

JERSEY / JUDGMENT

H -v- AG [2014] JRC 226

(18 November 2014)

[2014] JRC 226

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

JUDGMENT

THE BAILIFF: 1. This is an application by the Representor under Article 5(5) of the Sex Offenders (Jersey) Law 2010 ("the Law") for an order that he no longer be subject to the notification requirement under Article 6 of the Law. It is the first such application to be heard since the enactment of the Law. We announced our decision at the conclusion of the hearing and now give our reasons. 2. The background is that on 22 nd December, 2010, the applicant was sentenced to a 6 month Probation Order and 100 hours' community service in respect of four offences to which he had pleaded guilty. Three of these offences were of unlawful sexual intercourse and the fourth was an offence of downloading indecent images of children contrary to Article 2(1)(a) of the Protection of Children (Jersey) Law 1994 . 3. The facts were that, at the time of the offences, the applicant was 17. He began a relationship with the girl in question. They had sexual intercourse on three occasions, the first when she was fourteen and the other two when she was fifteen. It is clear that she thought the relationship to be more profound than he did and he broke it off in a somewhat insensitive manner. This was followed by a complaint to the police and the consequent investigation identified that he had downloaded 21 indecent images of children on his computer. 4. The applicant was sentenced by the Magistrate's Court before the Law came into force. However, on 24 th October, 2011, following an application by the Attorney General, the Court, for the reasons set out in its judgment (AG v H

[2011] JRC 206), made a retrospective order subjecting the applicant to the notification requirement under Article 6 of the Law. Exceptionally, given the particular circumstances of the case, the Attorney General recommended and the Court agreed that the period before the applicant could apply to be discharged from the notification requirement would be 2½ years rather than the usual minimum of 5 years. The Court explained the reasons for this at paragraphs 9 and 10 of its judgment as follows:- "9 The Crown in this case has moved for a period of 2½ years. The defendant does not oppose the request although Advocate Hall has raised the possibility of giving credit for the time spent on probation. We are satisfied that there are exceptional reasons for ordering a period of less than 5 years, namely:- (i) The defendant was only 17 at the time of the offences. The unlawful sexual intercourse was carried out in the context of a relationship between the defendant and the victim, albeit that she thought the relationship was more profound than he did. In

relation to the offence under the 1994 Law, that was one offence and it was towards the lower end of the scale. (ii) He has carried out the Probation Order to the complete satisfaction of the Probation Department and, as already mentioned, is assessed by them as being highly motivated to avoid reconviction. He is clearly extremely remorseful. (iii) He has a secure and happy family background with very supportive parents, he has regular employment and has recently obtained promotion, and he is now in a relationship with a new girlfriend. These all militate against his re-offending. (iv) Although he is assessed as being at moderate risk of sexual re-offending, this is, as already stated, a consequence of the assessment tool used to consider the risk. Thus, somewhat counter-intuitively, the fact that he has not had an intimate co-habiting relationship for a period of at least 2 years is considered a risk factor. We suspect that most people of the defendant's age have not had such a co-habiting relationship. Given the contents of the probation report prepared for this application and the general background as we find it to be, coupled with our assessment of the offending itself, we think that in reality the defendant is unlikely to re-offend and we should be very disappointed if he does. In all the circumstances we agree that there are exceptional circumstances to justify a reduction from the 5 year period before the defendant can apply for the notification requirement to be lifted. However, we do not think it would be right to go below the 2½ year period suggested by the Crown and accordingly we declare that that is the relevant period in this case." 5. Article 5(5) and (6) provide as follows:- "(5) The court may, on application, make an order in respect of a person ..., at any time after the expiration of the period specified in respect of the person ... , being an order to the effect that the person should no longer be subject to those requirements.

- (6) The court must not make the order applied for under paragraph (5) unless it is satisfied that the risk of sexual harm to the public, or to any particular person or persons, that the person subject to the notification requirements of this Law poses by virtue of the likelihood of re-offending does not justify the person's being subject to those requirements." 6. Three years have passed since the notification requirement was imposed and the applicant now applies for it to be removed. The notification requirement means that he must notify the police of any names which he uses and of his address annually and must also notify them of any change of address. He must also allow the taking of fingerprints and non-intimate samples if requested by the police and he must give details of travel outside Jersey. 7. The applicant is now 22. He continues to live with his parents and has a very supportive family. At the time the order was imposed, he had begun a relationship with a new girlfriend as described in the judgment. That relationship lasted for some 18 months but then ended. He began a new relationship some 7-8 months ago. He and his girlfriend intend to go travelling for up to five months beginning this November and have booked transport and accommodation for the trip to Asia and Australia. 8. As to employment, he was employed as a chef and had intended to pursue that as a career. However, a few months ago he began working for his girlfriend's father's business, which is a seasonal business. His earnings were greater and this was apparently intended to help him save for the trip which he and his girlfriend wished to

undertake. Outside work and family interests, he has healthy activities as described in the reports and those considered to be significant social influence in his life appear all to be a good influence and are supportive of him despite his offending. He is described as having been fully compliant with his probation supervision and during that time he completed one to one work on his offending behaviour, specifically looking at issues of consent, healthy relationships and the harm caused through internet sexual offending. He maintained contact on a voluntary basis with his probation officer after the end of the order until April 2012 when this ended by mutual agreement. He renewed contact with his probation officer for a short time between December 2012 and April 2013 in relation to matters which we have been told about and in our judgment it is to his credit that he sought such assistance at a difficult time. At the end of the period he said that he no longer felt the need for support and that was his last contact with the Probation Service until the preparation of this report. He has not reoffended since the original offences which were in 2009/10. 9. On the basis of the information described above, we would have had no hesitation in discharging the notification requirement. However, what has given us cause to pause and consider the matter very carefully is the fact that the applicant is assessed as being at moderate risk of sexual re-offending. With the assistance of evidence from the probation officer and a police officer from the Offender Management Unit (OMU), we have considered the reason for this. 10. The particular test upon which everyone concentrated is the Stable 2007 assessment tool. Under this tool, a score of 0-3 leads to a low risk of re-offending, 4-11 to a moderate risk of re-offending and 12 and over to a high risk of re-offending. Within each heading which goes to make up the overall score, a score of 0 means that there is no evidence of concern under that heading, a score of 1 means that there is some (but not very strong) evidence of concern and a score of 2 is where there is definite evidence that the risk factor in question is present. The applicant scored a total of 7 which is why he was assessed as being at moderate risk of re-offending. 11. With the help of the probation officer and the police officer, we went through the report of the assessment. Under the heading " Capacity for relationship stability" , the applicant scored 2 i.e. the worst score. This was because, under the test, a person who has not had a two year relationship with a female which has involved co-habitation scores 2. If the relationship has lasted for 2 years but has not resulted in co-habitation, it scores 1. As the applicant, although having had a relationship for 18 months, does not fulfil either of these criteria, he has scored 2. We have to say that in our judgment, whilst we fully understand the relevance of such a factor based on statistical evidence, it has to be considered very carefully in the case of a young person. As we indicated in our last judgment, we imagine that the vast majority of young men of the applicant's age have not co-habited with a girlfriend for two years. He has in fact shown a capacity for relationship stability in that his previous relationship lasted some 18 months and the present one has lasted some 7-8 months and he and his girlfriend intend to go off travelling together for the next five months. 12. The applicant was also scored poorly on the basis that he was impulsive because he had left his stable employment as a chef for the better paid but non-permanent unskilled job which he fulfils at present. It was also noted that he had not initially told his new employer of his offending history. However, this factor also appears to

have been a factor under the heading 'Poor problem solving skills' with the risk of double counting. It seems to us that the facts in this respect are fairly unusual. The applicant had told previous employers of his conviction when starting employment but the complication in this case was that his future employer was his girlfriend's father. He had discussed it with his girlfriend and they had agreed between them that it would be better not to tell the father at that stage. 13. Given the weighting attached to his offending (including in particular the internet offence), it seemed to us that, on this scoring, the applicant will almost certainly continue to be assessed as being at moderate risk of sexual re-offending unless or until he has a two year co-habiting relationship. Thus, even if he has regular employment and continues not to re-offend for a lengthy period, the assessment would remain at moderate, with the consequent argument that the notification requirement should not be removed even though the Court had originally fixed 2½ years as being a reasonable period to assess the position. 14. We have to apply the test set out in Article 5(6) by reference to the particular person before us. In its judgment of 24 th October, 2011, the Court said that, despite his also being assessed at moderate risk of sexual re-offending at that time, the Court considered that in reality the defendant was unlikely to offend. That has indeed proved to be the position in the three years since then and the Court remains of that view. 15. We wish to emphasise that in the ordinary case, an assessment of moderate risk of sexual re-offending is likely to mean that the notification requirement will not be removed. However, on the unusual facts of this case, given the nature of the original offending, the applicant's age at the time, his exemplary conduct since then, his lack of re-offending and the particular elements which have gone to make up the assessment of risk in this case, we consider that it would be disproportionate to keep the notification requirement in place. Applying the test in Article 5(6), the risk of sexual harm which the applicant poses by virtue of the likelihood of his reoffending does not justify his being subject to the notification requirements. We therefore discharged the requirement. Authorities Sex Offenders (Jersey) Law 2010. Protection of Children (Jersey) Law 1994. AG v H

[2011] JRC 206 . Page Last Updated: 18 Jan 2017 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/2014/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/h-v-ag-2014-jrc-226-18-november-2014>

Prepared on 26 October 2026 · Esheria