

JERSEY / JUDGMENT

C v AG [2020] JRC 083 (13 May 2020)

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JUDGMENT

THE DEPUTY BAILIFF:

Introduction

1. This is an application pursuant to Article 5(5) of the Sex Offenders (Jersey) Law 2010 ("the 2010 Law") for the Applicant to no longer be subject to notification requirements which were imposed upon him by virtue of his conviction of a sexual offence some years ago. 2. The Applicant was sentenced by this Court to a short term of imprisonment in respect of a sexual offence committed against a child and made subject to the mandatory minimum notification requirement of five years pursuant to Article 5(4) of the 2010 Law. That period has now expired and the Applicant is accordingly eligible to ask the Court to order that he should no longer be subject to those requirements. The relevant test for the Court to apply is contained in Article 5(6) which says:- "The court must not make the order applied for under paragraph (5) unless it is satisfied that the risk of sexual harm to the public, or to any particular person or persons, that the person subject to the notification requirements of this Law poses by virtue of the likelihood of re-offending does not justify the person's being subject to those requirements." Sitting in private/ anonymisation 3. The Court has been assisted by the recent decision in A-v-AG

[2020] JRC 004. That case analysed in detail two

issues.

First, whether or not these applications should be heard in private and, secondly, the extent to which the Court's reasons should be anonymised upon publication. 4. This judgment does not purport to summarise the decision of the Royal Court in A-v-AG but notes that the Commissioner, Sir William Bailhache, giving the judgment of the Court made the following observations: (i) There is a public interest in ensuring that a offenders are not deterred from making applications to have the notification requirements dis-applied to them (paragraph 10 of the judgment). (ii) The risk of publicity might destabilise an offender; this has the potential to make further offending more likely and there is a public interest in ensuring that this does not occur (paragraph 11 of the judgment). (iii) There is a need for the community to recognise that once an offender has served his sentence, both the community and the offender and his family need to move forward

(paragraph 13 of the judgment). (iv) It is desirable that judgments setting out the reasons of the Court when dealing with these applications are published so that the public can understand why the Court makes the order it does (paragraph 14 of the judgment). (v) The burden should not lie with the offender seeking an order for a hearing in private, requiring him to prove that it is the only way in which justice could be done. The public interest in these cases is wider and includes a number of factors, as set out in the A-v-AG judgment (paragraph 15 of the judgment). (vi) Accordingly, the Court should be more willing than hitherto to sit in private for applications of this kind and although no applicant can be entirely certain that that will be the outcome, it would be unsurprising if sitting in private for these cases became the norm. That would generally be followed by publication of a judgment in anonymised form (paragraph 15 of the judgment). 5. Applying the principles in the decision in A-v-AG to the facts of this case, the Court elected to sit in private but to publish its judgment in anonymised form. Applying the statutory provisions to the facts in this case 6. The Court was furnished with the application of C, a de-notification report prepared by the Jersey Probation and Aftercare Service dated 18 th March, 2020, and a report dated 13 th March, 2020, prepared by officers of the Offenders Management Unit (OMU) of the States of Jersey Police. 7. The OMU report indicates that the Applicant's risk of sexual reoffending has been assessed. 8. The Court heard evidence from Detective Sergeant Hamon of the OMU, in particular having regard to the Stable and Acute 2007 Risk Assessment. This risk assessment tool is specifically designed for sex offenders. It was first used in 2007 and is commonly known as the SA07. 9. The Stable Risk Assessment is a detailed assessment of the risk factors which may pertain to an individual and scores offenders by reference to 13 criteria categorised into five broad areas of concern (significant social influences; intimacy deficits; general self-regulation; sexual self-regulation and cooperation with supervision.) Such an assessment normally takes place by way of a face to face interview of between 45 and 90 minutes. The assessment yields overall scores in the following ranges: 0 to 3 is low; 4 to 11 is moderate and 12 to 26 is high. 10. Six years ago the Applicant scored 5 on the Stable Assessment which is a moderate score, partly as a consequence of vulnerabilities which he has arising from low self-esteem, poor social skills and a limited capacity for coping with emotional and interpersonal problems. However in March 2020 he scored 3 which puts him in the low risk category. 11. He has been far more frequently assessed by reference to the Acute Risk Assessment. The Applicant has been tested every year for 6 years and the outcome of each of those tests is that he is at low risk of sexual reconviction, low risk of violent reconviction with an overall recidivism risk assessment of low risk. Sometimes the "Acute" test has been carried out more frequently than annually as it is a quicker test to administer and deals with dynamic risk factors which may change from time to time. The overall scoring of the Assessment is as follows: zero equates a low risk; 1 to 2 equates to moderate risk and 3 to 14 is high risk. The Applicant has scored zero on all tests. The Acute Assessment tests examine the following aspects which may give rise to risk: victim access, sexual preoccupation; hostility; rejecting supervision; emotional collapse; collapse of social support and substance abuse. 12. The Applicant has engaged well with support services whilst obliged to comply with notification requirements. The Applicant has strong local family support and his family are positive social influences upon him. He is single and often feels lonely and excluded from society as a consequence of his offending but there is no evidence of him forming inappropriate

attachments still less with children. He understands the impact his offending is likely to have had upon his victim. He leads a quiet simple lifestyle and is employed. He has a strong work ethic. He accepted the sentence of the Court as representing a fair punishment. There is nothing inappropriate about his "sexual self-regulation", which includes recourse to lawful adult pornography. He has been compliant with all notification requirements including, although it has now expired, the restrictive order made against him under Article 10 of the 2010 Law. The victim's family have been consulted and understandably they are concerned at the prospect of the notification requirements coming to an end. 13. During the notification period, the Applicant has not been convicted of any offence let alone a sexual offence. The Probation Officer in her concluding remarks said:- "In general terms, adherence to restrictive Orders places a layer of monitoring and boundary setting to try to reduce the likelihood of sexual reconviction. In [the Applicant's] case this appears to have been successful and there has been no recurrence of any behaviours of concern." 14. Accordingly the Applicant has satisfied the Court pursuant to Article 5(6) of the 2010 Law that it is no longer justifiable for him to remain subject to the notification requirements of that Law. 15. The Court notes that this application was not opposed by the Attorney General. Authorities Sex Offenders (Jersey) Law 2010. A v AG

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