

JERSEY / JUDGMENT

AG -v- Maton [2016] JRC 072 (24 March 2016)

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JUDGMENT

THE DEPUTY BAILIFF: 1. Carl Lewis Maton ("the defendant") is currently before this Court having pleaded guilty to eight counts of obtaining goods or services by false pretences and one count of attempting to do so. The case was listed for sentencing before the Inferior Number on 11 th March, 2016, but was adjourned to th March, 2016, for legal argument. 2. On 27 th August, 2015, the defendant pleaded guilty before the Magistrate's Court to one count of indecent assault. That count was factually unrelated to the matters for which he is to be sentenced before this Court. On 6 th October, 2015, the Magistrate purportedly declined jurisdiction and on 20 th October, 2015, the Magistrate committed both the indecent assault charge and the false pretences charges for trial to the Royal Court. 3. The issue before me today is whether or not the defendant has been validly committed to this Court on the indecent assault charge. The Magistrate's Court has taken the view that he has been validly committed, the Crown argues that he has not. I am accordingly deciding the procedural position, the result of which will be either that the defendant will be sentenced on separate occasions before this Court for the false pretences and before the Magistrate's Court for the indecent assault or, if he has been validly committed, will be sentenced ultimately before this Court for both the false pretence charges and, on the assumption he maintains his pleas, the single count of indecent assault. 4. Whilst the matter turns on a point of statutory construction and interpretation it is necessary to set out a little more of the procedural background:- (i) On 19 th June, 2015, the defendant was charged in the Magistrate's Court with the single count of indecent assault on a 14 year old male. The assault had allegedly occurred on 24 th January that year. The initial plea was one of not-guilty. (ii) Thereafter a number of remands took place and the not-guilty plea was maintained. On each occasion the defendant was remanded on a warning. (iii) It appears that during the course of those remands the Magistrate's Court had accepted jurisdiction. This is to be inferred from the fact that the matter was dealt with procedurally by arranging for a summary trial including the fixing of a pre-trial review date and the appointment of an intermediary for the complainant. (iv) On 27 th August, 2015, the defendant changed his plea and entered a guilty plea to the indecent assault charge. The defendant was remanded on a warning to 8 th October, 2015, for an "SER and possible expert report...". There was also reference to "notification of sex offenders" and by Act of Court dated 27 th August, 2015, the defendant from that date was subject to the requirements of

the Sex Offenders (Jersey) Law 2010 ("the SOL"). Article 3(1) of that Law states "a person, who, in Jersey is convicted of a relevant offence becomes subject to notification requirements of this Law upon conviction". (v) There was a further remand of 10 th September, 2015, and it was noted that an expert's report would be ready for sentencing on 29 th October, 2015. (vi) On 29 th September, 2015, the false pretences charges were put to the defendant and the note from the Magistrate's Court Greffier reflects that "jurisdiction to be decided at the next appearance". (vii) On 6 th October, 2015, jurisdiction was declined and the sentencing date for the indecent assault was vacated. (viii) On 20 th October, 2015, there was a further interim remand and on 17 th November, 2015, the Magistrate committed the false pretences and the indecent assault charge for trial before the Royal Court. 5. There is no argument about the committal by the Magistrate of the false pretences charges. These are properly before the Court. The issue relates to whether or not the Magistrate has validly committed the indecent assault charge to this Court. 6. As I have stated, when the matter was listed before us on 11 th March, 2016, it was adjourned for legal argument. As the advocate for the defendant took the same view of the legal position as the Crown we left it open as to whether the defendant wished to be involved in this legal argument. He has elected not to be so. The argument in favour of the validity of the committal for indecent assault has been advanced by Advocate Santos-Costa who was appointed as *amicus curiae* for that purpose. 7. The Magistrate's Court is a creature of statute and consequently its jurisdiction is to be determined by reference to the statutory provisions under which it is created and empowered. It is accepted by counsel that there are only two statutory provisions which provide for the ability of the Magistrate to send matters to the Royal Court either for sentence or for trial. These are Article 3(2) and Article 4 of the Magistrate's Court Law (Miscellaneous Provisions) (Jersey) Law 1949 ("the 1949 Law"). 8. Article 3(2) of the 1949 Law is in the following terms:- "Subject to the provisions of Article 4, if the Magistrate is of the opinion that the gravity of an offence is such that there should be imposed a penalty or penalties in excess of those which the Magistrate is empowered by paragraph (1) to impose, or that a confiscation order is likely to be made, it shall be the Magistrate's duty to commit the accused for trial before the Royal Court." 9. Article 4 of the 1949 Law provides as follows:- "If the accused has pleaded not guilty and the Magistrate, having heard the case, finds the accused guilty and if - (a) thereafter having examined the accused's record of previous convictions; or (b) having regard to any other fact then brought to the Magistrate's knowledge, the Magistrate is of the opinion that there should be imposed a penalty or penalties in excess of those which the Magistrate is empowered by Article 3 to impose, or that a confiscation order is likely to be made, the Magistrate shall commit the accused in custody or on bail to the Inferior Number of the Royal Court to receive sentence." 10. Article 4 in its terms accordingly only applies to circumstances in which the accused has pleaded not guilty and the Magistrate has heard the case. It does not apply in the current circumstances. 11. Article 3(2) of the 1949 Law is therefore the only other provision under which a case can be sent to the Royal Court. There are a number of things to note from the wording of that provision:- (a) It is not in its terms limited as to the time in which the Magistrate's opinion as to gravity must be formed; (b) It says nothing about the stage of the proceedings before the Magistrate at which a referral to the Royal Court might be made; (c) It imposes a duty on the Magistrate, if the view is formed that the sentencing powers are insufficient, to commit the accused for trial before the Royal Court. It is

mandatory. 12. Advocate Santos-Costa argues that a simple construction of Article 3(2) makes it clear that it is dealing with an ongoing obligation which is not limited either by time or procedural stage and that duty must be discharged by the Magistrate at any time that the appropriate conditions apply (namely that the view has been taken that sentencing powers are insufficient) right up until the moment that the Magistrate is *functus officio*. That can only be when the Magistrate has fully discharged his or her duties in connection with the case that is when sentence has been imposed. At any point up to that time the Magistrate can decide in appropriate circumstances to commit the matter to the Royal Court for trial. 13. Advocate Santos-Costa illustrates this proposition by pointing out that it is often only after there has been a guilty plea and the matter has been remanded for sentence that the Magistrate will have at his or her disposal all of the facts necessary to answer the jurisdictional question. The contents of a social enquiry report may for example put a very different complexion on the case and persuade the Magistrate that it should not be sentenced by the Magistrate's Court but rather should be sent to the Royal Court. It cannot be that the Magistrate is then prevented from doing so. In the hypothetical case of a grave and criminal assault the Magistrate, having seen some of the papers and had some information about the injuries might accept a guilty plea and jurisdiction in the belief that the matter was not so serious or the injuries were not so severe as to require committal to the Royal Court. When, in that hypothetical case, the social enquiry report is received, however, full details of the antecedents are known and information, more precise, is available relating to the injuries suffered. The Magistrate might then take the view that the case is outside of the sentencing powers of the Magistrate's Court. This is far from fanciful, so Advocate Santos-Costa argues, and it is clear that this would and should fall within the terms of Article 3(2) of the Law and the matter committed for trial. 14. He further argues that it is not surprising that, in contra distinction to Article 4, Article 3(2) provides for committal for trial because there will have been at that stage no trial in answer to the guilty plea and an accused would be in a position to enter whatever plea he felt appropriate when the matter was indicted before the Royal Court. Article 4 was, so Advocate Santos-Costa argues, to provide for circumstances in which there had been a trial and a finding of guilt and committal for sentence was then appropriate. 15. In support of his argument I was referred to commentary and case law relating to "autrefois convict". In particular I was referred to the case of *Regina -v- Richard Privy Council*

[1992] 4 All ER 807 where Lord Bridge at page 813 paragraph (a) et seq said as follows:- "The underlying rationale of *autrefois convict*, as explained by Blackburn J in *Wemyss -v- Hopkins*

[1875] LR 10 QB 378, is to prevent duplication of punishment. But if the plea can be supported by a finding of guilt alone, a defendant might escape punishment altogether. Where a defendant is tried before a judge and jury, both have their roles to play and together they constitute the court of trial. If, in any case following trial and conviction by the jury, the judge were to die before passing sentence, there would be no court seized of the case by which sentence could be passed. The defendant, it seems to their Lordships, would in those circumstances have to be re-arraigned before another court and if he again pleaded not guilty would have to be retried. But it would be absurd that he should be able to plead

the jury's verdict in the first trial as a bar to the second. In the case of *autrefois acquit* the position is, of course, different, because the jury's verdict of not guilty is a final adjudication and disposal of the case and the judge has no further function to perform. The need for finality of adjudication by the court whose decision is relied on to found a plea of *autrefois convict* is even more clearly apparent where a defendant has pleaded guilty. Not only may the defendant be permitted, in the discretion of the court, to change that plea at any time before sentence, but, when a plea of guilty to a lesser offence than that charged has initially been accepted by the prosecutor with the approval of the court, there can, it appears to their Lordships, be no finality in that "acceptance" until sentence is passed. In *R -v- Emmanuel* [1981] 74CR App R135, where the defendant was charged in the indictment with alternative counts, the judge approved a proposal by the prosecutor to offer no evidence on the more serious charge and to accept a plea of guilty to the less serious. But, on hearing the facts opened, he changed his mind and withdrew his approval. The defendant was re-arraigned and the trial proceeded on both counts. The defendant was convicted of the more serious offence. On appeal it was held that there had been no material irregularity in the proceedings. Their Lordships consider that this case was rightly decided." 16. From this Advocate Santos-Costa draws the fact that for the purposes of *autrefois convict* a person has not been convicted until sentence has been passed. This, by analogy, suggests that there is no conviction before the Magistrate's Court until sentence has been passed. There was always the possibility, he argues, of an application to change a plea and there is nothing in the acceptance of a guilty plea which overrides the clear and ongoing statutory duty provided by Article 3(2). 17. I do not find persuasive the argument advanced to me based on *autrefois convict* which is a particular principle that has evolved to prevent the possibility of a person being punished more than once for the same offence. What might be taken from the passage in *Richards -v- R* , however, is the distinction between a finding, after a trial, of guilt or innocence (the former of which is a final disposal of the issue of culpability although not the sentence and the latter of which is a final determination of the case) and a plea of guilty. It seems to me that a finding after a trial can only be challenged by way of an appeal and it is, perhaps, for that reason that Article 4 of the 1949 Law provides for committal to the Royal Court for sentence purposes as opposed to full trial. Their Lordships in *Richards* , clearly took the view that a plea of guilty could not dispose of the question of conviction or otherwise for the purposes of *autrefois convict* and although I do not consider that the judgment in *Richards* is directly applicable to the question before me, it is indicative to my mind of a distinction that be validly drawn between a finding of guilt after a trial and a plea of guilty in respect of which leave may ultimately be granted to change it. The former can only be challenged by an appeal to a higher court, the latter is still within the purview of the lower court then seized of the case. 18. The Crown, for its part, argues that it is simply too late procedurally for the Magistrate to commit the indecent assault to the Royal Court. The Attorney General argues that where, as in this case, the Magistrate has initially accepted jurisdiction, has accepted a guilty plea, there is a conviction and the only Court that can then sentence the convicted person is the Magistrate's Court. 19. The Attorney General

points to the terms of Article 3(1) of the SOL and says that the fact that the defendant was made immediately subject to the reporting requirements in the SOL, which can only happen on a conviction, is confirmation that the Magistrate viewed him as being convicted. 20. The Crown also cites the case of *Le Cocq v AG*

[1991] JLR 169 in which the Court, at page 188, said this:- "The combined effect of the 1853 Law, the 1864 Law and the 1949 Law is that the Magistrate starts a case with four potential decisions available to him. First, he may decide that there is no case to answer, which is not an acquittal. Secondly, he may decide to dismiss the charge (liberate the accused), i.e., to acquit the defendant. Thirdly, he could convict and sentence the defendant or, fourthly, find a *prima facie* case but decide that the appropriate sentence is beyond his maximum powers and commit the defendant to the Royal Court, not for sentence but for trial." In that case the Magistrate had purported to retain a case when he had previously heard it for the express purposes of committal. 21. The case of *Le Cocq* does not to my mind assist in determining this issue. It was a case that was different on its facts and different in its statutory context in that Article 4 was not at that time part of the 1949 Law. The Court in *Le Cocq* did not need to consider what the effect of a guilty plea was in circumstances where the Magistrate had initially accepted jurisdiction, had gone so far as to remand for potential sentencing, but in the light of later facts decided that the matter should go to the Royal Court. This point has not, so far as I am advised, been the subject of any other judgment of the court. Accordingly it seems to me to be appropriate that I turn first and foremost to the express wording contained in the relevant statutory provision. 22. The defendant pleaded guilty to the charge of indecent assault on 27 th August, 2015. If nothing had occurred in the meanwhile which caused the Magistrate to review the position, the matter would have proceeded to sentence before that court and, on sentence, the Magistrate would have been *functus officio* . 23. At any point before that, however, the plea of guilty could have been changed with the leave of the Court. One can see circumstances in which a Magistrate, in the light of further information, may well have directed that a not-guilty plea be entered where, for example, it was clear from the reports prepared for sentencing that there was a serious doubt about the mental capacity of a defendant to have understood the plea in the first place. These types of considerations suggest to my mind that the plea of guilty is not, at least until the Court has discharged all of its duties in connection with the case, a fixed and immutable procedural point. 24. In my view until the moment that the Magistrate is *functus officio* having discharged all of the Magistrate's obligations with regard to the case before the Magistrate's Court it is open to the Magistrate, and indeed the Magistrate has a duty, to send the matter for trial to the Royal Court in the event that the Magistrate forms the view that the Magistrate's Court sentencing powers are insufficient. I see nothing in the clear wording of Article 3(2) which makes this conclusion untenable. 25. Although I was not addressed as to the reasons advanced by the Magistrate for committing the matter to the Royal Court, other than the fact that there was an express statement that jurisdiction was declined, the papers contained the correspondence that has passed between the learned Attorney General and

the Magistrate. 26. Amongst the arguments advanced by the Magistrate in her letter of 28th January, 2016, for the view that the matter has been validly committed the Magistrate says:- "There are often circumstances in which, on first presentation, of a case the Magistrate does have jurisdiction under Article 2 of the 1949 Law as a charge, or charge, is, or are likely to attract a sentence within the 12 months limit. If however, before sentence, the Magistrate becomes aware of factors which then appear to put the matter, or matters, beyond the sentencing power of the Magistrate, the question of jurisdiction will be reviewed. This can occur, if, for example, further charges are put; the facts of the case are more serious than at first appeared; or the defendant commits offences whilst on bail. If the court decides that Article 3(2) applies, taking into account the new circumstances the case must be committed to the Royal Court for trial. The effect of this is that the plea is vacated as the defendant will answer to the indictment of the Royal Court. The case will be adjourned and the committal proceedings will take place in the usual way." From this extract I deduce that the Magistrate had in fact, in this case, taken the view that the sentencing powers available to her were insufficient and accordingly had decided that she must commit the matter for trial to the Royal Court in accordance with Article 3(2) of the 1949 Law. I agree with the Magistrate's characterisation of the procedural position. 27. Accordingly in my view the procedural position that we have reached is now that both the false pretences charges and the indecent assault are validly committed to this Court and the Indictment relating to the indecent assault should be prepared and put to the defendant so that he can plead at the earliest opportunity. 28. I would like if I may to pay tribute to the clarity of the submissions of both the learned Attorney General and Advocate Santos-Costa. Authorities Sex Offenders (Jersey) Law 2010. Magistrate's Court Law (Miscellaneous Provisions) (Jersey) Law 1949. Regina v Richard Privy Council [1992] 4 All ER 807. Le Cocq v AG

[1991] JLR 169 . Page Last Updated: 13 Apr 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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