

JERSEY / JUDGMENT

The Attorney General v David Pearce

COURT

Royal Court

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Decision on Defendant's application for disclosure of psychological report

[2024]JRC156

Royal Court

(Samedi)

8 July 2024

Before :

A. R. Binnington, Esq., Commissioner
The Attorney General

-v-

David Pearce

S. C. Thomas Esq, Crown Advocate.

Advocate D. S. Steenson for the Defendant.

DECISION ON DEFENDANT'S

APPLICATION FOR DISCLOSURE OF PSYCHOLOGICAL REPORT

JUDGMENT

THE Commissioner: 1. On 1 March 2024, the Defendant was found guilty by a jury in respect of two counts of rape and two counts of assault, all of which were committed on the same individual (“the Victim”). The Defendant was found not guilty in respect of a further two counts of rape and one count of assault. He was remanded in custody pending a sentencing hearing before the Superior Number on Thursday 16 May 2024. 2. On 15 May 2024, the sentencing hearing was adjourned to a date to be fixed at the request of Advocate Steenson. It appeared that Advocate Steenson had only been re-instructed shortly before the hearing, having represented the Defendant at his Assize trial. In addition, the Crown had, on Friday 10 May, served on Advocate Steenson a psychological report prepared by Dr Jamie Connor (“the Report”) on the Victim which Advocate Steenson only saw on Monday 13 May. Due to restrictions on prison visits, it had not proved possible for Advocate Steenson to review the Report with his client. 3. The Crown had provided Advocate Steenson with a copy of the Report, but had requested that the Court make an order restricting the manner of its disclosure on the following basis, set out in an email from Crown Advocate Thomas dated 15 May 2024 : “The Crown has obtained a psychological report in

respect of the complainant which it relies upon for the purpose of sentence. As is the nature of such reports, it contains matters personal to the complainant. [Redacted]. The Crown accepts that the Defendant must see the report if the Crown relies on it. However, I invite the Court to make an order that he view that report in the presence of his lawyers and not be provided with a copy of it to take away. That would go some way to alleviating the complainant's anxiety about wider dissemination." 4. The Court indicated its approval of those conditions, although this was subject to any further application that might be made on behalf of the Defendant, which application was made at a hearing before me on 12 June 2024. I reserved my decision and I now give that decision. 5. Advocate Steenson argued at the hearing that in order for him to take instructions from his client in relation to the report, it was necessary for the Defendant to have a copy of it and for the Defendant to be able to share it with his English counsel and members of his family and friends who had been assisting him with his defence. 6. Advocate Steenson made the following points in support of his argument that access to the Report should be unrestricted: (i) Prison visits required forty-eight hours' prior notice and only forty-five minutes can be spent with the client. That would be insufficient time for him to go through the Report, which runs to thirty-five pages, for the Defendant fully to understand it and for instructions to be taken. (ii) If the Defendant were to take notes when reading the report, he would be able to disclose those notes to others without restriction and similarly could repeat to others any passages that he was able to memorize. (iii) If Advocate Steenson were to write to his client seeking instructions and to quote extracts from the Report that would in effect amount to providing him with copies. (iv) The Defendant was likely to have difficulty understanding the report without the assistance of his family and friends.

(v) The sentencing hearing is public and if references are made at the hearing to passages in the report they would therefore be disclosed to the public. (vi) The Report is no different from documents provided to the defence by way of discovery, which are not restricted in their disclosure. (vii) To restrict the Defendant's ability to discuss the Report with others is contrary to his human rights given that it is a document that may be relied upon by the Crown to support a higher sentence. (viii) There was no precedent for restricting the use of a report in this way. 7. In response, Advocate Thomas made the following submissions: (i) It is important to have regard to the context, which is that the Report is the professional opinion of a psychologist and it is difficult to see how the Defendant's family and friends could provide assistance in its interpretation. This is very different from the Defendant seeking advice upon it from another psychologist. (ii) The difficulties that it was suggested the Defendant would have in understanding the Report were overstated. (iii) In cases involving sexual offences, recordings of ABE interviews are provided to the Defence on the basis of an undertaking that they are not left with the Defendant. Advocate Steenson did however point out in reply that transcripts of ABE interviews are routinely supplied without restriction. (iv) It should be possible for arrangements to be made for the Defendant to view the report under the supervision of a prison officer at the prison or a police officer at the police station.

- (v) Previous judgments of the Royal Court have emphasised the importance of the Court having professional assistance to take into account the impact of the offences on the victim, and not simply to rely on a victim impact statement. (vi) The Victim had expressed reluctance to divulge personal information to Dr Connor [redacted]. She was therefore in a difficult position, being asked to provide information for the assistance of the court but being fearful to provide it. (vii) Given the importance attached to anonymity for victims in sexual offence cases, the normal rules as to the use of documents provided on discovery are not necessarily applicable. Discussion 8. Dr Connor's report runs to some thirty-five pages, of which sixteen pages are a synopsis of Dr Connor's interview with the Victim, three pages contain the results of various tests carried out, including a psychometric test, and five pages set out her conclusions. 9. Advocate Steenson suggested that restricting the Defendant's access to, and use of, the Report was an abuse of his human rights. It is of course correct that it is a fundamental human right, enshrined in the Human Rights (Jersey) Law 2000, that in the determination of any criminal charge everyone is entitled to a fair and public hearing. Furthermore, where someone is charged with a criminal offence, they have the right to adequate time and facilities for the preparation of their defence, which must include sentencing after conviction.
10. However, balanced against the Defendant's rights are the rights of the Victim to respect for her private life.
11. Dr Connor's report is a report prepared for the benefit of the Court and victim impact reports have become an important part of the sentencing process, in particular in relation to victims of sexual offences. Indeed, Dr Connor acknowledges her duties to the Court in Section 9 of the Report, entitled "Statement of Truth and Declaration of Awareness", where she says "I understand that my duty in providing written reports and giving evidence is to the Court and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with this duty".
12. [Redacted].
13. It is in the interests of justice that victims of sexual offences should feel able to be open with professionals tasked with preparing victim impact reports, and the court should endeavour to ensure that where there is a reasonable concern that information will be shared inappropriately and used against them such information should be protected. The effect on the victim of a sexual offence is an important consideration in the sentencing process. That does however work both ways, in that given the importance of these reports a defendant must have the opportunity to consider it with his legal adviser and any relevant professionals. I do not, however, consider that it should, or in the present case needs to be, shared with "family and friends".

14. A report prepared for the benefit of the Court is not, as was suggested by Advocate Steenson, in the same category as other documents provided by the prosecution to the defence on discovery. Different considerations apply and the Court may place restrictions on its dissemination. Furthermore, the legislature has made clear, in the Criminal Justice (Anonymity in Sexual Offences) (Jersey) Law 2002 that all documents relating to victims of sexual offences which may lead to their identification have a greater degree of protection.
Decision
15. I have endeavoured to strike a balance between the Defendant's right to a fair hearing and the Victim's right to respect for her private life, together with her statutory right to anonymity. In the circumstances I order as follows: (i) The Defendant may be provided with a physical copy of the Report, to be read in the presence of his Jersey legal adviser, a prison officer or police officer, either at the prison or elsewhere. He is not to retain the copy. To the extent that the Defendant may wish to take notes for the purposes of taking legal advice he may do so, but these are to be provided only to his Jersey legal adviser. (ii) The Defendant's Jersey legal adviser may share the report with relevant members of staff, counsel, or appropriate experts instructed by him, but the confidential nature of the report must be explained to and accepted by them. Authorities Human Rights (Jersey) Law 2000. Criminal Justice (Anonymity in Sexual Offences) (Jersey) Law 2002.

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.jerseylaw.je/judgments/unreported/Pages/%5B2024%5DJRC156.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/the-attorney-general-v-david-pearce-2024>

Prepared on 25 October 2026 · Esheria