

JERSEY / JUDGMENT

AG v Y [2022] JRC 002 (06 January 2022)

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JUDGMENT

THE COMMISSIONER: 1. You are here to be sentenced on indictments containing five charges, receiving stolen property to the approximate value of £278, two counts of malicious damage, one count of affray and one count of assault. Of these the last two are the most serious. As a result of this offending, which took place between July and October 2021, you are in breach of Probation Orders which were imposed by the Youth Court. Indeed, the receiving offence was committed whilst you were awaiting sentence in the Youth Court on a charge of assault, the first malicious damage offence was committed on the day you were sentenced and the last offence of assault was committed after the Magistrate had declined jurisdiction so that you were aware that for the other offending it was thought to be so serious that you should be committed for sentence to this Court. 2. The circumstances of the affray, which I have said we consider to be the most serious of the charges before us now, are clearly set out on the CCTV which we have looked at and I am sure you would have had a chance to look at as well. You were one of four boys and two girls in what I call the aggressive group. There were two potential boy victims although one was not actually assaulted. It is clear that you and your friends hung around outside the shop in question but then went in to follow the victim, and the CCTV shows that you and one of the girls to have been the leaders of the group. The victim was set upon with a flurry of punches. You armed yourself with a small bottle which you used as a weapon to hit the victim twice, over the head. He fell to the floor where others then attempted to kick him in the body and to the head. The assault which took place some weeks later is one where there has not been agreement between you and the victim of that assault as to exactly what took place, but once again there is no doubt that you reacted violently to being approached by him and told to remove your feet from the table of a café where you had placed them. 3. These facts reveal you to be a young man who does not really consider himself to be in the wrong. I say that because you apparently consider that the victim in the affray, whom you struck with the bottle, deserved it for what he had done, and you consider that the man who approached you in the café to tell you to remove your feet from the table should not have done so and that he was aggressive; and the other offences show that you have no respect for other people's property. 4. Because you are the age you are, and I am now going to go into a little more detail about that there are some restrictions in the statute, in the law, as to how we can deal with you. The legislature has passed legislation which means that we should not send you to youth detention unless we are satisfied there is no other appropriate way of dealing with you and we have given very careful thought to that. According to the legislation we would, if you were a

young person which you are now because you are 15, we would need to consider whether you have a history of failure to respond to non-custodial penalties and are unable or unwilling to respond to them, whether only a custodial sentence would be adequate to prevent the public from serious harm and whether the offence or totality of the offending is otherwise so serious that a non-custodial sentence cannot be justified. But it is more complicated than that because you were 14 at the time the offences were committed and therefore the law treats you as a child for those purposes. It does not mean that youth detention is not a possible sentence, because under Article 5 of the Criminal Justice (Young Offenders)(Jersey) Law 2014 ("the 2014 Law"), paragraph 3 says: "(3) Where - (a) a child or young person is convicted of any offence that is punishable, in the case of a person aged 21 years or over, with imprisonment for 14 years or more; (b) the offence is not an offence for which the sentence is fixed by law; and (c) the court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable," we can sentence you to youth detention. 5. The offence of affray falls within that category and accordingly we do have jurisdiction under the Law to impose a sentence of youth detention if we think that there are no other methods of dealing with you which would be legally suitable and, in that context, we have had regard to the provisions of Article 4(2)(b) in thinking of the other ways we might deal with you. 6. In our view, no other method of dealing with you is appropriate, because you have a history of failure to respond to non-custodial penalties and it is not clear that you are willing or able to respond to them and because only a custodial sentence is adequate to protect the public. We have had particular regard to the report of Professor Harding who is a very experienced psychiatrist in that respect and to the information provided in the Social Enquiry Report and because the offence of affray, rather than the totality of the offending, is so serious that a non-custodial sentence cannot be justified. We say that in the context that picking up a bottle and using it as a weapon in an assault is an extremely serious offence. I appreciate that you may find a lot of this is going over your head, but I am going into the detail for it so that your counsel can explain the reasons to you later as to why this sentence is being imposed. But what you can take from this now is that using any form of weapon whether it is a bottle, or a knife or a piece of wood or whatever it happens to be, and there is reference at different parts of the papers to different weapons, it really does not matter what we are dealing with, it is this offence, and this weapon, which was a bottle, that makes it a very serious offence. 7. So having regard to all those circumstances we think the Crown's conclusions are correct and you are sentenced in accordance with those conclusions on the First Indictment to 1 month's youth detention. On the Second Indictment there will be no separate penalty. On the Third Indictment to 9 month's youth detention; on the Fourth Indictment to 1 week's youth detention and on the Fifth Indictment to 1 month's youth detention, and they will all run concurrently making a total of 9 month's youth detention, and we direct that you are to be held for that purpose in an appropriate place of custody. 8. The previous Probation Orders are now revoked in the light of the sentence which is imposed, and I am required to warn you under the 2014 Law that you will be subject to a period of supervision by the Probation Service following your release from Youth Detention. 9. In addition, we are going to impose a Restraining Order which will be in the terms recommended by the Crown, but for a shorter period of 2 years rather than 3 years. The Restraining Order is that you are "1. prohibited from approaching or contacting, directly or

indirectly, the victim, other than any contact which is inadvertent or unavoidable.

2. The defendant is prohibited from entering any part of the premises known to him to be the home address of the victim, or from loitering outside the property. In respect of the current address, the defendant is prohibited from entering a named road. 3. If the defendant sees or comes into contact with the victim in any public or private place, he must take immediate action to avoid any breach of this Order" I must warn you that if you do breach this order, you are liable to be brought back to this Court and sentenced to a period of youth detention or to a fine. 10. We consider that there is an opportunity for you in Greenfields to put your life back on track. It is quite important that you listen to this, and I can see that you do not want to, but it is quite important that you do because you are only 15. Your life stretches out ahead of you and you will have choices to make in that life. Nobody else can make these choices but you; nobody else can do that only you can, and you can continue on the course you are on which we are all concerned will possibly lead you to spending a long time in custody in the future, or you can take control of your life with the assistance which you are offered and you will get that assistance in Greenfields and actually it has been seen before that your conduct improved while you were there. I just want you to think about that. You can take the sentence imposed today as being just another example as the authorities coming down on you but actually it is being imposed because you have done wrong and when you do wrong this is what happens. Only you can learn that lesson, only you can do that, and I just urge you to think about that, not under the stress of this court room but when you have a moment of peace and quiet to do so. 11. For the avoidance of doubt the presence of foster parents and mother here in this court has been noted and I am sure that the Defendant will appreciate your support. Authorities Criminal Justice (Young Offenders) (Jersey) Law Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 AG v Burrell and Ors

[2003] JRC 209 AG v Le Geyt and L'Enfant

[2019] JRC 007 AG v De Freitas and Hepburn

[2015] JRC 191A AG v Murphy

[2005] JRC 080 AG v Richomme

[2006] JRC 068 Wylie v AG (2002/13) AG v Keeble and Stearn

[2020] JRC 172 AG v D'Avoine (Royal Ct) 1987-88 JLR N-21b AG v McCool 2000/45 AG v Franco 2001/120 LG v AG

[2009] JLR 52 Whelan, Aspects of Sentencing (3rd Ed.) R v Webb [2001] ALL ER (D) Page Last Updated: 18 Feb 2022 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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