

JERSEY / JUDGMENT

K v AG 26-Sep-2019 [2019]

JRC 193 (26 September 2019)

[2019] JRC 193

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

JUDGMENT

THE COMMISSIONER: 1. On 23 rd August, 2019, the Court ordered that K ("the Applicant") no longer be subject to the Notification Requirements of the Sex Offenders (Jersey) Law 2010 ("the Sex Offenders Law") despite the fact that he was assessed as being at a moderate risk of sexual recidivism. 2. The Applicant was made subject to the notification requirements in January 2013, following his conviction for indecent assaults against three female children, aged between 7 and 14 years, which involved indecent touching of the victims under the clothing in the main on their chests. The offences were committed in the Applicant's home, in breach of trust, and without wishing to detract from the seriousness of these acts and their impact upon the victims, the sentencing Court noted that these offences were at the lower end of the scale and did not involve some of the more overtly sexual and damaging behaviour that can be involved in cases of indecency. 3. The Applicant was aged between 66 and 71 at the time of the offending, 78 at the time of his conviction, and is now 83. 4. The sentencing Court ordered that five years should expire before the Applicant could apply to have the notification requirements lifted. No restraining orders were imposed. The Applicant was released from prison in April 2014, and has therefore been subject to the notification requirements in the community for over five years. 5. The Applicant has his own accommodation and is financially independent. He has been in a stable relationship with his wife (no relation of the victims) since 2004. They have co-habited for about 10 years, and were married in 2012. His wife has two daughters, the younger of whom was 5 when the Applicant effectively became their step-father. All three attended the hearing, and were very supportive of the Applicant. 6. The De-Notification report from the Jersey Probation and After Care Service confirmed that the Applicant had been compliant with the notification requirements since his release from prison, and has not been convicted of any further offences. However, he has consistently protested his innocence of these offences, alleging a conspiracy between the victims and their mothers. He described the victims as liars and good actors, who had rehearsed their testimony. His position in this respect is deeply entrenched and is the reason for his being assessed under the SA07 Stable Assessment at being within the moderate risk band. 7. Under the SA07 Stable Assessment a score between 0 - 3 = low, 4 - 11 = moderate and 12+ = high. The Applicant scored 5 (down from 6 the previous year), which is at the lower end of the moderate band. 8. Looking at the assessment in more detail, under the heading "Deviant sexual

preference", the Applicant scored 2 as the offences involved three pre-pubescent victims. This score will never change. Taking the remaining headings where he did score:- (i) Under " Significant social influences " he scored 1. His friends and family (who he is in contact with), many of whom wrote in support of the application, believe in his innocence, and are deemed, therefore, to be collusive, in the sense that they will not challenge his behaviour relating to his victims. (ii) Under " Lack of concern for others " he scored 1. Because of his entrenched view of his innocence and of the victims being motivated by jealousy and monetary compensation, he showed no empathy for them and their families. We did detect a slight softening in his approach to the victims at the hearing. He accepted that what he did may have been wrong, but said that it was unintentional with no malicious intention on his part. (iii) Under the heading "Negative emotionality", he scored 1. The Applicant still ruminates over his conviction and the conspiracy theories and becomes verbally hostile towards the victims and their mothers when discussing his offending. 9. Thus he scored a total of 5, which is at the lower end of the moderate risk band. The De-Notification report makes the point that this score will not reduce whilst the Applicant continues to hold these views. The notification requirements 10. The notification requirements are set out in Article 6 of the Sex Offenders Law and require the person who becomes subject to them to notify an authorised officer of each name he or she uses and his or her home address. The notification must be renewed annually, and the person must also notify the authorised officer if he or she uses a name that has not been notified to an authorised officer pursuant to that Article. There is a requirement to notify any change in the person's home address, which must take place the latest within 24 hours of the change. It is an offence, punishable with 5 years' imprisonment and/or a fine, for a person to fail, without reasonable excuse, to comply properly with these requirements. 11. The notification requirements may, if an authorised officer requests, extend to an obligation to allow the officer to take finger prints and a photograph of the person subject to the requirements, together with a non-intimate sample. Once again, a person who fails properly to comply with these obligations is guilty of an offence, and liable to imprisonment for a term of 5 years and/or to a fine. 12. Under the Sex Offenders (Travel Notification Requirements) (Jersey) Order 2011 , a person that is subject to the notification requirements must give 7 days' notice to an authorised officer of his or her departure from Jersey (save in the case of emergency) identifying the carrier to be used to leave Jersey, the accommodation that the person will use for the first night outside Jersey and if travel is to more than one country outside Jersey, the point of arrival in each additional country, the identity of any carrier that the person will use to arrive at each such point and, if the person's second night outside Jersey will be spent in such an additional country, the accommodation the person will use for that night, and if the person will return to Jersey, the date of the journey returning to Jersey, the point of arrival and the identity of the carrier used for that journey (Article 3). If all of that information is not available seven days prior to departure, then it can be provided separately 24 hours before departure (Article 4) and there is a further requirement for any return to be notified the day after that return (Article 5). Any breach of the requirements of this Order is an offence punishable with imprisonment for a term of 5 years and/or to a fine. The law 13. The application is brought under Article 5(5) of the Sex Offenders Law and the test to be applied is set out in Article 5(6):- " (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." 14. The purpose of the notification requirements is not to impose a further penalty on the offender (the applicant in this case having served the sentence imposed upon him), but to protect potential victims of sexual abuse by ensuring that the police are aware of the whereabouts of all serious sex offenders, knowledge which will be of obvious assistance in the detection of offenders, and the prevention of crime. The scheme amounts to a legitimate interference with the private life of those subject to it, within the scope of Article 8(1) of the European Convention on Human Rights, but as the Court said at paragraph 12 of AG v Roberts

[2011] JLR 125 :- "... it nonetheless remains necessary for the court to satisfy itself that the orders which it makes are proportionate so that the extent of the interference with the Convention right is balanced appropriately against the important public interest which is the basis of the legislation." 15. As the Court concluded in Roberts at paragraph 23, the applicant has to satisfy the Court to the civil standard:- "...that the risk of his or her committing further sexual offending can be discounted to the extent that the imposition of the notification requirements is unjustified. The facts on which the offender would rely for such a contention will be too diverse for summary, but the seriousness of the original offence, the length of time since the offending and special circumstances, if any, which led to the offending and which no longer exist, might all potentially be relevant. The court would expect to have all background reports at the time the offending took place, and in most cases an update on those reports to highlight material changes in the interval." 16. It is relevant to note that if the Court had refused to lift the notification requirements, then under the provisions of Article 5(7) of the Sex Offenders Law, it would be required to make an order specifying a further period before another application may be applied for. Decision 17. The Crown opposed the application, because the Applicant is assessed at a medium risk of sexual recidivism and is an untreated sex offender. Crown Advocate Pedley referred the Court to the case of H v AG

[2014] JRC 226 , in which the applicant, then aged 22, had the notification requirements lifted, because the Court was able to discount two of the scores on his SA07 Stable Assessment, but the Court said this in conclusion at paragraph 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." 18. The Applicant in his statement to the Court considered the notification requirements as an additional ongoing penalty against him. In

terms of its impact, he explained the effect of the travel requirements on his family life and the practical issues it gave rise to, if, for example, he and his wife wished to make a short trip to France with friends. However, it is not a question of assessing the inconvenience to the Applicant. The notification requirements are an interference with his Article 8 Convention rights and their ongoing imposition has to be justified. 19. It was not open to the Court on this occasion to re-assess the scores in the Applicant's SA07 Stable Assessment and so the starting point was that the Applicant was assessed at a moderate risk of sexual recidivism and as the Court said in *H v AG*, in an ordinary case, that was likely to mean that the notification requirements would not be lifted. 20. There were a number of factors in this case that led the Court to conclude that the risk of sexual harm posed by the Applicant did not justify his being subject to the notification requirements:- (i) The offences were recognised by the sentencing Court as being at the lower end of the scale in terms of seriousness. (ii) The Applicant was assessed at the lower end of the moderate band. (iii) The Applicant had the support of his wife and step-daughters, and whilst that support could be described as collusive in the sense that they believed in his innocence, no issue had arisen as to his conduct with his step-daughters, to whom he had been a step-father from an early age. (iv) While Crown Advocate Pedley was correct to say that age is not a barrier to offending of this kind, it was still a factor to be taken into account, in particular, in the light of the Applicant's current state of health, which, according to the report from Dr Jackson included the following:- (a) Gout - hyperuricaemia. (b) Polymyalgia Rheumatica. (c) Short Term Memory Loss (mild). (d) Impaired Left Ventricular Heart function. (e) L. bundle Branch Block on ECG leading to cardiac dys-synchrony. (f) Hypertension on treatment. (v) There had been no further offending by the Applicant, and he had complied with the notification requirements for 5 over years whilst in the community. It was 6 years since their imposition. 21. In terms of the Applicant's current health, the short-term memory loss was unlikely to get better as he ages, and this increased the potential for inadvertent breaches of the notification requirements, in particular, the prescriptive travel requirements, as time went on. 22. The Court also took into account the fact that so long as the Applicant maintained his innocence, there would be no change in his moderate assessment. His belief in his innocence was so deeply entrenched it was most unlikely that this would ever change, with him remaining subject to the notification requirements for the rest of his life, an outcome the Court regarded as disproportionate. 23. For all these reasons, the Court concluded that the risk of sexual harm that the Applicant posed did not justify his being subject to the notification requirements and they were accordingly lifted. Hearing in private 24. The Applicant had applied for the Court to sit in private. The principles to be applied in such an application are to be found in the case of *Jersey Evening Post Limited v Al Thani and Four Others*

[2002] JLR 542, where it was held, quoting from the headnote:- "(2) The principle of open justice had not yet found statutory expression in Jersey but formed part of the law and an order for proceedings to be heard in camera was only to be granted when it was necessary to do

justice in the exceptional circumstances of the case, e.g. to protect specific individuals or prevent the destruction of the subject-matter in issue. Public proceedings ordinarily deterred inappropriate behaviour on the part of the court, maintained public confidence in the impartial administration of justice, made uninformed and inaccurate comment on the proceedings less likely, and could result in additional evidence becoming available. The burden lay with the party seeking an order for hearing in camera to prove that it was the only way in which justice could be done; convenience, potential embarrassment and parties' preference were in themselves insufficient justifications (paras. 122-17)." 25. Examples of exceptional circumstances which might justify sitting in private were mentioned in Roberts in relation to applications under Article 30(2) of the Sex Offenders Law, which could also apply to applications under Article 5(5):- "It is pointed out that there may have been a change in circumstances since the date of the conviction

- the offender may have married, and the existence of the previous conviction may be unknown to his or her spouse and/or children. It is possible that the consequences of the previous offending which might therefore be a disinhibiting factor to further offending. It is said that there may be circumstances where the publicity given to the application might be an extremely negative factor in the context of the work being done with the offender by the probation services. This is not necessarily an exclusive list of objections, but these examples are provided as illustrations of the kind of case where the courts might consider the interests of the offender outweighed the public interest that the court should sit in public, or that the court's judgment should be pronounced publicly and without anonymizing the offender." 26. The Applicant asked the Court to sit in private because, he said, " it would avoid opening the doors against similar abuse to my wife and her daughters, as has been going on over recent years and to myself." His wife, he said, did not wish him to go through all the abusive comments they had put up with since the conviction. 27. The Applicant was concerned about keeping the application private from the victims and their families but they had already been informed of the application (and would be informed of the outcome). There had been no reports to the police of any recent abuse or harassment of the Applicant and his family by the victims and their families, and in so far as the wider public were concerned, the judgment would be anonymised in any event, in order to protect the identity of the victims. 28. The Court concluded that there were no exceptional circumstances justifying the Court sitting in private. Authorities Sex Offenders (Jersey) Law 2010. Sex Offenders (Travel Notification Requirements) (Jersey) Order 2011. AG v Roberts

[2011] JLR 125 . H v AG

[2014] JRC 226 . Jersey Evening Post Limited v Al Thani and Four Others

[2002] JLR 542 . Page Last Updated: 04 Oct 2019 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/2019/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/k-v-ag-26-sep-2019-2019-jrc-193-26-september-2019>

Prepared on 22 October 2026 · Esheria