

JERSEY / JUDGMENT

Harding v AG [2010] JRC 167 (16 September 2010)

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JUDGMENT

THE commissioner: 1. By this appeal the appellant ("Miss Harding") seeks to set aside three convictions before the Magistrate's Court on 8 th May 2008 for common assault, malicious damage and possession of an offensive weapon ("the Magistrate's Court convictions"). 2. This appeal follows the decision of the Court of Appeal on 18 th May 2010 (

[2010] JCA 091) to set aside Miss Harding's convictions before the Royal Court on 12 th December 2008 on counts of grave and criminal assault and violently resisting arrest on the ground that she was unfit to plead and thus did not have a fair trial. 3. On 1 st September 2009 the Superior Number had found, following consideration of expert evidence, that Miss Harding was unfit to plead to a charge of attempted murder upon a female health worker at the prison on 18 th December 2008. The Court of Appeal found that Miss Harding would have been found unfit to plead on th December 2008 for the same reasons as found by the Superior Number on 1 st September 2009. 4. As made clear by the Court of Appeal, we are concerned about the course of events following Miss Harding's release from psychiatric hospital when aged 18 in February 2008, a release which as the Court of Appeal said can be seen in hindsight to have had catastrophic consequences both for Miss Harding and those with whom she came into contact. 5. The offences which gave rise to the Magistrate's Court convictions took place in March 2008. The grave and criminal assault which led to her trial before the Assize in December 2008 took place on 9 th May 2008, the day after she was convicted by the Magistrate's Court. The attempted murder took place on 18 th December 2008, shortly after her conviction before the Assize. 6. We were asked to give leave to appeal from the Magistrate's Court convictions out of time and to admit the expert evidence adduced before the Superior Number as to her fitness to plead. The Constables raised no objection to our doing so. Furthermore, the Constables agree that on the basis of that expert evidence, Miss Harding would have been unfit to plead on 8 th May 2008. We accept that this was the case. 7. A further point arose before us, namely that pursuant to Article 17 of the Magistrate's Court (Miscellaneous Provisions)(Jersey) Law ("the Law") there is no right of appeal against conviction where, as here, there is a guilty plea. Article 17 is in the following terms:- "Right of Appeal (1) A person convicted by the Magistrate's Court may appeal to the Royal Court: (a) if the person pleaded guilty or admitted the facts,

against sentence; (b) if the person did not - (i) and was sentenced by the Magistrate, against conviction or sentence; (ii) and was committed by the Magistrate for sentence under Article 4, against the conviction." 8. Miss Fogarty and Mrs Sharpe submit that notwithstanding the guilty plea, the Court retains jurisdiction to entertain the appeal and this on the authority of the case of *Bish v Attorney General* 15 May 1992 where, on different facts, the Court said this:- "In this case clearly a guilty plea was entered and therefore prima facie this Court has no jurisdiction to entertain an appeal. However, a number of Jersey cases in the *Poursuites Criminelles* of some years ago indicate that the Court is prepared to entertain an appeal where there are particular grounds to enable it to do so. The one case which supports that suggestion is the case of *Mortell*, (1963 36 PC 163) where although the appellant had pleaded guilty, a witness came forward afterwards to show that she had been drunk at the time and therefore didn't have the necessary mens rea. And, therefore the Court was prepared to look behind her guilty plea. On the other hand the Court was not prepared to do so in three other cases, *Barrot*

(1965) 36 PC 468, *Aubin*

(1966) 37 PC 98 and *Luce*

(1969) 38 PC 121. The conclusion which we draw from these cases is that the Court will look at any case to see if it has jurisdiction where either the accused did not appreciate the nature of the offence or there were any other grounds entitling the Court to do so." 9. In the case of *Mortell* (cited above) the appellant was drunk at the time of the commission of the offence to which she had pleaded guilty in the Police Court. A witness subsequently came forward whose evidence was that the Appellant had in fact not committed the offence which was the subject of the charge. On appeal, the record of the Court proceedings was as follows:- "On the case being called, the Attorney General drew the attention of the Court, first, to the statement in the said Act of the Police Court that at the hearing of the case before that Court the appellant admitted the facts set out in the charge preferred against her, and secondly, to paragraph (1) of Article 14 of the said law, as amended, which provides that a person convicted by the Police Court may only appeal to the Royal Court against his conviction if he did not plead guilty or admit the facts. The Attorney General having been heard and the appellant having been heard through the intermediary of her advocate, the Court decided to hear evidence with regard to the circumstances in which, at the Police Court, the appellant admitted the facts set out in the said charge. Whereupon, the appellant and Centenier John Wesley Le Breton having been heard on oath, the Court declared itself satisfied that when the appellant admitted the facts as aforesaid she did not fully appreciate the nature of the said charge." 10. In our view reference in Article 17(1) (a) of the Law to a person pleading guilty must be a reference to a plea properly entered. In *Bish* and *Mortell* the appellants did not understand the true nature of the charges against them. In the case before us, Miss Harding was unfit to plead at all. She must be treated as if she had not entered a guilty plea, as she was unfit to do so, thus giving the Court jurisdiction under Article 17(1) (b). 11. Accordingly, we grant leave to Miss Harding to

appeal out of time, we admit the expert evidence and set aside the Magistrate's Court convictions. Authorities *Harding v AG*

[2010] JCA 091 . Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949. *Bish v Attorney General* 17 th May 1992. Mortell (1963) 36 PC 163. Page Last Updated: 02 Aug 2016 BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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