances it would be better if he were in prison and took advantage of whatever support is available to him. There is some reluctance on our part, but it has to be a custodial sentence. 12. We note also that Mr Page has a long history of non-compliance with individualised sentences and he has frequently committed offences while on bail. 13. As to the sentence the Crown has referred us to Whelan, Aspects of Sentencing (3rd edition), where this is said:- "The offence [that is the offence of larceny] is so various in form and circumstances that it is not susceptible to guideline treatment. The cases mentioned in this section purport to be no more than instances of the Court's practice on specific occasions. Little of principle is to be derived from them, save that the value of property stolen may be one key consideration." 14. With that we respectfully agree. The offence of larceny is protean, but we do regard the amount of money stolen in this case as being important consideration. This was on any view a serious act of dishonesty. 15. For comparison purposes only the Crown has drawn our attention to AG v Ring

[2008] JRC190; AG v O'Shea

[2011] JRC136A and AG v Rousseau

[2011] JRC195. That last case involved a theft at knife point accompanied by threats, and we thus consider that it affords us little if any guidance. Neither have we found the three cases Egré, Esnouf and Stainforth passed up to us by defence counsel this morning to afford any particular guidance. 16. The Crown has moved conclusions as follows:- (i) Count 1, theft, 2½ years' imprisonment; (ii) Count 2 - breach of the peace - 2 months' imprisonment, concurrent; and (iii) Count 4 - possession of cannabis - 1 week's imprisonment, concurrent. 17. Mr Page would you please stand. The court has decided to take into account of the very difficult background and tragic circumstances of your life and your appalling childhood experiences. We do think that this has contributed in substantial manner to your criminal record so far. We think that a lot of this can be traced back to that. 18. The court wishes to give you something of a chance, Mr Page, so we are going to reduce the Crown's conclusions. 19. Count 1, the sentence will be one of 18 months' imprisonment. 20. Count 2, 2 months' imprisonment concurrent. 21. Count 4, 1 week's imprisonment concurrent, that making a total sentence of 18 months. 22. The Crown has requested a compensation order - in fact, two compensation orders. The Bookmaker has

suffered a loss of £7,500. A request for a compensation order is made for that money, to be paid at the rate of £100 a week and payment to begin 6 months after release from the term of imprisonment we have imposed. We grant this order, noting that a realisable amount will be immediately deducted from the sum of the compensation order. 23. The taxi driver suffered a loss of £50. The Crown has requested us to grant and we do grant a compensation order in the sum of £50, and we hope that the realisable amount will be applied to that. 24. In the event that you fail to pay the remaining balance at the rate of £100 a week, we fix a default sentence of 3 months' imprisonment, in accordance with Article 3(1)(c) and 3(3) of the Criminal Justice Compensation Orders (Jersey) Law 1994 . 25. As to confiscation, we make a declaration of benefit in the sum of £7,500 under Article 3(3) of the Proceeds of Crime (Jersey) Law 1999 . We make a confiscation order in respect of the monies recovered in the sum of £1,049.70 under Article 3 of the same law. 26. Article 3(7) provides that where a confiscation order and a compensation order are made and the defendant does not have the means to satisfy those orders, the sum recovered under the confiscation order shall be paid towards any amount that is not recoverable under a compensation order. 27. We therefore order that the sum of £1,049.70 is paid towards the sum of the compensation orders and in doing so we express the hope that the taxi driver will be reimbursed in full and the Bookmaker's firm to the tune of nearly £1,000, very shortly. 28. We also order the forfeiture and destruction of the two lumps of cannabis. Authorities Misuse of Drugs (Jersey) Law, 1978 Whelan, Aspects of Sentencing (3 rd ed.) AG v Ring

[2008] JRC 190 AG v O'Shea

[2011] JRC 136A AG v Rousseau

[2011] JRC195 Proceeds of Crime (Jersey) Law 1999 Criminal Justice Compensation Orders (Jersey) Law 1994 Page Last Updated: 12 Aug 2019 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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