

JERSEY / JUDGMENT

Sangster v AG [2002] JRC 87 (29 April 2002)

[2002] JRC 87

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JUDGMENT

THE DEPUTY BAILIFF: 1. On the 14 th December, 2001, the applicant appeared before the Inferior Number of the Royal Court to be sentenced on one count of demanding money with menaces. She was also charged with an offence of supplying a small amount of cannabis resin to her partner and co-accused, Amanda Sangster. Her co-accused was also charged with the offence of demanding money with menaces and an offence of possession of cannabis. 2. Both accused were sentenced to 18 months' imprisonment for the offence of demanding money with menaces and concurrent terms or a fine for the drug offences. 3. The applicant now applies for leave to appeal against the sentence of 18 months imposed for demanding with menaces, and as she only made her application on 1 st February, 2002, she also applies for leave to appeal out of time. 4. The facts giving rise to the offence can be briefly summarised. The applicant and her partner, Amanda Sangster, lived together in a lesbian relationship with her 4 children aged between 16 and 8. In August, 2001, G, a 17 year old youth, came to stay in the Sangster household following problems in his own family. Whilst there he caused a considerable amount of damage to household items, as a result of which he was asked to leave. He had told the applicant and her partner that Mr X had sexually abused him and C, a 15 year old youth. Following G's departure the applicant, and her partner Amanda, contacted Mr X and threatened to expose him to the police unless he paid them £5,000 in cash. 5. The offence began on 11 th September, when the applicant telephoned Mr X and asked him to meet her, saying that if he failed to turn up she would contact the police and tell them that he had been sexually abusing C. Mr X went to the designated meeting place but no one turned up. The next day the applicant telephoned again and told Mr X to come to the house. That was not possible because Mr X was going away, but the following Monday she telephoned again and Mr X came to her home. The applicant was there with her 14 year old son, A. Amanda Sangster came into the room and said to Mr X that he had 10 minutes to sort it out before she went to the police and then left the room. The applicant then said to Mr X that she wanted £5,000 to compensate for the damage that had been done to her property. Mr X realised he was being blackmailed; he agreed to pay the money in two tranches, £1,000 in cash and £4,000, which he would need to borrow. He paid over the £1,000 that day. 6. The applicant and her son, A, made 3 further calls over the next few days and eventually Mr X decided to contact the police. Whilst he was at the police station, he received a further call from the applicant on his mobile telephone, asking why he had not delivered the balance of the cash. The police initiated a covert operation. A meeting would be arranged, which would be recorded

and on the 21 st September, following another call from the applicant's son, A, a meeting was arranged. Mr X was met by the applicant and A. He paid over the £4,000 and the applicant was arrested shortly afterwards in possession of the money. 7. At interview, after initial hesitation, she fully admitted her part, implying that she had been put under pressure by Amanda. Amanda Sangster was also arrested. She was much slower to admit her part, but both defendants pleaded guilty upon indictment. Both had a previous conviction for breaking and entering in 1999, for which they were given community service. 8. The Crown moved for sentences of 2 years' imprisonment for each accused on the relevant count and referred to 4 English cases; R-v-Christie

(1990) 12 Cr. App. R (S) 540, R-v-Smith

(1993) 14 Cr. App. R (S) 786, R-v-Hollinworth and Yates

(1994) 15 Cr. App. R (S) 258 and R-v-Read

(1996) 2 Cr. App. R (S) 240. In all of those cases the defendant pleaded guilty, as the applicant did in this case, and the sentences imposed were 2, 2½, 3 years and in one case 21 months. 9. In passing sentence the Inferior Number made it clear that blackmail was a serious offence, and pointed to the aggravating factor that the applicant and her co-accused had not gone to the police with these serious allegations of sexual abuse, but had sought to make a profit out of it and had involved the applicant's son. The Court went on to say that although the conclusions were probably correct they felt able to reduce them, because of the impact upon the small children of the applicant. 10. Mr Winchester put forward a number of points in support of this application. First, he says that the Court did not distinguish between the two accused in relation to their personal circumstances. In particular they did not make allowance for the fact that the applicant was the biological mother of the children, two of whom were very young. 11. Secondly, he says that the Court did not make any allowance for the accused's different rôles. He asserts that the applicant played a lesser rôle. Thirdly, he says that the Inferior Number did not consider the appropriate starting point as it should have done. Fourthly, he says that the Inferior Number did not give full reasons for its decision. Fifthly, he contends that not enough allowance was made for the mitigation generally as put forward by counsel for the applicant; and sixthly, he refers to additional matters that have come forward since the sentence was imposed in relation to the applicant's children, A and the two young girls. 12. We deal first with the question of starting points. It is quite true that in several recent cases the Court of Appeal has emphasised the desirability of fixing upon a starting point in various categories of case, and that no starting point was suggested by the Crown in this case, nor referred to by the Court. However, we consider that the function of this Court , sitting as a Court of Appeal, is to consider whether the sentence passed was manifestly excessive, or wrong in principle, rather than to focus on the methodology used by the Inferior Number in arriving at its decision. Methodologies for determining sentence can vary. Until very recently the Royal Court and the Court of Appeal itself have, for all types of sentencing except drug offences, used the methodology which was applied by the Royal

Court on this occasion. That is the methodology still applied by the English Courts, to which the Jersey Courts often look for assistance. 13. Recently the Court of Appeal has indicated that a totally new methodology is preferable, and that the concept of starting points should be extended to cover offences other than drug offences. That is not particularly easy in a case such as this, where the cases relied upon to assist the Court in arriving at the correct bracket of sentencing levels are English cases where, of course, no starting point is discernable. The Court would have to work backwards from the final result in those cases in order to determine what starting point might have been used had the English Court thought of the concept. Be that as it may, we do not consider that a failure to articulate a starting point is in itself a ground of appeal. The issue for the Court is to determine the correct level of sentence. If the Court believes that the sentence imposed by the Court below falls within the appropriate bracket, it will not allow the appeal merely because a starting point was not articulated. This would be to place the importance of applying the correct methodology above the need to ensure that the correct sentence is passed for the particular crime committed by the particular offender. 14. Mr Winchester's next point is that the Inferior Number gave insufficient reasons. We fully accept that in accordance with the recent dicta in *Rimmer Lusk & Bade-v-Attorney General*

- (2001) JLR 373 CofA, adequate reasoning must be given. However, we do not consider that the reasons given by the Inferior Number in the present case fall below the required level of detail for a first instance sentencing. The Court referred to the serious nature of the offence and the aggravating features, to the mitigation, and to the needs of the applicant's children. Mr Winchester was particularly critical of the fact that no specific reference was made to the respective rôles undertaken by the two co-accused. In our judgment it is clear from the sentence imposed that the Court was making no distinction between them and felt that their rôles were equal. 15. We turn, therefore, to consider the substantive arguments raised by Mr Winchester as to why he says the sentence was manifestly excessive. As to the respective rôles, Amanda's counsel said before the Royal Court that the co-accused were equally to blame. The applicant's counsel said that the original idea came from Amanda. Even if that is so, the fact is that the applicant played the more active rôle. She made all the calls, she held the meeting with Mr X, apart from a short appearance by Amanda, and she received the money. In addition, she involved her 15 year old son in both telephone calls and meetings. Even if the original idea was that of her co-accused, Amanda, the greater part played by the applicant in carrying out the blackmail cancels that out. In our judgment no distinction is to be drawn between their respective rôles. 16. We have, since the hearing, received a letter written by the co-accused, Amanda, in prison, taking more of the blame. The Court is not willing to accept a letter from a co-accused written for the purposes of an appeal which is inconsistent with the approach taken by that co-accused at the first hearing. There is clearly great scope for statements being made on appeal with an intention deliberately to help an appellant. Accordingly, as we say, we proceed on the basis that both accused were equally to blame. 17. We have

considered carefully the other mitigation, namely the fact that the applicant is the biological mother of the children, the effect which the sentence will have on them and on her mother, who is having to help now in looking after the children when she has a health problem, and the guilty plea. Nevertheless, taking all these into account we have to have regard to the fact that blackmail is a serious offence, and that this was a serious offence. The cases to which we have referred show a bracket of between 21 months and 3 years, although of course in some cases it would be right to go outside that bracket. Nevertheless, having regard to all the factors we find it impossible to say that a sentence of 18 months was manifestly excessive. We, therefore, think that the prospects for any appeal would be that it would be bound to be dismissed and in the circumstances we refuse leave to appeal out of time. Authorities *Channing-v-Attorney General* (26 th October, 2001) Jersey Unreported; [2001/213]. *La Solitude Farm Limited-v-Attorney General* (1985-86) JLR 1 Court of Appeal. *R-v-Christie*

(1990) 12 Cr. App. R (S) 540. *R-v-Smith* (1993) 14Cr. App. R (S) 786. *R-v-Hollinworth and Yates* (1994) 15 Cr. App. R (S) 258 *R-v-Read* (1996) 2 Cr. App. R(S) 240. *Rimmer and Ors-v-AG*

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