

JERSEY / JUDGMENT

AG -v- Rodrigues [2014]

JRC 050 (25 February 2014)

[2014] JRC 050

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JUDGMENT

THE commissioner: 1. The defendant stands to be sentenced for two counts of affray and one count of breaking and entering with intent to commit a crime. The case is unusual in that the report of the psychiatrist shows the defendant was suffering from bipolar affective disorder, enduring serious mental illness, and his actions were, in the opinion of the psychiatrist, at least partly determined by his manic condition. In his opinion, if the defendant had not been suffering from mania at the time of the offences and his mood was, through medication, settled, he would not have behaved in this manner. 2. In brief he involved himself in a fight with another man who he knew (and who was the instigator) and usually gets on with, in the reception of the social security department and then afterwards outside those offices. Punches and kicks were thrown, although no-one was injured. There is no question, however, that members of the public were alarmed by what they witnessed. A month later, whilst on bail, the defendant attended at a flat in which he had lived for some 16 years before being evicted some 4 years ago. He had clearly become obsessed with the perceived injustice of his eviction and went to the flat to get the owner to apologise. Armed with a hammer he smashed the front door and gained entry. The owner was not there but another person was, who saw the defendant climbing the stairs and entering the living room. The defendant was apparently aggressive and agitated, waving his hands around, one still holding the hammer, and shouting at this occupant to leave, who felt it wise to do so. The defendant then threw some houseplants down the stairs, smashing them. When the police arrived the defendant gave himself up. 3. He is assessed at a high risk of reconviction, attributable in part to his drug addiction and deteriorating mental health. The Crown accepts that certainly the offence of breaking and entering was committed when the defendant was in the course of a manic episode but his bipolar disorder is not, it says, properly to be regarded as mitigation. Not everyone, says the Crown, with this disorder commits criminal offences and the defendant had sufficient insight, it says, to know what he was doing was wrong. To put the matter in context, his record of offences in 2007 and 2008 shows, the Crown says, a tendency on his part to commit serious offences both before and after the onset of mental illness. 4. Breaking and entering is, as the Crown says, a serious offence for which it moves for a sentence of 15 months' imprisonment with 1 month's imprisonment for each of the affrays, concurrent with each other but consecutive to the breaking and entering, making a total of 16 months' imprisonment. 5. We

understand that the defendants co-accused in relation to the fights in and outside the social security department was dealt with in the Magistrate's Court by one charge of breach of the peace for which he was sentenced to probation. For reasons which are not clear the charges against the defendant in respect of the same incident has been raised as two counts of affray, inherently more serious offences. Advocate Pedley has not had responsibility for this case and was not able to assist us on why the two defendants have been treated so differently, but on the face of it it seems very inequitable. The defendant did not wish to have the question of his criminal responsibility at the time of the offences made an issue for trial by the Court electing to plead guilty but at the same time putting forward his mental ill health by way of mitigation. 6. The defendant's diagnosis of bipolar was made after these offences and it is clear that that diagnosis has assisted him in understanding his difficulties. Paragraph 37 of the probation report states:- "Throughout this period Mr Rodrigues has continued to seek help from a variety of sources and has tried to make changes, albeit without lasting success. His diagnosis with Bipolar Disorder in November 2013 may go some significant way to accounting for the difficulties he has experienced in the last few years. It also has the potential to help him get his life back on track. He reports that he is feeling the benefit of the medication which Dr Harrison has prescribed and he appears genuinely motivated to engage with the Psychiatric Service. He understands that his condition will require self-monitoring and compliance with treatment on a long-term basis. Encouragingly, Mr Rodrigues' insight to his situation and its impact on his behaviour over the past year has been more apparent on each visit I have made to him over the last month." 7. The defendant has already served a sentence equivalent to 7 months and 4 days and, in light of his serious mental ill health, we conclude, as urged by Advocate Bell, that an individualised sentence is appropriate, bearing in mind the unusual nature of the offences. In our view both the defendant and the community are immeasurably better served by the defendant being placed on probation so that he can receive the very comprehensive package of support and treatment that is set out in paragraph 38 of the probation report and this for a period of 18 months. 8. Having made that decision it would be inconsistent, we feel, for the Court to then hold, in the context of deportation, that the defendant's continued presence in the Island was detrimental and therefore we do not get over the first stage of the Camacho test. But, in any event, despite the past, we do not think that deportation is in any way appropriate for someone who has been diagnosed with an enduring mental health illness of this kind. 9. Therefore on all three counts contained in the two Indictments you are sentenced to 18 months' Probation, concurrent. That is a total of 18 months' probation on the usual conditions but on condition also that you comply with the directions of the Probation Department and, in particular, that you continue to take your medication as prescribed and undertake any treatment that is recommended. You must appreciate that if you breach any of the conditions of your probation you will be returned to this Court. 10. We are not going to make an order in relation to the hammer. Authorities Camacho-v-AG

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