

Having heard Mr. Polack's arguments, (which of course the learned Chief Justice did not have to do when granting leave) I am of the view that the pleadings are insufficient to justify the relief sought.

Ordinarily that would be the end of the matter. However, I think I am correct in saying that Mr. Smellie, for whose assistance I am grateful, was concerned to reply to the substance of the applicant's case, as expressed orally in court by Mr. Polack. Although he did not file an affidavit to the effect (strictly, I do not think he was obliged to), he threw light on or acknowledged certain matters of fact. In the circumstances of this case, where it is obvious that there is a genuine issue as to the applicant's mental condition, I propose to take the statement as amended to include all of the applicant's grounds as argued by his counsel, and to deal with the matter accordingly, subject to Mr. Polack's giving the undertaking to which I shall refer below.

The relevant facts, in my view, are these. The issue of the applicant's fitness to plead first arose when he came before the Summary Court on 2nd August 1984. The evidence filed shows that the learned Magistrate then noted the words "fit to plead?" against the appearance. On 14th August, he evidently required the applicant to plead. A plea of not guilty was entered. But the hearing was adjourned, and the Magistrate's note against that appearance reads "Maria Smith, mother, to see that D sees the Doctor." A number of adjournments followed. It seems clear that what happened was that the applicant went to Jamaica, where he was medically examined. A report dated 12th October 1984 was subsequently forwarded to the Clerk of the Courts by Dr. Charles Thesiger, Head of the Department of Psychiatry at the University of the West Indies. This report was, according to Mr. Smellie, brought to the attention of the Summary Court when the applicant appeared before it on 26th November.

The case was eventually disposed of on 26th February. Although the record indicates that the applicant pleaded guilty then, counsel are agreed that in fact he pleaded not guilty and was tried, convicted and sentenced. The record does not disclose any specific ruling by the Magistrate on the issue of fitness to plead, nor his reasons for deciding that the applicant was fit to plead.

Mr. Smellie submitted that the record showed that in fact the Magistrate did consider the issue, and that there was evidence (namely Dr. Thesiger's report) on which he could reasonably have come to the view that the applicant was fit to plead. He said that the taking of

the plea of not guilty on 14th August was clearly done on a provisional basis only, and that it was also clear that there had thereafter been a medical investigation into the applicant's condition before the trial proceeded on 26th February.

There is force in Mr. Smellie's submissions. It also seems to me to be a little unfortunate (though I recognise in saying this that I am not fully apprised of all the circumstances) that counsel who appeared earlier for the applicant were not able to focus the issue as much as it might have been for the benefit of the lower Court and of the medical practitioner's. Perhaps the answer is that at critical times the applicant was unrepresented.

By reason of section 44 of the Criminal Procedure Code, however, where a court in the course of any trial has reason to suspect that the accused is of unsound mind so that he is incapable of making his defence, it has a duty to inquire into that fact.

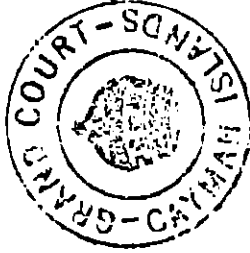
I think it is beyond doubt here that the Summary Court did have reason to so suspect, so that it had a duty to inquire into the issue. I accept that it was aware of the need to inquire but what is not shown by the record is how it went about doing so. The only medical evidence that was put before the court before 26th February was Dr. Thesiger's report. This seems to me to be simply a diagnosis of the applicant's condition. It does not specifically deal either way with the question whether he was fit to plead, e.g. whether he was capable of instructing a lawyer, or understanding the evidence. The nearest it comes to this is in the last sentence on the first page where Dr. Thesiger states that in his opinion, at the time of his arrest the applicant was showing poor judgment "and was not aware of the nature of his offence." That to my mind almost suggests that he did not understand the nature of his acts. I suspect that it is not meant to go that far, but it does appear to raise a real question as to whether, when subsequently brought before the Court, he would have been capable of pleading.

There being grounds for suspecting that he may have been incapable of making his defence, and having regard to ^{the} inconclusive nature of the medical report that was later produced on this issue, and also to the facts that the record does not show that the Magistrate later specifically ruled on the issue, or gave reasons for allowing the plea to stand and the trial to continue, and to the fact that when the trial did proceed, the applicant was unrepresented, I have come to the view that it cannot reasonably be said

that there was a due inquiry into the issue, as required by law, or that the Summary Court could reasonably find that he was capable of pleading. In my view, it follows that it erred in allowing the proceedings to proceed as they did, instead of taking further steps by way of inquiring under section 44 or by proceeding in the manner required by section 45.

Subject to the applicant's counsel first undertaking to file a supplementary affidavit, verifying these additional facts to which I have referred, I propose accordingly to grant relief.

To enable him to do so, I will adjourn this application until 10 a.m. on 21 June 1985.



D. Hull

David Hull
Puisne Judge

19th June, 1985

On 24th Jan 1985:

Order of Calkinasi Granted quashing conviction of Lower Court.

*Order of Mandamus granted directing the Lower Court to re-consider the matter and enquire specifically into whether the Applicant is fit to plead and to re-hear the matter.
DmZ is renewed on the same terms.*

*Smullie
cc:*

M.G. DS