

JERSEY / JUDGMENT

AG v States Employment Board 26-Mar-2021 [2021]

JRC 094 (26 March 2021)

[2021] JRC 094

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JUDGMENT

THE BAILIFF: 1. We are passing sentence today in regard to a single count of a contravention of Article 21(1)(a) of the Health and Safety at Work (Jersey) Law 1989 in that the States Employment Board failed to take adequate steps to provide a safe environment for the treatment of patients that prevented vulnerable people from accessing a roof area at Orchard House. As a result of that failure, as we have heard, a patient sustained serious injuries on 8 th May, 2020. 2. We do not need to set out the facts in full detail as these have been rehearsed by the Crown Advocate. Suffice to say the injured person in question, a lady patient, was admitted to Orchard House on 30 th April, as exhibiting suicidal ideation. She had gained access to the roof of her family home and considered jumping although had then changed her mind. On 2 nd May she had tried to harm herself when alone in her bedroom at Orchard House by tying a ligature around her neck. This was said by one of the nurses there to have been "a close thing", and the levels of observation with regard to her were raised. Before the incident on 9 th May however the levels were reduced, and she was checked approximately every 15 minutes. On 9 th May she left by an external door which should have been locked with an electronic lock and physical lock. She should not have had access to the area outside the door unsupervised by a member of staff. She then climbed a fence which allowed her access to the roof of Orchard House and she walked along the roof until it became a two storey building and she jumped from the roof onto the tarmac, sustaining as we have said serious injury. Those injuries have been listed before us and include a 3cm deep laceration to the right hand side of her chin, pain in ankles, metatarsals and calcaneus, fractures to T12, L1, L2 and L5 transverse processes, bilateral sacral fractures, right inferior pubic ramus fracture, and fractures of tarsal and the base of 4 th metatarsal bilaterally with dislocation. These are the facts of the incident in question. 3. In 2018, the Health and Safety Inspectorate had required the Health and Community Services Department to undertake a risk assessment dealing with, amongst other things, the prevention of patients gaining access to the roof area of Orchard House. The need for an anti-climb perimeter fence was identified. No such fencing had been erected at the time of the incident in question although it was to have been erected by October 2018. It is also of note that there have been three previous incidents where patients have gained access to the roof of Orchard House. 4. We note that the Board has been fully cooperative with

the investigation and has readily admitted its failings. We note the full apology tendered to the injured person in this case through counsel. Furthermore, we have reviewed the file of documents provided on the behalf of the Board and heard the submissions of counsel which make it clear that full remedial action has been taken to address the safety concerns highlighted by this and other incidents. We accept therefore that the States Employment Board has taken the steps required to put matters right. 5. In summary, however, by reason of the failings of the Board, which were serious failings in the light of the prior warnings and the report in 2018, a vulnerable adult was allowed to jump and sustained serious injuries. The Board was itself aware of the three previous occasions on which patients at the House had gained access to the roof. Accordingly, we agree with the Crown's assessment of culpability in this matter of as being high. The Board failed to address risks which had already been made known and in respect of which direction had already been given. The patient in this case was specifically at Orchard House for suicidal ideation and had already climbed on the roof of her own family home with the possibility of her jumping from it. She had already attempted her life and had already been placed under observation. Failings of the Board were in this case accordingly particularly serious and that is why we view the culpability as high. 6. We also agree with the Crown's assessment of the seriousness of the harm that it can be properly categorised as a medium likelihood of a progressive, permanent or irreversible condition. The actual harm sustained by the lady in question was, as we have already said serious, although of course not as serious as the other case placed before us relating to a hoist at the General Hospital. That resulted in death. 7. This Court has long applied the principles of the English Court of Appeal case of *R v Howe and Son (Engineers) Limited*

[1999] 2 CR App R (S) 37 which requires the Court to consider culpability and the risk of harm and actual harm suffered and the defendant's finances. We have referred to those factors, except finances, as it is evident that the Board is capable of meeting whatever fine the Court levies. 8. We agree respectfully with the observations of the court in *AG v Petroleum Distribution (Jersey) Limited*

[2018] JRC190 in which the court stated that culpability and harm factors set out in the English Sentencing Guidelines were relevant and helpful but not of course the level of fine imposed. This approach has been supported by the Superior Number in the case of *States Employment Board v AG*

[2020] JRC 259 . 9. We repeat what counsel for the Board said to us from that case, where, at paragraph 40, the Court said: " We accept that sentences imposed in matters such as this should sting because this legislation is designed to protect employees or members of the public. A substantial departure from previous sentences of this nature for unexplained reasons however is of concern. A revision for sentencing levels is for either the Superior Number or the Court of Appeal sitting in plenary session" 10. The Crown moves for a sentence of £100,000 and pins that assessment to the seriousness of the harm and the injuries concerned. It reflects, in our view, twice the level relating to the incident that I have referred to, namely that involving the hoist at the General Hospital. 11. We have had

regard to the sentencing levels imposed by this Court for earlier cases. Each of those cases of course fall to be assessed on their own facts, but we accept that where culpability is high, and has given rise to serious injury, that must inevitably be effected in the level of fine imposed by the Court. 12. In all the circumstances however, taking the levels of sentence previously imposed by this Court, and in the light of the Court's view as to harm and risk we think the appropriate penalty in this case is a fine of £80,000 and that is the sentence of the Court. 13. It was not argued before us, but we see no reason not to order costs in the sum of £5,000. Authorities Health and Safety at Work (Jersey) Law 1989. R v Howe and Son (Engineers) Limited

[1999] 2 CR App R (S) 37 . AG v Petroleum Distribution (Jersey) Limited

[2018] JRC190. States Employment Board v AG

[2020] JRC 259 . AG v States Employment Board

[2014] JRC139 AG v States Employment Board

[2017] JRC 132 AG v States Employment Board

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Prepared on 24 October 2026 · Esheria