

JERSEY / JUDGMENT

AG v Roberts [2023] JRC 095 (12 June 2023)

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JUDGMENT

THE COMMISSIONER: 1. The Court has already passed sentence on Mr Roberts and has given some reasons for the sentence that it imposed. 2. The Court made it clear at that time that it regarded the offences as serious, representing a serious breach of trust by the Defendant both towards the patients and the hardworking members of staff who worked alongside him and who were appalled at his conduct. 3. We offered to set out more extensive reasons than we gave when sentencing and we were encouraged by Advocate Jones who appeared for the Defendant to do so. We are told that this is the first prosecution for offences contrary to Article 75(1)(a) of the Mental Health (Jersey) Law 2016 and while this is not in any way intended to be a guideline judgement it may be of assistance to others who have to sentence for this offence in the future to know the considerations that we took into account. The sentence we have passed is fact specific and that needs to be remembered if it is referred to in any subsequent court hearing. 4. By virtue of Article 75 it is an offence for any person who is concerned in the care of a person with a mental disorder to intentionally touch any person suffering with a mental disorder where the touching is sexual. 5. Mr. Roberts was convicted of eight such offences by the Jurats after a trial. 6. The offences were committed on two patients while they were resident at Orchard House which is a mental hospital and where the Defendant worked as a health care assistant. The offences in the Indictment cover the period from June 2020 to January 2021. 7. There were two women with mental disorders that he touched, Miss Y and Miss Z. 8. In relation to Miss Y the Defendant was convicted of the single count relating to her, Count 1. She had been diagnosed as suffering from a borderline emotionally unstable personality disorder at that time but it is apparent from the expert's reports that we have seen that she may have other mental problems that require treatment. The Defendant first of all gained her trust by showing a keen interest in her. He obtained her telephone number from the hospital which he was not entitled to have for the purpose of contacting her when she was discharged. He talked to her about music and other interests. Having gained her trust, he then started to turn the conversations towards sexual matters. He would remark on her figure and make other comments of a sexual nature. He took opportunities when he could to be alone with her and on one occasion he kissed her on the lips and she slapped his face. 9. The kiss was Count 1 on the Indictment. 10. The other counts related to Miss Z. She had a diagnosis of anorexia nervosa; PTSD and alcohol abuse. He again gained her trust and paid her a great deal of attention and she thought that he was being kind to her. She was having a number of difficulties in her private life and perhaps because of lack of self-esteem she

welcomed his attentions. Their relationship became sexual and he started talking about a life together after she was discharged. They began to kiss. There was touching over clothing; he touched her breast. With the Defendant's encouragement she touched his penis over his clothes and finally, Count 8, he put his finger inside her vagina underneath her clothing. 11. They also sent sexual photographs to each other. 12. The Defendant was employed to assist patients in their recovery and he was indulging in activity which was likely to delay and make more difficult their recovery to indulge his own sexual desires. 13. The mitigation was that the Defendant was a man of good character aged 57. Although he was divorced there was a character reference from his wife who had attended court throughout the trial in which she spoke of his attributes as a father and was able to tell the court that this sort of behaviour was entirely out of character. The final piece of mitigation was the delay in bringing the case to trial which resulted from an early decision not to proceed with the prosecution. That decision was successfully appealed but that inevitably led to a delay which was no fault of the Defendant. 14. In the absence of any comparable cases from Jersey the prosecution referred us to the sentencing guidelines for England and Wales. These guidelines are often useful in identifying the harm and culpability factors which are relevant to achieving a starting point for sentencing and the aggravating and mitigating factors which can increase or decrease a sentence. 15. In so far as the culpability factors were concerned, we adopted some of the analysis in the guidelines. In relation to the harm factors we found that analysis less helpful. In our view the principal harm factor should be the degree of psychological harm suffered by the patient as a result of the behaviour of the Defendant. That is not mentioned anywhere in the harm factors nor in the aggravating factors which we find surprising. 16. In the Sentencing Council Guidance the harm factors relate solely to the physical acts of sexual touching and the more serious they are the higher the starting point is. While we accept that that should be a factor in assessing the sentence we do not think that should be the exclusive or principal factor in assessing harm. 17. The Attorney General's conclusions reflect the approach in the Guidelines so they propose a sentence of 6 months on Count 1 for kissing Miss Y which is at the bottom of the scale. We consider that to be considerably too low as it fails to reflect what we are satisfied was significant psychological damage that she suffered. The Defendant gained her trust by being kind to her. He then betrayed that trust by kissing her on the lips. That has had very serious consequences for the patient. She now does not trust any man who is involved in her treatment but is afraid he has ulterior motives. This is causing considerable obstacles to her recovery. Many of the people who treat her are men and she needs to be able to trust them and be happy that they do not pose a threat to her. 18. So while the actual act may not have been serious as compared with other acts such as in Counts 4 to 8 we, having had the opportunity to see the victim, and having read the reports consider that the psychological damage she suffered was substantial. 19. In assessing the harm done to the victim we have been careful to exclude any damage suffered by the experience of having to give evidence. The Defendant was entitled to plead not guilty and have a trial and it is the Court's job to ensure that steps are taken to try and prevent any consequential harm to the witness. As this case proved this is very difficult to achieve. 20. Accordingly, having assessed the harm as significant we imposed a three year sentence on Count 1. 21. In relation to the second victim, as is often the case where the offences have exacerbated existing psychological damage, it is not

necessarily easy to distinguish between existing damage and the further damage caused by the acts of the Defendant. Nevertheless the view of the expert is that she has suffered severe psychological harm as a result of the Defendant's actions and in her report she sets out in detail the effect that that has had on her. 22. As we have judged it to be right in this case to make all the sentences in relation to the offences against the second victim concurrent, the sentence on Count 8 reflects the totality of the conduct. 23. The Court arrived at a figure of 7 years as a starting point to reflect the Defendant's offending against both victims. It would have been possible to have passed a consecutive sentence on Count 1 to reflect the fact of a second victim. The Court decided not to do that and it reduced the starting point to 5½ years to reflect the Defendant's good character and the delay. 24. In considering what is an appropriate length of sentence we have considered the ranges of sentence set out in the Sentencing Guidelines. We have not felt bound by them but, where there are no other appropriate comparators, it seemed sensible to see the sort of sentences which are imposed in a jurisdiction that does bear a number of similarities to the criminal justice system in Jersey. 25. We have already set out the individual sentences and I shall not repeat them. These additional reasons are intended to give a better insight into how the Court reached its sentence. Authorities Mental Health (Jersey) Law 2016. Page Last Updated: 24 Jul 2023 Back to top About JLIB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001- 20262023 (External) BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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