

The Attorney General v L

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith, Jurats Fisher, Grime, Commr., Clyde-Smith
Judgment Date:	01 September 2016
Neutral Citation:	[2016] JRC 152
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Text

[2016] JRC 152

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith, Esq., Commissioner, and Jurats Fisher and Grime

The Attorney General
and
L

The Defendant appeared on his own behalf.

R. C. P. Pedley, **Esq.**, **Crown Advocate for the Attorney General.**

Authorities

Sex Offenders (Jersey) Law 2010.

H v AG [2014] JRC 226.

Jersey Evening Post Limited v Al Thani and Four Others [\[2002\] JLR 542](#).

Trusts (Jersey) Law 1984.

Hearing (Criminal) — application by the defendant requesting a private hearing in relation to Sex Offenders notification requirements.

THE COMMISSIONER:

- 1 L filed an application under Article 5(5) of the Sex Offenders (Jersey) Law 2010 (“the Sex Offenders Law”) for an order that he no longer be subject to the notification requirements of the Sex Offenders Law.
- 2 L asked for the hearing to be conducted in private, making it clear that if that request was refused, he would withdraw his application. The Court declined to sit in private and L accordingly withdrew his application. We now set out our reasons for declining to sit in private.
- 3 The period laid down by the Court when L was sentenced, after which an application could be made by him to be released from the notification requirements, had expired and he was therefore free to apply to be released from those requirements. Those requirements are, in summary, that he must notify the police of any names which he uses and of his address annually and any change of address. He must also allow the taking of finger prints and non-intimate samples if requested by the police and he must give details of travel outside Jersey.
- 4 The application was opposed by the Attorney General on the basis of reports received from the States of Jersey Police Offender Management Unit and the Jersey Probation and After-Care Service, both of whom had assessed L as presenting a moderate risk of committing further sexual offences, applying the assessment tool SAO7, which was the subject of some analysis in *H v AG* [2014] JRC 226. In that case, the Court felt able to discount two of the scores because of the unusual facts of that case (including that defendant's age – he was 22), but the Court emphasised that in the ordinary case an assessment of a moderate risk of sexual re-offending was likely to mean that the notification requirements would not be removed.
- 5 The test which must be applied as to whether the Court should sit in private is set out in the

case of *Jersey Evening Post Limited v Al Thani and Four Others* [2002] JLR 542. That case concerned proceedings under Article 47 of the Trusts (Jersey) Law 1984 which the Court had ordered to be held in camera, an order challenged by Jersey Evening Post Limited. Quoting from the headnote:-

“(2) The principle of open justice had not yet found statutory expression in Jersey but formed part of the law and an order for proceedings to be heard in camera was only to be granted when it was necessary to do justice in the exceptional circumstances of the case, e.g. to protect specific individuals or prevent the destruction of the subject-matter in issue. Public proceedings ordinarily deterred inappropriate behaviour on the part of the court, maintained public confidence in the impartial administration of justice, made uninformed and inaccurate comment on the proceedings less likely, and could result in additional evidence becoming available. The burden lay with the party seeking an order for hearing in camera to prove that it was the only way in which justice could be done; convenience, potential embarrassment and parties' preference were in themselves insufficient justifications (paras. 12–17).”

- 6 In considering whether to sit in private, the burden was accordingly on L to persuade the Court that there were exceptional circumstances in his case which outweighed the principle of open justice.
- 7 L had complied with the notification requirements and remained in a stable long-term relationship with his wife and children. He had since built up a successful business which provided employment to others. Put simply, his concern was that any publicity arising out of his application being made in public, particularly if reported by the Press, would be very damaging to him, his wife and his children and to his business and its employees. It would, he said, be to punish him twice for offences committed many years ago and since when he has rebuilt his life.
- 8 The Attorney General considered L an untreated sex offender who remained in denial about his offences (the making of indecent photographs of children) and whose danger to the public remained exactly the same as it did at sentencing. The likelihood of his re-offending had not changed to any degree.
- 9 Crown Advocate Pedley, for the Attorney General, submitted that there had been no significant change in L's circumstances since he was convicted, save that he is now conducting his own business. He lives in the same house with his family, all of whom are aware of his conviction as are other people living in the same estate. There is no ongoing work with L as regards his offending and, given his denial over the offences, no likelihood of such work being undertaken. He submitted that there was no basis for holding the hearing in private.
- 10 It is said that the notification requirements are not intended to be punitive. They are

imposed to enable the police to manage persons who pose a risk of sexual harm to the public, but one of the consequences of an application to be released from these requirements is the possibility of publicity which applicants may understandably feel effectively punishes them twice.

- 11 The legislature could have provided for applications under Article 5(5) to be held in private so as not to deter applicants who may be concerned about publicity, but it has not done so. The principle of open justice therefore applies and it is only to be displaced where it is necessary to do justice in the exceptional circumstances of the case. Each case will be considered on its own merits, but the case before us was a contested application, and as such would have been of greater interest to the public than one which was unopposed. Had the hearing gone ahead, the Court may have been satisfied that the risk of sexual harm to the public posed by L justified the notification requirements remaining in place. That is a matter where the interests of the public are not outweighed by the interests of the applicant in avoiding any publicity that might result from such a contested public hearing. Accordingly, we declined to sit in private and, out of fairness to L, agreed that this short judgment should be anonymised.