JERSEY / JUDGMENT

AG -v- P [2012] JRC 041 (23 February 2012)

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JUDGMENT

THE commissioner: 1. Article 5(1) of the Sex Offenders (Jersey) Law 2010 requires us, before sentencing, to specify a period that must expire before an application under sub paragraph (5) may be made. We specify the period of 10 years and will come to the reasons later. 2. Turning now to the sentencing of the defendant, who is aged 55, he has been found guilty following one Assize of indecent assault, incest and attempted indecent assault on or with his daughter, who was aged 13-14 for the first two offences and 16 for the last. In a second Assize he was found guilty of one count of indecent assault upon the complainant who was aged 12. All of the offences involved gross breaches of trust committed in homes where the complainants, who came from troubled backgrounds, should have been safe and secure. 3. It is clear from the information that is available that the defendant's daughter had an extremely difficult upbringing. She looked to her father to provide a proper family and she told the jury what she wanted was a normal father and daughter relationship. Instead her father acted as a sexual predator introducing her to oral sex and, after giving her alcohol and cannabis, he then engaged in full sexual intercourse with her. Once again, in the words of the daughter, rather than being a father to her he was simply treating her as though they were a couple. The defendant was aged 31 at the times when Counts 1 and 3 were committed. 4. It is equally clear from the evidence that the defendant has a particular interest in teenage females as can be seen not only from the age of the two complainants in this case but also from the ages of the women with whom he was in relationships from the time those relationships commenced. 5. The complainant in the Second Indictment was also from a very unsettled family upbringing and was vulnerable. At a time when she should have felt safe and secure being in her mother's bed, she was subject to the predatory sexual habits of the defendant who indecently assaulted her. The indecent assault was committed by the defendant when he would have been aged 41. 6. There can be no question that these offences have had a severe and long-term impact upon both complainants. This is abundantly clear from the victim impact statements which have been provided to the Court. 7. In the view of the Crown the defendant has no mitigation. He did not plead guilty; the offences were committed when he was a mature adult, between 31 and 41; he has an appalling record including offences of dishonesty and violence, although none for sexual offences; he has expressed no remorse or regret and he has decided not to cooperate with the probation department and therefore, we do not have the benefit of a social enquiry report. The Defence did not demur from this. 8. In terms of incest there have been only two previous cases before the Royal Court, both involving guilty pleas where sentences of 5 years

were imposed. English cases are, in our view, of limited assistance as there incest is a statutory offence. Under the Sexual Offences Act 1956 the age of 13, which in most cases will mean that the complainant has achieved puberty, is the demarcation line chosen so that incest by a man with a girl under 13 has a maximum penalty of life imprisonment, and over 13 a maximum sentence of 7 years' imprisonment. 9. Here in Jersey the sentence is at large and the Court has more flexibility (which we think it is very important for the Court to retain) to take into account the often very different circumstances ranging from one end of the scale where the daughter may be in her late teens or older and is a willing participant or even the instigator, to the other end of the scale where the girl is, from the very relationship, in a particularly vulnerable position, which the father exploits for his own sexual gratification due to her dependence and inexperience and possibly fear of disrupting relations between the father and mother, or fear of the father if she refuses to comply with his demands. The gravity of the offence therefore varies greatly according, primarily, to the age of the girl and the degree of coercion or corruption. 10. Although the sentencing guidelines set down in the case of Attorney General's Reference (No 1 of 1989) under Criminal Justice Act 1988 Section 36

(1989) 11 Cr. App. R. (S) 409, are of no assistance to this Court because of their being based upon a statutory regime, we think the other aggravating and mitigating factors set out in that case may be of assistance to the Court:- "Other aggravating factors, whatever the age of the girl may be, are (inter alia) as follows:

(1) If there is evidence that the girl has suffered physically or psychologically from the incest.

(2) If the incest has continued at frequent intervals over a long period of time.

3) If the girl has been threatened or treated violently by or was terrified of the father.

(4) If the incest has been accompanied by perversions abhorrent to the girl, e.g. buggery or fellatio.

(5) If the girl has become pregnant by reason of the father failing to take contraceptive measures.

(6) If the defendant has committed similar offences against more than one girl. Possible mitigating features are (inter alia) the following:

(1) A plea of guilty. It is seldom that such a plea is not entered, and it should be met by an appropriate discount, depending on the usual consideration, that is to say how promptly the defendant confessed and his degree of contrition and so on.

(2) If it seems that there was a genuine affection on the part of the defendant rather than the intention to use the girl simply as an outlet for his sexual inclinations.

(3) Where the girl has had previous sexual experience.

(4) Where the girl had made deliberate attempts at seduction.

(5) Where, as very occasionally is the case, a shorter term of imprisonment for the father may be of benefit to the victim and the family." 11. None of the mitigating factors set out in that case are present here and in terms of the aggravating factors, the two victims have suffered psychologically. In our view their statements make disturbing reading. In one case oral sex was involved, albeit on an earlier occasion, which the victim clearly found frightening and disturbing, and the defendant has committed sexual offences against more then one girl, albeit not offences of incest. 12. The Crown seek a sentence of 8 years for the incest and 2 years for the indecent assault committed when his daughter was 16, which it regards as a separate incident to be treated consecutively, giving a total of 10 years for the First Indictment. The Crown then seeks a sentence of 3 years for the indecent assault under the Second Indictment to be consecutive which would give a total of 13 years' imprisonment. 13. Mr Baker limited his submissions to the length of the sentences arguing that 13 years in the totality is too high. He referred us to a number of cases and to the commentary of Cyril Whelan but the facts of these cases differ enormously in circumstances where the full details are never properly explained or set out either in the reports or the commentaries. There are no guidelines applicable in this jurisdiction and it would be very difficult to have any bearing in mind the very different circumstances in which these offences take place. 14. We wish to say from the outset that we regard the offence of incest committed on such a vulnerable girl who came from a troubled background and who looked to the defendant as her father for love and protection only to have that grossly abused with the long term psychological effects we can see from her statement as abhorrent. On behalf of society we must make it clear that such conduct will be met with condign punishment. We express the same sentiments in relation to the other offences committed against both complainants. We therefore accept the conclusions of the Crown on the two indictments. 15. However, notwithstanding the appalling nature of these crimes, we have to stand back and look at the totality of the sentences sought by the Crown and, after careful reflection, we do agree with Mr Baker that 13 years is too high, bearing in mind that we are not dealing here with a prolonged course of conduct. In our view 10 years is the appropriate sentence to meet the criminality of the defendant and we are going to achieve that by making the sentence on Count 4 of the First Indictment concurrent and reducing the sentence on Count 7 of the Second Indictment to 2 years. 16. We wish to make it clear that this does not in any way diminish the seriousness of the offence in relation to the second complainant, accepting, as we must, that the defendant stands to be sentenced for the one incident alone. This was an offence committed against a vulnerable girl whose mother was unwell in the very heart of what should have been the safest place for her, namely in her mother's bed. The prolonged impact upon her is clear from the statement. In our view this offence must be met with a consecutive sentence. 17. Finally, before passing sentence, we would wish to formally recognise the courage of the two complainants in coming forward and giving their evidence before a jury. 18. On Count 1 of the First Indictment you are sentenced to 3 years' imprisonment, on Count 3; 8 years' imprisonment, concurrent and Count 4; 2 years' imprisonment, concurrent. On the Second Indictment you are sentenced to 2 years' imprisonment, consecutive to the other counts, which makes a total of 10 years. 19. Turning

to the Sex Offenders Law we agree with the Crown that there are no reasons justifying a shorter period than 5 years set out in Article 5(4) in relation to the notification requirements. The defendant has been assessed at a medium risk of sexual recidivism and scored high in terms of combined sexual and violent recidivism. We take into account his not guilty pleas and lack of any cooperation with the probation department and agree with the Crown that 10 years is the appropriate period. 20. Turning to the restraining orders sought we again agree with the Crown that the defendant poses a threat of serious sexual harm and that a restraining order is appropriate in the following terms:- (i) That for a period of 5 years from the date of the defendant's release from custody he be prohibited from being alone with any female person under the age of 16 years. The person will be considered to be alone if there is not a parent, guardian or adult over the age of 21 present. (ii) That if the defendant finds himself alone with a female person under the age of 16 during the same period of time, then he has a positive duty to remove himself from that situation as soon as reasonably possible. Authorities Sex Offenders (Jersey) Law 2010. Sexual Offences Act 1956. Attorney General's Reference (No 1 of 1989) under Criminal Justice Act 1988 Section 36 (1989) 11 Cr. App. R. (S) 409. Whelan on Aspects of Sentencing in the Superior Court of Jersey. Archbold 2012 Edition. R-v-Corless (1989) 11 Cr. App. R. (S) 47. AG-v-C

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