

JERSEY / JUDGMENT

AG -v- Q [2015] JRC 216 (26 October 2015)

[2015] JRC 216

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JUDGMENT

THE commissioner: 1. Dealing first with the notification requirements under the Sex Offenders (Jersey) Law 2010 we order that the period of 5 years from the date of the defendant's conviction on 21 August, 2015, for the offence of incest, shall expire before an application can be made under Article 5(5); so that is a period of 5 years from that date. 2. The defendant, who is 62, stands to be sentenced for one count of grave and criminal assault, two counts of indecent assault and one count of incest. The victim was aged between 8 and 9 when the grave and criminal assault was committed and between 12 and 14 when the sexual offences were committed. The victim's mother had died when she was just under 2 years old and so the defendant was her primary parent. The grave and criminal assault, in which the defendant beat the victim and put his hands around her throat, causing bruising, was reported immediately by him to the Children's Home and she was removed for her safety. It was not a case of lawful chastisement but a case of loss of temper, which the Crown says constituted a gross breach of trust. The indecent assaults involved the defendant kissing the victim and putting his tongue in her mouth. The incest took place in the family home when the victim was in bed feeling unwell. 3. These offences took place 26-32 years ago when the defendant was between 30 and 35 years old, a mature adult. The sexual offences took place over a period of approximately 2 years and, in our view, demonstrate a course of offending which escalated to full sexual intercourse. 4. The defendant is assessed at a moderate risk of general reconviction and at a low risk of reconviction specifically for sexual and violent offending, although we are told that if he did reoffend the impact of his behaviour on a victim would be significant. 5. We have considered the impact upon the victim in this case as set out her personal statement and suffice it to say that it has been profound. 6. The approach to be followed in sentencing of historic offences such as these is set out in the English Court of Appeal decision of R-v-Hall and Others

[2011] EWCA Crim 2753 cited with approval in AG-v-E and F

[2015] JRC 134 . We have had regard to the factors set out in Harrison-v-AG

[2004] JLR 111 in relation to the grave and criminal assault and the factors set out in P-v-AG

[2012] JCA 070 for the sexual offences. 7. The Crown seek an overall sentence of 5 years, treating the grave and criminal assault consecutively. In terms of the most serious offence, that of incest, the Crown has referred us to the case of P which is the most recent case and to the

earlier cases of AG-v-Mandel (28.9.77) and AG-v-Miller (15.4.75). 8. In terms of mitigation the defendant has pleaded guilty to these offences, although in relation to the incest, not at the earliest opportunity; nevertheless he has done so. He is of good character and, despite reservations in the social enquiry report; he has expressed remorse in a letter to us. We have considered all of the points put forward by Advocate Haines very comprehensively in terms of mitigation for the defendant. 9. Taking the grave and criminal assault, it is the case, as Advocate Haines said and as we have already mentioned that he reported this assault immediately to the Children's Service and agreed that the victim be taken to a children's home for her safety. For whatever reason no action was taken by the authorities and no complaint has been made by the victim, who cannot now remember this incident. It is fair to say therefore that he has written his own Indictment in respect of this count and, in view of the very considerable delay in bringing this matter to Court; we agree with Advocate Haines that his sentence for this offence should be served concurrently. 10. As to the incest, this is a very serious offence and one which all right-minded thinking people regard with abhorrence. The impact upon the victim, as we have said, has been profound. There has been no delay in the authorities bringing this charge and, again, as mentioned before, the defendant did not change his plea until a month after the Indictment had been presented before the Royal Court. In our view the sentence sought by the Crown for this offence should be increased to mark the public's distaste for conduct of this kind and to deter others from such conduct in the future. 11. As to the two counts of indecent assault, we see no reason to depart from the Crown's conclusions and they will be served concurrently. 12. On Count 1 you are sentenced to 6 months' imprisonment, on Count 2; 18 months' imprisonment, concurrent to Count 1. On Count 3; 18 months' imprisonment, concurrent to Counts 1 and 2. On Count 8; 4 years and 6 months' imprisonment, concurrent to Counts 1, 2 and 3, which makes a total of 4 years and 6 months' imprisonment. 13. In terms of the Restraining Order we have considered the relevant test and impose a restraining order in the terms sought by the Crown for 5 years from today's date. 14. Finally, we would like to say to the victim, who is in Court, that we do hope that she can now move forward and see herself, as she said in her statement "as a survivor and not a victim." Authorities Sex Offenders (Jersey) Law 2010. R-v-Hall and Others

[2011] EWCA Crim 2753 . AG-v-E and F

[2015] JRC 134 . Harrison-v-AG

[2004] JLR 111 . P-v-AG

[2012] JCA 070 . AG-v-Mandel (28.9.77). AG-v-Miller (15.4.75). Criminal Justice (Anonymity in Sexual Offence Cases)(Jersey) Law 2002. AG-v-A

[2013] JRC 129 AG-v-Roque

[2013] JRC 037 . AG-v-G

[2015] JRC 157 Whelan on Aspects of Sentencing in the Superior Court of Jersey. UK Sentencing Guidelines Council's Definitive Guidelines "Overarching Principles: Assaults on Children and Cruelty to a Child". Page Last Updated: 16 Jan 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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