

JERSEY / JUDGMENT

AG v Samson 16-Oct-2020 [2020]

JRC 217 (16 October 2020)

[2020] JRC 217

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JUDGMENT

THE lieutenant BAILIFF: 1. The facts giving rise to Counts 1 and 2 of the First Indictment, which respectively charge the defendant with unlawful sexual intercourse and indecent assault, occurred over 16 years ago when the defendant was 22 years old. The complainant was aged 15½ years at the time. She fell pregnant and underwent a termination some two months later. 2. We note that the sexual intercourse is accepted by the Crown as having taken place on one single occasion and that only one offence of indecent assault is charged. These are not specimen charges therefore. This was not a prolonged or persistent course of conduct, which is so often a feature of cases of this type. 3. The Court also takes into account that although there was some element of breach of trust in this case, it was not a gross breach such as that committed by a teacher or a parental figure abusing children in his care. Nevertheless in our judgment this was an opportunistic offence and it would seem from our reading of the Social Enquiry Report that opportunism has been a feature of this defendant's offending in the past. 4. We mention these matters at the outset in order to provide some context for the offending and not in any way to minimise it or the impact that these crimes have had upon the victim. We have read the Victim Impact Statement with care and we note the effect upon the complainant including emotional and physical consequences; and in this context we are concerned by the statement in the Social Enquiry Report at paragraph 32, which reads: "Mr Samson does not display any remorse toward the victim and does not appear to understand the impact his behaviour could have had on her. However, he does express regret although his reasons appear to be more about the consequences for himself rather than those of the victim." We note though that the author goes on to say this: "Nevertheless, Mr Samson does have an understanding of the impact engaging in sexual intercourse with a child could have on them and responded appropriately when I linked such a scenario to his daughter." 5. The Sexual Offences (Jersey) Law 2018 has increased the maximum sentence for unlawful sexual intercourse to 10 years' imprisonment, but this offence was committed prior to the coming into force of that Law, and the Crown has rightly conceded that the defendant falls to be dealt with under the Loi (1895) Modifiant le Droit Criminel . The maximum sentence under that Loi is one of 5 years' imprisonment. We remind ourselves of the gravamen of the offence of unlawful sexual intercourse. The law may have changed, but the underlying reason for the existence of the offence has not; it is immutable. 6. Delivering the

judgment of the Court of Appeal in Kittleson v AG

- [2011] JCA 052 the President, Sir John Nutting said at paragraph 25: "There can be no doubt that this offence exists to protect children and that a girl under 16, no matter how developed and no matter how mature for her age, is still a child who must be protected even from herself. As Silber J. said in *R. v Goy*
- [2001] 1 Cr. App. R. (S.) 13 "The aim of this legislation is to ensure that girls are protected from sexual intercourse even if they have consented." 7. In *AG v Brewster* 2001/3 the then Bailiff, Sir Philip Bailhache, commented: "The removal of a child's innocence and the corruption of the trust which children naturally feel for adults are so serious that, other than in exceptional circumstances, they must be punished with imprisonment." In our judgment, those words hold just as true today as they did nearly two decades ago. 8. In the instant case there are no exceptional circumstances and indeed none has been advanced on behalf of the defendant by counsel. But we do take into account the mitigating factors. The guilty plea was a valuable one. It saved the victim from having to give evidence and thus to relive this traumatic period in her life, and thus we propose to allow the defendant full credit for the guilty plea. 9. In our judgment another major mitigating factor is that, despite the fact that the defendant has a long and unenviable criminal record, this is his first sexual offence, and we note also that he has not reoffended in that way over the course of the last 16 years. We also take account of the unfortunate delay in the bringing of this prosecution, notwithstanding that the defendant admitted to the police in 2004 that he had indecently assaulted the victim. The delay has prejudiced both the complainant and the defendant. We hasten to say that it does not arise as a result of the fault of either of them, but we must allow the defendant some extra credit for the delay. 10. We have also had regard to everything that is contained in the Social Enquiry Report and the very comprehensive psychological report. 11. We are also impressed by the progress that the defendant is making with the substance abuse officer at HM Prison La Moye . The officer is reported to have said this to the Probation Officer: "Justin is always polite and compliant whenever we meet and has opened up considerably since our first session. He has a very good level of understanding of how his opiate misuse is linked to his criminogenic behaviour. ... I have noticed that he is becoming more reflective and is now creating a very clear plan for his future, especially as he has agreed to work for his friend who owns a garage. Part of his plan is to remain permanently abstinent from any substance, in particular opiates. He also states that this is the healthiest that he has ever felt and that he plans to remain healthy, both physically and mentally." 12. The Second Indictment contains two counts to which the defendant has also pleaded guilty. Driving without insurance is a serious offence and the culpability on this occasion is exacerbated by the fact that the defendant has committed such an offence on very many previous occasions. There is no mitigation available to him in the fact that he drove while uninsured on this occasion because he knew he was going to prison anyway and he had nothing to lose. That is not advanced as mitigation and if anything we think it is a slightly aggravating factor. 13. Mr Samson, would you stand please. As you have heard we have taken account of all the

mitigating factors and we are going to reduce the Conclusions of the Crown. On the First Indictment, unlawful sexual intercourse, the sentence will be of 18 months' imprisonment. On Count 2, the indecent assault, 15 months' imprisonment, concurrent. On the Second Indictment Count 1, there will be no separate penalty. On Count 2, driving without insurance, 6 months' imprisonment, consecutive and you will be disqualified for driving or obtaining a licence for 12 months. This is a total of 2 years' imprisonment. 14. As a result of your conviction you have become subject to notification requirements under the Sex Offenders (Jersey) Law and despite all that your advocate has said on your behalf it is our order that a period of 5 years is appropriate before you may apply to have the notification requirements dis-applied. 15. We make no restrictive orders. 16. We are unable to make a restraining order under Article 5 of the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 because the tests set out in that Article are not met in this case. We take comfort, as should the complainant, that the defendant has not been in contact with the complainant for 16 years and we accept your assurance through counsel that you have no intention of doing so. 17. Mr Samson, we note with great regret your sad and troubled childhood. You had a pretty dreadful start in life. It might not be unfair to say that the system failed you, but you must please try to leave this behind you now as best you can. We are really encouraged by much of what we have heard and read about you. You are intelligent. We urge you to take full advantage of all the training, all the therapy and all the courses that are available to you at HMP La Moye . We are very encouraged indeed to learn that your friend has agreed to offer you training and employment on your release in his motorcycle and Land Rover repair business. We hope that that will be the making of you and mark a new chapter in your life. We very much hope we shall not see you here again. Authorities Sexual Offences (Jersey) Law 2018. Loi (1895) Modifiant le Droit Criminel . Kittleson v AG

[2011] JCA 052 . AG v Brewster 2001/3. Sex Offenders (Jersey) Law 2010. AG v Bacon

[2017] JRC 041A K-v-AG, AG v F

[2016] JCA 219 J-v-AG

[2016] JCA 090 AG-v- Kittleson

[2010] JRC 184 AG-v-Hamon

[2003] JRC 149 Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008 Magistrate's Court Sentencing Guidelines Sentencing Council Guidelines for England and Wales Page Last Updated: 26 Nov 2020 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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