

JERSEY / JUDGMENT

AG -v- Z [2010] JRC 016 (25 January 2010)

[2010] JRC 016

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

JUDGMENT

THE DEPUTY BAILIFF: 1. Z, you fall to be sentenced for an Indictment containing three counts; the first one is robbery, the second one is indecent assault and the third is the count of rape. Rape is always a very serious offence and the Court has no option but to impose a custodial sentence in relation to this offence. It involves the degradation of a woman in circumstances, in this case, which were extremely frightening and humiliating. 2. The facts were that, late at night, you followed a woman in a quiet area; you took out a knife, threatened her with it and took her from her chosen course from the road into a field. You threatened her on several occasions; you made sure that she could feel the knife and in the course of the assault you required her to commit an act of oral sex upon you and there were some further indecent assaults with digital penetration. You then raped her. 3. The Court has had regard to the victim impact statement which has been part of the Court's bundle and which was taken from her. It is clear from that victim impact statement that the experience that you committed her to that evening will live with her forever. It is not to your credit that she has responded with the bravery that she has. There was, in addition for her, a long period of uncertainty as to whether she would suffer from any disease as a result of the assault which you committed upon her. 4. For the purposes of the Criminal Justice (Young Offenders)(Jersey) Law 1994 the Court has no doubt that Article 4(2)(c) is met in this case, the offence is so serious that a non-custodial sentence cannot be justified. The Court has considered whether Article 4(2)(b) is met as well, whether it is necessary to protect the public from serious harm from the person, but does not proceed on that basis today. 5. We have given careful consideration to what the starting point should be for the purposes of this sentence. As has been clear from other cases before this Court, particularly quite recently the case of AG-v-Benyoucef

[2008] JRC 142, the case of R-v-Milberry

(2003) 1 Cr App R 25 and the previous case of R-v-Billam

(1986) 8 Cr. App. R. (S) 48 have been applied in this Court to the question of sentence for offences of rape. This Court considers that the starting point of 8 years is the correct starting point in this case. We think that there was, at least technically, an abduction, in the sense that the victim in the strict sense was led away from her chosen path at knifepoint. It may not be quite the same as an abduction from a victim's bedroom but it was still an abduction. Even if the Court had not been prepared to look at 8 years as the appropriate starting point, we think that the aggravating factors would still mean that one was looking at a total

of 10 years before applying mitigation; those aggravating factors are the nature of the indecent assault, the digital penetration and the lifting, by her breasts, of the victim off the ground, which are all serious aggravating factors, also the use of the knife and the threats which were made against the victim and also the use of the balaclava, because it must have been an extraordinarily frightening event for her. If one approached it from the other angle and one were looking at sentence after a contested trial and without other mitigation, we think 10 years would have been an appropriate place to finish. And so for all those reasons, but applying the 8 year starting point, we therefore look at 8 years plus the additional 2 years which the Crown has identified as reflecting the aggravating features in this case. 6. We now turn to the mitigation and we have spent a good deal of time reading carefully all the reports which have been made available to us and the references which have been passed down. We take into account your good character; we take into account very much your guilty plea and the admissions which you made right at the outset when you were first interviewed by the police, and we take into account the remorse which your counsel has mentioned to us. We also of course, take into account your youth. You are entitled to credit for all those things and in the circumstances we think that applying the Court's experience in the round, the right sentence is to adopt the conclusions for which the Crown has moved. 7. In accordance with our powers under Article 5(4) of the Criminal Justice (Young Offenders)(Jersey) Law 1994 , we sentence you to be detained for 4 years for Count 3, 2 years on Count 2 and 12 months on Count 1, all of which should be served concurrently. 8. We also order the forfeiture and destruction of the knife. 9. Everyone in this Court has been concerned about this case; that is why the Court was out for such a long time. We have looked very anxiously at all the material that has been given to us. You should be encouraged by the love and the support of your family who have been in Court to help you. During your detention or afterwards, you will have the opportunity of trying to understand how you came to commit these offences. You will need to rebuild your life and you should, in the Court's view, build as far as you can on your family's love and support for you. 10. Mr Yates, we are going to make the order that pending the determination by the Secretary of State pursuant to Article 5(4) of the Young Offenders legislation that the accused should be detained at Greenfields. It is an Order and not a request. The Court has recognised that on the last occasion that the Court made a similar request of this kind, the offender was in fact sent out to the young offenders institute almost straight away but it is completely unsatisfactory if the Court could not order it but we think we can. It is clear that when an offender is sentenced under article 4(1) of the Young Offenders legislation, the sentence is expressed as "detention in a young offender institution". This is later described in Article 4 as "youth detention". By contrast, Article 5 of the Young Offenders legislation does not describe the Court's power in Article 5(1) in the same way, nor indeed do paragraphs (2) and (4) of that Article. The nature of the sentence is different

- although it is a sentence of detention. The place of detention is not expressed to be a young offender institution, but rather the detention is "as the Secretary of State may direct". Given that that is so, there appears to us to be no clear requirement in the legislation that pending the direction of the Secretary of State, the offender must be held in a young offender institution. In the circumstances, the Court considers it must have been a residual discretion as to where the offender should be held in that intervening period and we have no doubt at all in this case that that should be at Greenfields. 11. Obviously that Order stays in place only for as long as the Secretary of State has not made an Order under Article 5(4). We consider that it is very important that Z stays at Greenfields where he is not going to mix with other young men and older young men with much worse records. If we are wrong about our construction of that statute and it is a question of designation that is going to cause a difficulty then the Minister can no doubt give thought to a fairly early designation as necessary of the Young Offenders Institute at Greenfields, it does appear to us that it has caused no difficulty whatsoever for the last few months while he has been present in custody and there is absolutely no reason why he should not stay there until other arrangements have been made by the Secretary of State under Article 5(4). 12. And so we make that Order. Of course it is open to the Minister to take further steps if he wishes to do so but I hope, after careful consideration, he will not think that is appropriate and the Order is accordingly made in that way today. Authorities Whelan on Aspects of Sentencing in the Superior Court of Jersey. Criminal Justice (Young Offenders)(Jersey) Law 1994. AG-v-Benyoucef

[2008] JRC 142. R-v-Milberry

(2003) 1 Cr App R 25 . R-v-Billam (1986) 8 Cr. App. R. (S) 48. R-v-Patrick M (2005) 1 Cr. App. R. (S) 49. AG-v-Dawrant and Others

[2007] JRC 162. Page Last Updated: 09 Feb 2017 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/2010/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-z-2010-jrc-016-25-january-2010>

Prepared on 24 October 2026 · Esheria