

JERSEY / JUDGMENT

AG -v- Salsac [2017] JRC 125 (04 August 2017)

[2017] JRC 125

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JUDGMENT

THE BAILIFF: 1. You are here to be sentenced on an Indictment containing four counts of distributing indecent photographs of children and one count of making indecent photographs of children. You distributed 21 images to four individuals and of those 21 images, 2 were stills and one video at level 4 on the Oliver scale. The Court's approach to the distribution and making of images at levels 4 and 5 is that normally those offences call for the imposition of a custodial sentence unless there are exceptional circumstances and indeed, that the initial starting point is a figure of 3 years' imprisonment. There is no doubt in your case that, first of all, you are not a fool and that you knew you were offending because you hid the computers in question. One of the important differences in your case however is that you committed these offences when you were aged 17 and the Court applies the test which is set out in AG-v-Cameron

[2008] JLR 182 which is to treat you as though you were being sentenced at the date of the commission of these offences and so, as was said by LJ Dyson in R-v-Gafoor

[2002] EWCA Crim 1857 : "The approach to be adopted where a defendant crosses the relevant age threshold between the date of the commission of the offence and the date of the conviction should now be clear. The starting point is the sentence that the defendant would have been likely to receive if he had been sentenced at the date of the commission of the offence." And the reason for that is quite clear. It is because the legislature has set out a philosophy of restricting the sentencing powers in relation to young offenders and that reflects both the fact that society accepts that young offenders are less responsible for their actions and therefore less culpable than adults and it also reflects the recognition that in consequence sentencing then should place a greater emphasis on rehabilitation than on punishment. 2. We are satisfied that that is the approach that we should take in the instant case and so we have looked at the 1994 Young Offenders legislation and we are satisfied that there is no previous record, no history of not complying with non-custodial orders in the past and we are also satisfied that this offending is not so serious that it would have required, had you still been 17, a custodial sentence and so we are not going to send you to prison. 3. We have looked carefully at the case of AG-v-Marett

[2017] JRC 110 . There the defendant was 22 and his offending took place when he was 19 or 20. That case, in our view, is substantially different from the present one, both in terms of the age at which the offences were committed because Marett was 19 or 20 at the time and you were only 17, and secondly, in terms of the number of images. The offending was therefore positively different, in his case there were some thousands of images. 4. What is really important that you recognise is that when we distinguish between these cases and when we say 21 images is not nearly as serious as 1,200 images, of course it is true, but nonetheless, the making of images and the distributing of these images is an extremely serious offence. Your counsel says that you recognise this but I just want to emphasise to you now that the Court recognises that real children have suffered real harm in the making of these images. It is said that you have got no sexual interest in children. We hope that is true in that sense, but you should be under no illusions that these are serious offences and you should be under no illusions at all that if there were to be any repeat of these offences in the future then, undoubtedly, you would find yourself in custody for a long time. 5. In the circumstances what we are going to do is going to place you on probation as recommended by the Probation Service for a period of 18 months and, reflecting the seriousness of the offence, we are going to sentence you to 150 hours' Community Service Order. The alternative of that would have been 9 months' imprisonment. The order of 18 months' probation and the 150 hours' community service is imposed on each of the five counts of the Indictment and it shall run concurrently so the total is 18 months' probation and 150 hours' community service. 6. You must do that community service and if you do not you are liable to be brought back to Court and the sentence of the Court may well be all or some of the 9 months or, in some circumstances, could be higher. Equally you must comply with the terms of the Probation Order but nothing we have read suggests that there is likely to be any difficulty about that compliance and you should take advantage of the help that Doctor Briggs will be able to give you because that is an important part of our reasoning in imposing this Probation Order. 7. We also the forfeiture and destruction of the two computers. 8. As a result of your offending you are liable to the notification requirements under the Sex Offenders (Jersey) Law 2010 and we determine that the period before which you can make any application to set aside the reporting restrictions under the notification requirements is 5 years from today. 9. We turn now to the question of a Restraining Order because it is suggested in the paperwork put before us that we impose a restraining order upon you, a restrictive order. We are satisfied in the light of what we have read that you pose a threat of serious sexual harm to the public i.e. those children who might be the subject of these films in the future - in this sense because you have added to the market of potential users of illegal images and by the imposition of the restrictive order you would be less likely to commit the offences and thus the market is reduced and so to some extent the order will protect these children from serious sexual harm. That is the rationale for the Court's jurisdiction in being able to impose the restrictive order which we have noted from your counsel has not been opposed. 10. In the circumstances we impose a Restrictive Order for a period of 5 years from today's date: (i) that you must produce to a police officer immediately on

request for examination at any time, any computer or device which may access the internet, or any device which can store images electronically, which belongs to you or is in your possession, it being noted that such request may be made anywhere including by the police attending at your place of residence; (ii) You are prohibited from owning or having in your possession or having access to any device which is capable of accessing the internet unless (a) It has the capacity to retain and display the history of internet use; and (b) That you ensure that such history is not deleted. That Restrictive Order will last for a period of 5 years from today's date. 11. I must warn you that if you breach that order that of itself will amount to a criminal offence and you can be brought back and sentenced in Court. 12. There will be no order for costs. We are not satisfied that there is anything in the conduct of the defendant to justify the order for costs which is proposed and it will, as was said in the case to which Advocate Gollop referred us, it will require considerably more argument on behalf of the Crown to justify such an application in the future. Authorities AG-v-Cameron [2008] JLR 182. R-v-Gafoor

[2002] EWCA Crim 1857 . AG-v-Marett

[2017] JRC 110 Sex Offenders (Jersey) Law 2010. Criminal Justice (Young Offenders)(Jersey) Law 1994. Costs in Criminal Cases (Jersey) Law 1961. AG-v-Q [2016] JRC 259. AG-v-Brown

[2015] JRC 062 . AG-v-Godson and Crowley [2013] (2) JLR 1. AG-v-A and six others

[2009] JLR Note 25 . Page Last Updated: 15 Aug 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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