

JERSEY / JUDGMENT

The Attorney General -v- Timothy David Nicolle

COURT

Royal Court

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Mental Health (Jersey) Law 2016.**[2022]JRC240****Royal Court****(Samedi)****7 November 2022**

Before :

Sir Michael Birt, Commissioner, and Jurats
Christensen and Le Cornu
The Attorney General
-v-
Timothy David Nicolle
Crown Advocate M. L. Preston
for the Attorney General
Advocate D.
S. Steenson for the Defendant

JUDGMENT

THE commissioner: 1. The Defendant is charged on an indictment with six offences, namely three counts of grave and criminal assault, one count of possession of an offensive weapon, one of breaking and entering, and one of malicious damage. All the offences occurred during the course of less than an hour on 29th November 2020. 2. The Defendant was remanded in custody following his arrest on 29th November 2020 and has spent approximately 22 months in custody. An issue arose as to his mental capacity at the time of the offence and as to whether he was fit to stand trial. 3. On 11th May 2022, the Court (Commissioner Clyde-Smith with Jurats Ronge and Le Heuze) heard evidence from two psychiatrists, Dr De instructed by the prosecution and Dr Hillier instructed by the defence. Both psychiatrists concluded that the Defendant was not fit to participate in a trial. Having heard this evidence, the Court, for the reasons set out in a judgment dated 11th May 2022, found that the Defendant was incapable of participating effectively in the proceedings against him, as described in Article 55 of the Mental Health (Jersey) Law 2016 (“the

2016 Law”). However, the Court adjourned the proceedings in order to give consideration as to whether to make a treatment order under Article 63 of the 2016 Law. 4. On 28th July 2022, the Court (the Deputy Bailiff with Jurats Christensen and Le Cornu) remanded the Defendant to Orchard House – he had hitherto been remanded in custody – for assessment and treatment. The Court adjourned the proceedings to 28th October 2022. 5. On 23rd September 2022, the Court (Commissioner Clyde-Smith with Jurats Crill and Christensen) accepted that there was no further benefit to be gained from remanding the Defendant at Orchard House and accordingly remanded him on conditional bail. 6. The issues before the Court on 28th October were first, whether there had been any change in the Defendant’s mental condition since 11th May 2022 as a result of which he was now in a position to participate in a trial and, if not, whether there should be a trial of the facts pursuant to Article 59 of the 2016 Law. 7. As to the first issue, the Court received a detailed report dated 13th October 2022 and heard oral evidence from Professor Marshall (instructed on behalf of the prosecution) and oral evidence (by video link) from Dr Hillier, who had not been able to provide an updated report as the Defendant had not been willing to meet with him. 8. Article 57(1) of the 2016 Law provides as follows: “The court determining an issue as to the defendant’s incapacity shall have regard (so far as each of the following factors is relevant in the particular case) to the ability of the defendant:

- (a) to understand the nature of the proceedings so as to be able to instruct his or her lawyer and make a proper defence;
 - (b) to understand the nature and substance of the evidence;
 - (c) to give evidence on his or her own behalf;
 - (d) to make rational decisions in relation to his or her participation in the proceedings (including entering any plea) which reflect true and informed choices on his or her part.” 9. Professor Marshall was of the opinion that, although the Defendant met the requirements of paragraphs (a) and (b) of Article 57(1), he did not meet the requirements of
 - (c) and (d) in that, because of his intense phobic anxiety in relation to the proceedings which arises as a consequence of his Obsessive-Compulsive (Anankastic) Personality, he is unable to give evidence on his own behalf or to make rational decisions in relation to his participation in the proceedings which reflect true and informed choices on his part.
10. During the hearing, the Court pressed Professor Marshall about the important public interest in defendants being called upon to answer for their actions through the criminal justice system and Professor Marshall fully accepted this point. However, he remained of the clear view that the Defendant’s mental state was such that he did not meet the requirements of (c) and (d) and was therefore not capable of participating effectively in the criminal proceedings against him.

11. Dr Hillier had not seen the Defendant since the preparation of his original report which was before the Court in May 2022 and was therefore not in a position to provide any opinion on the Defendant's current mental state. However, he indicated that nothing he had heard or read suggested any marked change in the Defendant's ability to participate in a trial since the date of his report.
12. The purpose of the hearing on 28th October was to consider whether the position had changed since the Court's decision on 11th May 2022 that the Defendant was unfit to stand trial as he could not participate effectively in the criminal proceedings against him. There was nothing in the evidence before us to suggest that the position had so changed since 11th May 2022. In the circumstances, it is not open to us to depart from that finding, which therefore remains in effect.
13. The second issue then arises, namely whether the Court should order a hearing under Article 59 of the 2016 Law as to whether the Defendant did in fact do the acts with which he is charged even though that will not lead to a conviction because of his inability to participate effectively in any trial. Advocate Steenson submitted that it was not necessary or appropriate as it might well exacerbate the Defendant's mental state by reason of his phobic anxiety.
14. The allegations against the Defendant are serious and the acts of the Defendant, if proved, would have been extremely frightening for all those involved. In our judgment, there is an important public interest in there being a public finding and record as to whether the Defendant did in fact do the alleged acts. It would not be sufficient for the public interest if these proceedings were simply to be discontinued without there being a finding as to what the Defendant did or did not do. In our judgment, the public interest outweighs any stress or exacerbation of his mental state which continuation of the proceedings in this way might cause. Accordingly, at the hearing on 28th October we ordered that there be a trial of the facts pursuant to Article 59.
15. The next issue was whether any such hearing should be before a jury or before the Jurats in the Inferior Number. If the case were to be heard before a jury, it could not be heard before 16th May 2023 because of existing Assize cases. On the other hand, if heard before the Inferior Number, it could be heard on 14th February 2023.
16. Article 48(3) and (4) of the Criminal Procedure (Jersey) Law 2018 provides that where an indictment charges both an offence under customary law and an offence under an enactment, the Court will decide whether the defendant should be tried before a jury or before the Inferior Number. Article 48(4) states that, in reaching its decision, the Court should have regard to the nature and gravity of the offence and to any submissions from the defence and the prosecution.
17. In this case, the customary law offences are undoubtedly more serious than the statutory offence. However, the alleged offences occurred as long ago as November 2020 and the criminal proceedings have lasted for a considerable period because of the issues as to the

Defendant's mental health. In our judgment, not only is there a strong public interest in the matter being brought to a conclusion as soon as possible, but it is also in the Defendant's interests, as Advocate Steenson submitted, for this to occur, so that the continued effect of the proceedings on his mental health can be brought to a close as soon as possible.

18. For these reasons, we concluded that, in the very special circumstance of this case, the hearing should be before the Inferior Number beginning on 14th February 2023.
19. At a subsequent hearing on 1st November 2022, the Court further ordered that the hearing on 14th February 2023 should, if it concluded that the Defendant did carry out the alleged acts, also consider whether, as described in Article 72 of the 2016 Law, at the time of carrying out the acts the Defendant was suffering from mental disorder to such a substantial degree that he ought not to be held criminally responsible for doing so. If the Court were to so find, it would record a special verdict to that effect. Authorities Mental Health (Jersey) Law 2016. Criminal Procedure (Jersey) Law 2018.

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