

JERSEY / JUDGMENT

Agostini v AG (Royal Court : Hearing (Criminal) : Le Cocq) [2025] JRC 225 (16 September 2025)

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JUDGMENT

THE BAILIFF: 1. On 7 August 2025, this Court considered the appeal of Ian Agostini ("the Appellant") against the sentence imposed upon him by the Magistrate on 10 June 2025 of six months' imprisonment in respect of one charge, that on 29 November 2024 at the General Hospital he assaulted Dr James Wainwright ("the Complainant"). 2. We dismissed that appeal and said on 7 August that we would provide our reasons at a later date. These, in brief, are our reasons. The facts 3. The facts of this matter as appear from the transcript are as follows. 4. In the early hours of 29 November 2024, the police were called by the Appellant asking for assistance. He was located in New Street and was in an "apparent unconscious state". 5. He was taken by ambulance to the emergency department where concerns were expressed about his level of consciousness and intoxication and whether or not he may have been suffering from a head injury. The Complainant, Dr Wainwright, completed initial checks including pain stimulus to understand the Appellant's level of consciousness. During these checks, he was the subject of verbal aggression shown by the Appellant and physical lashing out. At that point there was no contact made. 6. The Complainant stepped away from the Appellant, turning his back to discuss his findings with the paramedics and the Appellant then "leapt off the trolley and was punching out and grabbing Dr Wainwright". The Appellant attempted to rugby tackle Dr Wainwright to the ground and although the doctor did not fall to the ground, he fell on a trolley that was nearby, injuring himself. 7. He referred to considerable pain from the bruising to his stomach which the normal analgesics and anti-inflammatory medication did not affect and he was, in the event, prescribed much stronger pain medication. 8. The Complainant's victim personal statement was provided to the Court and it highlighted the psychological distress suffered by the doctor as "profound and long-lasting". 9. Subsequently, the Appellant admitted to the force medical examiner, Dr Deryn Evans, during examination that he had been "pretending to be unconscious", although this was denied by the Appellant through counsel at the sentencing hearing. The law 10. The principles that this Court applies when considering appeals against sentence from the Magistrate's Court are well-travelled. They are referred to in the skeleton arguments of both the Appellant and the Attorney General. 11. In AG v Price

[2019] JRC 211 , cited in Uddin v AG

[2020] JRC 221 , the Court said: "The Court may only allow an appeal where the sentence is wrong in principle or manifestly excessive. It will not interfere merely because, if they had been sitting at first instance, the members of this Court would have passed a different sentence." 12. In *Morgan and Schlandt v Attorney General*

[2001] JLR 225 , the Court said: "It is not the function of this Court to tinker with sentences which were well within the range open to the sentencing court simply because we might ourselves have fixed a lower term of imprisonment." 13. In terms of the Court's ability to impose custodial sentence, the Court in *Fernandes v AG*

[2023] JRC 098 said this: "The Court is always free, if it finds the custody threshold has been passed, certainly in respect of an adult, to pass such a sentence and it is not obliged to impose a Community Service Order as an alternative." 14. It is of relevance to note that in this case reference was made to newly introduced Magistrate's Court Sentencing Guidelines. It was accepted that the sentence imposed by the Magistrate fell within the guidelines and indeed were assessed within the appropriate characteristics. It was, however, urged by the Appellant through counsel, both before the Magistrate and before this Court, that the sentencing guidelines were not binding upon the Court. Before this Court the Appellant through counsel attacked those guidelines as being too severe, pointing out that had this matter come before the Royal Court at first instance, the Court would not have had a presumption in favour of custodial disposal and there were very many circumstances that could be envisaged where, although the matter was fitted within the guidelines which suggested custody, such a sentence would not in fact be appropriate. 15. For the sake of completeness, we should observe that during her sentencing remarks, the Magistrate indicated that she was not treating the guidelines as mandatory and said: "The sentencing guidelines are guidelines - they are not as people say tramlines - that the Court has regard to sentencing guidelines and the Court is aware that people who are working in public service.... are vulnerable to assaults." 16. Even though the learned Magistrate said that and clearly did not treat the guidelines as mandatory, it might be observed that there is a presumption of a custodial sentence in matters such as this, save in exceptional circumstances. 17. The argument before us is that the Magistrate should have considered more carefully and ultimately imposed a period of community service. It was pointed out that the Appellant was a man of previously good character and had no previous convictions at all. The assault was accordingly entirely out of character. He had pleaded guilty and although this was an assault and the Appellant did not in any sense resile from responsibility, this was not, it was argued, the most serious of assaults. 18. It appeared to be submitted before us that there was a principle that the Court should, unless the offence was serious, always, in the case of a first offender, deal with the matter by way of a sentence of community service or some other non-custodial disposal. It was only if a non-custodial sentence in some manner could not be justified that the Court should impose a custodial sentence. 19. We do not agree that there is, save in connection

with young offenders for which there is statutory provision, any such presumption. 20. It was pointed out that the consequences for the Appellant had already been severe. He had worked in the finance industry and had now lost his job, and there was a recommendation for community service within the Pre-Sentencing Report. However, this Court weighs the results of the offending on the Appellant against the physical and psychological severity that the assault has had upon the Complainant as witnessed within his Victim Impact Statement. 21. We must consider whether or not the sentence of the Magistrate was wrong in principle or manifestly excessive. 22. There was nothing wrong in principle with sentencing the Appellant to a period of imprisonment. It was clearly within the Magistrate's Court Sentencing Guidelines and we have seen that in many cases of an assault it would be appropriate for there to be a sentence of imprisonment. As we have already said, we do not agree with the Appellant's submission there is a presumption against a custodial sentence in the circumstances of this case. 23. We ask ourselves whether the Magistrate's sentence was manifestly excessive. It was clearly within the parameters of the guidelines. Moreover, this Appellant had without any provocation attacked a doctor who was doing his duty in trying to help the Appellant. The assault was violent and the Appellant needed to be restrained by other members of staff. The doctor was injured and that injury had painful and long-lasting consequences and difficulties for the doctor in returning to work. Owing to this event the Accident and Emergency hospital department has been deprived, for a period, of a valued and experienced doctor. 24. We agree that those whose duty requires them to provide care and respond to difficult situations, such as medical staff in the emergency department late at night as in this case, or indeed members of the emergency services are entitled to expect the protection of the Courts so far as it is possible to do so. 25. We also keep in mind the fact that we are not to tinker with a sentence in terms of length. 26. In the circumstances, in our view there was nothing wrong in principle with the sentence imposed by the learned Magistrate, nor was it manifestly excessive. Accordingly, we dismissed the appeal. *Authorities AG v Price*

[2019] JRC 211 . *Uddin v AG*

[2020] JRC 221 . *Morgan and Schlandt v Attorney General*

[2001] JLR 225 . *Fernandes v AG*

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