

JERSEY / JUDGMENT

Sullivan -v- AG [2014] JRC 079A (26 March 2014)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an appeal by the appellant who pleaded guilty to 6 separate charges before the Magistrate on 21 st January, 2014, of taking his fishing vehicle out to sea without having all the appropriate, up-to-date certificates, as required by the Shipping (Fishing Vessels - Safety Training)(Jersey) Order 2004. In fact that required him to have three relevant certificates. He had two of them, and the circumstances at the time of the offences were that he had attempted to renew the particular certificate, which he needed, and which had expired, but had been unable to do so before the time when he was required to have the certificate actually in his possession. As a result, he was breach of the order when he took his fishing vessel out into the open sea on 6 occasions, between the 8 th and 14 th September, 2013. 2. The appellant was the skipper of the boat and he had no employees with him. On the last of the occasions on which he went out he received an instruction from the Harbour Master to return and he ignored it, and that gave rise to the seventh charge, which was that he acted in contravention of Regulation 7 of the Harbours (Jersey) Regulations 1962 , in that he failed to comply with the directions of the Harbour Master. 3. The maximum sentence under the Shipping (Fishing Vessels - Safety Training) (Jersey) Order 2004 is £5,000. The maximum sentence, we are told, under the Harbours (Jersey) Regulations 1962 for this particular offence, which is the subject of charge 7, was £3,000. The Magistrate may not have had her attention directed to the maximum sentence on charge 7, but at all events she imposed a sentence of £500 for each of the 7 charges. She added a sentence in lieu of 21 days' youth detention, because the defendant before her was aged only 19, in default of payment. 4. In passing sentence on the defendant she indicated that she thought that the right sentence for the charges in question would have been £1,000 per offence, but she was reducing that sentence, having regard to the inability of the defendant to pay. As a result she imposed a fine of £500 on each count, as I have indicated. 5. The appeal is brought upon the basis that the decision of the Magistrate was excessive in all the circumstances and that we as a result ought to interfere with the sentence. Appeals against sentences imposed by the Magistrate are generally considered against three tests: Was the sentence lawfully imposed? Was it wrong in principle? Was it manifestly excessive? In this case the relevant legislation makes it plain that a financial penalty should be imposed, and in the circumstances there is no doubt at all that the fines were lawfully imposed, and cannot be said to be wrong in principle in so far as that is concerned. 6.

Advocate Hollywood submits that the Magistrate has not imposed sentences which are manifestly excessive, that the purpose of the order, which gives rise to charges 1-6, was the protection of health and safety, and therefore that it was intended by the Legislature and the Minister, that there should be a harsh penalty in circumstances where the order is breached. 7. We think that the primary purpose of the order is indeed health and safety, but it is primarily the health and safety of employees and in the circumstances of this case, the appellant had put himself at risk, but he had not put at risk any employees because there were none with him. We think that is an important feature, and indeed that the overall sentence, which was imposed by the Magistrate, was indeed substantially excessive, indeed manifestly excessive, for the purposes of the test which we have to apply. So we are going to reduce it. 8. The regulations are there for a purpose and they have to be complied with. Professional fishermen are expected to meet these standards, and there is absolutely no question that the Magistrate approached the matter correctly, by emphasising that point when she came to impose sentence. We would be very concerned if we thought this appellant was going to leave this Court thinking that in any sense we did not regard these regulations as important. They are important and they must be complied with, and that is the purpose they serve, for compliance, for health and safety of employees certainly as their primary purpose, but also for you, the appellant, as skipper of the boat. 9. Having decided that the overall fine was manifestly excessive, we have then to consider what we think is the right approach to take. It seems to us that these charges could easily have been framed as a single charge, namely that between 8th -14th September, 2013, the appellant in the territorial waters of Jersey acted in contravention of the relevant order, and if that had been so, then one fine would have been imposed for that activity. The Court recognising that the activity took place each day, but nonetheless, one fine would have been imposed. Another way of looking at that was that had there been a custodial sentence, the sentences would have been consecutive, if the offences had been charged separately. So we think that the right way of looking at this in principle is to fix on what would have been the right sentence, had there been one charge for breaching the order over that period. 10. Broadly speaking we think that the Magistrate was right to say that perhaps in the circumstances which are personal to this defendant, £1,000 might have been the right sentence at which to arrive for a charge encompassing 6 days of offending against that order. When we come to look at the circumstances of this appellant, it appears to us that there are aggravating factors. There was a knowing and deliberate breach of the law. That shows an indifference on his part to the consequences of breaching the law and we hope that the remarks we have made so far about the obligations which professional fishermen are expected to meet, will be words which the appellant remembers when he leaves this Court. Those are aggravating features. 11. On the other hand, he is a young man of 19 and youth stands in his favour because the courts recognise that young people make mistakes. He has hitherto been of good character. He has not put anyone at risk except himself, there are no employees and there was a guilty plea. All those are important mitigating circumstances. Furthermore, the financial information shows that a fine in the order of £1,000 on these charges 1-6 would be a fine which would cause some difficulty. 12. Now, before going to the ultimate fine that we are going to impose we just want to say a few words about charge 7. The authority of the Harbour Master is conferred on him for a purpose. He has responsibilities for the safe running of the harbour, and when he gives

directions they are to be obeyed. There is no question about that, and that of itself means that when we look at charge 7, we are going to impose, as it were, a consecutive sentence, in relation to that charge. 13. We think in the circumstances affecting this appellant personally, the right sentence to impose by way of substitution, is a fine on charge 1 of £500 or 5 weeks' youth detention in lieu. And there will be no separate penalty on any of charges 2-6, making a total of £500 in respect of charges 1-6, or five weeks' youth detention. In relation to charge 7; we think the right sentence is £200, or two weeks' youth detention, so that would be a total of £700 by way of fine that should be imposed. 14. We set aside the decision of the Magistrate and substitute the sentences which I have just set out. 15. The appellant to pay the fine over 35 weeks at a rate of £20 per week. Authorities Shipping (Fishing Vessels - Safety Training)(Jersey) Order 2004. Harbours (Jersey) Regulations 1962. Page Last Updated: 06 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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