

JERSEY / JUDGMENT

De Souza -v- AG [2005] JRC 129 (21 September 2005)

[2005] JRC 129

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

JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application for leave to appeal out of time against a recommendation for deportation made by the Inferior Number on 8 th April, 2005. In the particular circumstances of this case the Crown does not oppose the application for leave to appeal out of time and accordingly we grant such leave. 2. As we say the Appellant appeared before the Inferior Number on 8 th April. He pleaded guilty to 24 counts of breaking and entry and larceny, and 1 of possession of cannabis resin. He was sentenced to a total of 2 years' imprisonment coupled with a recommendation for deportation. 3. The offences were committed over a 14 week period between 31 st July and 5 th November 2004. He stole goods to the total value of approximately £21,000, of which about £5,000 worth has been recovered. 4. The burglaries were carried out to fund his heroin addiction and many of the offences were committed in private homes. We are told that there was a total of some 32 victims. The appellant has an appalling record despite being only 24. He has been before the Court on nine occasions before the present one involving some 26 offences, many of a similar nature to the present offences. 5. The Courts have tried a variety of non-custodial sentences as well as periods of youth detention, including 30 months in 2001, and 15 months in October 2003, but all to no avail. Indeed the appellant was placed on probation by the Magistrate's Court on 4 th August, 2004, but as the background report makes clear, he was committing the present offences throughout the period when he was on probation and he denied falsely that he was still using heroin. Not surprisingly the background report assessed the appellant as being at very high risk of re-offending. 6. When considering the question of deportation the Inferior Number applied the principle established in the well known case of R -v- Nazari and other cases

(1980) 3 All ER 880. It concluded first that the appellant was a menace to the community and that his continued presence in the Island was detrimental to the interests of the community. Mrs Pearmain, who has appeared for the appellant, has very sensibly not challenged that finding and we endorse it. 7. The Inferior Number went on to consider the second aspect of the test, namely the effect of any deportation on innocent members of the appellant's family and on the right to respect for family life under Article 8 of the European Convention on Human Rights. It is on that aspect that the appellant asks us today to overturn the finding of the Inferior Number that such matters did not outweigh the

detriment to the community of the appellant's continued presence. 8. The background on this aspect of the matter is that the appellant was born in Madeira. When he was 9 his mother came to Jersey leaving him and his siblings, except one sister, in the care of his father and an elder sister. When he was 14, he and his siblings all came to Jersey to live with their mother. The father has since died. It follows that all of his immediate family now live in Jersey. 9. The appellant is married. His wife was born in Jersey although she speaks Portuguese. They have a child born in 2004. Sadly his wife suffers from multiple sclerosis. She and the child, Jason, live with her parents. When the appellant is not in custody he also lives there. Although he does not contribute materially to their up-keep because he has not worked to any material extent and the proceeds of his stealing go to pay for his heroin addiction, he does provide emotional and practical support to his wife when he is out of prison. 10. The appellant has been warned on a number of occasions that if he continues to offend he will be at risk of deportation. It is worth recording the number of warnings he has had. He was first warned in May 1999, by the Immigration Department following some criminal offences. On 2nd June, 2000, the Royal Court warned him of the real risk of deportation if he re-offended and that warning was repeated by the Immigration Department a few weeks later. Despite that warning the appellant came before the Royal Court again in March 2001. As the Court explained then, it considered very carefully whether to recommend deportation at that time. It decided not to but warned the appellant in strong terms of the likelihood of deportation if he re-offended. That warning was repeated by the Immigration Department in March 2003, when the appellant was released from youth detention. 11. On 31st October 2003, the appellant appeared again having re-offended despite those warnings. On that occasion he received a sentence of 15 months' youth detention, and the Inferior Number, having considered the effect of deportation on the appellant's wife, who was then his girlfriend, and the forthcoming child, recommended deportation. By a majority the Superior Number overturned that decision on 4th May 2003, essentially on the grounds of the effect upon the appellant's wife and small child. Despite this warning the appellant has now re-offended and has committed the 24 further offences to which we have already made reference. The Inferior Number concluded that the balance had now tipped in favour of deportation. 12. Mrs Pearmain has mounted a persuasive and eloquent case in support of this appeal. She has placed a number of letters and references before us from the family. She points out that Mrs de Sousa, the wife, depends upon support from her parents and the medical facilities and support in Jersey and that, as her general practitioner, Dr Howell, says, she could not obtain these in Madeira. Her parents have lived in Jersey for 30 years; it would therefore be thoroughly unreasonable to expect them to uproot themselves and return to Madeira. If she and her son for this reason cannot follow the appellant if he is deported to Madeira, the result would be that the appellant would play no significant part in his son's upbringing. As we have said, she submits and we accept, that when at liberty the appellant does give his wife practical and emotional support. 13. The appellant's mother and six sisters and brother all live in Jersey and Mrs Pearmain has produced letters from them urging that he be allowed to remain here. He only has cousins

in Madeira, who he does not know well, as well as grand-parents who are now elderly and not in good health. In essence, he has lived all his adult life in Jersey and Mrs Pearmain submits it would be wrong now to deport him. She submits that deportation would break up not only the Appellant's relationship with his wife and child, but also with his mother and siblings. It could also affect his wife's parents and the more extended family. Jersey is now his home and deportation would be disproportionate. 14. The Court has found this a difficult decision. We fully accept that substantial hardship will be caused to members of his family if he is deported. If his wife and child were to follow him to Madeira, they would lose the support of the wife's family, the local medical facilities and the financial support of the Island's benefit system. Conversely, if the wife were to feel that she was unable to follow him if he were deported to Madeira, she would lose his emotional and practical support and her son would lose the relationship with his father. The rest of the family would also suffer in the way that has been described. 15. However, the Appellant has been given endless warnings. On the last occasion it was only on appeal to the Superior Number that the deportation recommendation was set aside, essentially on the very grounds now put forward by Mrs Pearmain. Despite this, the Appellant has continued with his heroin addiction and has committed these twenty four further burglaries. Burglaries of private homes can be extremely upsetting for the occupants. We have no doubt that the background report is entirely correct in saying that the Appellant is at very high risk of re-offending. The community is entitled to as much protection as we can properly give. Furthermore, we believe that the high likelihood of the Appellant's re-offending means that the continuing support that he will be able to give to his wife and child will be limited, because he is likely to spend substantial periods in prison. 16. In our judgment the balance has now tipped in favour of the interests of the community, as opposed to the interests of the Appellant and his family. We have every sympathy with the family but, in our judgment, it would not be disproportionate to deport him in the light of his continued offending and we therefore dismiss the appeal. Authorities R -v- Nazari and other cases (1980) 3 All ER 880. Page Last Updated: 18 Aug 2015 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/2005/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/de-souza-v-ag-2005-jrc-129-21-september-2005>

Prepared on 24 October 2026 · Esheria