

JERSEY / JUDGMENT

Louis v AG [2010] JRC 170 (23 September 2010)

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JUDGMENT

THE commissioner: 1. On 3 rd September 2010 the appellant appealed to the Royal Court against his sentence of two months' imprisonment imposed by the Relief Magistrate, Mr G Boxall, on 10 th August 2010 for an admitted breach of a Community Service Order. 2. Between 2 nd and 13 th February 2010 the appellant committed seven offences of larceny of alcohol from the Coop Grand Marché in St Peter. The total value of the alcohol amounted to £960. On 23 rd February 2010, he entered pleas of guilty to the charges in the Magistrate's Court and was sentenced on 23 rd March 2010 to a Community Service Order for 70 hours, a Probation Order of six months and a Compensation Order of £807. In making the Community Service Order, the Magistrate's Court had considered passing a sentence of imprisonment of two months. The appellant has a record of previous convictions although prior to February 2010, he had not offended for almost three years. However, he had breached Community Service Orders on three previous occasions. 3. The appellant had complied satisfactorily with the Probation Order (attending some 16 appointments) and had served 35 hours of the Community Service Order before missing sessions without providing a valid reason. He was brought back before the Magistrate's Court on 10 th August 2010 where the Jersey Probation and After Care Service recommended that unless he could show more commitment in the future, the Community Service Order should be revoked. 4. Mr Bell, for the appellant, admitted the breaches and urged the Relief Magistrate to give the appellant a further chance to complete the Community Service Orders, pointing out, *inter alia*, that he had completed half the order, namely 35 hours. 5. The Relief Magistrate was concerned at the appellant's record of breaches of previous Community Service Orders expressing the view that this had the effect of diluting, if not eliminating, any possible lenience on the part of the Court, and expressed his conclusions as follows:- "I understand that and you were told, you have been told and you've been told on many, many occasions, it's that what you do in that situation, and it's quite clear that your close contact with the Probation Service would have left you in no doubt, if you had been listening, what your obligations were. So I can't let that go, I simply can't, I have a duty to the public I'm afraid and to the system to make sure that these orders are complied with. I'm going to discharge that Community Service Order, I'm going to apply the substitute prison sentence of 2 months and I do so with great regret but I have no choice. I've looked at the record, there may be some offences in there which are not included but there are a lot that are. I've

looked more relevantly even at the pattern of response to Community Service Orders and the failure to do that on ... to comply with them on two previous occasions neutralises the mitigation in that area." 6. Mr Bell did not seek to suggest that it was wrong in principle for the Relief Magistrate to impose a sentence of imprisonment. The central ground of appeal was that in imposing a sentence of two months' imprisonment, being the full amount of the sentence of imprisonment that the Magistrate's Court had considered passing when the appellant was originally sentenced for these offences, the Relief Magistrate failed to take into account the extent to which the appellant had complied with the Community Service Order. 7. Under English law, it is a statutory requirement for the Crown and Magistrate's Courts to take into account the extent to which an offender has complied with the requirements of a Community Service Order (Criminal Justice Act 2003 , Schedule 8 paragraphs 9 and 10). As made clear by the English Court of Appeal in *R v Clarke*

(1997) 2 Cr. App. R. 163, the English statutory provisions gave recognition to a principle which had been previously laid down by the English courts in a number of authorities (see *R v Baines*

(1983) 5 Cr. App. R. 264 and *R v Whittingham* (1986) 8 Cr. App. R. 116.) 8. Article 7(4) of the Criminal Justice (Community Service Orders)(Jersey) Law 2001 provides that where an offender has failed to comply with his obligations under a Community Service Order, the Court may:- "(a) continue the order, with or without variation and with or without the imposition of a fine; or (b) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence by the court which made the order." 9. Thus, if the Community Service Order is revoked, the offender is not to be sentenced for the breaches that led to that order being revoked, but for the original offences and this in any manner in which the offender could have been dealt with by the Court which made the order. 10. Mr Yates submitted, and we agreed, that the Relief Magistrate, having revoked the Community Service Order, should have been guided, although he was not bound, by the sentence of imprisonment which the Magistrate's Court had considered passing for the original offences namely two months' imprisonment - what the Relief Magistrate described as the substitute prison sentence. The Relief Magistrate appears to have considered that he had no choice other than to impose the full amount of the substitute sentence, which taking into account the 35 hours Community Service already completed, would have had the effect of imposing upon the appellant a greater sentence than that considered by the Magistrate's Court, namely two months' imprisonment and 35 hours Community Service. 11. In our view, it is a principle of Jersey law that where an offender who is subject to a Community Service Order is sentenced for the offence in respect of which the order was made, after performing a substantial part of the requirement of that order, he should be given some credit for the hours performed in the calculation of the sentence imposed for the original offence. 12. In our view, the Relief Magistrate cannot be criticised for choosing to deal with the matter by revoking the Community Service Order and sentencing the appellant to imprisonment for the original offences. However in determining the length of that sentence, credit ought to

have been given to the appellant for the fact that he had completed one half of his Community Service Order satisfactorily. 13. Accordingly, we allowed the appeal and varied the sentence imposed by the Relief Magistrate to one month's imprisonment. 14. Finally, the Court was concerned as to the circumstances in which the appellant had been able to steal such a large quantity of alcohol from licensed premises over such a short period and will therefore request the Licensing Unit to investigate the security arrangements in place at those premises and whether the licence is being properly conducted. Authorities Criminal Justice Act 2003. R v Clarke (1997) 2 Cr. App. R. 163. R v Baines (1983) 5 Cr. App. R. 264. R v Whittingham (1986) 8 Cr. App. R. 116. Criminal Justice (Community Service Orders)(Jersey) Law 2001. Page Last Updated: 15 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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