

JERSEY / JUDGMENT

Vibert -v- AG [2012] JRC 237 (20 December 2012)

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JUDGMENT

THE BAILIFF: 1. This matter is listed as an application by Mr Vibert for leave to appeal out of time against the sentence imposed for seven parking offences by the Magistrate's Court on 5 th November. However, for reasons which we shall explain in a moment, we do not think that that is actually a correct description of the procedural position. In order to explain why this is so, we should recount briefly the procedural history of the matter culminating in this morning's hearing. 2. On 27 th April, 2012, the appellant was charged with five parking offences committed on five different days in January and February. Not guilty pleas were entered. The cases were adjourned periodically because the appellant had appealed to the Royal Court on a point of law against an earlier parking charge of which he had been convicted and it was thought that the decision of the Royal Court would be relevant to the outstanding charges. In due course the decision of the Royal Court was given and the five charges were listed for trial before the Magistrate's Court on 12 th October. Nine prosecution witnesses were there to be called. 3. Following various submissions to the Assistant Magistrate the appellant elected to withdraw from those proceedings and left the Court. The Assistant Magistrate proceeded to hear the witnesses and she convicted the appellant in his absence of the five parking charges. Sentence was fixed for 25 th October. On that date the appellant failed to appear. Accordingly he was arrested and brought before the Court on 26 th October. Two further parking charges were laid on that day relating to offences on 26 th September and 24 th October, 2012. The appellant refused to enter a plea and accordingly the Assistant Magistrate entered not guilty pleas on his behalf. The trial date was fixed for 1 st November. On that date the appellant again did not attend. In his absence the Assistant Magistrate heard from two witnesses and convicted him of the two further parking offences. She also convicted him of contempt of court in relation to his non-appearance on the 25 th October. An arrest order was issued and he was brought before the Court on 5 th November. On that occasion the Assistant Magistrate found him guilty of a second charge of contempt relating to his non-appearance on 1 st November. 4. She sentenced the appellant to 7 days' imprisonment, consecutive, on the two counts of contempt of court. In relation to the seven parking offences, he was fined £70 on each count i.e. £490 in total; she ordered him to serve a default sentence of 6 days' imprisonment in respect of each count, that to be consecutive. In other words, 42 days imprisonment in total. He was ordered to pay the fines at the rate of £30 per

week commencing after his release. 5. The appellant filed a notice of appeal immediately, indeed it was the same day. That appeal was expressed to be against conviction and sentence in respect of both the parking offences and the two counts of contempt of court. It follows that the appellant did appeal in respect of the parking offences against both conviction and sentence and therefore he has no need now to seek leave to appeal out of time. That is why we say that the matter as originally listed does not reflect the position. We place no blame whatsoever on the appellant in this respect; he was acting with the assistance of those at the prison who no doubt were trying to help him achieve the best outcome and the point we have raised is a technical one. 6. There is however a complication. The appellant's appeal came before this Court on 29 th November. At that stage it appeared to be an appeal against conviction and sentence in respect of both the parking offences and the contempt of court because that is what the notice of appeal said. But at the beginning of the hearing the appellant confirmed to this Court that he was no longer pursuing any appeal in respect of the parking charges. He was only appealing against conviction and sentence in respect of the two contempt charges. The Court proceeded to hear argument on those two charges and after doing so, it dismissed the appeals both against conviction and sentence in respect of the contempt charges. Accordingly the appellant returned to serve the balance of the 14 days sentence, having been granted bail pending appeal by the Royal Court on 9 th November. The Court said it would give reasons later and I regret that we have not yet been able to do so. 7. In our judgment there is no doubt that on the 29 th November, the appellant abandoned his appeals against conviction and sentence in respect of the parking offences. He did so by informing the Court orally that that was what he was doing. It is of course correct that Article 19(1) of the Magistrate's Court (Miscellaneous Provisions)(Jersey) Law is in the following terms:- "(1) An appellant may abandon an appeal under Article 17 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." 8. The appellant did not in this case give any such written notice. However it is clear to us that that provision enables an appeal to be abandoned before the matter actually comes before the Court, and of course, in those circumstances it must be done in writing to the Judicial Greffier. But that provision does not in any way prevent an appellant from abandoning an appeal in the face of the Court. 9. In our judgment that is what happened on this occasion. So we start from the position that the appellant has abandoned his appeal against conviction and sentence in respect of the parking offences. 10. The background to it now coming back before us is that, following the dismissal of his appeal in respect of the contempt charges, the appellant was served with notice of default in respect of the fines because he had failed to pay them in accordance with the order of the Magistrate's Court. Accordingly, upon the expiry of the 14 day sentence for contempt, he remained in prison to serve the 42 days sentence in default for the parking offences. We are informed that he has so far served the equivalent of a 25 day sentence in respect of that default. 11. In Leeds United-v-Admatch

[2009] JLR 186 the Court of Appeal said at paragraph 9 that it had an inherent power to allow a party to reinstate an abandoned appeal to that Court from the Royal Court. We think that the Royal Court must have a similar inherent power in respect of appeals from the Magistrate's Court to the Royal Court. Where an appellant has abandoned an appeal in the

face of the Royal Court, this is clearly a power which should be exercised very sparingly because of the importance of bringing finality to a litigation. An appellant should normally expect that, if he tells the Court that he has abandoned his appeal and is not pursuing it, that will be the end of the matter and he will not be able to change his mind later. But nevertheless, there is, in our judgment, a power in exceptional cases to do so; and clearly in deciding whether to allow an appellant to reinstate an appeal, it may be relevant that he has acted without legal advice. The merits of any possible appeal will also be relevant. 12. So now we turn to consider whether we should grant leave for Mr Vibert to reinstate his appeal in respect of the parking offences. He has emphasised that it is only against sentence and in fact, it is only against part of the sentence, namely the default sentence of imprisonment. He has expressly disavowed any intention to appeal against the level of fine imposed for the seven parking offences. So we turn to consider the merits of his appeal, always bearing in mind of course, that the test on an appeal against sentence is whether the sentence is manifestly excessive. It is not a question of this Court substituting its own views on the correct level of sentence; it has to be satisfied that the sentence is outside the appropriate bracket so that it can be described as manifestly excessive. 13. Mr Vibert's point is simple. On the 16th October the Greffier of the Magistrate's Court circulated new guidelines which, it was said, the Magistrates were going to apply in respect of default sentences. We propose to quote it in full:- "The previous fine default sentence guidelines has(sic) been reviewed, and the Magistrates have decided that the following fine default sentence guidelines will be in force from today." Fine Suggested Maximum Default Not exceeding £200 12 Days imprisonment or Youth Detention Exceeding £200 but not exceeding £500 21 Days imprisonment or Youth Detention Exceeding £500 but not exceeding £1000 6 weeks imprisonment or Youth Detention Exceeding £1000 but not exceeding £2500 12 weeks imprisonment or Youth Detention Exceeding £2500 but not exceeding £5000 24 weeks imprisonment or Youth Detention 14. Mr Vibert says that his aggregate fines amounted to £490. He says therefore that they fall within the second bracket i.e. exceeding £200 but not exceeding £500. For that the suggested maximum default is 21 days' imprisonment. What in fact the Assistant Magistrate appears to have done is to treat each fine as falling within the first level i.e. not exceeding £200, and imposed 6 days for each, that is half of the suggested maximum default, multiplied by 7, giving rise to the 42 days. 15. We would emphasise that guidelines are just that. They are not tramlines. A judge is always free to go outside the guidelines. This would, in our judgment, particularly be so if one were to be faced with a repeat defaulter. So for example, if a person has regularly failed to pay fines so that defaults have to be activated, we see no reason why a Magistrate should not increase the default level beyond that of the guidelines so as to bring home to the person concerned that a fine is to be paid. Similarly of course, in respect of the level of fines. If Mr Vibert were to persist in committing parking offences it would be perfectly open to the Magistrate to start increasing the level of fines. But there should be some reason to move outside the guidelines. No reason was given by the Assistant Magistrate on this occasion, and indeed, the evidence before her from the transcript was that Mr Vibert was not in default in

relation to any fines. The Assistant Magistrate was told that he was up to date with all fines through the Viscount's Department. So this was not the case of a repeat defaulter. 16. Advocate Gollop sought to defend the level on the basis that each fine was £70. It fell within the first bracket and it was perfectly proper to, in effect, treat each one separately and multiply the default sentence by the number of offences. 17. We have to disagree. We can see no logic in the suggestion that, for a fine of £490 for a single offence, which by definition would be more serious, the maximum default sentence is 21 days whereas for seven offences which are less serious (where the fine is £75) the default sentence could be 42 days. There seems to be no logical justification for that at all. We think that, when considering the appropriate default sentence, one must have regard to the aggregate level of fine whilst emphasising all the time that a guideline is not a tramline. Nevertheless, applying that to the current circumstances, we can ascertain no justification for imposing a sentence as high as 42 days for Mr Vibert, who was not a repeat defaulter and where the aggregate level of fine was under £500. 18. We have considered whether this is sufficient to give leave to reinstate the abandoned appeal. Had Mr Vibert been legally represented we would not have done so. But he was representing himself on the 29th November and we can accept his assertion that his mind was focused very much on the prison sentences for the two counts of contempt of court and that he did not have in mind the default sentences in relation to the parking fines. 19. In all the circumstances we think the interests of justice suggest we should, on the unusual facts of this case, give Mr Vibert leave to withdraw his notice of abandonment and allow him to bring forward the appeal against the default sentences in respect of the parking fines. For the reasons we have given, we consider that the default sentence was manifestly excessive; we think that the correct sentence is the suggested maximum in the second bracket, namely 21 days. Accordingly we substitute for the period of 42 days a period of 3 days in respect of each count, consecutive, making 21 days. That means that Mr Vibert is entitled to be released immediately. 20. We would add just one matter. Mr Vibert pointed out that these default guidelines are not published and that, had he known of them he might have made some submissions before the Magistrate's Court. It is a matter for the Magistrate's Court but it seems to us that, if the Magistrates are going to have these guidelines, it would be right for them to be published and we invite the Magistrate's Court to give consideration to that. 21. The appeal is therefore allowed and a sentence of 3 days on each count, consecutive, is substituted. Authorities Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949. Leeds United-v-Admatch

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