

JERSEY / JUDGMENT

Burghardt -v- AG [2017]

JRC 112 (19 July 2017)

[2017] JRC 112

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

JUDGMENT

THE DEPUTY BAILIFF: 1. On 25 th May, 2017, we dismissed an appeal by Wieslaw Burghardt ("the Appellant") against a recommendation made by the Assistant Magistrate for his deportation. We indicated on that occasion that we would give fuller reasons for our decision and we now do so. 2. On 17 th May, 2016, the Appellant committed a common assault on his partner Ms Glowa. He was sentenced on 16 th September, 2016, to 18 months' probation. 3. During the continuance of the probation order on 18 th December, 2016, the Appellant committed another common assault on Ms Glowa in respect of which, on th March, 2017, he was sentenced to time served in custody on remand. Although no additional sentence was handed down for the breach of the probation order, he was required to agree that he would not return to live with Ms Glowa. Charitable accommodation had been made available to him at Sanctuary House in St Aubin. 4. On 14 th March, 2017, upon his release, the Appellant immediately breached that condition and on 7 th April, 2017, the learned Assistant Magistrate sentenced the Appellant to 20 weeks in custody with regard to the original assault on 17 th May, 2016, and made a recommendation for the Appellant's deportation. It is against that recommendation that the Appellant appeals. 5. The notice of appeal filed on behalf of the Appellant was broadly based but in essence as argued before us it was restricted to the submission that the recommendation for deportation was manifestly excessive and/or there was a failure by the Assistant Magistrate to give due or proper weight to the rights granted by Article 8 of the European Convention on Human Rights. 6. It is salient to note that Ms Glowa, although the victim of the assaults in question, did not support the recommendation for the Appellant's deportation. In fact she filed a statement before the Assistant Magistrate supporting the Appellant and saying that she was pregnant with the Appellant's child. No medical evidence was provided to the Assistant Magistrate in support of that statement, nor was this lady present before him. No better information was provided to us other than counsel for the Appellant was able to indicate that he had telephoned Ms Glowa who had maintained that she was pregnant although, once again, she did not come before us and no medical evidence was provided. 7. These observations are significant because, on the Appellant's own submission through counsel, Ms Glowa had made false statements to the police relating to the Appellant's activities. It seems to us apparent, therefore, that the Assistant Magistrate, and indeed we, are able to approach with some scepticism an unsupported assertion contained in a statement made

by someone who the Appellant himself considers to be unreliable as a witness. It would, to our mind, have been simplicity itself to provide medical confirmation of Ms Glowa's pregnancy. 8. The Appellant and Ms Glowa had previously had a child together. That child had been removed from her care and freed for adoption and was now adopted. 9. It is also apparent that Ms Glowa is vulnerable to the extent that she relies on the Appellant to help her deal with life in Jersey. She does not speak very good English whereas the Appellant does. 10. The standard that we apply when considering the appeal against the sentence of the Assistant Magistrate would be to ask whether the sentence was to our minds manifestly excessive or wrong in principle. Although it was put to us that there was a "lingering doubt test" in as much as we should allow any appeal if we retained a lingering doubt about the process before the Assistant Magistrate we do not think that that takes us any further than the basic test that we have articulated. 11. The Appellant invited us to refer the matter back to the Assistant Magistrate in the event that we felt there should be more information relating to Ms Glowa's supposed pregnancy. We declined to entertain that. As we have indicated there was more than enough time for confirmation to be sought and obtained relating to the pregnancy if indeed it is relevant to our consideration. 12. The principles that a court needs to take into account when considering a recommendation for deportation are well known and have been articulated as a two-stage test in the case of *Camacho v AG*

[2007] JLR 462 . To paraphrase, the test is that the court should firstly ask whether the continued presence of the convicted person in the Island is detrimental to the Island and, if so, whether or not there are any Human Rights which ought to be taken into account in determining whether a recommendation for deportation ought to be made? The rights to be taken into account are the rights of the convicted person and any other person. 13. It was accepted by the Appellant that the Assistant Magistrate identified the correct test and it was further accepted by the Appellant that the first limb of the test had been passed. Although we will come on to deal shortly with the reasons given by the Assistant Magistrate for his decision, we agree that quite clearly the first limb had been passed. 14. In considering the first part of the *Camacho* test the Assistant Magistrate set out a number of reasons for his conclusion that that limb was passed. Amongst them was the repeated offending involving acts of domestic violence against a vulnerable victim, the link of offending to the consumption of alcohol and the lack of willingness on the part of the Appellant to control his consumption of alcohol; a further conviction that related to drink driving; his refusal to comply with the requirement that he did not live with Ms Glowa and his failure to reside where he was required. 15. The Magistrate concluded that the first limb of the *Camacho* test had been passed and this Court agrees and can see no basis for interfering with that assessment. 16. The issue that we consider, therefore, is whether or not the second limb of the *Camacho* test has been passed. 17. The Assistant Magistrate in his "consideration for deportation" sets out the background and the detail of the Appellant's offending. He further identifies that the Appellant's only personal relationship was with Ms Glowa who was the victim of the assaults and that the relationship has been described by the States of Jersey Police as "high risk". There had been 39 domestic incidents between the couple reported to the police between August 2012 and September

2016. The Magistrate referred to Ms Glowa's statement of 5 th April, 2017, in which she indicates that she believed that she was "in the early stages of pregnancy" with the Appellant's child. The Magistrate expressed the view that, even if it is correct that Ms Glowa is pregnant, that he is the father and that the child is born, it was in his view highly unlikely that the authorities would allow any contact between them, given the continuing violence and abuse of alcohol. The Appellant criticised the Assistant Magistrate's characterisation and assessment of the position saying that it was not for him to make an assessment as to whether the Appellant would be entitled to see his child but rather for the Children's Service. It was argued that the Assistant Magistrate had dismissed the Appellant's human right to a family life with his child and indeed the unborn child's rights, in a cursory manner without proper consideration. 18. The Assistant Magistrate then correctly identified the appropriate article of the European Convention of Human Rights, specifically Article 8, enshrined in the Human Rights (Jersey) Law 2000 which states: "(1) Everyone has a right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." 19. The Assistant Magistrate also made reference to the Appellant's period of residence in Jersey which was of significance and the fact that he would undoubtedly would have built ties through his work and social activities and that he had for a protracted period led a conviction free life. He also noted that Ms Glowa is effectively the Appellant's only family in Jersey and that her Article 8 rights would be affected by his deportation. Although she had been resident for a similar period to the Appellant, her command of English was not as good as his and she said that she would find it difficult to cope without him. The Assistant Magistrate then made reference to the fact that it is Ms Glowa herself who is vulnerable to violence from the Appellant. 20. The Assistant Magistrate also made reference to the fact that the gravity of the offending was not severe but that there was a high risk of further offending against Ms Glowa from which she was entitled to be protected. 21. We note that there is a very high risk of the offending continuing and that the Appellant really appears to have little control over his consumption of alcohol and when he drinks his propensity to commit domestic violence (albeit at a low end of seriousness at this point) against Ms Glowa. She is vulnerable and if the Appellant remains in Jersey it is highly likely that he will return to her and that the cycle of offending will continue. We do not think that she is the best judge of her own needs and safety and in any event, as the Appellant himself has informed us, she had made statements to the police in the past which the Appellant has viewed as false. 22. It was urged on us that the Assistant Magistrate had not given due weight to the rights of the Appellant's unborn child nor do the Appellant's rights to form a relationship with that child. 23. We do not agree. The Assistant Magistrate, although dealing with the matter briefly, clearly made some reference to the effect of deportation on the Appellant's rights to a relationship with his unborn child. It is clear that the Magistrate was not, however,

certain that Ms Glowa was pregnant with the Appellant's child and we are surprised, if reliance is to be placed on that aspect of the appeal, that the Appellant did not take steps to ensure that confirmatory evidence was before us as to Ms Glowa's state. Given that the Appellant has himself impugned Ms Glowa's reliability and no confirmatory information has been provided to us relating to her pregnancy by the Appellant or otherwise, we are not persuaded that this could be a factor that we should take into account. However, even were she to be pregnant with his child and it would be appropriate for us to take the unborn child's Article 8 rights into account in this context, we observe that on an earlier occasion a child of the Appellant and Ms Glowa has been taken from them and given up for adoption. We also observe that any child would be exposed to the same cycle of behaviour that Ms Glowa herself would have been exposed to, namely that of drunken assaults upon her, and this could not have been in the child's interests or promote its wellbeing. In our view, in any balancing exercise it is clear that it would not be in the interests of the child for the Appellant to remain in the Island and accordingly it would not be disproportionate to interfere with such Article 8 rights that the child might have by making a recommendation for deportation. 24. In the circumstances we believe that the assessment of the Assistant Magistrate was reasonable and the recommendation made was neither manifestly excessive nor wrong in principle. We certainly do not think that the approach of the Assistant Magistrate into the factors in this case gave rise to a disproportionate result in his assessment of the position. 25. Accordingly we declined to interfere with the Assistant Magistrate's recommendation for deportation. Authorities *Camacho v AG*

[2007] JLR 462 . Human Rights (Jersey) Law 2000. Page Last Updated: 26 Jul 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/2017/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/burghardt-v-ag-2017-jrc-112-19-july-2017>

Prepared on 23 October 2026 · Esheria