

JERSEY / JUDGMENT

# AG v Roberts [2023] JRC 092 (12 June 2023)

**[2023] JRC 092**

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## JUDGMENT

THE COMMISSIONER: 1. A full judgment will follow in due course. This is not an easy matter and I make it clear from the outset that the Court regards these as very serious offences. 2. The Defendant worked at a Mental Hospital as a health care assistant. He was dealing with extremely vulnerable patients and his job was to help them and care for them and try to help with their recovery. He was meant to be caring for them and that included protecting them against themselves. The offences took place in a Mental Hospital where they were entitled to be safe from the attentions of a predatory male who wanted to use them for his own sexual gratification. 3. In relation to the first victim the Defendant used his position to get close to her, he started by gaining her trust then started making sexual remarks to her and finally he tried to kiss her. He had obtained her telephone number from the hospital so that he could contact her when she was out of the hospital. When he kissed her she slapped him and with that his attentions stopped. 4. It might be said that very little happened but the effect that it has had on that first victim has, we are satisfied, been significant, and we are satisfied that it is likely to have had a detrimental effect on her recovery which may be permanent. She has completely lost her trust in men and as her key worker at present is a man that is a considerable problem and it may mean that half the people who could be helping her she will not be able to work with. 5. In relation to the second victim, who the Defendant moved on to, much more happened. There was touching over clothing of breasts and her touching his penis over clothing and on one occasion he put a finger in her vagina beneath her clothing. She says that she did not object and it is apparent that to some extent at that time she welcomed his attention. She was not someone who was at the time capable of looking after herself. That was why she was in a Mental Hospital and it was the Defendant who was one of those who was meant to be looking after her. She drank too much and the Defendant it seems to the Court took advantage of that and his attentions were attractive to her, suffering as she was, apart from anything else, from a lack of self-esteem. 6. The Prosecution describe his conduct towards the women as grooming and certainly he used his position as the carer to gain friendship and then to an extent to achieve their dependence on him. The essence of these offences is breach of trust and there is an overlap inevitably between breach of trust and grooming. 7. In sentencing for offences such as these there has to be an element of deterrent. People need to understand that when they are put in a position of trust they cannot and must not abuse it. In sentencing in this case we are not setting out a sentencing guideline. We have looked at the sentencing guideline for England and Wales for the equivalent offence and, with respect,

we consider that there are considerable shortcomings in that guideline. In dealing with harm factors t they do not deal at all with what we think is the principal harm factor which is the psychological effect on the victims of these offences. We have taken full account of the psychological harm suffered. We have taken account of the guidelines in relation to some of the aggravating and mitigating factors that it identifies and we have taken notice of the starting points which are the basis of the Prosecution conclusions because otherwise it would mean that we would be starting from scratch. Because we are not setting out a guideline, what we shall do is arrive at an overall figure for the offences, taking into account all the aggravating features and we will have that as a starting point and we will then discount that figure to reflect the mitigation. 8. The features of the offences that we have taken primarily into account in reaching our starting point are the fact that there were two victims, and most importantly the very serious consequences which resulted in exacerbating the illness of the second victim as described in the expert report and the effect on the first victim which we are satisfied was serious. Then we have taken into account the abuse of trust. It is not only a breach of trust to the victims but it is also to the other hard working carers who were appalled and shocked at what the Defendant had done, while they were doing their utmost to assist the patients to recover from the illnesses that they were suffering from. We have taken into account to the Defendant's attempts to cover up what he had done and persuade the second victim not to say what had happened. There was also an exchange of photographs involving the second victim. 9. So taking all the facts of the case and all the aggravating features put forward by the prosecution where we have accepted them; taking all of that into account the figure which we have arrived at is 7 years. We have discounted that by about 20% to reflect good character and significantly in this case, which we have not heard a great deal about, the extensive delay which was nothing to do with the Defendant but was as a result of what has now to be accepted to have been an incorrect charging decision in the first place which was later reversed. 10. So before I actually announce the sentences on each of the counts, in relation to the reporting notification we say that a period of 10 years from today must have been completed before application can be made to alter it. 11. We also make a restraining order prohibiting the Defendant from having any contact direct or indirect with either victim, this will be of immediate effect and will remain in force for an indeterminate period from this date and any breach of this order will be an offence for which the Defendant will be liable to imprisonment for up to 2 years and to a fine. 12. The total sentence we pass, and we pass concurrent sentences on all of the offences, is one of 5½ years. While that is the same as the Prosecution's conclusions, we have varied the individual sentences. We have arrived at the same total sentence as the Prosecution but we have reached that sentence for entirely different reasons. Count 1 we regard as being very serious because of the consequences to the victim. On Count 1 the sentence is 3 years' imprisonment. On Count 2 it is 9 months as it is on Count 3. On Count 4 it is 18 months' imprisonment. On Counts 6 and 7, 2 years' imprisonment and on Count 8 5½ years. The differences in sentence on counts 2 to 8 reflect the different conduct on each of the different counts but the overall sentence is one of 5½ years. Authorities Sex Offenders (Jersey) Law 2010 Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008 K v AG; AG v F

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