

JERSEY / JUDGMENT

AG v Simao [2004] JRC 021 (03 February 2004)

[2004] JRC 021

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE DEPUTY BAILIFF: 1. The Court is sitting to consider the question of possible deportation, having dealt with the question of sentence on the 23 rd January. 2. The first question which we must ask is whether it is to the Island's detriment that the defendant should remain in the Island? He has pleaded guilty to a grave and criminal assault. He was then placed on bail but whilst on bail committed the offence of false imprisonment. 3. This must have been a frightening incident and it is certainly a serious offence as the Court said when passing sentence. As the Social Enquiry Report stated at paragraph 16, it was likely that one of the consequences would be that the victim would no longer feel safe in her own home. 4. For this hearing the Court has received a further report via Victim Support from the victim which confirms that to be the case, but that is nothing new. It is only to be expected after such a frightening experience. 5. Miss Fogarty emphasises that the defendant has been of good character until now, and she relies on the fact that it was his failure to take his medication for depression that led to these offences. This was dealt with by the psychiatrist in his report and we think it right to read his conclusions which are as follows: "Having stopped his anti-depressant on 2 August (or thereabouts) it is very probable that he experienced some withdrawal symptoms in the form of increased irritability. This is a well-documented feature of abrupt withdrawal from the kind of drug which he was taking but it would usually be quite mild in degree and not usually be expected to lead to law breaking behaviour but nevertheless could contribute to it. Any such withdrawal effects would have gradually diminished and disappeared in a maximum of three weeks following cessation of the drug. Withdrawal effects could then possibly have affected Mr Simao's mental state at the time of the offence on 16 th August. The elation of mood described by Mr Simao can certainly occur in people who suffer from mood disorder although it had not previously been documented in Mr Simao's case and was not evident when he was seen in the outpatient clinic on 15 th August. The features he described however do fit well with the syndrome of mild hypomania following a depressive episode. It is therefore feasible, but hard to evaluate objectively, that Mr Simao's mood and therefore his behaviour on 16 August and on 21 September might have been influenced by mood elation and disinhibition . If there was such an influence at work it would have been only slight as his mood appeared normal on 15 th August." 6. We read that as saying that, whilst it cannot be completely ruled out, its effect, if any, would have been only slight particularly as he

appeared normal on 15 th August, and particularly as he stopped taking his anti-depressant on 2 nd August, and any withdrawal effects usually disappear within three weeks. Therefore any effect on the 21 st September when the false imprisonment was committed must have been very small, if it existed at all. 7. Miss Fogarty has also referred to the Probation Report which has categorised the defendant as being at moderate risk of re-offending. Miss Fogarty makes three particular points. First, his attitude to these offences; secondly his mental health problems, and thirdly recent instability regarding work, accommodation and use of time. Miss Fogarty submits that the third reason arises out of his mental health problems and that if we were, therefore, to deport him on the grounds of his being at moderate risk of re-offending we would be doing so basically because of his health problems; she says we would be discriminating against him on the grounds of health contrary to Article 14 of the European Convention on Human Rights 8. We have considered these various submissions but in our judgment it would be to the Island's detriment for the defendant to remain here. These were serious offences and the second one was committed whilst on bail. The possibility of the failure to take his prescribed drugs having had any noticeable effect are remote in our judgement. He is described as being at moderate risk of re-offending. We accept that some element of that is due to his mental state but an important element is also that referred to in the Report, namely his attitude towards these offences. All in all we are quite satisfied that his continued presence would be detrimental. 9. We must balance that against the effect of deportation on his private life, in accordance with Article 8 of the European Convention . We must be sure that the effect of deportation is not disproportionate. The defendant came to Jersey in 1995 when he was about 21. He has been in fairly regular employment until 2002, but since then his employment has been somewhat erratic following his episode of clinical depression. Nevertheless, he was employed as a doorman at the time of these offences. 10. He does not have a fixed residential address. He is a single man with no dependents. His only family in Jersey is his married sister with her children. He has, however, also a sister in Madeira. His remaining siblings are spread around the globe. 11. We have carefully considered and balanced these factors but we are quite satisfied that it would not be disproportionate for the defendant to be deported in the light of what he has done and his connections with the Island. We therefore make the recommendation for deportation. Authorities R -v- Nazari

(1980) 71 Cr. App. R 87. Human Rights (Jersey) Law, 2000. Keir Starmer : European Human Rights Law, the Human Rights Act 1988 and the European Convention on Human Rights (Legal Action Group), 1999). Page Last Updated: 18 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2004/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-simao-2004-jrc-021-03-february-2004>

Prepared on 23 October 2026 · Esheria