

JERSEY / JUDGMENT

AG -v- X [2014] JRC 113A (15 May 2014)

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JUDGMENT

THE DEPUTY BAILIFF: 1. You were convicted by the jury of one count of committing an act of gross indecency and the circumstances of that seem to us to be that we should take it the jury were sure that in showing the child your penis you acted in a grossly indecent manner and that you knew that people would think it was grossly indecent but, nonetheless, you deliberately showed her. That is the factual basis upon which we are sentencing you today. It is clear that that factual basis, which is consistent with the jury's findings on the other counts on the Indictment, is such that we cannot be sure that any conclusions can be drawn as to sexual intent on your part. It is also clear that in the light of those facts the offending comes at the less serious end of the scale of committing an act of gross indecency and, indeed, all the cases which the Crown has set out in its summary show that this is offending at the lower end of the scale and we accept that point and we accept what Advocate Bell has said in that connection as well. 2. What this case requires us to consider is a balance between the individualised sentence which Advocate Bell has contended is the right sentence to impose and he is supported by the social enquiry report and the psychologist's report and a sentence which reflects the approach of the courts and, we think, the community, to offences of this kind generally. The Court has considered anxiously that balance. One Jurat is of the view that the right sentence is a custodial sentence because that reflects the very serious, and I repeat that, very serious breach of trust that you committed on this child of 4 years old, in her home, in circumstances where you had been trusted by the family over a long period. The other Jurat considers that the best advantage for the community lies in your receiving the sort of treatment which is set out in the social enquiry report and in the psychological report. That division reflects what a difficult case this is for the purposes of sentence. 3. The judgment of the Court is that you should go to prison. The reason for that is essentially that, although this was at the lower end of the scale, you have committed a seriously aggravated offence by the breach of trust and the effect of this offending on the family is such that, and I speak really for the two members of the Court, we do not think that we should do other than impose a custodial sentence. The effect of the offending is going to continue on this child for many years. She is going to have to have some very careful counselling at some point because she will be scarred by what you have done and you should not be unaware of that. It appears from the psychological report that you are unaware of it but when you think about why this sentence is being imposed upon you, it is because by your actions you have scarred this child and that is something that we think, by majority, must be reflected in a custodial sentence. 4. We

treat you as a person of good character and of course give you credit for that. Clearly you do not have any mitigation for youth and you do not, in our view, have any mitigation in relation to a plea. We do not wish to inhibit constructive discussions between the Crown and the Defence but we do not take the view that the approach which was made by the Defence, by your advocate, to the Crown, was good enough for the purposes of obtaining a discount for a guilty plea. The Crown was entitled to expect an approach to be made on instructions and, in this case it is clear, that the approach was a tentative one not based on instructions and secondly, the Crown was entitled to expect a guilty plea to be entered to Count 1A because the Prosecution was then better able to assess the public interest in continuing with a trial in relation to the not guilty pleas that had been entered to the other counts on the Indictment. So we do not give you any mitigation for the fact that some time before the trial, the approach was made, without instructions, to the Crown to suggest that perhaps a guilty plea would be entered if it was accepted to be on the basis of one occasion and no touching of your penis. 5. Even if we were wrong on that we do not think that this would have had any impact on the overall length of sentence. The Court would not have found a longer sentence necessarily to be inappropriate but we will follow the Crown's conclusions and you are sentenced to 12 months' imprisonment on the one count on which you have been convicted. 6. We turn next to the Sex Offenders (Jersey) Law 2010 and there is no argument about that because of the conviction you are already subject to the notification requirements under the Sex Offenders (Jersey) Law 2010 and we order that a period of 5 years should elapse from the date of your sentence before you are entitled to apply under Article 5 of the Law to be longer subject to the notification requirements. This is a technical area and your counsel will explain to you precisely what it means but you should know that you are subject to notification requirements until a court says otherwise and you cannot apply for at least 5 years from the date of sentencing for that to be changed. 7. We also are satisfied that there is a risk of serious sexual harm on the balance of probabilities if we do not make Restraining Orders and we accordingly make the orders which the Crown has set out and which your counsel has not opposed. You are prohibited from being alone with any persons under the age of 16 years except for contact that is inadvertent or unavoidable in the course of lawful daily activity. That person will be considered to be alone with you if there is not a third person present over the age of 21 who is aware of your conviction. If you should find yourself in contact with any person under the age of 16 in those circumstances, where you could be placed in breach of that order I have just made, then you have a positive duty to remove yourself from that situation as soon as reasonably possible. If you are in a shop, for example, and there is a person under the age of 16 in that shop and it is just you and the shopkeeper, you cannot expect the shopkeeper to know that you have this conviction, you must leave the shop at once. That is the effect of these orders. I should tell you that if you do breach these orders that itself is a criminal offence and you can be brought back to court. So they are serious orders and if you do not fully understand what I am saying to you now then you must ask your lawyer about it and he will explain it carefully to you. 8. In the circumstances you are sentenced therefore to 12 months' imprisonment. Authorities Sex Offender (Jersey) Law 2010. Whelan on Aspects of Sentencing in the Superior Courts of Jersey (3rd Edition). Brewster-v-AG

[2001] JLR 312 . Dykes-v-AG 1999/126. AG-v-Hampson 1998/99. AG-v-Le Geyt

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