

JERSEY / JUDGMENT

AG -v- Such [2012] JRC 155 (24 August 2012)

[2012] JRC 155

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JUDGMENT

THE DEPUTY BAILIFF: 1. You are here to be sentenced on an Indictment which charges you with two offences of failing to notify a change of circumstances to the Social Security Department. The first was that you did not tell the Department that you had become entitled to a half share in a house and flat at 54 Clos des Sables, and the second is that you did not tell the Department that you had become entitled to a half share in the residual estate of your late grandmother. 2. You were given every opportunity of telling the Department of this change of circumstances. By way of example, you had a letter in January 2010 from the Department advising you of an adjustment to income support awards and it concluded with the reminder "You must notify the Department immediately of any change in family or financial circumstances as this may affect your claim. See attached document with examples of changes that must be reported." One of those examples was "You purchase or inherit a property in Jersey or anywhere else in the world". You had similar advice on other occasions including in May 2011 and you did not tell the Department of the change of circumstances. 3. The background report tells us that you do not consider yourself a benefit thief, as you claim that you withheld information rather than told lies intentionally about your circumstances. In the case of AG-v-Turner

[2012] JRC 147 , which was before this Court on 3 rd August, the Court said this in circumstances where the defendant was guilty of similar offending:-

3. We have read the papers carefully and we are not really satisfied that there is any significant evidence of remorse on your part in this case and we certainly are not satisfied that this is one of those cases of desperate need which sometimes we see in this Court. We accept that the money may not have been spent on luxuries but it is not a case of desperate need. You have quite deliberately stolen money from the taxpayer. Services and benefits from the States do not come for free. Theft of this money, for that is what it is, is an insult to those who make substantial contributions in tax and social security contributions, without complaint, in the knowledge that in our democracy proper provision is made for those who are in genuine need. Theft of this money is also an insult to the many people who are not well off and who struggle on day by day doing without luxuries but acting honestly and not making claims which they are not entitled to make. You have deliberately made these claims, knowing that you were not entitled to make them.

4. We have considered very carefully whether or not a custodial sentence should be imposed, having regard to what the legislature provides but in the event we are going to impose community service..." The legislature provides a maximum sentence and imprisonment of 7 years or a fine and that shows the degree of seriousness which the legislature accords to benefit fraud and that is why we have been looking at the circumstances of this case with such care. 4. Now it is proposed that some Compensation Order should be made and your Counsel suggest that you cannot afford £200 per month but you could afford £150 a month. I say that because there are two principles which this Court must bear in mind at this stage; the first is that the public should be repaid, within a reasonable delay, the monies which you have improperly claimed from them, and secondly, there should be a penalty for the conduct. The Court does not accept at all the contention reported in the social enquiry report that you are somehow not guilty of stealing money from the public because you did not tell a deliberate lie. In effect, every time a payment of income support is made, the original application is made again and that is why the rule about disclosure of any change of circumstances is so important. The Court does not accept the view that you did not think the house was a capital asset; you had a good education, your educational accomplishments are such that we do not think that you can possibly have contemplated that a house worth £250,000 to you, but worth £500,000 in all, could not count as a capital asset. 5. In so far as I describe it as a theft of money, the Court also does not think that anyone would consider that income support should be available for those who inherit capital assets in excess of £250,000. Income support is for those who are in genuine need, not for those who inherit capital assets in that sum. 6. In the circumstances we are not going to go with the conclusions of the Crown. We consider that this offending is serious and that it is important, taking the views expressed by the Bailiff recently in the case of AG-v-Whelan

[2011] JRC 159A , to send out a message that those who defraud the community by obtaining income support or other benefits by telling lies are at risk of a prison sentence. Although that case involved the telling of lies, your case of not disclosing a change of circumstances when you were given every opportunity to do so is not very dramatically different. 7. We think the right sentence is a sentence of 15 months' imprisonment on Count 1 and 3 months' imprisonment, concurrent, on Count 2. We have taken into account the mitigation which you have, the references, we have noted the personal letter which you have sent into the Court and we have also noted your guilty plea and the other matters of mitigation which your Counsel has raised. However, we are not going to order that this sentence of imprisonment should take effect immediately; it will be suspended for a period of 2 years. If you do not offend during that period the prison sentence will not come into force. If you do offend during that period, if you commit any offence which carries a custodial sentence then the sentence we now impose will come into effect and you will serve that prison sentence. Keep out of trouble and you will not be serving that sentence. The reasons that we are going for the suspended sentence in this case are two-fold, first of all it is important to mark the seriousness of the offence with a custodial order and secondly, we have suspended it having regard to the fact that you have a six year old child. 8. We are going to

attach to the suspended prison sentence a Supervision Order of 9 months. We think that it is necessary in the circumstances of the Compensation Order which we are about to make, that you should have the support of the Probation Service and that is the purpose of the Supervision Order. We acknowledge what is said in the social enquiry report that you do not carry a substantial risk of further offending so that is not the reason for the Order. The reason for the Order is to allow the Probation Service to give you support over the next 9 months because of the Compensation Order which we are now about to make. As I said, there is a principle that the public should be repaid within a reasonable delay and a proposition that repayment should be made at the rate of £150 per month would require some 14 or 15 years before the public was repaid in full and we do not think that is reasonable. 9. In the circumstances we are going to make a Compensation Order in favour of the Social Security Minister in the sum of £27,254.47. That is money which you have wrongly had from the Minister and which you must repay. You must repay it within 9 months and in default of paying it back within 9 months then you will go to prison for 12 months. 10. We recognise that the effect of the Compensation Order is the probability that the house will have to be sold. Of course the probability is that had you made proper disclosure at the right time you would never have had the money but you would have had to sell the house anyway. And so that seems to us to be a perfectly fair outcome. You will, as a result of the sale of the property, which we anticipate, have a substantial capital sum. You will also, although subject to the suspended prison sentence, you will also have your liberty. It gives you the opportunity of starting again with a clean slate having repaid the debt to the community which you owe as a result of the conduct which you have committed. Authorities AG-v-Turner

[2012] JRC 147 . AG-v-Whelan

[2011] JRC 159A . AG-v-Morin

[2010] JRC 217D . R-v-Graham and Whatley

[2004] EWCA Crim 2755 . AG-v-Couillard

[2011] JRC 179A . AG-v-Gallagher

[2011] JRC 129 . AG-v-Duchesne

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