

JERSEY / JUDGMENT

Leigh v AG [2019] JRC 244A (18 December 2019)

[2019] JRC 244A

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

JUDGMENT

THE commissioner: 1. On the 5th December, 2019, the Court allowed an appeal on a limited basis against the sentence of the Inferior Number ("the Sentencing Court") passed on 1st July, 2019
AG v Leigh

[2019] JRC 138 . The appellant contended that the sentence had been imposed upon an error of fact. 2. The appellant was sentenced for the making of indecent photographs of children, contrary to Article 2(1)(a) of the Protection of Children (Jersey) Law 1994 ("the Law"). There were three counts, but in terms of the number of images (defined under Article 1(1) of the Law as including both moving and still images), the position as agreed by Crown Advocate Baglin for the Attorney General is as follows: Level Still Images Moving Images Totals 1. 3 2. 11 3. 7 4. 23 5. 1 Totals 45 3. It can be seen from this that there were 159 images in total, 72 images at Level 4 and 2 images at Level 5. The total images at Levels 4 and 5 is therefore 74. 4. The Sentencing Court said this in its judgment: "2. You have made in total, over three different pieces of equipment, 45 moving images, 23 at Level 4 on the Oliver scale, 1 at Level 5 and 159 still images, 74 at Level 4 on the Oliver Scale and 2 at Level 5 and this offending took place between July 2017 and July 2018." 5. It is agreed that this is incorrect. It should read: "2. You have made in total, over three different pieces of equipment, 45 moving images, 23 at Level 4 on the Oliver scale, 1 at Level 5 and 114 still images, 49 at Level 4 on the Oliver Scale and 1 at Level 5, and this offending took place between July 2017 and July 2018." (amended numbers highlighted) 6. The Sentencing Court went on to say this at paragraph 4: "4. This level of offending, because it includes images at Level 4 and Level 5, leads us therefore to take an initial figure of 3 years in accordance with Godson and Crowley and we have looked at the aggravating features in terms of number as the Crown has requested. There were 100 exactly images at Levels 4 and 5 combined, and it is of interest in that connection to look at paragraph 38 of the Court's decision in Godson and Crowley because in that the Court declines to adopt the High Court view in the United Kingdom that significant levels means high hundreds, and instead the Court said this:- 'We regard any number of images above 100 as constituting a large number. In doing so we are less concerned to pay heed to the facility with which the images can be downloaded and more concerned to reflect the obvious fact that the possession of any significant number

of such images involves the abuse either of a large number of children on a few occasions or of a small number of children on a large number of occasions. With these observations we leave the extent to which the number of images is considered to be an aggravating factor for each level to the judgment of the Magistrate's Court and the Royal Court." 7. The reference to 100 images at Levels 4 and 5 combined is incorrect; it should be 74. The Sentencing Court then went on to increase the initial figure of 3 years to 3½ years, to take into account this aggravating feature. The appellant was then sentenced to a total of 2 years' imprisonment, having taken into account the mitigation available to him. 8. Advocate Mière for the appellant accepted that the Sentencing Court was correct to take the initial figure of 3 years following the guidance in AG v Godson and Crowley

[2013] (2) JLR 1, but argued that, if the aggravating factor in terms of numbers is to be present, there must be 100 images or more at Levels 4 and above, then this aggravating factor would not be present in this case because the appellant had fewer than 100 images at those levels. In which case, the initial figure of 3 years would not have been increased to 3½ years. If, however, the making of 100 images or more at any level constitutes the aggravating factor in terms of numbers, then he accepted that the sentence imposed was not manifestly excessive. 9. In Godson and Crowley, the Court adopted the guidance given in the Guernsey Court of Appeal decision of Wicks v The Law Officers [2011-12] GLR 482, and cited this section of Wicks under the heading "Aggravating Factors", which we set out in full: "2. Where the number of images is large, indicating a high level of personal interest in such images and/or a significant period of time over which the images have been collected. We have carefully considered the apparent preference of the court in Gunter, following Oliver, to treat the amount of material as a reason for lifting the case from one sentencing category into another. We prefer to treat quantity as an aggravating factor within the sentencing categories which we have proposed. We also note that the court in Oliver declined to define what is meant by a 'large' number of images. However, the High Court of Justiciary in Graham ... (

[2010] HCJAC 50, at para. [32]) concluded that a large number could be defined as in the 'high hundreds' and upward (see para. 32). We accept that any figure is necessarily arbitrary and that a sentencing court might well take the view that a large number of images of Level 4 or 5 would constitute a more significant aggravating factor than a similar number of images of Level 1, or Levels 2 and 3. We recognize the ease with which such images can be downloaded from the Internet. Evidence from other cases demonstrates that paedophiles find the images addictive and tend to download images in substantial numbers. We accept, as the Lord Justice-Clerk reports in his judgment, that offenders can quickly amass a collection of many thousands of images (para.32). Nonetheless, we decline, with respect, to adopt the view of the High Court of Justiciary. We regard any number of images above three figures as constituting a large number. In doing so we are less concerned to pay heed to the facility with which the images can be downloaded and more concerned to reflect the obvious fact that the possession of any significant number of such images involves the abuse either of a large number of children on a few occasions or of a small number of

children on a large number of occasions. With these observations we leave the extent to which the number of images is considered to be an aggravating factor for each level to the judgment of the Magistrate's Court and the Royal Court." 10. It is clear to us that the Court in Wicks regarded any number of images at whatever level above 100 as constituting a large number and thus an aggravating factor. The extent to which the initial figure in each category would be increased to reflect this aggravating factor would be a matter for the Sentencing Court, and as the Guernsey Court of Appeal said, a large number of images at Levels 4 and 5 would be a more significant factor than a large number of images at Level 1, or Levels 2 and 3. 11. The Sentencing Court was in error to state that there were 100 images at Levels 4 and 5, whereas there were 74 images at those levels, but there were 159 images in total, and this is a large number that as per Wicks constitutes an aggravating factor. Of those 159 images, 74 were at Levels 4 and 5, and therefore, despite this error, the Sentencing Court was correct, in our view, to increase the initial figure of 3 years to 3½ years and correct to impose a final sentence of 2 years. 12. Accordingly, we gave leave to appeal, not to disturb the sentence imposed by the Sentencing Court, but: (i) to correct the mathematical miscalculations in the sentencing judgment, and (ii) to confirm that the correct interpretation of paragraph 38, sub-paragraph 2 of Wicks as cited in Godson and Crowley is that the aggravating factor in terms of numbers is the making of 100 or more images (both moving and still) at any level. Authorities AG v Leigh

[2019] JRC 138 . Protection of Children (Jersey) Law AG v Godson and Crowley

[2013] (2) JLR Wicks v The Law Officers [2011-12] GLR 482 Page Last Updated: 06 Jan 2020 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/leigh-v-ag-2019-jrc-244a-18-december-2019>

Prepared on 23 October 2026 · Esheria