

JERSEY / JUDGMENT

AG v R [2011] JRC 076 (13 April 2011)

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JUDGMENT

THE BAILIFF: 1. This is the adjourned application of the Attorney General for retrospective notification requirements and restraining orders under the Sex Offenders (Jersey) Law 2010 ("the Law") in respect of R. The matter first came before the Court on 25 th February together with applications in respect of two other individuals, T and S. Details of that are to be found in the Court's judgment AG -v- T, S and R

[2011] JRC 055 , where the Court summarised the statutory background and the general nature of the evidence produced in relation to risk assessments (see paragraph 5 and 6). Having reached conclusions on that occasion in respect of T and S, the Court adjourned the application in respect of R in order that further information might be obtained. That information has now been provided. The Court reconvened on 5 th April and made certain orders. We now give our reasons.

Background

2. R is 47. He was sentenced to three and a half years imprisonment in 2007 after having pleaded guilty to offences of indecent assault, gross indecency and attempted sodomy as well as possessing and distributing indecent photographs. All of the offences were committed in respect of a boy who was initially 13 and then 14 during the period of offending. R was released towards the end of 2008. 3. The defendant met the victim in a gent's toilet whereupon they immediately engaged in mutual masturbation. This was repeated on occasions over the next few weeks. Sometime later, when the victim was 14, they met again and, over a period of a few months, they regularly engaged in mutual masturbation and oral sex. The defendant asked the victim to send indecent photographs of himself via his mobile telephone. This the victim did and the defendant passed some of these photographs onto another man who was also having a sexual relationship with the victim. On one occasion the defendant attempted sodomy with the victim. It was an accepted at trial that the victim had fully consented to all that occurred. 4. At the initial hearing of this application the Court was informed by Mr Simon Davies on behalf of the States Police that R was assessed as being at high risk of re-offending under the Risk Matrix 2002 tool but at medium risk under the Hanson and Harris 2007 Stable and Acute Assessment tools. However, some confusion arose during the course of the evidence and the

Court asked for the Probation Service to carry out up to date risk assessments and prepare a report. 5. We have now received that report and we also heard from the Probation Officer Mr Taylor in evidence. R is assessed at being at high risk of sexual re-offending under both the Risk Matrix 2000 and the Hanson and Harris Stable and Acute Assessments. This was also the view of the multi-agency JMAPPA meeting held on 9 th March 2011. A relevant factor in the Hanson and Harris assessments and the JMAPPA assessments is that R is an alcoholic. There is also concern because, following his release, R posted his mobile phone number in public places such as toilets and telephone kiosks inviting contact from males. Although he has declined to allow matters to go any further where he has ascertained that a male responding to the posting is under age, this is clearly risky behaviour. In January 2011 a 16 year old boy with learning difficulties contacted the telephone number previously displayed by R. Again R ended the contact but it was unwise behaviour. R states that he last posted his telephone number about eight or nine months ago. When giving oral evidence Mr Taylor maintained the view set out in his report. He accepted that R had been very co-operative and had not re-offended since his release. Nevertheless the fact that he had undertaken such behaviour constituted a significant risk and the potential for this to lead to re-offending was exacerbated by his alcoholism. 6. R also gave evidence before us and asserted that he had not put his number in any telephone kiosk or public toilet for eight or nine months and that he was not at risk of causing serious sexual harm to anyone. Decision 7. We remind ourselves of the principles as summarised in AG -v- Roberts

[2011] JRC 050 and AG -v- T, S and R (supra). We are in no doubt that the threshold for making a notification requirement is met. In the light of the evidence before us, we cannot possibly say that the risk of R committing further sexual offending can be discounted to the extent that the imposition of the notification requirement would be unjustified. As to the period before application for removal of the requirement may be made, Advocate Preston suggested the period should be three years on the basis that two years had already elapsed since his release from prison. However, it is of note that, according to the Attorney General, the equivalent United Kingdom legislation provides that, where a sentence of imprisonment exceeding 30 months is imposed, the offender should be subject to the notification requirement for an indefinite period. In our judgment, taking into account the risk of re-offending and the seriousness of the offence for which R was sentenced and noting the terms of Article 5(4) of the Law, we consider that the appropriate period which must expire before R can apply for removal of the notification requirement is one of five years from the date of this order, namely 5 th April 2011. 8. Turning to the Attorney General's application for a restraining order, the Court may only make such an order if it is satisfied on the balance of probabilities that the person concerned poses a threat of serious sexual harm to the public or to any particular person or persons and that the making of the order is necessary to protect the public or any particular person or persons from serious sexual harm from the offender. 9. Advocate Preston argued that the Court could not be so satisfied. R had not re-offended since his release from prison at the end of 2008, he had co-operated fully with the Probation Service and the Police and the evidence

showed that, where a young person or an inappropriate person contacted him, he turned them down and refused to take the matter any further. 10. We are wholly unable to accept Advocate Preston's submission. The evidence before us is that R committed the offences referred to above as recently as 2006, he is assessed as being at high risk of sexual re-offending, he is an alcoholic which increases his risk of giving way to temptation in respect of offending because it will impair his judgment and reduce his inhibitions, and he has undertaken the risky behaviour of putting up his telephone number in places such as toilets and telephone kiosks in order that men might contact him for the purposes of sexual liaison. We are in no doubt that R poses a threat of serious sexual harm to boys under 16. We must therefore consider what restraining orders it may be appropriate to make. 11. The Attorney General asks for restraining orders in the following terms:- "(1) That he be prohibited from posting or displaying in any public place, access to which is restricted by payment or otherwise; any sign, note, or writing that indicates a method of making contact with him, including but not limited to any form of telephone number or electronic address with the potential of encouraging sexual liaison with any person. (2) That he be prohibited from knowingly making or remaining in contact with any person under the age of 16 years by means of any form of written, telephonic or electronic communication." 12. We are not willing to make orders exactly in these terms. Paragraph 1 is deficient in that it is both too wide and too narrow. It is too narrow because the reference to public place is qualified by the necessity for access to be restricted by payment. Thus any toilet or telephone kiosk to which access is not restricted would not be covered. That seems very illogical. Conversely, it is too wide in the reference to "the potential of encouraging sexual liaison". This is a very vague concept. It would be difficult for R to know whether he was adhering to it and for the prosecution to prove that he was breaching it. Paragraph 2 of the proposed order is similarly extremely wide. Thus it would prevent R from sending a Christmas card to a nephew or a godchild. 13. As mentioned at paragraph 10 of T, S and R, restraining orders must be clear on their face, capable of being complied with without reasonable difficulty and free of the real risk of unintentional breach. This is because breach of a restraining order is a criminal offence. Furthermore, the order made must of course be proportionate to the legitimate objective, namely the prevention of re-offending. 14. In our judgment, orders in the following terms are proportionate and necessary in order to protect persons under 16 from serious sexual harm from R:- "(1) That he be prohibited from posting or displaying in any public place (whether or not access thereto is restricted by payment or otherwise) any sign, note, or writing that indicates a method of making contact with him (including but not limited to any form of telephone number or electronic address) with the intention of encouraging sexual liaison with any person or in circumstances which may reasonably be expected to lead to such a liaison. (2) That he be prohibited from knowingly making or remaining in contact with any person under the age of 16 years by means of any form of written, telephonic or electronic communication with the intention that such communication be for the purpose of encouraging sexual liaison with that person or in circumstances which may reasonably be expected to lead to such a liaison". 15. These orders are for a period of

five years from the date on which they were made, namely 5 th April 2011. Authorities Sex Offenders (Jersey) Law 2010. AG -v- T, S and R

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