

JERSEY / JUDGMENT

Hatton-Edge -v- AG [2010]

JRC 186B (14 October 2010)

[2010] JRC 186B

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JUDGMENT

THE commissioner: 1. This is an appeal by Alexander Hatton-Edge against a sentence of 2 months' imprisonment for an offence of driving with excess alcohol in the body, imposed by Falle, Magistrate, on 7 th September, 2010. The appellant had originally been sentenced for this offence on 15 th July, 2010, by a Relief Magistrate, to perform 70 hours' Community Service, but he had failed to comply with that order and had been re-presented before the Magistrate's Court for sentence on 7 th September, 2010. This was his third offence for driving with excess alcohol in the body although one of those convictions was in England. 2. When the appellant appeared before the Magistrate on the 7 th of September, he was represented by counsel. The Magistrate was told that the appellant had crashed a Land Rover vehicle into a granite wall on Le Mont des Routeurs in St Peter on 15 th June. The appellant had left the scene but had later telephoned the police to say where he was. When the police arrived he was unsteady on his feet and his speech was slurred. He was taken to Police Headquarters where a reading of 69 micrograms in 100 millilitres of breath was recorded; this is nearly twice the legal limit. On sentencing by the Relief Magistrate on the 15 th July he was warned that if he did not do the community service he would be brought back to Court and sentenced to imprisonment. 3. It emerged before the Magistrate on the 7 th September that after sentence on the 15 th July the appellant had seen a probation officer and asked if he would be able to go to France during the summer. He had been told that if it was a pre-booked holiday that was ordinarily acceptable but that he would need the written consent of the Chief Probation Officer to leave the island. The appellant was given a first appointment on the 23 rd of July but he failed to attend. A letter giving a further appointment on the 26 th of July was sent to him but on the 24 th of July he had left the Island for France. The appellant admits that that letter was forwarded to him in France but a further letter sent by recorded delivery to the appellant summoning him back to Court on the 10 th of August was not received by him. On the 10 th of August his arrest was ordered by the Magistrate's Court and the appellant was arrested a few days after his return to Jersey at the beginning of September. 4. The Magistrate heard submissions from counsel and an explanation from the appellant. It was admitted that he had missed the appointment on the 23 rd July; it was suggested that he had realised that he was in serious trouble and had put his head in the sand. He had left for France the following day. Counsel had urged the Magistrate to give the appellant another chance on the basis that he would

remain in Jersey until Christmas and that he would make a real effort to keep his appointments. The appellant told the Magistrate that he did not report to the probation officer on his return to Jersey because he expected to be summoned through the Viscount's department to appear in court. 5. The Magistrate had available to him the background report from the Probation Service which had been available to the relief Magistrate on the 15 th July. It was a very full report setting out the appellant's background clearly. Having heard submissions the Magistrate retired to reflect upon sentence. On his return the appellant was sentenced to 2 months' imprisonment after the Magistrate had explained why a custodial sentence was to be imposed. We wish to record that the Magistrate's approach cannot be faulted and that the sentence was well within the reasonable range of sentences available to him. 6. Counsel for the appellant in this Court has submitted, however, that there was material information about the appellant's background which was not available to the Magistrate and which might have affected his decision to impose a custodial sentence. That information is contained in a letter from Mr James Hollywood, Consultant Psychologist, dated the 13 th October, 2010. Mr Hollywood writes that he has known the appellant for two years following a referral for problems associated with poor personal organisation and a disabling inability to make any plans for activity beyond an extremely short time span. Mr Hollywood considers that the description of the appellant's problems going back to childhood, are strongly suggestive of Attention Deficit Disorder (ADD). This is usually confined to childhood but a percentage of children carry the problem through to adulthood. Mr Hollywood concluded his letter by stating "The cumulative effects of these shortcomings leave Alexander at age 28 years, in a limbo-land of uncertainty and confusion and those around him are disappointed, perplexed and irritated. He has been seen and assessed over the years by a number of medical specialists but no recognisable medical or psychiatric diagnosis has ever been made except for that of ADD, with results nothing short of catastrophic personal disorganisation. Given these patterns of well-established behaviour Alexander's failure to adhere to an appointment schedule associated with a Community Service Order is unsurprising but understandably intolerable to the authorities who imposed the order". This information clearly amounts to fresh evidence which was probably available at the time of sentencing in the sense that it could have been procured from the Consultant Psychologist but was not brought forward by the appellant. 7. Given the nature of the evidence we think it is right to admit the letter from Mr Hollywood *de bene esse*. It is material evidence and it is possible that the Magistrate might have arrived at a different decision had it been placed before him when he was considering sentence. It is not by any means inevitable, but it is possible. We have considered therefore whether we should exercise our statutory power to send the matter back to the Magistrate for reconsideration but we have been urged by counsel for the appellant and by counsel for the Attorney General not to do so. We agree that in all the circumstances it is preferable to dispose of the matter today. 8. We therefore will look at the matter afresh and ask ourselves whether, notwithstanding the additional evidence now available, we would in the Magistrate's position have imposed a sentence of 2 months' imprisonment. 9. Counsel for the appellant has given us a passionate address about the difficulties faced by people suffering from ADD, even if, to a certain extent, they are themselves unaware of those difficulties. We think that there is some force in those arguments and we are prepared to take the view that the failure to appear for the probation appointment on the 23 rd

July was forgivable given the condition from which the appellant suffers. What is not forgivable, however, was the decision, having realised that he had missed the appointment with the Probation Office on the 23 rd July, to go to France in any event. The appellant knew that he required the written consent of the Chief Probation Officer to leave the Island; that had been explained to him in court by the probation officer and furthermore, he had signed a form where that condition of a Community Service Order was clearly set out. The appellant had been given a copy of that condition yet, notwithstanding that position, he had taken upon himself to travel to France without bothering to seek the permission of the Chief Probation Officer. That decision was, in our judgement, an unacceptable and wilful refusal to acknowledge the authority of the Magistrate's Court. 10. We look at the matter in the round. This was a very serious offence; the appellant could have killed or injured an innocent pedestrian or motorist by driving his vehicle in the state of intoxication in which he was on the evening in question. He was fortunate to have been given the opportunity to perform community service. He failed to take that opportunity and he must now pay the price of that failure. 11. The appeal is accordingly dismissed. Authorities Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949. Dubois-v-AG

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Prepared on 28 October 2026 · Esheria