

JERSEY / JUDGMENT

De Sousa v AG [2004] JCA 078 (04 May 2004)

[2004] JCA 078

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JUDGMENT

THE BAILIFF: 1. The Applicant was sentenced by the Inferior Number on 31 st October 2003 to 15 months' imprisonment on three counts of breaking and entering and larceny and one count of going equipped contrary to Article 1 of the Crime (Going Equipped) (Jersey) Law 2003 to all of which offences he had pleaded guilty. 2. In addition to sentencing the Applicant to imprisonment, the Inferior Number recommended that he should be deported at the conclusion of his sentence. The Applicant is due to be released from La Moye Prison on 22 nd May. It is against the part of his sentence containing the recommendation for deportation that the Applicant now seeks leave to appeal. 3. Counsel has conceded that the Inferior Number applied the correct test in determining whether to make the recommendation for deportation. That test has two elements; the first is whether the continued presence of the Applicant in the Island would be detrimental to the public good; the second is whether, if the answer of the first question is in the affirmative, the deportation would be disproportionate having regard to the right to family life contained in Article 8 of the European Convention on Human Rights . 4. The Inferior Number expressed its conclusion in relation to the test in the following way: "We must now consider the question of deportation. As we have said, you have a very poor record in the time you have been here. You also have a poor work record. You are a heroin addict and the Probation Report confirms that you are at high risk of re-offending. In the circumstances we have no difficulty in concluding that your continued presence in Jersey is detrimental to the Island but we must balance against that the impact which any deportation would have on your family life bearing in mind Article 8 of the European Convention on Human Rights ." Counsel for the Applicant did not contest the conclusion of the Inferior Number in relation to the first limb of the test. The real question for this Court is whether the balancing exercise, having regard to the Convention right, was properly applied by the Court below. 5. The facts, as put before the Inferior Number, are that the Applicant came to Jersey from Madeira when he was aged fourteen. He is now twenty-two. He is one of a large family and all his close relatives, that is his mother and brothers and sisters, are living in the Island. His father is dead. His grandparents are alive and living in Madeira and he also has cousins there to whom he is not, however, close. 6. In December 2003 he married his then girlfriend who was pregnant and who has subsequently given birth to their son who was born on 27 th February 2004. The Applicant's wife suffers from multiple sclerosis and is unable to work. She and the baby are currently living with her parents who have offered temporary accommodation to the Applicant when he is released from prison if

the deportation recommendation is revoked. It is likely that the Applicant's wife will require increasing medical help and she is unwilling to go to Madeira. The deportation of the Applicant would therefore be likely to involve his separation from his wife and child. All these factors were known to the Court below when the recommendation for deportation was made, although at the time of sentence the Applicant and his wife were not, of course, married. The Inferior Number stated: "We appreciate the hardship which will be caused if you are deported but that has to be balanced against the interests of the community." Was this, therefore, a disproportionate conclusion? We wish to make it clear that we have found this a very difficult decision. If the interests to be considered were only those of the Applicant, we have no doubt that the recommendation for deportation would stand. He has been warned several times that if his criminal behaviour continued he would risk deportation. The Applicant, in short, deserves to be deported. 7. We are obliged however to consider the effect upon the Applicant's family and that involves a close consideration of the interests of his wife and small child. Mrs de Sousa was born in Jersey but she speaks Portuguese and could, other things being equal, move with the Applicant to Madeira if he were deported. The difficulty is that things are not equal. As we have stated this young woman has very sadly been afflicted since the age of nineteen by MS and has recently been unable to work. We have received from the Neuro Care Service at Overdale Hospital a letter helpfully setting out in some detail the medical condition. Mrs de Sousa needs, and in all likelihood will need for the foreseeable future, considerable support both medical and social. The family network which can give that social support is in Jersey and not in Madeira. The medical people by whom she has been treated and with whom she is familiar are in Jersey. We are satisfied that Mrs de Sousa cannot go back to Madeira with the Applicant if he is deported. The Convention rights of the Applicant and his wife to respect for their family life would therefore be severely affected. 8. Against that background the decision of the Court, which is a decision by a majority, is that the recommendation for deportation is disproportionate and cannot be allowed to stand. The application for leave to appeal is therefore granted and we quash the recommendation for deportation. The Applicant will have his costs. *Authorities Monteiro -v- AG* (7 th August 2001) *Jersey Unreported* [2001/177]. *Breen & Ors -v- AG* (13 th September 2002) *Jersey Unreported* [2002/167]. *De Jesus -v- AG*

[2003] JCA 181 . *AG -v- de Sousa*

[2003] JRC 196 . *R -v- Nazari*

(1980) 71 Cr. App. R. 87. *AG -v- Samspon*

[1965] JJ 495 . *Morgan & Schlandt -v- AG* (24 th April 2001) *Jersey Unreported*; [2001/88]. Page Last Updated: 29 Jun 2016 BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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Prepared on 27 October 2026 · Esheria