

JERSEY / JUDGMENT

AG -v- U [2016] JRC 185 (13 October 2016)

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JUDGMENT

THE Commissioner: 1. The Attorney General applies under Rule10(11) of the Sex Offenders (Jersey) Law to amend the restraining orders imposed upon the respondent on 14 th November, 2011. Article 10(11) of the Sex Offenders (Jersey) Law 2010 is in these terms:- "A court may amend an order under paragraph (4) or an interim order under paragraph (5) on the application of the Attorney General or the offender." 2. The respondent had been sentenced to 7 years' imprisonment for eight counts of indecent assault, four counts of gross indecency and twelve counts of making an indecent photograph of a child. The victim of these offences was a male child aged between 12 and 15. The facts are set out in the sentencing court's judgment of 14 th November, 2011, AG-v-U

[2011] JRC 219 . 3. The restraining order was in these terms:- "i) That during the period of 10 years following his release from custody, the accused be prohibited from being alone with any persons under the age of 16 years. The person will be considered to be alone if there is not a third person present who is over the age of 21. ii) That during the period of 10 years following his release from custody, the accused shall be prohibited from acquiring or using any computer software which is designed to destroy, delete or disguise internet activity on any device which may access the internet, or any computer software which is designed to encrypt data held on such a device, save for any encryption which may be demonstrated to be for a legitimate purpose by the provision of any password or access code to a police officer. iii) That during the period of 10 years following his release from custody, the accused produce to a police officer, on request from time to time, for examination, any computer or any device which may access the internet, or any device which may store photographic images of persons under the age of 16 years, where such device belongs to the accused or is in his possession; such request may be made anywhere including at the accused's place of residence, by officers attending there." 4. The respondent's son, Taylor (this is not his real name) would have been 10 years of age at that time and the Court did not think it necessary to make a special restraining order in respect of him, saying this at paragraph 24 of the court's judgment:- "24 ... We have considered the question as to whether we should make special provision for the defendant's son. In our view it would be right to take account of the fact that there will be nothing preventing the defendant from seeing his son in the presence of others including his former partner, the child's mother, in the event that that should be what the son then desires, and in the

circumstances we do not see the need to make any special change to the terms of the restraining order as the Crown has contended." 5. During his period of imprisonment the respondent did not engage with any sex offender treatment and continued to deny his offending. Following his release on 28 th November, 2014, care proceedings were started in relation to Taylor and his sister April (this is not her real name), culminating in the court, on 11 th December, 2015, making Taylor the subject of a supervision order for the reason as set out in the Court's judgment of 18 th December, 2015, (In the matter of April and Taylor (Care proceedings)

[2015] JRC 264 . Quoting from paragraphs 8 to 10 of that judgment:- "8 On 27 th July, 2015, the Court sat to hear an application by April for unsupervised contact with the father. That application was rejected for the reasons set out in the judgment referred to at paragraph 2 above. However the Court indicated that it would be willing to reconsider the matter in early October after the therapeutic work had been undertaken by Mr Tucker and Ms Ziegert and they had reported on the outcome of such work. Mr Tucker and Ms Ziegert undertook the recommended therapeutic work with the mother, the father and the children during the course of July and August. They reported on the outcome of the work on 24 th September. In essence, the report was very encouraging. All the parties had engaged very fully and had had to confront difficult

issues.

In particular, the mother and the children had moved away from a position whereby they believed the father to be innocent of the offences of which he had been convicted. The report recommended further work to develop a Family Safety Plan which was to be agreed by all family members and professionals. This was intended to set out a structure for keeping the children safe. The report further recommended that once the work on a Family Safety Plan had been done, April could start unsupervised contact with the father in the community and Taylor could move to contact with the father supervised by the mother. Furthermore long-term work was recommended to help with communication about sex offending and to ensure updates on the father's progress on work concerning sexual offending with the probation service. On 30 th September, the Court made orders to reflect these recommendations which were agreed by all parties. The Family Safety Plans for April and Taylor have now been prepared and agreed. The programme for the more long-term work has also been put in place." 6. The family safety plan in relation to Taylor was in summary as follows:- "a. Supervised contact can only take place in community settings. It cannot take place in the homes of Taylor, the defendant or other relatives, friends or acquaintances b. The defendant is not allowed to visit the family home. c. The defendant is to avoid any text, telephone, snap chat or use of social media contact with Taylor at this time. d. The defendant should not allow Taylor to have contact with any sex offenders known to him, or with persons suspected or known to pose a risk, until such time when their level of risk has been evaluated by Probation in consultation with Children's Services and the mother. e. The family proposed their own rule that "It is ok to say No and No means No." 7. That family safety plan has been breached in that, as disclosed by Taylor and his sister, April, Taylor has been in the

respondent's home, the annex to which was occupied for some time by a known sex offender, and there have been text messaging between the respondent and Taylor. Some of these breaches took place prior to the Family Court hearing on 11 th December, 2015. 8. The respondent has refuted concerns as to risks posed by him to Taylor, who is now 15, and has maintained the view that, contrary to the family safety plan so carefully drawn up, Taylor should be allowed to attend his property. The Children's Service attempted to protect Taylor by way of supervised contact but it is clear that contact between the respondent and Taylor has continued since at least 29 th May, 2016, unsupervised by the Children's Service and since early July 2016 Taylor has withdrawn his engagement with the social worker Caroline Glynn. The supervision order has, we are told, been now extended on an interim basis. 9. The current position is best described by quoting from paragraphs 15-23 of the report of Robert Tucker and Josephine Ziebart of 25 th August, 2016. "15 In subsequent work with Ms Glynn the mother has shown that she cannot be assertive to the defendant, even though she has been able to articulate and understand that he is a potential risk of sexual harm to Taylor and also to Taylor and April's friends. This lack of assertiveness was increasingly evident in our contact with the family, despite having been able to plan taking an assertive position in the session on the previous day. In the previous intervention report Mr Tucker noted that the children were not confident their mother could be protective. It transpires that the children were correct, as it is our view, (confirmed by both children to Mr Tucker) that the mother behaved passively when persuaded not to follow the safety plan by the defendant. The mother's lack of assertiveness is disappointing but it also illustrates the defendant's ability to control others. His controlling manner has been evident at several family meetings. For example, in persuading Taylor to report to the group he wanted text contact with his father, whilst this was really about the defendant wanting to have phone contact with his son. This issue is laid out in Ms Glynn's 3 rd statement. In addition, we note the mother's change of view regarding contact after being confronted and shouted at the evening before a family session. Our observations of family dynamics during the family sessions, together with the responses of the children, indicate that the defendant is a forceful and controlling character who is able to impose his views on the family. In our view, his motives appear to be to control the family and the mother's lack of assertiveness is exploited by him. We remain concerned that this exploitation and control could be used by the defendant as part of any future abuse of a child, as it demonstrates his ability and capacity to overcome the external protector. Until such time as the mother can develop her confidence in being assertive towards the defendant, and until she can illustrate this to professionals in a consistent manner on a daily basis, it is our view that she is not a suitable or safe enough person to supervise contact between the defendant and any child or young person on her own. Similarly, we assess her brother not to be a suitable person to supervise any contact. In relation to the defendant we note that in 2011 he was assessed by Dr Briggs as a hebephile who had a sexual interest in adolescents and that if he were to offend again this would be against an adolescent male, occurring in the context of him knowing and befriending the youth over a significant period of time. A further assessment by Dr Bailham in 2015, making use of the Risk Tool RSVP, also concluded that he presented a high risk to post pubertal children and young people and that the highest risk was to post-pubertal children who are known to him through female and family acquaintances, intimate partners or friends who are in close proximity with

him. The risk to April was assessed as grooming to get access to children and risks to Taylor were considered to be high because of his gender, age and his similar age to the child he had offended against. In our view there is no evidence to suggest any amendment to these assessments of risk. We note that the defendant remains an untreated sex offender who whilst engaging in individual work with Probation, has not completed his programme, has no Relapse Prevention Plan in place and has not been assessed at a lower level of risk. He has not been able to acknowledge responsibility of his offending to his family and has not been able to share details of his sex offending process in order to help develop any more applied Family Safety Plan. In our view the work being carried out with Probation has not proceeded to a point that it can be seen as enhancing family protection. If he had a good relapse plan he would not refuse to follow safety plans that were designed to keep his children safe. When these factors are considered alongside the recent breaching a the Family Safety Plan, the non-cooperation with professionals, the concerns about the mother's protective abilities and the defendant's manipulation of family relationships, our concern about the level of risk to Taylor, April and their friends has increased. We remain of the view that the defendant presents a significant risk to Taylor and any of his friends and should not be allowed unsupervised contact and as a result Taylor's continued contact with his father should be supervised by professionals. In our view a failure to do so places Taylor at risk of significant harm." 10. It is against that background that the Attorney General seeks to amend the first of the restraining orders for the inclusion:- "14 of a requirement that contact between Taylor and the defendant is at the written direction of the Children's service until he reaches the age of majority. This provision is aimed at providing protection for both Taylor and those who might be exposed to the defendant by association with Taylor whom, it has been assessed, would be within the group at risk of harm. In addition, the defendant shares or has shared his residence with a person, aged over 21, who has convictions for sexual offences involving children. As matters stand, that person would satisfy the requirements under the Restraining Order precluding the defendant from being alone with a child under 16 years of age, if he was also present. The Court cannot regard the protection sought by the presence of a third person over the age of 21, is achieved when that person has also been convicted of sexual offences involving children. For that reason, it is submitted, those persons should be expressly excluded. The final variation sought is to provide that the third person must also have full knowledge of the defendant's convictions for sexual offences involving children. It follows that if the imposition of the third person requirement is to provide a protective element, that person cannot be properly protective unless they have some basis for understanding the risks posed by the defendant. In such circumstances, it would be incumbent on the defendant to provide the necessary information or remove himself from the situation." 11. The first part of therefore of the restraining order would, at the request of the Attorney General, now read as follows:- "That during the period of 10 years following his release from custody, namely 28 th November, 2014, the defendant be prohibited from being alone with any persons under the age of 16 years. The person will be considered to be alone if there is not a third person present who is over the age of 21, such person having full knowledge of the defendant's convictions for sexual offences involving a child and not being a person with a conviction for sexual offences involving children. That in circumstances where the defendant finds himself in contact with any person, or

finds himself alone with any person, under the age of 16, that he has a positive duty to remove himself from that situation as soon as reasonably possible. Contact between the defendant and Taylor, until he reaches the age of majority, may only take place at the written direction of the Children's Service." 12. The respondent represented himself and objected to these variations for the following reasons which we would summarise as follows:- (i) There had been no breaches of the existing restraining orders - which is the case. The Family Safety Plan was a voluntary agreement and so there have been no breach of any orders made by the Family Court either. Again that is technically correct, although the Family Court were not told by the respondent that the Family Safety Plan had already been breached at the time the supervision order was made. If it had known the court may well have made a different order. (ii) The issue of his contact with Taylor is a matter for the Family Court, and there is no justification for it to be extended to the restraining orders which bring with them potential criminal liability in the event of a proven breach. (iii) The new restrictions will make life very much more difficult for him should he come into contact with children under 16; and (iv) The general prohibition relates to children under 16, but the new restriction in relation to Taylor extends to the age of 18. This has a considerable impact upon Taylor and his views, are not before the Court. 13. In response to this Advocate Byrne pointed out that the respondent had failed to comply with the Family Safety Plan which had been drawn up with considerable care and effort and with the input and support of the whole family. The respondent, who was a dominating and controlling character, could not be relied upon to comply with any measures the Children's Service may impose to protect Taylor from risk. 14. Taylor's legal representative had been notified of the proceedings and the variations being sought by the Attorney General but had not sought to make any representations on his behalf. 15. Advocate Byrne conceded that the new restrictions would impose some additional burden on the respondent but that was necessary, he said, in order to protect Taylor and his friends from the perceived risks. Decision 16. In making any amendment to the restraining orders we have to be satisfied on the balance of probabilities that, pursuant to Article 10(4) of the Sex Offenders Law, the respondent poses a threat of serious sexual harm to the public or any particular person or persons. 17. The advice we have received leaves us in no doubt that the respondent does pose such a risk to Taylor and any friends of Taylor the respondent may come to meet through him, because of their gender and age - a similar age to the victim of the defendant's crimes - and a gender and age in which the respondent has a sexual interest. That risk has increased since his conviction, justifying taking measures now that the sentencing court did not consider necessary then. 18. We then have to be satisfied on the balance of probabilities that the variations are necessary to protect Taylor and any friends of his, from serious sexual harm. 19. To clothe the steps necessary to protect these children with the threat of criminal sanction in the event of any breach is a serious matter and one that does place upon the respondent an additional burden but we are satisfied that it is both necessary and proportionate in this case. The respondent has been given an opportunity to address those risks working with the Children's Service and under the Family Safety Plan and he has shown a blatant disregard for both. We agree with Advocate Byrne that the boundaries of the law, for him, only exist where criminal sanctions apply. 20. We are going to delete the word "full" in the phrase "having full knowledge of his convictions", as it leads to potential uncertainty, in our view, which is inappropriate in the context of a provision that

carries criminal sanction with it and we are also going to expand on the issue of contact with Taylor under the written direction of the Children's Service. 21. We have taken into account the fact that these restrictions endure until Taylor is 18, but we must allow the Children's Service the credit for carrying out their duty of reviewing the need for safeguards on contact, bearing in mind the possibility that such safeguards may become unnecessary or ineffective as Taylor matures towards his majority. 22. The restraining orders will therefore be amended, that is the first part of them, to read as follows:- "That during the period of 10 years following his release from custody, namely from the 28 th November, 2014, the offender be prohibited from being alone with any persons under the age of 16 years. The person will be considered to be alone if there is not a third person present who is over the age of 21, such person having knowledge of the offender's convictions for sexual offences involving a child and not being a person with a conviction for sexual offences involving children. That in circumstances where the offender finds himself in contact with any person, or finds himself alone with any person, under the age of 16, than he has a positive duty to remove himself from that situation as soon as reasonably possible. Contact between the offender and Taylor, until he reaches the age of majority, may only take place at the written direction of the Children's Service under such conditions as to supervision or otherwise as the Children's Service may in its discretion direct in writing." 23. And for the avoidance of doubt, of course, the restraining orders as set up in paragraphs ii and iii will remain in force. Authorities Sex Offenders (Jersey) Law 2010. AG-v-U

[2011] JRC 219 . In the matter Olsen and of April and Taylor (Care proceedings)

[2015] JRC 264 . Page Last Updated: 15 Nov 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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