

JERSEY / JUDGMENT

AG v Smith [2023] JRC 105 (23 June 2023)

[2023] JRC 105

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JUDGMENT

THE DEPUTY BAILIFF: 1. Johann Michael Smith, you are 41 years old and have no previous convictions. You stand before the Court to be sentenced for a grave and criminal assault committed against your former partner who we shall call the Victim, who is 40 years old. You committed the offence in the context of a relationship you had had with her lasting some five years. The offence was committed at her home when, owing to difficulties in the relationship, you had been sleeping on her sofa since March 2022. 2. There is evidence in the papers that you were domineering and controlling in the course of your relationship with the Victim. The Pre-Sentence Report speaks of a number of prior police call-outs to domestic incidents involving you and the Victim with your jealousy being a feature, and on one occasion, you taking her telephone from her in order to prevent her from making calls. Further, the Victim's two children, aged 18 and 13, had been present during some of those previous incidents. 3. The offence with which we are concerned today occurred shortly after the Victim's 40th birthday. You and she had planned to stay at an hotel for a night to mark the event on 24 February 2023 but you cancelled this when the Victim had a lie-in. 4. Nonetheless, later that day you and the Victim went out to a number of licensed premises in St Helier. During the course of the evening, you drank six pints of Guinness and cider and had six alcoholic shots of spirits. You were unpleasant to the Victim in some of the premises you went to that night - you were rude to her for talking to another man in a public house, and when you went to a nightclub she danced near you to reassure you that she was not near anyone else. In those premises the bar staff would not serve you, owing to your intoxicated state. 5. On the way home, you shouted at the Victim in the street. This continued when you got home. You called her a slag for talking to other men, grabbed her by the throat with your left hand and forced her back against her kitchen sink. She pushed you away. In the sitting room, you got on top of her, straddling her on the floor with both hands around her neck. She thought you were trying to kill her. This must have been very frightening. She could not speak save to say her daughter's name. When you desisted she went outside her home and made some noise, hoping that someone would call the police. Her mobile phone was not operating so she went to the police station herself, arriving at 3am. She was examined 20 minutes later by a doctor who noted a number of injuries to her neck which were consistent with her being strangled by you which of course she had been not long before. 6. When you were arrested shortly thereafter, grazes on your face were noted, which were consistent with the Victim scratching your face as you strangled her. 7. You were interviewed on 25 February by the police. You claimed that you were

too drunk to recall the incident in which you assaulted the Victim but you did not challenge what she had said; you accepted that you had caused her injuries and you also accepted that she had no reason to lie. 8. Notwithstanding those admissions, when you first appeared at the Magistrate's Court on 27 February, you entered a not guilty plea. At the time you were represented by the Duty Advocate and had sight of certain disclosure including the statement of evidence made by the Victim. Accordingly, you will not receive full credit for your plea of guilty as you failed to enter that plea on the first occasion. However, nonetheless you will receive significant credit for entering such a plea as you changed your plea to guilty on 19 April in the Magistrate's Court. You have been in custody since the 27 February. 9. We have had regard to the contents of the Pre-Sentence Report in this case and note that you accept that alcohol, jealousy and mistrust were part of a pattern of behaviour in your relationship with your Victim as well as being factors in this offence. You say your relationship became strained because the Victim disapproved of your use of alcohol. The Probation Officer says that the Victim's children were not at home at the time of the offence but they are likely to have subsequently seen their mother's injuries. The Probation Officer observes that the emotional and psychological impact of this on the children cannot be under-estimated. The Victim has not made a Victim Impact Statement so we cannot comment on the effect on her of this assault. 10. She does not want you to return home but nonetheless does not seek an order preventing you from doing so and there is no application for a restraining order before us today and accordingly we are unable to grant one. 11. Prior to your remand in custody, you had been in employment for a number of years with the same employer - which is to your credit and that job is available to you again on upon your release. The Probation Officer says that if there was to be an attempt to reconcile with your Victim, there would be an elevated risk of domestic abuse. 12. We have considered the case of *Coelho v AG*

[2020] JRC 216 and we note a number of aggravating features in this case: (i) This was an offence of domestic violence which took place in the home of the Victim where she was entitled to feel safe. (ii) She needed to leave that home in order to seek help. (iii) You were drunk, so drunk that you cannot recall the assault, and bearing in mind that you were strangling your Victim the injury in those circumstances could have been much worse. (iv) Although the children were not present, they will have seen the injuries that you caused to their mother. 13. The courts have repeatedly held that domestic violence in the home will be treated severely and the custody threshold will generally be passed. It is certainly passed in this case and the sentence is one of 12 months' imprisonment. 14. Upon your release we urge you to take advantage of the programs offered by the Probation Service, namely the Jersey Domestic Abuse Program and the Drug and Alcohol Service which are also offered to offenders on release. *Authorities Coelho v AG*

[2020] JRC 216 . *Harrison v AG*

[2004] JLR 111 . *AG v Crabtree*

[2017] JRC 143 . *AG v Horn*

[2010] JRC 104 . *AG v Sudol*

[2022] JRC 143 . AG v Doran

[2020] JRC 129 . AG v Gallie

[2017] JRC 104 . AG v Goncalves

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Prepared on 22 October 2026 · Esheria