

JERSEY / JUDGMENT

Gracia v AG [2002] JRC 126A (08 July 2002)

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JUDGMENT

THE cOMMISSIONER: 1. It must be said at once that this Court will not interfere with a decision of the Magistrate's Court unless the sentence is either wrong in principle, or manifestly excessive. This Court does not act out of mercy or compassion, however strongly it may feel, and it will not, generally, substitute its own view if the sentencing in the Magistrate's Court is inherently right. 2. There are a number of charges but we must, as Advocate Deacon has conceded, consider for the purposes of this appeal the serious offences of obtaining prescribed drugs by false pretences and the possession of heroin. 3. It may be useful to read what the learned Magistrate said when sentencing Gracia: "The Probation Officer is very optimistic in view of the past history but I must form my own view and to assist me in that I have various things, I have the criminal record of Mr Gracia and I have the sequence of events in relation to the matters for which I am sentencing him and I note from his Criminal Record that he was placed on probation for two years by the Royal Court in April, 1998, which he breached twice before receiving to a custodial sentence. On the other hand on the 14 th May, 1998, he was bound over for one year and did not offend during that period. I also note, of course, that he is in breach of the 15 th January binding over order for which I am sentencing him today. There are other factors I have to look at here and the principles in these are this: the obtaining of sixteen prescriptions by fraudulently pretending to be another person and using that person's card and the attempt to obtain a prescription on the seventeenth is a very serious matter. The persistent use of a card in such a way over a period of time constitutes serious offending and I cannot overlook that. Furthermore, I note that the first offence on the charge sheet, the offence of the 11 th April, was committed whilst on bail, not only in relation to the January offences, but also in relation to the more serious offences which were first presented on the 5 th April, and that the fourth offence on the charge sheet dated 15 th April was also committed whilst on bail in relation to the January offences. My view is that the Alcohol and Drug Service's view of Mr Gracia is the correct one and I am going to sentence him accordingly". 4. The Magistrate, taking a global view of all the offences to date, then passed a sentence of six months' imprisonment. The health card was stolen from a man called Seaward, with whom Gracia had lived for two years prior to the theft. Mr Seaward was seriously inconvenienced because his application for a new health card was refused. 5. The amounts of drugs unlawfully obtained are disturbing: 28 diazepam tablets, 252 chlorodiazepoced tablets, 617 Temazepam tablets, 1,245 Dihydrocodeine tablets on 18 prescriptions. That is by any standards a large amount of drugs obtained unlawfully. 6. We have read the two reports, one encouraging from the Probation

Officer, and one clearly less so from the Drug and Alcohol Service Director. In one of his highly literate letters to us Gracia says this: "When I first started attending the Alcohol and Drug Service, I used to talk to Mrs Jackson, and found her to be very helpful and understanding, but at the same time honest (even when she tells you things you may not want to hear). Since being in custody, I have spoken with Mrs Jackson on a number of occasions, to try to establish what could and would be the best all-round solution to my current situation. In talking things through, it has become clear that we are of the same opinion. That is that a custodial sentence is of little or no benefit to me. I say this as she feels that the problems I have had are better dealt with by keeping a close eye on me in the community, where, at the same time, I could start to build on a brighter future. She also feels that this would be the better course of action because, as well as being a longer and more severe punishment, I would also have no choice than to abide by a treatment order, or face a custodial sentence were I to fail". 7. That, of course, is helpful but it is hearsay evidence, and we heard no oral evidence from anyone in Probation or the Drug and Alcohol Service. It is to us disturbing that Gracia placed so much reliance on the Probation report. Perhaps he should have been warned that the Court would, in its discretion and, of course, its experience make up its own mind. We regret that despite Advocate Deacon's helpful address we can find nothing that would allow us to disturb the decision of the Magistrate. The appeal is accordingly dismissed. 8. We would, however, add this, we would hope that Gracia who is undoubtedly literate

- if his letters are anything to go by - will serve out his sentence, put his old life behind him and thereby make a contribution to society. Authorities *Pipon -v- AG* (16 th August, 1999) Jersey Unreported; [1999/143]. Page Last Updated: 21 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 25 October 2026 · Esheria