

JERSEY / JUDGMENT

Capuano v AG [2021] JRC 330 (23 December 2021)

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JUDGMENT

THE BAILIFF: 1. This was to have been an application brought by Mr Capuano to extend a time within which he would wish to appeal against a conviction by the Relief Magistrate for a charge of grave and criminal assault and another charge in respect of which he had pleaded guilty. Mr Capuano was unrepresented before the Relief Magistrate and he indicates in his Notice of Appeal that his reason for seeking such an extension was because he was not mentally able to conduct his defence in an appropriate way. 2. Although Mr Capuano is not represented before me as such, the Court and indeed Mr Capuano has had the services today of Advocate Boothman who has appeared as amicus, but he has been instructed relatively late in the day and he, and indeed Mr Capuano, are under some disadvantage because of the timing in which the bundles have been filed. 3. Following discussion in the Court it was agreed that the application for an extension of time would be adjourned and dealt with on a later date at the same time as the Court deals with the arguments on appeal and there would be a rolled up hearing. Mr Capuano agreed to that course and I made an order to that effect. 4. Mr Capuano then comes on to ask for bail pending appeal. Advocate Hallam for the Crown raises a preliminary issue. She points out that Article 34 of the Criminal Procedure (Jersey) Law 2018 read together with Article 39 suggest that this Court has no jurisdiction to deal with a bail application where there is no appeal outstanding and until the Court has granted leave for an extension of time and therefore leave to appeal there is no appeal in respect of which bail may be sought and granted. 5. We had placed before us the case of *In re Young*

[1998] JLR 383 which is a judgment of the Court under the old statutory provisions and therefore is to a significant extent outdated, but which it is suggested is illustrative of the approach the Court might take to this argument. Advocate Boothman for his part argues that it is far from clear that the statute bears the interpretation urged upon me by Advocate Hallam and in fact I should entertain a bail application. 6. The substance of the bail application is in effect this: Advocate Boothman argues that there is some prospect of success of an appeal as the only basis for a finding of grave and criminal assault, as opposed to common assault, is the evidence of a single witness, a Mr Cruz, who was looking through the window who says that he saw Mr Capuano push the Complainant down to a couch and put his hands around her neck. Other than that the only evidence is as to slaps and those by

themselves would not amount to a grave and criminal assault. It is possible, had Mr Capuano been represented that the evidence of that single witness would have been undermined, and had it only been a common assault then it is likely, so Advocate Boothman argues, that the sentence would have been less and the risk that Mr Capuano now faces is that if I do not admit him to bail he will effectively have served longer than the appropriate sentence were he ultimately to be successful on appeal. 7. Advocate Hallam argues that in any event the sentence imposed for common assault or grave and criminal on some occasions overlap as indeed they do and that it is quite possible that the sentence imposed by the Magistrate would be no different had he made a finding of common assault, but in any event there was simply no reason to undermine the evidence of Mr Cruz and therefore no reason to undermine a conviction for grave and criminal assault. I note that Mr Capuano challenged Mr Cruz when he cross examined him indicating that Mr Cruz may be animated by ill will towards Mr Capuano. That point was clearly before the Relief Magistrate and it is equally clear that in making his decision the Relief Magistrate found that as a matter of fact Mr Capuano had placed his hands around the throat of the Complainant and that this was an important factor underpinning the conviction for grave and criminal assault. There was a basis, therefore, in the evidence on which the Relief Magistrate could make that finding and it is speculative that the presence of a legal advisor would have made any difference to that outcome. 8. It is inarguable that the application made by Mr Capuano for an extension of time is made very late in comparison to the sentence. In fact he is due to be released at the end of this month, and although he has stated that the delay is because of the mental condition of that applied to him at that time we do not have any evidence before us in this Court either supportive of that or from which we can make any very clear deductions. As I have said, Mr Capuano appeared to be able to put in cross examination those points that he felt were appropriate. 9. As it stands, therefore, he remains convicted of grave and criminal assault and the presumption in favour of bail no longer exists. He tells the Court that he wants to turn his life around, that he wants the chance to prove himself and to steer others away from prison and I very much hope that that is correct, and it will happen at the appropriate time. However, I also have to reflect on the fact that he has a number of previous convictions, a very large number indeed, and even though he indicated that those from 2007 were less frequent and of a different nature than those beforehand indicating a development and improvement in his behaviour, nonetheless since 2007 they number 16 appearances in all for a number of offences including grave and criminal assault and breach of court orders. I cannot other than conclude that there would be a risk of reoffending were I to admit Mr Capuano to bail. 10. On balance, I do not think it is necessary for me to make the statutory determination dealing with the point raised by Advocate Hallam. I would wish to have heard further argument on that statutory interpretation and I simply leave the matter at this point undetermined. It will be a matter for a future occasion. I do not criticise either counsel for not putting the full argument before me as it was a point that has arisen late in the day. 11. However, were I to have the jurisdiction to deal with the matter on the merits, I would for the reasons that I have

articulated declined to admit Mr Capuano to bail and therefore refuse the application. 12. We adjourn the further argument on this until th January and you can continue with the argument at that point. I just remind you that it is important that you keep in contact with Advocate Boothman so that he can help you put the arguments together in the way that you want. Authorities Criminal Procedure (Jersey) Law 2018 In re Young

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