

JERSEY / JUDGMENT

Oeillet -v- AG [2013] JRC 083 (02 May 2013)

[2013] JRC 083

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

JUDGMENT

THE DEPUTY BAILIFF: 1. On 15 th February, 2013, the appellant was sentenced to 9 months' imprisonment on a single charge of having in his possession 40 counterfeit Jersey £10 notes contrary to Article 8 of the Currency Offences (Jersey) Law 1952 ("the Currency Law"). He had first been charged on 23 rd November, 2012, when his plea had been reserved, and he subsequently entered a guilty plea on 18 th January, 2013, upon the basis that he did indeed know that the counterfeit Jersey £10 notes had been forged. He appealed against his sentence, and the appeal was allowed in part on th April, 2013, when the sentence of 9 months' imprisonment was overturned and a sentence of 6 months' imprisonment substituted for it. Reasons were deferred, and this judgment contains those reasons. 2. A prosecution against one Paul Emmanuel Bisson was heard contemporaneously with the charge against the appellant. Mr Bisson originally reserved his pleas, but ultimately pleaded guilty to a charge of possession of one counterfeit Jersey £10 note, a separate charge of being in possession of four counterfeit Jersey £10 notes, and two charges of uttering the same notes at different retail outlets in November 2012. Mr Bisson was placed on Probation for 12 months and sentenced to 180 hours' Community Service on each count concurrent, the Acting Magistrate indicating that he would have imposed a custodial sentence of 12 months' imprisonment concurrent on each charge had the Community Service Order not been imposed. 3. There seems little doubt that the charges against the appellant and against Mr Bisson were rightly heard at the same time. The counterfeit £10 notes in question had the same serial number, and offences against the Currency Law do not come before the Courts frequently. It was clearly desirable that the sentencing court be aware of the two cases when sentence was passed. Nonetheless, the appellant and Mr Bisson were not co-accused, and were not charged with having acted in complicity in relation to the charges brought against them. 4. There were three main grounds of appeal advanced by Advocate Landick for the appellant. The first was that there was disparity in the sentences imposed upon the appellant and Mr Bisson such that the Royal Court should set aside the custodial sentence and instead impose a non-custodial sentence on the appellant. Mr Landick contended that this ground of appeal was advanced on the basis that the sentence was wrong in principle and also manifestly excessive. It seems to us that the argument did not really address the question of whether the sentence was manifestly excessive but should be construed as a submission that the sentence was wrong in principle, as a result of the disparity between the two sentences imposed. 5. The second argument is that the Acting Magistrate failed to give any, or sufficient, weight to the appellant's

asserted motive for not using the notes. We take those arguments separately. The third ground of appeal was that there was material which ought to have been before the Acting Magistrate which would, if it had been before him, have had an impact on the sentence which he imposed, such that the sentence can be treated in the Appeal Court as manifestly excessive. Disparity 6. Advocate Landick very properly accepted in his submissions before the Court that it is at the very least difficult, and often impossible, to criticise the fairness of a sentence by reference to another case which is before the Court, and the Court rightly refuses to entertain such criticisms. Nonetheless, he said that the two cases of the appellant and Mr Bisson were heard at the same time in order that the Acting Magistrate could act consistently in sentencing them, and he failed to do so. As a result there was a disparity which was contended to make the custodial sentence on the appellant both manifestly excessive and/or wrong in principle. 7. As Crown Advocate Hopwood pointed out, the Royal Court interferes in a sentence which has been imposed by the Magistrate's Court where it considers that the sentence was either wrong in principle or manifestly excessive. Leaving aside for the moment questions of disparity, it is right to review the limited number of cases in Jersey where the Court has sentenced for breaches of the Currency Law. We note first that the offence in question here is created by Article 8 of that Law which is in these terms:- "Every person who, without lawful authority or excuse (the proof whereof shall lie on the person accused), purchases or receives from any person, or has in his or her custody or possession, any forged paper money, knowing it to be forged, shall be liable to imprisonment for a term not exceeding 14 years." 8. The seriousness with which the legislature views an offence of mere possession is apparent from the maximum sentence of 14 years' imprisonment. 9. In the case of AG-v-Kearns 1998/38 the appellant was charged with one count of importation of forged paper money contrary to Article 11 of the Currency Law, and one count of possession of forged paper money contrary to Article 8. He pleaded guilty. He had purchased 50 counterfeit £20 notes for £150 at a car boot sale in Liverpool and imported them into the Island. He was a man of previous good character and it appears the Court accepted that he never intended to use the counterfeit currency but instead only intended to make a collage behind Perspex and hang that in the toilet, or make someone an unusual present. He was not charged with uttering and had pleaded guilty. In delivering the Court's judgment, Sir Philip Bailhache, Bailiff said this:- "You deserve to be sent to prison because possession of counterfeit money is a serious offence which has the capacity to undermine public confidence in the monetary system and to cause loss to innocent individuals. The Court has accepted, however, your explanation, unusual as it may be, as to what you intended to do with these notes and we accept therefore that you did not intend to pass them on. But what has tipped the balance, as far as we are concerned, is that you are a first offender and that for 39 years you appear to have lead an industrious life supporting your family and being a good family man. That good character has persuaded us by a whisker that we ought to impose a non-custodial sentence upon you." 10. The Court then imposed a fine of £2,500 on each count. 11. In the case of AG-v-Whiteman

[2004] JRC 146 , the defendant pleaded guilty to six counts of uttering forged paper money contrary to Article 7 of the Currency Law and one count of possession of forged paper money contrary to Article 8 of that Law. He was aged 62, had pleaded guilty, and was of

previous good character. His mitigation included exemplary references, an excellent work record, a sick wife requiring his permanent attendance, and the defendant had also given evidence against his friend who had produced the notes and in effect written his own indictment. In passing sentence, Sir Philip Bailhache, Bailiff said this:- "Generally speaking the use of counterfeit money should be punished with an immediate sentence of imprisonment. Using counterfeit notes, as the Crown Advocate has said, has the capacity to undermine public confidence in the monetary system. People who use such money should expect to go to prison unless there are very strong or exceptional mitigating circumstances." 12. The defendant in that case had purchased a number of photocopied £20 notes and proffered them at various shops around the Island. Taking account of the mitigation, the Court sentenced him to 12 months' imprisonment, suspended for a period of two years. 13. It is clear from these two cases that the sentencing policy of the Royal Court in relation to offences of possession and/or uttering forged paper currency contrary to the Currency Law is to impose a custodial sentence unless there are very strong or exceptional mitigating circumstances. This sentencing policy reflects the importance of preserving public confidence in the currency which circulates in the Island. One has only to pause momentarily to reflect what the consequences of a lack of confidence would be - retailers might become unwilling to accept cash in relation to sales of their goods, or might end up reflecting the risk of counterfeit cash in increased prices, or both. The effect on this community might be very adverse, and might be experienced very quickly. We think it is for these reasons that the legislature treats the offence as seriously as it does, and as is reflected by the maximum sentence of 14 years' imprisonment for mere possession of counterfeit notes knowing them to have been stolen. In both cases, a significant factor in the Court not imposing an immediate custodial sentence was the good character of the defendant in question. By contrast, the appellant here has a number of previous convictions. 14. In the circumstances, barring some other relevant submissions, it would be impossible to urge that a sentence of imprisonment on a charge of possession of counterfeit currency contrary to Article 8 of the Currency Law was wrong in principle. A sentence of custody is right in principle. 15. We pause momentarily now to consider the case of Mr Bisson. We have not had before us all the material which the Acting Magistrate had before him. We have not had the social enquiry report, nor have we seen Mr Bisson's criminal record, although it appears that he cannot have been of good character because the Court had to consider at the same time a breach of a Probation Order. We have of course seen the transcript of what was said on Mr Bisson's behalf because the transcripts of the proceedings before the Magistrate's Court in their entirety in relation to these two cases were put before us. When passing sentence, the Acting Magistrate said that he was very, very uncertain as to whether he was doing the proper thing, and he was passing sentence as he did only because of the defendant's particular circumstances. 16. It seems to us that the material which the Acting Magistrate had before him must have been such as persuaded him that Mr Bisson had very strong or exceptional mitigating circumstances, or else he would have imposed a custodial sentence. It is clear from what he said, as described above, that he considered that Mr Bisson's case presented unusual

difficulties. 17. Against that background we now consider questions of disparity. It is apparent that the Jersey courts have from time to time reduced a sentence having regard to disparity of treatment between co-accused. The cases, however, do not necessarily show an entirely consistent set of principles, although some themes are apparent. It seems to us that the relevant principles are these:- (i) It is open to a Court to pass different sentences on equally culpable co-accused - an individualised sentence on one and a tariff sentence on the other (*Hollman-v-AG*

[1995] JLR N22c). (ii) Disparity between sentences on co-accused is not justified if right thinking members of the public, knowing all relevant facts, would consider the sentence unjust (*Durkin-v-AG*

[2005] JLR 12 ; *Andrews-v-AG*

[2006] JLR N17). (iii) The Court has sometimes considered that an error of leniency in favour of a co-accused makes it proper to reduce the sentence of an appellant so as to avoid any appearance of injustice causing a sense of grievance (*Hollman-v-AG* (supra); *Lynch-v-AG*

[1991] JLR N15d). 18. In England and Wales, the position as laid out in Archbold at paragraph 5-159 (2013 Edition) is as follows:- "Where an offender has received a sentence which is not open to criticism when considered in isolation, but which is significantly more severe than has been imposed on his accomplice, and there is no reason for the differentiation, the Court of Appeal may reduce the sentence, but only if the disparity is serious. It has been said that the Court will interfere where "right-thinking members of the public, with full knowledge of the relevant facts and circumstances [would] consider that something had gone wrong with the administration of justice", (per Lawton LJ in *R -v- Fawcett* 5 Cr. App. R. (s.) 158 CA); but this was rejected as providing little guidance as to those cases in which the court's sense of injustice would be so offended that it would interfere, in *R -v- Coleman and Petch* Unreported October 10 th

[2007] CA (2007 EWCA Crim 2318) where it was said that there was no identifiable principle on which the court would intervene on this ground. Certainly there are cases where the court has refused to interfere with proper sentences by reference to the good fortune of another offender, where that other offender has received a lenient sentence for no apparent reason (*R v Tate* (2006) 150 S. J. 1192, CA) or, despite having been alleged to have been more deeply involved than the appellant, has been convicted of a lesser offence for lack of evidence... The court will not make comparisons with sentences passed in the Crown Court in cases unconnected with that of the appellant (see *R -v- Large*, 3Cr. App. R. (S.) 80 CA). There is some authority for the view that disparity will be entertained as a ground of appeal only in relation to sentences passed on different offenders on the same occasion: see *R -v- Stroud*, 65 Cr. App. R. 150 CA. It appears to have been ignored in more recent decisions... the present position seems to be that the court will entertain submissions based on disparity of sentence between offenders involved in the same case, irrespective of whether they were sentenced on the same occasion or by the same judge, so long as the

test stated in Fawcett is satisfied." 19. One could be tempted to conclude that the approach of the appellate courts in England and Wales to submissions of disparity is no more consistent than arguably has been the position in Jersey. 20. The most recent statement of the Jersey Court of Appeal in relation to disparity is to be found in Camacho-v-AG

- [2007] JCA 145 . In that case, a total sentence of 6½ years' imprisonment had been imposed on various counts on an indictment, some of the sentences running consecutively and others concurrently. In relation to the sentence of 5 years' imprisonment for the supply of heroin, one submission made on behalf of the applicant for leave to appeal was that the sentence was manifestly excessive compared with other sentences imposed, which gave rise to a feeling of injustice. It is clear that the applicant in that case did not feel constrained by the fact that the other cases on which he relied were not his co-accused. The Court of Appeal said this:- "27. As to the second point we would make two general observations. Firstly, as was said by Lord Bingham of Cornhill in O'Brien-v-The Independent Assessor
- [2007] 2 WLR 544 there is a limit to the reach of the principle that one defendant's sentence should be reduced because it is out of line with sentences other handed down to similar circumstanced defendants lesser. As he said at paragraph 26:- "It is convenient to touch first on this disparity argument. In some cases (of which R-v-Fawcett
- (1983) 5 Cr App R (S) 158 is an example) an appeal against sentence has succeeded because right-thinking members of the public, learning of a lenient sentence imposed on a co-defendant, would think something had gone wrong with the administration of justice on also learning of a disproportionately severe sentence passed on the appellant. In some of the cases such an appellant is said to have a justified sense of grievance. If the matter is viewed through his eyes alone, that may sometimes be so. But the appellate courts of all three United Kingdom jurisdictions have shown themselves to be, in varying degrees, resistant to disparity arguments of this kind, and the reason is not hard to discern. For while the perception of the sentenced defendant is important, a criminal sentence is imposed in the interests of the public and for its protection. The "right" sentence in a given case is that shown by statute, authority, and other guidance to be best fitted to serve those ends. Thus a court will, and generally should, be very slow to impose what it regards as anything other than the right sentence simply because it or another court has imposed a "wrong" sentence on a co-defendant. The more usual approach is that very recently articulated by the Court of Appeal (Criminal Division) in R-v-Tate
- [2006] EWCA Crim 2373 at [20]:- "The fact that the co-defendant Sheppard appears to have been extremely fortunate is not in our judgment a good reason for imposing a sentence on the appellant that would in our judgment be less than the facts of the case merit". 21. In Camacho-v-AG the Court then went on to consider comments which have been made on a number of occasions that guideline cases are always of assistance, but these always have to be adapted to the facts of a particular case. Decisions of courts, particularly those sitting at first instance, which are not guideline cases are of limited help. Invariably such

cases turn substantially on their own facts, and those facts are not always available and do not always appear on the face of the judgments. Beloff, JA continued as follows:- "We are constrained to draw attention to [these observations] yet again. It is no doubt for a sentencing court to explain the reasons why it has passed a sentence both in fairness to the defendant and to assist (if need be) an appellate court. But it would impose new and unjustified burdens on a sentencing court to have to explain why such sentence differed from those imposed by it in other cases and ex hypothesi it could not do so in respect of cases not yet before it. Here the Deputy Bailiff presided over all three cases now being compared. Far from inferring error from that commonality of presiding judge (and assuming that the Jurats were of one mind) we draw the opposite inference- namely that the differences in sentence must have sprung from a different assessment of different facts by a tribunal whose general approach was similar." 22. We apply this helpful guidance from the Court of Appeal in this case. We do not need to consider whether disparity principles can be applied where the cases compared are not those of co-defendants in the same criminal activity. In fact, if we had been required to do so, we would have treated Mr Bisson and the appellant for these purposes as co-defendants, because although they were not involved in any joint purpose, they were sentenced at the same time and did face in some respects the same charges. We think that the Acting Magistrate was clearly well aware that offences under the Currency Law would generally be met with a custodial sentence unless there were very strong or exceptional mitigating circumstances. He cannot have realised that in the case of the appellant but forgotten it in the case of Mr Bisson, whose sentence was delivered immediately after that of the appellant. Accordingly, we approach the matter upon the basis that the Acting Magistrate must have had some special reasons on papers which were available to him but have not been available to us to justify treating Mr Bisson in a different way from the way he treated the appellant. We do not think it could possibly be said that the imposition of a custodial sentence on the appellant for breach of Article 8 of the Currency Law was wrong in principle, having regard to the Royal Court cases cited above in relation to charges under this legislation. Even if it were the case that Mr Bisson should be regarded as having been extremely fortunate, that would not in our view be a good reason for imposing a sentence on the appellant that would be less than the facts of the case merit. 23. Accordingly the disparity arguments are rejected. 24. It was argued by the appellant that the Acting Magistrate adopted the wrong factual basis for sentencing. When passing sentence the Acting Magistrate said this:- "It was put by your learned counsel that you thought the notes were poor copies...you decided that because they were such poor copies they would probably be dangerous to you and would be spotted and you would return then to your source when eventually that source came to collect from you his proceeds. The Court notes that your perspicacity in spotting that they were not particularly good counterfeits. But having regard to your motivation there and your record of dishonesty I have to ... the Court looks with reserve generally on your attitude to the whole process." 25. Having regard to all the material before us, it seems to us to be impossible to criticise the Acting Magistrate in his conclusions here. We think the Acting Magistrate was

relatively neutral on whether he accepted the statements made by Advocate Landick in mitigation as to the intentions of the appellant, or whether to accept what was said by the appellant to the probation officer, who in his report said this:- "Mr Oeillet's account of the current offence is as stated in the police report. He told me he was contacted by an associate who offered him the opportunity to make some money. Mr Oeillet agreed to take the package without knowing its contents. When he opened the package and saw the counterfeit notes, he did not think they looked sufficiently realistic to pass on and decided to return them to the original owner when they called him back for the profit. In the event, he was arrested before anything further transpired." 26. It seems to us it would have been well open to the Acting Magistrate to have reached the view that the reason that the appellant did not use the notes was simply that he feared he would be apprehended if he did. 27. Accordingly, the appellant's contentions on this point are also rejected. 28. In our view however, the last point advanced by Advocate Landick has some force. It is unnecessary to go into extensive detail, but in summary, material which Advocate Landick expected to be before the Court was not before the Court as a result of which the Acting Magistrate did not treat the appellant as having been entirely cooperative with the police investigation. The cooperation with the police is of course an important piece of mitigation which the Courts take into account when passing sentence. On this occasion, the Court has been shown the material which should have been before the Acting Magistrate, and considers that it might well have made a difference to the sentence which he actually imposed, had he had it. For those reasons, the Court resolved to allow the appeal to this extent, namely by substituting for the sentence of 9 months imposed by the Acting Magistrate, a sentence of 6 months' imprisonment instead. Authorities Currency Offences (Jersey) Law 1952. AG-v-Kearns 1998/38. AG-v-Whiteman

[2004] JRC 146 . Hollman-v-AG

[1995] JLR N22c. Durkin-v-AG

[2005] JLR 12 . Andrews-v-AG

[2006] JLR N17. Lynch-v-AG

[1991] JLR N15d. Archbold Criminal Pleading, Evidence and Practice 2013 Edition. Camacho-v-AG

[2007] JCA 145 . Page Last Updated: 16 Sep 2016 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/2013/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/oeillet-v-ag-2013-jrc-083-02-may-2013>

Prepared on 28 October 2026 · Esheria