

JERSEY / JUDGMENT

The Attorney General v George McLoughlin

COURT

Royal Court

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Inferior Number Sentencing – application for review of compensation order.

[2014]JRC119A

Royal Court

(Samedi)

28 May 2014

Before : W. J. Bailhaiche, Q.C. Deputy Bailiff, and Jurats Le Cornu and
 Blampied.
 The Attorney General
 -v-
 George McLoughlin
 D. J. Hopwood, Esq., Crown Advocate.
 Advocate I. C. Jones for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application by Mr McLoughlin to discharge a Compensation Order which was made by the court on 5th October, 2012, (AG-v-McLoughlin [2012] JRC 179) in the sum of £60,053.33 in favour of the Social Security Department when the court made an order for enforcement as varied of 12 months' imprisonment set in default of payment. 2. The basis upon which we approach this particular question is set down by Article 7 of the Criminal Justice (Compensation Orders)(Jersey) Law 1994 and we agree with the submission made by Advocate Jones that that requires us to look at really three questions. The first is whether there has been a substantial reduction in Mr McLoughlin's means since 5th October, 2012, when the order was imposed, secondly was that reduction in means unexpected as at 5th October, and unexpected in this context means unexpected by the court, and thirdly, are the means of Mr McLoughlin unlikely to increase for a substantial period. It is clear from the decision of the court in 2012 that the court expected the business The Sign Shop Limited to provide the funds from which the Compensation Order would be discharged. It was apparent that it had a substantial turnover and

the court said this:- “The Court makes a Compensation Order in the sum of £60,053.33 and in default of that money being repaid to the Social Security Department, you will serve an additional sentence of 18 months’ imprisonment, so it is to be consecutive.” And as I say the 18 months has been corrected to 12 months which was the maximum. “It is payable within 12 months of today. I say today because the Court expects arrangements to be made in relation to the business to ensure that that money is paid.” And then there is a warning given to Mr McLoughlin that if he was unable to make repayment it was open to him to apply for the Compensation Order to be reviewed. So it is quite clear the court was expecting at the time the monies to be generated from the business. 3. We have heard a lot more about the business today. What is apparent is that the major contracts have been lost and indeed that this was a personal business in a sense because these contracts depended very much on the relationship between those with whom the company contracted and Mr McLoughlin personally and when he was sent to prison for the offences which he had committed, the trust that was required, as far as the contracting parties were concerned, was lost. 4. We have addressed the questions and the answer to the first question, has there been a substantial reduction seems to us to be clearly yes there has because the company which owned the assets no longer exists. Was it unexpected as at 5th October and the answer to that again is clearly yes it was unexpected because the court was making the Compensation Order upon the basis that the company would generate the profits to make the payment. The third question is whether the means are unlikely to increase and the really key question as far as that is concerned seems to us to be whether we consider that Mr Zonta, who was, on the evidence of oath of Mr McLoughlin and Mr Zonta, put in initially as the caretaker but subsequently set up either a rival business or a rival business that was going to swallow up the business of the defendant, whether he is likely to make any payment back to Mr McLoughlin in the future. The Court is satisfied that there is no probability of any such money being paid, we have reached that conclusion on the evidence which was put before us and we accordingly do not think that there was any scheme to give money back to Mr McLoughlin at a later stage. 5. We have asked ourselves a question that Advocate Hopwood posed as to whether Mr McLoughlin should be permitted to let an asset go without realising what value it might achieve and then get the benefit by having the Compensation Order set aside because he has let it go. In our view the business was going anyway and Mr McLoughlin recognised this for the reason we have just given that it was a personal business to him, and in those circumstances we do not think that we should hold it against him the fact that he was not able to generate any return for the loss of this asset. If we had thought that he was likely to get some benefit from the lost asset in the future it would have been a different matter but we are satisfied on the evidence that we have seen and heard that that is not the case. 6. Accordingly the Compensation Order falls to be varied and we have considered what sort of variation ought to be imposed. Having regard to the evidence that we have of assets and liabilities, we think the right order to make is to discharge the Compensation Order in full and not to substitute any other order. The civil debt of course still exists and it is open to the Social Security Department to determine how they wish to deal with that but we are not going to reinstate the Compensation Order for any amount as a result of the financial information which we have before us at the moment. Authorities Criminal Justice (Compensation Orders)(Jersey) Law 1994. AG-v-McLoughlin

[2012] JRC 179.

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