

JERSEY / JUDGMENT

AG v R [2019] JRC 059 (04 April 2019)

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JUDGMENT

THE Commissioner: 1. We need to first deal with the notification requirements under the Sex Offenders (Jersey) Law, 2010 . In 2017, the Court imposed a period of 5 years before the defendant could apply to have the notification requirements lifted and in the light of the offences now before the Court we agree with the prosecution, and it is not opposed by the defence, that this should be extended to 10 years, from 15 th December, 2017. 2. The defendant stands to be sentenced for four breaches of restraining orders imposed upon him on 15 th December, 2017, when he was sentenced to 180 hours' community service and 2 years' probation for two indecent assaults on a 9 year old girl. Following his conviction the police attended at his home on four occasions when he failed to produce all of the devices in his possession, which he was required under the restraining order to do, devices which transpired to hold a total of 22,042 indecent images of children, of which 87% were Level 1 of the Copine Scale but 1,032 were at the more serious Levels 4 and 5 of the Copine Scale. 3. Applying the guidance in the case of AG v Godson and Crowley

[2013] (2) JLR 1 this is a Category 4 case indicating an initial figure of 3 years' imprisonment, but on the assumptions set out in this case three do not apply here:- (i) The sentencing does not follow a contested trial; (ii) The number of images is large; (iii) The defendant has a previous relevant conviction. Those latter two assumptions constitute aggravating features. In addition there were 269 moving images at Level 4 or 5 of the Copine Scale. The collection was amassed over a period of some eleven months during which the defendant was sentenced for the indecent assaults, and we do not accept his assertion that he downloaded these images over a much shorter period. The defendant is also in breach of the Probation Order imposed upon him. 4. The prosecution take what is called an adjusted figure of 7 years, taking into account he aggravating and mitigating features of the offences, from which allowing for personal mitigation the prosecution arrives at a sentence of 4½ years' imprisonment for the making of the indecent images offences. It seeks a consecutive sentence of 2 years' imprisonment for the breaches of the restraining orders giving rise to a total of 6½ years' imprisonment. 5. The defendant is assessed at a high risk of generalised reconviction. He is considered to have a deviant sexual preference and therefore to be at a high risk of further sexual offences. 6. In terms of mitigation he did plead guilty and should have credit for that, and he was cooperative with the Police in handing over most of the passwords to his devices. It can be said that up until the 2017

offences he was a man of good character and he had a good work record. 7. Advocate Ingram did not appear to dispute the adjusted figure sought by the prosecution of 7 years for the indecent images offences but says that the sentences for those offences should be reduced down to 2½ years applying the totality principle. In asking for that he accepts that the breaches of the restraining orders must attract a consecutive sentence. 8. Advocate Ingram also said to us that the defendant should be given a full one third discount for the indecent images offences, but we note that the prosecution have indeed given him over a one third reduction from 7 years down to 4½ years for those indecent images offences. 9. We have considered all of the arguments put forward by Advocate Ingram on behalf of the defendant and we have considered of course the cases he referred to, but apart from Godson they are not cases which set out any guidance and the facts are always different. In our view the prosecution's conclusions are correct. As the prosecution said and we reiterate the making or possession of indecent images is not a victimless crime. The images are of events which have in fact happened. In the case of images falling into the higher Copine levels in particular, a child will actually have been subject to the sexual abuse shown in the image, with all the suffering and damaging consequences which flow from that. The gravamen of this offence is that the making of indecent images fuels the demand, and this in turn encourages the production of such images with consequent further abuse of young children. 10. On Count 1 you are sentenced to 2 years' imprisonment, on Count 2, 2 years' imprisonment, concurrent; Count 3, 2 years' imprisonment, concurrent; Count 4, 2 years' imprisonment, concurrent; on Count 5; 4½ years' imprisonment, consecutive; Count 6, 4½ years' imprisonment, concurrent; Count 7; 4½ years' imprisonment concurrent and Count 8, 4½ years' imprisonment, concurrent, which makes a total of 6½ years' imprisonment. 11. For the breach of the Probation Order we discharge it and there is no separate penalty. 12. We order the forfeiture and destruction of the devices as sought by the Crown. 13. We impose the Restraining Orders which are set out at paragraph 33 of the Crown's conclusions for a period of 10 years from today's date, those restraining orders not being opposed by the defence. Authorities Sex Offenders (Jersey) Law 2010 AG v Godson and Crowley

[2013] (2) JLR 1. AG v Laffoley

[2017] JRC 058 AG v R

[2017] JRC 213 AG v Bourke

[2018] JRC 134 AG v Storer

[2018] JRC 167 Protection of Children (Jersey) Law Page Last Updated: 24 Apr 2019 BAILII:
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