

JERSEY / JUDGMENT

Mendonca -v- AG 21-Sept-2006

[2006] JRC 132 (21 September 2006)

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JUDGMENT

THE BAILIFF: 1. Jose Luis Da Silva Mendonça applies for leave to appeal against part of a sentence imposed by the Inferior Number of this Court on 28 th April, 2006, for various offences involving violent and disorderly behaviour. He was sentenced to a total of 22 months and 3 weeks' imprisonment, and a recommendation was made that he should be deported from the Island at the conclusion of his prison term. It is against that recommendation that he seeks leave to appeal. 2. The facts leading up to the sentence on 28 th April may be briefly stated. On 27 th August 2005 the applicant obstructed a police constable in the execution of his duty. He was arrested, but not at that stage charged. On 25 th September, he was involved in disorderly conduct in a public house. He was told to leave and to depart from the area. He did leave but subsequently returned and was then involved in obstructing a police officer. He was arrested and was involved in prolonged violent resistance of police officers involving minor injuries to several of them. He was taken to Police Headquarters and later charged and bailed for these offences. On 6 th December 2005, whilst on bail, he committed a further serious offence of grave and criminal assault. 3. Counsel for the applicant has challenged the recommendation for deportation in two respects. The Inferior Number applied the principles laid down in R -v- Nazari and Ors [1980] 3 All ER 880 which have frequently been applied by this Court. Counsel submitted that in both respects the test laid down in Nazari had not been satisfied. 4. First, she submitted that the continued presence of the applicant in the Island was not detrimental to the public interest. Secondly, she submitted that the family circumstances of the applicant were such that his deportation from Jersey would involve a breach of Article 8 of the European Convention on Human Rights . 5. Dealing first with the question of whether the first limb of the test was satisfied Counsel submitted that the applicant was not a recurrent offender. It is true that he has only one previous appearance before a court on his criminal record when he was convicted of two offences in July 2004. On the other hand there were three separate incidents for which he appeared before the Court on the 28 th April 2006, as we have just described. Counsel continued by submitting that the grave and criminal assault was not in all the circumstances such a serious offence. It was mitigated by the high level of provocation to which the applicant had been subjected. That may be so, and indeed may have been reflected in the sentence of imprisonment which was passed by the Court below. But the nature of the grave and criminal assault, that is to say, a hard kick to a

man's head whilst he was on the ground was extremely serious. The applicant is therefore a person who has during the last twelve months or so committed a number of criminal offences. 6. What is more important in our judgment is that the reports placed before the Inferior Number show that the applicant is at 'medium risk' of re-offending and that he is a person who is liable to react aggressively, both when under the influence of alcohol and indeed even when sober as a result of a lack of emotional control and a disregard for authority. 7. Taking into consideration all these factors we do not think that it can properly be said that the Inferior Number erred in any way in finding that the continued presence of the applicant in Jersey is detrimental the public good. 8. We turn then to the second question relating to the Convention rights of the applicant and his family. Counsel submitted that we should take into consideration not only the applicant's position but also the position of his brother and his girlfriend, to whom he would like to get married. The brother has been living in the Island for a number of years. We agreed, at the request of Counsel for the applicant to look at a second letter written by him which was not before the Inferior Number. This letter asserts that the applicant is part of the brother's family and helpful in looking after his young children. 9. We have also considered the position of the girlfriend. The precise nature of the relationship is open to some question, but she is in any event a Portuguese national, obviously able to speak Portuguese and could, if she wished, follow the applicant back to Portugal if the recommendation for deportation were to be upheld. The other members of the immediate family of the applicant, that is to say his mother, sister and another brother live in Madeira. 10. We have considered carefully all these arguments put forward by Counsel, but none of these considerations amounts, in our view, to an interference with family life which is contrary to Article 8 of the European Convention on Human Rights . 11. As this Court has said before on many occasions, it is a privilege to live in this Island. If a person who is a foreign national conducts himself in such a way that he abuses that privilege he is liable to be deported. We therefore, refuse the application for leave to appeal. Authorities R -v- Nazari and Ors [1980] 3All ER 880. European Convention on Human Rights. Page Last Updated: 26 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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