

JERSEY / JUDGMENT

K v AG [2022] JRC 189 (13 September 2022)

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JUDGMENT

THE DEPUTY BAILIFF: 1. On 5 September 2022, we made an order granting the Applicant's application under Article 5(5) of the Sex Offenders (Jersey) Law 2010 ("the Law") that he no longer be subject to the notification requirements of the Law. The Application was not opposed by the Attorney General and pursuant to Article 5(6) the statutory test is: "(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." 2. Accordingly, we were satisfied that the risk of sexual harm posed by the Applicant no longer justified him being subject to the notification requirements. 3. The offences committed by K in this case were offences involving the downloading of indecent photographs / images of children contrary to the Protection of Children (Jersey) Law 1994 . He pleaded guilty. The images were held on computers seized from the Applicant's home. The Applicant had, when first convicted, previous criminal convictions, but not for similar offences. He became eligible to apply to have the notification requirements lifted in 2021 and issued this Representation in July 2022. 4. We agreed in the circumstances of this case that it was appropriate to hear this case in private and made an order to this effect at the convening hearing on the footing that the judgment giving our reasons would be published in due course albeit anonymised so that the Applicant, who has been punished and complied with the various orders made against him, may get on with his life. 5. We were substantially assisted by a detailed report from the States of Jersey Police Offender Management Unit and a report from the Jersey Probation Service. Both reports concluded, inter alia , that the Applicant is living a stable life; is employed; has the support of his family; is aware of the impact of his offending; has moved on with his life; has cooperated with conditions of the Notification Order; and both reports concluded that there were no grounds to object to the Application made. Nonetheless, the Court was keen to understand the assessment tools which have been used in the case to identify the extent to which the Applicant may represent a risk to the public, bearing in mind the statutory test and the risk of re-offending in this case. 6. One of the tools, the Stable and Acute Risk Assessment is considered in some detail and analysed at paragraph 9 to 11 inclusive in the judgment in C v AG [2020]

- (1) JLR 236 to which we have had regard to but do not repeat. 7. In this case, the Applicant's continuing risk, if any, was assessed by reference to two particular tools. 8. We had a number of questions in relation to these tools and the author of the report from the Offender Management Unit, Detective Constable Le Chevalier, gave evidence before us. The first risk assessment was the Child Pornography Offender Risk Tool ("CPORT") which is used to assess and evaluate the likelihood of an adult male being charged with further contact, non-contact sexual or indecent image offences. 9. The seven factors considered by the CPORT Assessment are static in the sense that they do not change over time. In relation to four of those static factors, the Applicant has (and always will) score highly. These are as follows: (i) His age at the date the offence was committed. The Applicant was under thirty-five years of age when he committed the offence. This permanently puts him at higher risk of offending (using this tool) notwithstanding his age now. Presumably this risk indicator is a consequence of research to the effect that those under thirty-five are more likely to re-offend, although we anticipate that over time (it is now several years since the Applicant offended), the risk of re-offending ought to diminish. (ii) The Applicant's prior criminal history even though those were dissimilar offences. (iii) The fact that he once breached a probation order; and (iv) That the offending indicated an interest in paedophilia. 10. These considerations mean that the Applicant is in the high risk bracket for four of the seven fields that are scored resulting in a 'relatively high' assessment of risk of further offending. However, we were told that the authors of this tool accept that it is in the early stage of development; that owing to technology the nature of this sort of offending is changing all the time and there is no one tool to assess the risk that this category of offender may present in future. Indeed, we were told and we accept that the Stable and Acute Risk Assessment Tool referred to above is a more comprehensive and reliable test, certainly in this case. The two assessments, Stable and Acute, are based on detailed interviews and observations of the offender from time to time. The Stable Assessment is conducted annually and the Acute Assessment takes into account dynamic factors that can alter quickly. 11. As noted in *C v AG*, the Stable Risk Assessment encompasses thirteen criteria categorised into five areas of concern and the assessment yields overall scores which are considered to be indicative of low risk if the score is between 0 and 3, moderate if the score is between 4 and 11, and high if the score is between 12 and 26. 12. Each area of potential risk is scored 0, 1 or 2. In this case the Applicant scored in two fields. First, in respect of his intimacy deficit owing to the fact that he is not in a relationship and never has been in a meaningful one he scored the maximum of 2. Secondly, in respect of his deviant sexual preferences, he scored 1 by virtue of his offending. In other fields including social influences, general self-regulation, cooperation with supervision and sexual self-regulation, he did not score yielding an overall score of 3 and a low risk of re-offending. 13. As to the Acute Risk Assessment, the Applicant was tested across a number of fields. This test is quicker to administer and deals with, as we have said, matters which change from time to time. As to the overall scoring, 0 equates to a low risk, 1 to 2 equates to moderate risk and 3 to 14 to a high risk. The Applicant has in recent years been assessed frequently - seven times since 2017 - and has usually scored 1 indicating a moderate risk and at the most recent assessment in 2021 he scored 0 indicating

a low risk owing to a notable reduction in sexual preoccupation. 14. In the circumstances and having regard to the evidence before us, we were satisfied that the Applicant met the statutory tests and we discharged the notification requirements to which he has hitherto been subject. Authorities Sex Offenders (Jersey) Law 2010. Protection of Children (Jersey) Law 1994. C v AG

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