

JERSEY / JUDGMENT

Z v AG [2024] JRC 002 (03 January 2024)

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JUDGMENT

THE COMMISSIONER: 1. On 3 November 2023, we granted an application made by Z (to whom we shall refer as "the Applicant") pursuant to Article 5 (5) of the Sex Offenders (Jersey) Law 2010 ("the 2010 Law") that he no longer be subject to notification requirements which were imposed upon him by virtue of his conviction of a sexual offence some years ago. The following are the detailed reasons for our decision. 2. The Applicant was sentenced by this Court in respect of one count of indecent assault on an adult male to a twelve month probation order and made subject to the mandatory minimum notification requirement of five years pursuant to Article 5(4) of the 2010 Law. That period has now expired and the Applicant is accordingly eligible to ask the Court to order that he should no longer be subject to those requirements. 3. The relevant test for the Court to apply is contained in Article 5(6) of the 2010 Law which provides that: "(6) The Court must not make the order applied for under paragraph (5) unless it is satisfied that the risk of sexual harm to the public, or to any particular person or persons, that the person subject to the notification requirements of this Law poses by virtue of the likelihood of re-offending does not justify the person's being subject to those requirements." Sitting in private / anonymisation 4. On 24 August 2023, the Court, sitting in private, ordered, inter alia, that "The Representation shall be listed to be heard in private, but the first matter for consideration at the final hearing shall be whether the matter should be heard in private or public or whether any reporting restrictions should be imposed". Accordingly, we address that issue first. 5. Useful guidance as to the approach of the Court to this issue is to be found in a decision of MacRae, Deputy Bailiff, in C v AG

[2020] (1) JLR 236, in which the Court referred with approval to certain observations made by Commissioner Sir William Bailhache in A v AG [2020] JRC 004, which it summarised as follows: "(i) There is a public interest in ensuring that offenders are not deterred from making applications to have the notification requirements disapplied to them. (ii) The risk of publicity might destabilise an offender; this has the potential to make further offending more likely and there is a public interest in ensuring that this does not occur. (iii) There is a need for the community to recognise that once an offender has served his sentence, both the community and the offender and his family need to move forward. (iv) It is desirable that judgments setting out the reasons of the court when dealing with these applications are published so that the public can understand why the Court makes the order it does. (v) The burden should not lie with the offender seeking an order for a hearing in private, requiring him to prove that it is the only way in which justice could be

done. The public interest in these cases is wider and includes a number of factors. (vi) Accordingly, the Court should be more willing than hitherto to sit in private for applications of this kind and although no applicant can be entirely certain that that will be the outcome, it would be unsurprising if sitting in private for these cases became the norm. That would generally be followed by publication of a judgment in anonymised form." 6. The application for the hearing to be held in private was not opposed by the Crown and, applying these principles to the facts in this case, we elected to sit in private but to publish our judgment in anonymised form. Applying the statutory provisions to the facts in this case 7. The Court was provided with a De-Notification Report dated 30 October 2023 prepared by the Jersey Probation and Aftercare Service, and a report dated 9 October 2023 prepared by officers of the States of Jersey Police Offender Management Unit ("OMU") who have been managing the Applicant whilst he has been on the register. 8. The OMU report indicated that the Applicant's risk of re-offending had been assessed using an accredited risk assessment tool, namely the SA07 Stable and Acute risk assessment tool, which is a dynamic assessment, based on detailed interviewing and observation of the offender and which provides a risk level for further sexual offending. The SA07 assessments have elements within them which are more subjective in nature, some of which are influenced by professional judgment scored against a robust scoring guide. 9. The Stable assessment is conducted annually taking information from the past twelve months, whilst the Acute part of the assessment records day-to-day changes and takes into consideration factors which can change very quickly. 10. On the SA07 Acute assessment, the Applicant had scored "Low" during his recent assessments although previously substance abuse and collapse of social supports had been the main areas of concern. 11. On the SA07 Stable assessment, the Applicant had scored "Medium" during all his Stable assessments. The main areas of concern had been his apparent inability to maintain a stable relationship (which is defined for these purposes as a "marital" type committed relationship of two years or more) and his poor emotional regulation. However, over the years his risk had reduced from high end moderate to low end moderate. 12. The Applicant had been managed by the OMU as a low-risk offender, even though his stable assessments scored him as medium. The reason for this was that the areas of concern, highlighted by the SA07 assessment, namely the lack of relationship stability and poor emotional regulation, were factors that were unlikely to change and did not directly link to sexual offending. The OMU report noted that the Applicant was supported by a number of different professionals and that there were no immediate problems or issues that he needed to address. He had always worked consistently and honestly with professionals, maintaining long-term relationships with them and reaching out for help when needed. There had been no evidence or intelligence of any offending related behaviour since the offence for which he was sentenced. The OMU report noted that the Applicant had not had any further convictions since being on the sex offenders register and there was no evidence or intelligence to suggest that he harboured any desire to re-offend. 13. The report prepared by the Probation Service agreed with the conclusions reached by the OMU following the risk assessments. The report noted that in relation to the Applicant's

poor general self-regulation, this was an area in which there had been significant improvement by the Applicant and, whilst he had a history of poorly considered decisions, this was almost entirely connected to episodes of mental health decline. It was noted that following medical intervention, his mental health now appeared stable and the Applicant was likely to continue to be assisted by Mental Health Services for the foreseeable future. 14. In an addendum to the OMU report, the Applicant's previous and long-term mental health care co-ordinator (from 2016 to 2021) noted that whilst it was unclear whether the Applicant's offence was influenced by the state of his mental health, the offence occurred after the recognised onset of his illnesses but whilst untreated. The addendum highlighted that whilst his illness had been in relapse on several occasions over the last six years, resulting in a multitude of bizarre behaviours, none of them had been deemed as sexually aggressive or resulted in any further sexual offending. Accordingly, it was concluded that whilst the Applicant is effectively treated, as he is at present, and not suffering any side effects that may affect his compliance as in the past, his risk of any further offending in general is reduced and as such, but not specifically, his risk of any sexual offending is also reduced. 15. In relation to the Court's general stance towards risk assessments, Advocate Mière referred us to *H v AG*

[2014] JRC 226 where the Court stated that: "We wish to make it plain that in the ordinary case, an assessment of moderate risk of sexual re-offending is likely to mean that the notification requirement will not be removed." 16. However, in *H v AG* and a further case, *K v AG*

[2019] JRC 193, the Court had exercised its discretion to grant the relief sought under Article 5(6) of the Law where applicants presented as medium risk. In *H v AG*, the medium risk assessment was apparently a function of the applicant (who was then aged twenty-two) not having ever been in a relationship lasting two years. Advocate Mière submitted that the Applicant finds himself in a similar position given that the factors on which his medium risk assessment are predominantly based are factors which are unlikely to change and which do not appear to give the OMU concern. It was suggested that so long as the Applicant was unable to form and maintain a stable relationship for a significant period of time, he would be tethered to a medium risk assessment. In passing, we note that being on the register may itself be something of an impediment to an offender forming a long-term marital type relationship, and in the circumstances of this case we agreed that the impact of this factor on the risk score should not prevent the court granting the application. 17. Similarly, we noted that the other factor influencing the moderate risk assessment, namely poor emotional regulation, was felt to be a consequence of the Applicant's mental health issues in respect of which he had sought medical treatment and was actively engaging with the relevant mental health professionals. 18. Whilst the SA07 risk assessments are extremely valuable tools and are therefore given very careful consideration by the Court, we found it useful to have the additional explanation contained in the OMU and Probation Service reports which put the risk assessment factors into the individual context of the Applicant. 19. On behalf of the Attorney General, Crown Advocate Harrison confirmed that the application was not opposed. He reminded us that the Court must be satisfied, on

the balance of probabilities, that the risk of sexual harm to the public, or to any particular person or persons, that the Applicant poses by virtue of the likelihood of reoffending, does not justify the person being subject to the notification requirements. He noted that the assessments carried out by the OMU and the Probation Service suggested that the Applicant was considered to pose a medium risk of sexual re-offending, but he accepted that both of the risk areas identified, namely lack of relationship stability and poor emotional regulation, were unlikely to change and independently did not directly relate to sexual offending as a risk. He further noted that the Applicant had not re-offended since committing the offence over seven years ago, has cooperated with the OMU and appeared to be making progress in his life. 20. As Commissioner Clyde-Smith pointed out in *K v AG*

[2019] JRC 193 , the notification scheme: "....amounts to a legitimate interference with the private life of those subject to it, within the scope of Article 8(1) of the European Convention on Human Rights, but as the court said at paragraph 12 of *AG v Roberts*

[2011] JLR 125 : " it nonetheless remains necessary for the court to satisfy itself that the orders which it makes are proportionate so that the extent of the interference with the convention right is balanced appropriately against the important public interest which is the basis of the legislation." 21. In striking that balance, we were satisfied that the significant progress that has been made by the Applicant in addressing factors, which may have contributed to his commission of the offence, have resulted in a significant reduction in the risk of his re-offending, such that the continued notification requirement is no longer justified. We therefore granted the application. *Authorities Sex Offenders (Jersey) Law 2010. C v AG*

[2020] (1) JLR 236. *A v AG*

[2020] JRC 004. *H v AG*

[2014] JRC 226 . *K v AG*

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