

JERSEY / JUDGMENT

Evans -v- AG [2015] JRC 012 (19 January 2015)

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JUDGMENT

commissioner: 1. On 11 th July, 2014, the appellant chose to walk out of his trial in the Magistrate's Court for a contravention of Article 51(b) of the Telecommunications (Jersey) Law, 2002 on the basis of an unspecified allegation that he could not receive a fair trial and this after being warned that the trial would proceed in his absence. It did so proceed in his absence and he was found guilty. Sentencing was adjourned. 2. On 29 th July, 2014, the appellant filed a notice of appeal against his conviction out of time. He gave as his address for the serving of summonses and notices respecting his appeal as c/o Hastingue Farm, La Route de l'Etacq, St Ouen. He stated as his ground of appeal that a plea was unlawfully entered for him and he was unable to receive a fair trial because of the Magistrate's presumption of guilt for one or more of the elements of the alleged crime; a presumption which we have to say the transcripts provide not one shred of support. 3. The Judicial Greffier wrote to him at that address, pointing out that his notice of appeal had been lodged out of time, and he therefore needed to apply for an extension of time. The appropriate application was signed and filed by him on 8 th August, 2014, and received by the Judicial Greffe on 11 th August, 2014. In that application he stated that he was unaware of the time for appealing and was not notified of the Court's decision until 23 rd July, 2014. 4. On 26 th September, 2014, the Judicial Greffe wrote to the appellant informing him of the date set for his appeal. That letter was returned as undeliverable. The Judicial Greffe was informed by the Viscount that he no longer resided at this address. 5. Further arrangements had been made to serve the appellant with notice of the appeal date and a bundle of documents at his appearance for sentencing at the Magistrate's Court on 23 rd October, 2014. However, he did not attend and his arrest was ordered. The Viscount's Department has made further attempts to locate the appellant since then, without success. 6. On 18 th November, 2014, the date fixed for the hearing of his appeal against conviction, the defendant did not appear. There appeared to be four options open to the Court in order to deal with the matter:- (i) To confirm the conviction under Article 20(3) of the Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949 ("the 1949 Law"). (ii) To dismiss the appeal pursuant to Article 20(2) of the 1949 Law on the basis that the Court was of the opinion that the appeal was frivolous or vexatious or brought for the purpose of delay. (iii) Declare the appeal abandoned by the appellant's conduct. (iv) Adjourn the appeal for a date to be fixed as and when the appellant is located. 7. Advocate Byrne, for the Attorney General, was

concerned about the Court proceeding to make any order under Article 20(2) or (3). Although the appellant had given an address for service, it was clear from the letter giving notice of the date of the appeal being returned that he was unaware of the hearing and was not therefore in a position to counter any arguments put forward by the Attorney General. Without the Court knowing why the appellant could not be served and in the absence of any evidence that his absence was deliberate, he felt that making an order could raise issues under Article 6 of the European Convention on Human Rights 2000 (the right to fair trial). 8. Furthermore, pursuant to Article 26(2) of the 1949 Law, any order made under Article 20(2) and (3) would be final and without further appeal, although the Court did find in *Syvret v AG*

[2012] [1] JLR 132 that the Court could permit the re-opening of a concluded appeal exercising its inherent jurisdiction on the basis that the Court had implied powers to do those things that were necessary to avoid serious injustice in exceptional cases. It was held that there were two competing principles; on the one hand, the importance of finality in litigation both in the public interest and in the interests of the parties involved and on the other hand the equally clear public interest in ensuring that a manifest injustice could be remedied, particularly if the injustice was a wrongful criminal conviction. 9. An adjournment for a date to be fixed, when the appellant was eventually located offended the first of these principles, as it would not bring finality to the proceedings. Accordingly, the route recommended by Advocate Byrne and preferred by the Court, was for it to deem the appeal to have been abandoned by conduct. The appellant had made no effort to engage with the process by giving an alternative address for service or making any inquiry as to the progress of his appeal. 10. Article 19 of the 1949 Law provides for abandonment by giving notice in writing to the Judicial Greffier not later than the third day before the day fixed for the hearing of the appeal. However, in *Vibert v AG* [2013]

(1) JLR N 4 and

[2012] JRC 237, it was held that Article 19 does not prevent an appellant from abandoning an appeal in the face of the Court, which can be done by giving oral notice. Therefore, whilst the statute prescribes a means to abandon the appeal, the Court has read this not to be the only means. The Court held further that it had an inherent power to allow reinstatement of an abandoned appeal against the decision of the Magistrate's Court in exceptional cases and that relevant factors include the merits of the proposed appeal and abandonment without legal advice. Advocate Byrne submitted therefore that the appellant would not be prejudiced by a decision that he had abandoned the appeal by conduct, as a future application by him for reinstatement would be judged on the merits. 11. The Court therefore declared the appeal to have been abandoned by the conduct of the appellant, thus enabling these proceedings to be brought to a close. *Authorities Telecommunications (Jersey) Law 2002. Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949. European Convention on Human Rights 2000. Syvret v AG*

[2012] [1] JLR 132. *Vibert v AG*

[2013] (1) JLR N 4. Vibert-v-AG

[2012] JRC 237 . Page Last Updated: 27 Sep 2016 BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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