

JERSEY / JUDGMENT

AG -v- Wren [2007] JRC 163 (23 August 2007)

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JUDGMENT

THE DEPUTY BAILIFF: 1. Now this is an unusual and difficult case. The Defendant admits to french kissing the victim on some half dozen, or so, occasions when he was babysitting for her parents. At the time she was 11, although he thought she was 12, and he was about 22. He has also pleaded guilty to downloading one indecent photograph of a child which is measured at level 4 on the applicable scale and in addition he has pleaded guilty to possession of two offensive weapons, namely a knife and some throwing knives, when he attended for his trial. 2. There are some very unusual features of this case. Firstly, there is the Defendant's mental condition. We have received a full report from Doctor Sharkey in this respect. Secondly, there is his expressed attitude towards sexual activity with minors; he has expressed the opinion that it is permissible to have sexual activities with underage minors provided that they are old enough to know exactly what is involved and to make a choice about whether to engage in sexual activity. 3. Mr Steenson has spoken eloquently on the Defendant's behalf and there are many mitigating features. (i) The first point which is made is that this was an unusual offence in that it was fully consensual. The victim admits that she was very mature for her age and that she fully and willingly participated in what occurred. She says that the Defendant never exceeded the boundaries which she set to the activities. She at no stage complained to the Police and she is categorical that the Defendant's actions had no ill effect on her. She is now happily involved in a long term relationship and reports, according to the Victim Impact Statement, that her life is rewarding and fulfilling. Indeed it is clear that she is not very happy with the decision to prosecute the Defendant. (ii) Secondly, the Defendant did write his own Indictment. Originally in May 2006 the police interviewed him following disclosures made by professionals, arising out of Court proceedings whereby he was seeking access to his daughter. After having interviewed him the police decided to take no further action at that stage, notwithstanding that he made what seemed to be very full admissions as to what had happened. Later in November he wrote a letter to the Bailiff about his access case and, again, mentioned this incident. The letter was forwarded to the Police and, on this occasion, they proceeded to interview him again and then to charge him. Mr Steenson asserts that there is a certain sense of grievance on the Defendant's part in that this Prosecution arose out of what might be said to be 'a cry for help'. (iii) Thirdly, the Defendant did, immediately, admit to what he had done. He has been fully co-operative in the whole trial process and, in the

light of his mental condition, we do not hold his not guilty plea against him, given in fact that he made full admissions of all relevant matters. Notwithstanding the not guilty plea, we propose to proceed on the basis that he has pleaded guilty to all the offences. (iv) Fourthly, Mr Steenson points out that, notwithstanding the Defendant's expressed beliefs, he has not in fact re-offended in the ten years or so, since these offences took place. (v) Fifthly, he emphasises that the offending in this case was very much at the lower end of the scale of indecent assaults and we agree with that. (vi) And finally, he refers, of course, to the detailed reports from Doctor Briggs, who is an expert in treating sexual offenders, and the Probation Department. Both Doctor Briggs and the Probation Department recommend a 3 year Probation Order in order to give a real opportunity to treat the Defendant in this case. 4. As we say, we have found this a difficult case. Normally indecent assaults of this nature, even at the lower end of the scale, attract a custodial sentence. This is to reflect society's outrage at such conduct and additionally to show that even children who fully participate and are old enough to make such a decision, need to be protected from themselves. However, not only do Doctor Briggs and the Probation Service recommend probation, but in this case, the Crown has supported it as offering the best way forward. Certainly, one of the functions of the Court is to try and protect the public, in this case that means to protect young children, and the unanimous recommendation from the Crown and the Defence is that a Probation Order offers the best opportunity of protecting children in the sense that it offers the best opportunity of trying to address the Defendant's attitudes. 5. Taking into account all the various matters, we consider this to be an exceptional case and we are just persuaded that probation is the right course and that the alternative of an 18 month prison sentence, which the Crown referred to, would not be the right way forward. 6. Mr Wren, as has been asked for, we are going to place you on probation for 3 years. That means that you must do what the Probation Officers tell you, because if you do not do what they tell you and if you fail to comply with the conditions, which I am just going to read out, then you will be brought back to this Court. If you are brought back it seems almost inevitable that you will then go to prison. This is the opportunity which is being offered to you, this is your chance, so we do urge you to take it, because if you fail to take it, then we will be left with no alternative but to send you to prison for these offences. 7. So the conditions to be attached to the Probation Service are as follows: (i) no contact directly or indirectly with young children, persons under 18, without prior written permission of a supervising Probation Officer; (ii) not to seek or undertake either employment or leisure activities in which there is contact with children, young persons under the age of 18; (iii) to reside and sleep each night at an address approved by the supervising Probation Officer; (iv) to co-operate at all times with, and attend all meetings with, Doctor Briggs or his assistants, or members of his team; (v) to co-operate with all professionals concerned with his treatment with the RAMAS (Risk Management and Audit System). These conditions are in addition to the standard conditions of a Probation Order. 8. We would add this. It is clear to us that the Defendant does have a mental condition. There is no recommendation in Doctor Sharkey's report for continued involvement by the Mental Health Service, but we would urge the Mental Health Service to co-operate with and assist the Probation Service so that the Defendant's mental condition can be monitored, so that in the event of any deterioration, this is acted upon as necessary. So we hope very much that the Mental Health Service will work closely with the

Probation Service in the course of the Probation Order. 9. Finally, we order the forfeiture and destruction of the weapons and the video disc which were the subject of the charges. No

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