

JERSEY / JUDGMENT

AG -v- Pereira and Thomas [2012]

JRC 216A (16 November 2012)

[2012] JRC 216A

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JUDGMENT

THE DEPUTY BAILIFF: 1. Mr Pereira, you are here to be sentenced on an Indictment which variously charges you with counts of common assault, being carried in a motor vehicle without the owner's consent, illegal entry and larceny, and larceny from an unattended motor vehicle. Mr Thomas, in your case, you are charged with taking and driving away, driving without a licence and without insurance, malicious fire setting, illegal entry and larceny from an unattended motor vehicle. 2. You both have very poor records of previous convictions and you are both of an age, 25 and 28 respectively, when you can no longer count on youth as a mitigating factor. You have both pleaded guilty and therefore you are entitled to credit on that score. 3. Mr Thomas, in your case, your counsel suggests that in relation to illegal entry and larceny, the tariff is a maximum of 18 months from which one should allow a discount for your guilty plea, reducing it to 12 months' imprisonment as a maximum; so therefore it is said that no extra credit has been given in your favour. Reliance is placed on the case of AG-v-Gaffney 1995/101. We reject that argument. First of all Gaffney was a case where there was a guilty plea and so to the extent that 18 months was a maximum, it was on a plea and secondly, if we look at the decision of the then Deputy Bailiff in the case of Gaffney, at page 4 he said this:- "We need, for a moment, to consider whether we have to set a guideline for criminally breaking and entering commercial premises at night. We have examined very carefully all the authorities that have been cited to us but we must say that we find it extremely difficult in this particular case to set a benchmark. Each case will have an infinite number of variations and will depend, for example, on the amount of force used, the quantity of goods stolen and their value, the time of day, and whether the act was impulsive or planned." So it is clear from that quotation from the Court's decision in the case of Gaffney that the case does not attempt to set any form of benchmark or maximum tariff and indeed, for all the reasons given by the Court in that case, it would be surprising if it had tried to do so. 4. It was also said by Mr Giovannoni on your behalf Mr Pereira, that there was a distinction to be drawn between breaking into commercial premises which were a building and breaking into a gated car park of commercial premises. In principle the Court does not think that there is this distinction to be drawn; it seems to us to be commercial premises which have been entered illegally, and whether it is a gated car park or a commercial building seems to us to be beside the point. 5. There is one other feature of the charges to which we should refer and that is the conclusion that there should

be a consecutive sentence for maliciously setting fire to the property of another. It was contended by Advocate Jones that this was all part of one offence, one series of offending, that started with the illegal entry and the taking and driving away and that therefore the Court should treat the sentence for setting fire to the car later on in the evening, as part of the same series of offending and treat it with a concurrent sentence. The Court considers that this type of offence is a different type of offence from stealing or taking and driving away. The offence is connected in time and it is connected in the sense that the same car is involved, but it is in a different category of offending and in our judgment it merits a consecutive sentence. 6. Taking the case in the round, and having regard to everything which is in the background reports and to what has been said by counsel, we conclude in this way. 7. Mr Pereira, on all the material before the Court, we are satisfied that despite your very poor record of previous convictions, there is some reasonable evidence that you have been making serious efforts to overcome the problems that have led to your offending. We think the sentences moved for by the Crown are absolutely right in principle and they cross the custody threshold, but we have resolved to order that you serve your sentence in the community by making a Community Service Order. 8. Accordingly you are sentenced on Count 1; 100 hours community service, the default sentence we would have imposed would have been that of 4 months' imprisonment, on Count 2; 100 hours community service, and again we would have ordered 4 months' imprisonment, on Count 3; 100 hours community service, and we would have ordered 4 months' imprisonment as an alternative there. In relation to Count 8 you are sentenced to 180 hours community service, it would have been 12 months' imprisonment, concurrent, and on Count 9; 50 hours community service, and it would have been 1 month's imprisonment, concurrent. All those Community Service Orders will be served concurrently, and so that makes a total of 180 hours community service. The default sentence would be therefore 12 months' imprisonment. You should be aware that if you fail to comply with the order of community service, if there is difficulty in it, you can be brought back and you will be sentenced accordingly. The Court obviously at that time would have to give very careful consideration to the imposition of the custodial sentences which are the alternative. 9. Mr Thomas, in your case you have committed these offences recently after coming out from custody. You have written a good letter to the Court, we note that you have expressed your shame for irresponsible and shameful actions, and you had not given the thought to victims which you should have done. You have an appalling record, as does your co-accused, and it is inevitable, in our view, that you must serve a sentence of further custody as a result. During that period I hope you will take advantage of the psychological treatment that you can have in the prison and indeed take advantage of the other courses which are available in prison and that this will enable you, because you are 28 and it is time you stopped behaving like this, to make the fresh start that you say that you want to make when you come out. 10. We think that the overall conclusions of the Crown are mostly correct, we are going to adjust some of them slightly but they will have no impact on the total period in custody. On Count 4 you will serve 4 months' imprisonment, on Count 5; 6 months' imprisonment, concurrent, on Count 6; 6 months' imprisonment, concurrent, on Count 7; 18 months' imprisonment, consecutive, on Count 8; 12 months' imprisonment, concurrent, and on Count 9; 1 month's imprisonment, concurrent. So that makes a total of 2 years and 6 months' imprisonment in all. In addition on Count 5 you will be disqualified from driving, we think that

the right period is 1 year which will run from the date of your release from custody. 11. It has been suggested by the Crown that we should make a Compensation Order; we do not think that is appropriate, it is clear you cannot afford to pay, and income support is not designed for making payments of this kind. Accordingly we are not going to make any Compensation Order against you, so you will start when you have served your custodial sentence, as it were, with a clean slate and we hope that you will do so positively and try to mend your ways. Authorities AG-v-Gaffney 1995/101. Whelan on Aspects of Sentencing in the Superior Courts of Jersey. AG-v-Williamson

[2011] JRC 232 . AG-v- Nimmo

[2011] JRC 145A. AG-v-Capuano

[2003] JRC 223. Extracts from the Magistrate's Court Guidelines. AG-v-Bailey

[2009] JRC 077 . AG-v-Lee

[2011] JRC 092 . AG-v-Knowles

[2008] JRC 057 . Page Last Updated: 13 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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