

JERSEY / JUDGMENT

Capuano -v- AG [2014]

JCA 123 (04 June 2014)

[2014] JCA 123

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Court of Appeal (Unknown) 4 June 2014 Before : Sir John Nutting Bt, Q. C., sitting as a Single Judge of the Court of Appeal Antonio Romano Capuano -v- The Attorney General

JUDGMENT

Nutting JA: 1. I propose to deal with both applications together. 2. Having pleaded guilty to five offences in two Indictments at earlier hearings the Applicant was sentenced in the Royal Court on 3 rd May, 2013. 3. He filed an application for extension of time in which to appeal ("extension notice") on 15 th January, 2014, and an application for leave to appeal his conviction but not his sentence ("conviction notice") on 6 th March, 2014. He sent a letter to the Judicial Greffier on 14 th April, 2014, setting out grounds for his appeal ("letter of grounds"). 4. In view of the date of sentence, his application for leave to appeal should have been filed by 31 st May, 2013, in accordance with Article 32(1A) of the Court of Appeal (Jersey) Law 1969 (the "Law"). 5. The sentence passed on the Applicant on 3 rd May, 2013, amounted in total to 2 years' imprisonment, but having spent 13 months on remand by the date of the sentencing hearing, the Applicant is due shortly to be released from prison. 6. An analysis of the three documents filed by the Applicant appear to suggest that his application relates to the convictions on Counts 1 and 2 of the First Indictment only, although he does complain about a number of other matters. 7. None of the three documents contain any indication why he has delayed filing his application 229 days later than the Law allows. Indeed all the points advanced therein were available to him in the immediate aftermath of the sentencing hearing, in good time to comply with the Law. 8. In view of his pleas of guilty the gravamen of his application for leave to appeal his conviction must be on the basis that his pleas were equivocal. 9. I have looked in vain for any evidence in the papers before me that there was any equivocation in respect to the Applicant's pleas to any of the offences listed and charged in the indictments. 10. In particular the following matters seem to me to be material:- (i) The applicant was represented by an experienced lawyer, Advocate Fogarty, throughout the proceedings in the Royal Court. (ii) In relation to the five counts before the Royal Court, the applicant entered pleas of guilty on three different dates. (iii) In respect of the First Indictment (which referred to events on or after 25 th March, 2012) he pleaded guilty to Ct.1 on th March, 2013, and to Ct. 2 on the same date and to Ct. 3 on 30 th November, 2012. (iv) In respect to the Second Indictment (which referred to events on 13 th February, 2013) he pleaded guilty to Cts. 1 and 2 on 19 th April, 2013. (v) No explanation is given in the papers why, in so far as there might

have been any equivocation about any of these pleas, no point was taken, and no argument advanced, between these dates of plea and the date of sentence. (vi) Nor is any explanation given why the point is sought to be taken, apparently for the first time, more than 8 months after the date of sentence. All that is said by the Applicant on this topic is that he "deeply regrets" making his pleas of guilty. Subsequent regret does not amount to equivocation. 11. The reason for the delay between the plea made by the Applicant on 30 th November, 2012, and the pleas made on 14 th March, 2013, may be accounted for by fact that in relation to Counts 1 and 2 of the First Indictment, the Applicant wished to argue that he had been wrongfully arrested. However notification was given to the Royal Court on or after 14 th March, 2013, by his advocate, Mrs Fogarty, that she was abandoning her arguments on this point. The fact that the argument was abandoned, after several months, underlines the non-equivocal nature of the two pleas of guilty on the latter date resulting directly from the abandonment. Furthermore at the sentencing hearing nearly two months after the pleas to Counts 1 and 2 had been entered, Advocate Fogarty told the Deputy Bailiff and Jurats, in mitigation in the presence of the Applicant and apparently without protest from him, "Mr Capuano has chosen not to take the point that there exists no power of citizen arrest in Jersey, or that the power of doorman (sic) relates entirely to the premises to which they are attached and not to the public road which is the province of the police. Mr Capuano wishes to be sentenced for what he did and it is for you to decide to what degree his mental health may mitigate that sentence." 12. The fact that a defendant decides to abandon a legal argument which may be available to him at trial, which is opposed by the Crown (as was this legal argument) and which may or may not avail him a defence, is no support for the proposition that his subsequent pleas of guilty are, or may be, equivocal. 13. Further evidence of the non-equivocal nature of the pleas is to be found in the probation interview in relation to the First Indictment. The Applicant described himself to the Probation Officer as having been very drunk on the evening of 25 th March, 2012, and that his memory of the events, necessarily relating to Counts I and 2, was therefor limited. It follows, of course, that he would have been in a difficult position persuasively to dispute the evidence adduced by the prosecution on those two counts. 14. The allegation by the Applicant that his advocate "did not have my best interests at heart" (see page 2 of his letter of grounds) is certainly contradicted by a study of what Advocate Fogarty said in mitigation. She had taken the trouble to type in advance what she intended to say on the Applicant's behalf and to provide the Royal Court with copies. She opened the mitigation with this acknowledgment "I am going to speak for a little longer than I usually do today and I am going to refer rather densely to the documents that you have before you in both bundles." Moreover in his sentencing remarks the Deputy Bailiff said "...you clearly have a substantial amount of mitigation which your counsel has put very fully before us and which we have considered very carefully." In my view there is nothing to criticise and much to praise in Advocate Fogarty's plea in mitigation. It is clear she took a great deal of trouble on the Applicant's behalf. 15. The Applicant further complains in his extension notice at point 6 "Apart from a Social Enquiry Report no other reports were requested. Had they been they would have shown that my mental state was not 100%." This is not correct. The Court had reports from Dr Hendricks and Dr Harrison. Advocate Fogarty had also included in the defence bundle extract from a book by a psychiatrist, Dr Kay Redfield Jamieson. 16. The Applicant also complains in his letter of grounds

at points 7 and 8 "I believe that the CCTV footage should have been shown to the court as this would have clearly aided my mitigation." And "There was a fault with the footage which needs to be explored further." 17. It is noteworthy that the Applicant asserts that the matter relating to the CCTV relates to mitigation. His assertion does not give any indication that the point would allow a court to hold that his pleas of guilty to Counts 1 and 2 were equivocal. In any event Advocate Fogarty referred to the CCTV in her mitigation and called the images in aid of her client. She further stated that she had herself "viewed the CCTV many times." 18. If I do not deal with the rest of the Applicant's complaints it is because I can find nothing in them which is germane to the issue of the equivocal nature of his pleas of guilty. And while it is clear that those who were concerned with this case had real sympathy for the health problems from which this Applicant has suffered for some time, including the Attorney General (see his letter of 22 nd January, 2013, referred to by Advocate Fogarty on page 21 of the transcript), the psychiatrists who provided reports to the Royal Court, the Deputy Bailiff and Jurats who sentenced the Applicant in the Royal Court (see the sentencing remarks of the Deputy Bailiff para 2) and Advocate Fogarty herself (to whose mitigation I have already referred), nonetheless I have been unable to find any arguable point which would support either the application for leave to appeal so much out of time, or an appeal against the convictions. 19. Accordingly I refuse both applications for leave. Authorities Court of Appeal (Jersey) Law 1969. AG-v-Capuano

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