

JERSEY / JUDGMENT

AG -v- Sutton and McDermott

[2015] JRC 144 (30 June 2015)

[2015] JRC 144

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

JUDGMENT

THE BAILIFF: 1. Shortly before 6 0'clock in the morning on 11 th June, customs officers on duty at Jersey Airport observed a car draw up in the drop-off zone at the Departures Hall. The second defendant, Mr McDermott, got out of the car carrying a large hold-all and entered the building, a few minutes later the first defendant, Mr Sutton, also got out of that car, also carrying a large hold-all. Both men checked into departures and made their way through security. They then entered the World Duty free shop and purchased cigarettes, which they purchased independently, and left the departures lounge through the exit leading to the flight gates but, instead of going to the flight, made an exit through the customs control area back into the arrivals hall and failed to make any declaration to customs that they were carrying dutiable items. They were on their way towards where the car was parked, when they were arrested on suspicion of being knowingly concerned in the fraudulent evasion of duty. 2. That incident led to an investigation by customs and to the current Indictment. The defendant Sutton has pleaded guilty to twenty counts of being knowingly concerned in the importation in the fraudulent evasion of the duty chargeable on goods, contrary to Article 61(2)(a) of the Customs and Excise (Jersey) Law 1999 . The second defendant, Mr McDermott, has pleaded guilty to three charges. In the case of Sutton, the offending took place over a period of some ten months concluding in June 2014 and in the case of McDermott the offending took place over two and three months. 3. The amount of duty which was avoided has not been entirely agreed between the Crown and Defence counsel but in the case of the first defendant, Mr Sutton, it is something in the order of £9,000 to £10,000. In the case of the second defendant, McDermott, it is just under £2,300. 4. This is the first occasion which this Court has been required to consider sentences for this type of offending because the previous cases, and there have not been very many, took place under earlier legislation and this, as I say, is the first occasion where the 1999 law has to be considered. That Law introduced some changes not least because the maximum sentence has increased and is now set by the Legislature at 7 years' imprisonment or a fine. The fact that it is set at 7 years' imprisonment indicates the seriousness with which the legislature considers that these charges should be considered by the Courts. 5. In the case of both defendants the Court is completely satisfied that the custody threshold has been passed. It was suggested by Advocate Grace that some people might consider that this sort of activity is more of a game than a crime. That is clearly not the case. As she herself

conceded in her submissions to us, it is a crime, a crime by which the community of Jersey suffers a loss. In effect there has been a theft from the community of the amount of duty which has been avoided and it was, in both cases, a quite deliberate theft that was committed, committed with a view to making money, commercial gain or greed as well as for personal use, a combination of motivation as is clear from the summary of facts put before us. 6. In the course of submissions from both the Crown and from counsel for Mr Sutton, it was suggested that we ought to have regard to English sentencing guidelines. The Crown did not submit that we ought to adopt those guidelines but they were put before us as part of the reference material which we would consider and we would like to make it plain that when it comes to the part of those guidelines setting out factors which increase seriousness and factors which reduce seriousness or reflect personal mitigation, those seem to us to be entirely appropriate factors for us to consider and we have done so. The fact that they are statutorily aggravating factors in the United Kingdom is beside the point. They seem to us to be sensible factors to which we should have regard when we come to pass sentence. But it is important nonetheless to recollect that we are a different sentencing jurisdiction. 7. The Court of Appeal has held on a number of occasions that there is no need to harmonise Jersey and English sentencing guidelines and, indeed, in the case of *Whyte-v-AG* 1999/52 the Court of Appeal went as far as to say that a citation of English sentencing decisions was unhelpful and a practice to be discouraged. Of course in the case of drugs sentencing there is no doubt that the Royal Court has frequently imposed sentences which might be thought of as being in excess of the sentences imposed in the United Kingdom. There are also some important differences between sentencing policy in the United Kingdom and in Jersey. In the case of *AG-v-U*

[2011] JRC 219 which was a decision of the Superior Number of this Court on 14 th November, 2011, the Court said this:- "14. The important differences in sentencing process to which reference was made in *Campbell* include the fact that the Attorney General, who occupies a crucial role at the heart of the Island's administration, moves conclusions as to the appropriate sentence; and particularly that the sentence is assessed by two or more Jurats who are rooted in our community, people whose status reflects the trust reposed in them by an electoral college of States members and practising lawyers. 15. We also observe that there exists in England and Wales a much wider variety of sentence than is available in Jersey. This variety arises from legislative policy that is undoubtedly influenced by a great many factors amongst which is generally counted budgetary pressures on the prison service. The variety of sentencing options is bound to lead to differences in approach, quite apart from the additional factors that the Court of Appeal in *Gunter* rightly identified, namely the small and close knit size of our community and the possibility that deterrence may be seen to be of more importance here in particular areas." Those comments were subsequently approved by the Guernsey Court of Appeal. 8. These are reasons why reference to the English sentencing guidelines are generally not regarded as helpful in this Court because the guidelines themselves take into account comparators between different offences committed in the United kingdom for which sentence is passed in accordance with a different legislative structure. It follows that the sentencing guidelines themselves

are not necessarily going to be helpful in Jersey; that is not to say that they are not of interest, of course they are, but they are not necessarily going to be regarded as being in any sense conclusive of the way in which the Royal Court should approach a sentencing issue. 9. As was said a moment ago, the Court is in no doubt that the custody threshold has been passed in this case and indeed in normal circumstances, usual circumstances we think a custodial sentence might well be imposed. In this case, after, as it will be apparent, quite lengthy consideration, we have concluded that the custodial sentences will be served in the community. 10. We have taken into account the mitigation which is available for both defendants, fully set out by their counsel and we therefore are going to impose a Community Service Order which we think is more appropriate than a fine. 11. We also add that we have very much taken into account the very substantial Confiscation Orders that have been agreed between the parties in the sense of the amount of benefit has been agreed and we were addressed by both counsel on the basis that the Confiscation Orders would be made and we think we are entitled to look at the position in the round, having regard to those Confiscation Orders. 12. Mr Sutton, you have heard what we have had to say about the offending generally. We have taken into account that you had some personal difficulties at the time that this offending took place and we have certainly read carefully the references and your letter of remorse to us. We have taken into account your guilty plea and all those go to be balanced against the serious offences which have been committed over a 10 month period. 13. In the circumstances we are going to make a Confiscation Order in the sum of £96,210.44. It is to be paid within 1 month and, although the monies are subject to a *saisie*, there will be a sentence of 12 months' custody in default of payment. 14. As to the offences themselves, you are sentenced to 180 hours' community service, concurrent on each count. The alternative would have been 12 months' imprisonment and that would have been served consecutively to the default sentence on the Confiscation Order. 15. It is important that I emphasise to you that if you do not perform the community service you are liable to be arrested and brought back to this Court and sentenced again for your breach. You should also be aware that we have, in imposing this Community Service Order, noted what appear to be contradictory statements in the social enquiry report which suggests that you wish to go back to Thailand and a comment in one of the references from your son who says that your continued assistance to him as an employee in his business is essential, and we have, for the time being at any rate, assumed that you are intending to remain in the Island and therefore that you should perform your Community Service Order before you leave to go to Thailand. 16. It is a requirement upon you that you should liaise with those administering the community service scheme in the event that you should wish to leave the Island at any earlier stage before community service is performed because if you do so or try to do so we would treat that as a breach of the Community Service Order and you would be brought back for immediate sentence. I would like to make that clear. In imposing this sentence upon you the Court wishes to stress to you that you can consider yourself fortunate that you have not been given a direct custodial sentence in prison. 17. Mr McDermott, your offending is similar but it is not joint offending. The Court accepts that you are to be

treated as an offender in your own right and you are not to be counted with the offending of your co-defendant. The custody threshold again has been passed. We have also noted that you committed an offence whilst on bail for these proceedings which is, frankly, not an encouraging sign; you should realise that when you are on bail for serious offending of this kind that you should ensure that you do not commit any offence at all. 18. We are going to impose a community service on you as well but again you must recognise that if you should commit any offences at all while that community service is in place, you will be liable to be brought back to this Court and sentenced again for the offences which you have committed. 19. In your case the Confiscation Order is in the sum of £2,294.64 and is to be paid within 1 month and there will be a 3 month prison sentence in default if you do not pay it. Again as I understand it, the money is subject to a saisie so that is academic but that is the position that we set it out to be. 20. You are sentenced to 90 hours' Community Service on each of the three counts to which you have pleaded guilty. The alternative would have been 3 months' imprisonment, concurrent on each count and, again, if you do not perform that community service you will be brought back and sentence will be reconsidered. 21. In your case it is in our judgment more appropriate that a Community Service Order be imposed because it reflects, even at these lower levels, the fact that the offences are serious and passed the custody threshold and therefore a fine would not have been appropriate. 22. In both cases we order the forfeiture and destruction of the cigarettes. Authorities *Whyte-v-AG* 1999/52. *AG-v-U*

[2011] JRC 219 . Customs and Excise (Jersey) Law, 1999. Proceeds of Crime (Jersey) Law, 1999. *AG v Denis and Co* 2000/127. *AG v Whelan*

[2011] JRC 159A . *AG v Gallagher*

[2011] JRC 129 . *AG v Manners*

[2009] JRC 212 . Page Last Updated: 27 Sep 2016 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/2015/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-sutton-and-mcdermott-2015-jrc-144-30-june-2015>

Prepared on 23 October 2026 · Esheria