

JERSEY / JUDGMENT

# T v AG [2024] JRC 111 (13 May 2024)

**[2024] JRC 111**

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## JUDGMENT

THE BAILIFF: 1. On 12 December 2023, we delivered a brief ex tempore judgment indicating that in the light of the evidence before us, and that the Crown no longer sought to progress its application under Article 69 of the Mental Health (Jersey) Law ("the Mental Health Law"), the Court could make no order. At that stage, we said that we would give some further reasons which we now do. 2. On [date redacted], T was convicted following a trial of grave and criminal assault. 3. On [date redacted], he was sentenced to a period of imprisonment. 4. He appealed against conviction and sentence and his sentence of imprisonment was reduced by the Court of Appeal. The appeal against conviction was dismissed. 5. When he appeared before the Royal Court for sentence, the Court directed that enquiries should be made regarding a potential transfer order pursuant to Article 69 of the Mental Health (Jersey) Law 2016 . Pending T's appeal, those enquiries were held in abeyance and the Court of Appeal expressed the view that they should be progressed. 6. There have been a number of hearings before this Court and the matter has taken between the appeal to the Court of Appeal and the 12 December 2023 to reach the conclusion set out at paragraph 1 of this judgment. 7. We do not think that it is helpful to set out what has happened in this matter in full but, in general terms, the following occurred: (i) In November 2022, the Crown sought to instruct a medical expert to examine T. T refused to see him, and the medical expert considered that any further attempts by him to see T would be without point. (ii) In December 2022, there was a hearing before the Bailiff in which T provided details of doctors he would agree to have examine him. The Court invited the Crown to establish the availability of those doctors. (iii) In January 2023, the Crown made the necessary enquiries and established the doctors were not available to examine T within a reasonable timeframe. (iv) On 23 January 2023, T's advocate indicated that whilst T would not see the medical expert previously identified, he may be willing to see Dr Hillier. (v) In February 2023, the Crown sought to arrange an examination of T by Dr Hillier in the face of issues raised by T, making those examinations difficult. (vi) On 12 February 2023, Dr Hillier attempted to examine T unsuccessfully. He then on 15 February carried out a limited assessment of T in prison, although T walked out shortly after the session had started. Dr Hillier expressed a provisional view that T should be assessed by a specialist autism spectrum secure service at the level of medium security. (vii) On 8 March 2023, Dr Hillier attempted a further examination, and a few days later on 12 March indicated that in his view a further assessment would not be fruitful, although he continued in a report of that day to recommend a mental health law transfer. (viii) On 13 March 2023, the Crown contacted the

Ministry of Justice and received a suggestion that St Andrews Hospital, Northampton, might be appropriate. (ix) On 22 March 2023, the Crown suggested that an amicus curiae should be appointed. (x) On 3 May 2023, there were further allegations of assault against T allegedly committed whilst in prison. Advocate Dale was appointed as amicus curiae. (xi) On 17 May 2023, it was established that the hospital in St Andrews was not appropriate, but a different hospital in East London was under consideration. Other establishments suggested by Advocate Dale on discussion with T were also considered. (xii) On 7 June 2023, it was confirmed that referrals had been made to an establishment in London and were being chased up, but that establishments which were suitable in the United Kingdom were limited and of the three which existed, one was already closed to in-patients at the present time. (xiii) On 21 June 2023, there was further discussion with Dr Hillier who was then due to start work at La Moye Prison who indicated that he would try to see T when he commenced work in Jersey in the first week of July. The question to be considered was whether a transfer is appropriate. (xiv) There were two further hearings before the Court, the latter being on 20 September 2023 where in the light of the evidence then available the presiding judge referred the matter to a further hearing of the Inferior Number (sitting with Jurats) so that, if possible, a determination as to outcome could be made.

8. Article 69 of the Mental Health (Jersey) Law 2016 is in the following terms: "69 Transfer orders (1) This Article applies in respect of a person detained in a prison (the "prisoner"). (2) The court may order the transfer of a prisoner from a prison to an approved establishment and the detention of the prisoner in that establishment in accordance with paragraph (5), where the court is satisfied - (a) on the evidence of 2 registered medical practitioners, at least one of whom must be an approved practitioner, that the prisoner is suffering from mental disorder of a nature or degree that makes it appropriate for the prisoner to be detained in an approved establishment for treatment; (b) that the prisoner should be so transferred and detained in the public interest; and (c) on the written or oral evidence of the approved practitioner who would be responsible for making the report, or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the accused person to that establishment within 7 days of the date of the order. (3) Subject to paragraph (4), evidence under paragraph (2)(a) - (a) must be given in writing signed by the practitioners who have personally examined the defendant either jointly or, if separately, at an interval of not more than 5 days; and (b) must specify the form of mental disorder from which the defendant is found to be suffering. (4) In a case of emergency the court may waive the requirement for written evidence imposed by paragraph (3)(a) and the evidence of a medical practitioner may be given orally. (5) Where an order under this Article (a "transfer order") is made in respect of a prisoner - (a) the prisoner shall be conveyed to the specified approved establishment within the period of 7 days beginning with the date of the order and in accordance with any directions given by the court for that purpose; and (b) the managers of the approved establishment shall admit the defendant and detain the defendant in accordance with this Article. (6) Unless - (a) the prisoner is discharged under paragraph (8); or (b) the prisoner's sentence of imprisonment expires, a prisoner who is subject to a transfer order may be detained for a period of 6 months beginning with the date of the order. (7) A period of detention imposed by a transfer order may be renewed for one further period of 6 months and thereafter for successive periods of 12 months - (a) on an

application made by the Attorney General; (b) on the grounds that, in the opinion of the responsible medical officer - (i) the prisoner is suffering from mental disorder of a nature or degree that makes it appropriate for the prisoner to be detained in an approved establishment for treatment, and (ii) the prisoner should continue to be so detained in the public interest. (8) A prisoner whose sentence of imprisonment has not expired may be discharged from the approved establishment to which he or she has been transferred under this Article - (a) on an application made to the court by - (i) the prisoner, or (ii) the Attorney General; (b) on the grounds that, in the opinion of the responsible medical officer, it is no longer necessary for the prisoner to be detained in such an establishment by reason of mental disorder. (9) Where paragraph (8) applies, the prisoner shall be conveyed to the prison in accordance with any directions given by the court for that purpose, and the Governor of the prison shall admit the prisoner and deal with the prisoner as if no transfer order in respect of him or her had been made." 9. It has taken a long time to ascertain what the possibilities for transfer were for T. 10. It is fair to say that the situation before us is unsatisfactory. It is entirely clear that T would benefit from treatment, but it is equally clear that no such treatment out of the island is available to him. It is a pity that this could not have been ascertained sooner, but it may be that the position has changed. 11. On 12 December 2023, we received evidence from Dr Hillier once again which, as we said in our ex tempore judgment, in essence, was to the effect that it was now too late to transfer T to a specialised unit. He had originally thought that it would be helpful that such a transfer should be explored and he had spoken to two units offering secure specialist treatment of people with autistic spectrum disorder conditions. 12. Both have responded to the effect that with the waiting list that they currently have and the likely release date of T, they were not able to offer any constructive and effective treatment. Such units were, so Dr Hillier informed us, rare and it was difficult to secure places and it was unlikely, in his view, that he would receive any different response from any other unit he approached. 13. In the light of the evidence, the Crown therefore no longer sought to proceed with its application under Article 69 and because the application originated from the Crown and in the light of the evidence before us, we no longer feel able to progress the matter. 14. Naturally, should T find himself in custody again, it would be open to him or indeed to the Attorney General to renew an application for a placement outside the island. That opportunity currently no longer exists and accordingly we made the orders that we did. Hearing in private 15. As is apparent from above, this Court has sat to deal with this matter on a number of previous occasions. 16. The Court has had the opportunity of assessing T's demeanour and his ability to cope and function in the context of these Court proceedings. This has proved extremely challenging for him and indeed he has on more than one occasion been unable to govern his temper and his language when before the Court. When afforded the opportunity to reflect and a warning that if he continued with that behaviour the Court would proceed in his absence, T, after a period, has felt able to proceed on each occasion and we have been able to listen to him and on some occasions meet his concerns relating to, for example, the disclosure of documentation. 17. On none of those previous occasions, so the Court can recall, were members of the press present, but even if they had been, T had not taken exception to the presence of anyone else in the Court room. 18. On the instant occasion, however, the 12 December hearing, T was finding the matters challenging in the way that we have described and

he had already vociferously objected to the presence of an individual within the Court room and we had thought it best in the interests of justice and the proper dealing with the matter before us to ask that individual to leave the Court, as they had done. 19. No sooner had that happened, however, and whilst T presented as highly agitated and volatile, two representatives of the media arrived late in the Court room and they were immediately challenged, again vociferously, by T. The Court took the view that in these circumstances and in the light of the subject matter of the proceedings, to continue in the presence of the individuals who had come in would have meant that the proceedings would have been disrupted, the Court would not have been able to move the matter to a conclusion and, indeed, T would have been left with a sense of grievance that, as certainly would have been the case, he had needed to be removed. Accordingly, we directed that the members of the media should retire from the Court. 20. We did this without consultation with them or permitting them to make representations. This was because in our view the urgency of the matter, the late arrival of the representatives of the media and the agitated state of T in this case meant that we should deal with the matter quickly in the manner that we did. Had representations been invited then, in our view, there was every likelihood that it would have been impossible to proceed in difficult circumstances where it was, in our view, important to do so. 21. We make these observations because we accept as a matter of general principle that justice is to be done in public and that, save in exceptional circumstances, representatives of the media are entitled as the eyes and ears of the public, to be present. Generally speaking, if the Court is considering the removal of members of the public or indeed the media, it should afford those individuals the opportunity to make representations to the contrary and in some cases it may even be necessary to adjourn the matter for that purpose. Equally, in some exceptional cases where it is necessary to do so, it must be open to the Court, in order to do justice, to make urgent orders to preserve the hearing being conducted before it and to exercise a judgment as to how best to deal with potential disruption. This does not in the slightest detract from the general principle of open justice that we have mentioned above, but these were exceptional circumstances where the presence of the media might have prevented the hearing from continuing at all. The Court proceeded on the basis of necessity. 22. The approach has been considered by this Court in the case of *AG v Williams*

[2023] JRC 097 in which MacRae, Deputy Bailiff, at paragraphs 44 et seq said: "44. Many of the principles set out by the Court of Appeal in *ex parte BBC* are of obvious relevance to the circumstances of this case. I also agree with what Sir Igor Judge said in *Trinity Mirror Plc* [2008], at paragraph 32: "In our judgment it is impossible to over-emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country. An important aspect of the public interest in the administration of criminal justice is of the identity of those convicted and sentenced for criminal offences should not be concealed. Uncomfortable though it may frequently be for the defendant that is a normal consequence of his crime." 45. The Court's duty in criminal proceedings is not to protect the reputation or feelings of defendants and other third parties. It is to protect the administration of justice. As Lord Read said in *AG v Times Newspapers*

- [1974] AC 273 at page 294: "The law on this subject is and must be founded entirely on public policy. It is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the administration of justice and it should, in my judgment, be limited to what is reasonably necessary for that purpose. Public policy generally requires a balancing of interest which may conflict. Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there will be real prejudice to the administration of justice." 46. In the circumstances, I have no doubt, and I find, that any trial of these proceedings must be heard in public in the usual way. The same applies to any determination, if the Defendant is unfit to stand trial by jury, as to whether or not he did carry out the acts alleged to constitute the offences with which he is charged. Such a hearing is sometimes required under the provisions of the 2016 Law. As Sir Michael Birt, Commissioner, recently determined in *AG v Nicolle*
- [2022] JRC 268 : "There is a very strong public interest in criminal proceedings taking place in public. Furthermore, there is now the issue as to whether the defendant should be held criminally responsible. In my opinion a matter such as this cannot be held behind closed doors, so that the public do not know what has been said and what the evidence is. I find that the public interest in criminal proceedings being held in public, particularly of this gravity, outweigh any risks to the mental health of the defendant." 47. It was accepted, certainly on behalf of the media, that it was arguable that different principles perhaps applied to hearings such as this, namely hearings to determine whether or not a defendant should be remanded to a specialist unit for assessment for the purposes of the provisions of the mental health legislation, from that which may apply to a trial. 48. Certainly, the public interest in such hearings will be less and, arguably, there is a risk that such hearings may involve the ventilation of private details about a defendant's mental health which might, if widely publicised, prejudice a future jury from considering the evidence fairly if, ultimately they are found to be fit to stand trial and evidence in relation to their mental health is irrelevant to determination of their guilt or innocence. However, I remind myself of the strong presumption in favour of open justice, the fact that departures from that principle can only be justified on the grounds of necessity..." 23. We accept those principles and note paragraph 47 of *AG v Williams* above. It is for those reasons that we asked members of the media to leave the Court. It would not have been appropriate to invite submissions there and then (which would in our view have had the effect of disrupting the proceedings) nor to adjourn the matter for another date to enable representations to be made (the matter had already been adjourned and the interests of justice, in our view, required conclusion). 24. As we have said, however, we do not consider this as a derogation from the important principle of open justice. *Authorities Mental Health (Jersey) Law 2016. AG v Williams*
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