

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **SCA No.: 18/2012 - CASE No.: 01433/2012 (Buckeridge)**
5 **SCA No.: 17/2012 - CASE No.: 01697/2012 (Aleman)**
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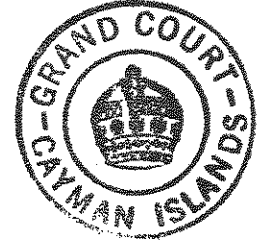
7
8 **LEON TROY BUCKERIDGE**

9
10 **&**

11
12 **FIDEL CASTRO ALEMAN**

13
14 **V**

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16
17 **REGINA**



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20 **Appearances:**

Mr. Peter Polack for the Appellants

21
22 **Ms. Candia James on behalf of the**
23 **Respondent/DPP**
24

25 **Before:**

The Hon. Mr. Justice Malcolm Swift (Actg.)

26 **Heard:**

21st November 2014

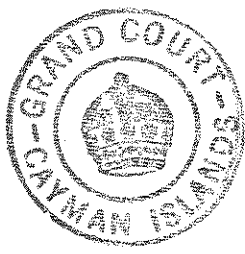
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28 **JUDGMENT**
29

- 30 1. Because these appeals involve identical questions of law they have been conjoined in a
31 single hearing. Both Appellants are represented by Mr. Peter Polack who appeared in
32 the Summary Court below. Miss Candia James appears for the Respondent.

1 2. **Leon Buckeridge** was alleged to have committed traffic offences on the 18th October
2 2011. He was charged by the Police on the 2nd March 2012. The file was received by
3 the DPP on the 14th March 2012. The Court File shows that the Charges were filed at
4 the Summary Court and stamped on the 2nd March 2012 and summonses were issued
5 (stamped with the date 2nd March but dated 13th March 2012 in the body of the
6 summonses) to be served on the Appellant to appear at Court on the 16th April 2012.
7 The summonses were served on the Appellant on the 4th April 2012. On the 16th April
8 2012 the matter was mentioned, Mr Polack indicated that he wished to take the point of
9 law and the hearing was adjourned to the 2nd May 2012 and then to the 6th June 2012
10 when the hearing took place (with it appears further hearings during August and
11 September 2012) before Magistrate Foldats who delivered his Ruling on the 4th
12 October 2012.

13 3. **Fidel Aleman** was alleged to have committed traffic offences on the 7th January 2012.
14 His case followed a similar path to that of the first Appellant. The only additional
15 dates of importance are the date of charge on the 23rd March and the date the file was
16 received by the DPP on the 26th March 2012.

17 4. It is to be noted that, in the case of the Appellant **Buckeridge**, he appears to have been
18 charged 16 days before the expiry of the 6 month time limit for the bringing of
19 criminal proceedings (S78 Criminal Procedure Code). The summonses were issued
20 before that period expired but service was not effected until the 6 month period
21 expired.

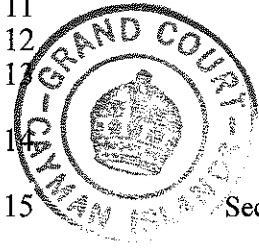


1 5. The Appellants applied to Magistrate Foldats in the Summary Court to dismiss the
2 traffic cases against each of them. The grounds of the applications were that they had
3 each been charged by the Police before seeking the decision of the DPP as to whether
4 charges were appropriate.

5 6. It is accepted by all parties that the failure to seek DPP approval for the charges was a
6 clear breach of s.82 of the Police Law 2010 which provides that the information or
7 evidence in support of the charges 'shall' be sent to the DPP and that the DPP 'shall'
8 decide whether the person concerned should be charged:-

9 Section 82(1) reads:

10 *"Where a person is released on bail or detained in custody, a police officer*
11 *involved in the investigation of the offence shall, as soon as is practicable, send to*
12 *the Director of Public Prosecutions all such information or evidence as has been*
13 *obtained in the case."*



15 Section 82(2) reads:

16 *"The Director of Public Prosecutions shall decide whether the person should be*
17 *charged with an offence."*

18

19 7. It is common ground between the parties that the charges were laid prematurely
20 without first submitting the case papers to the DPP for consideration with a view to
21 deciding whether the Appellants should be charged. It is agreed that the charges were
22 laid contrary to the procedure laid down in s.82. It has been explained to me that some
23 police officers were slow to catch up with the change in the law brought about by s.82.
24 Nevertheless it has been emphasized by the Respondent that the charges themselves
25 were not defective and were in proper form, the procedure which followed was not

1 defective and the error in laying the charge prematurely did not prejudice the
2 Appellants in taking a full and effective part in the criminal proceedings.

3 8. Mr. Polack submitted in the court below and submits to me that the failure to obtain
4 consent to the charging procedure is fatal to the proceedings as it invalidates the entire
5 process which ensued.

6 9. The application in the Summary Court was made as a preliminary point of law. The
7 Magistrate refused the applications and embodied the reasons for that decision in a
8 written ruling which I have read.

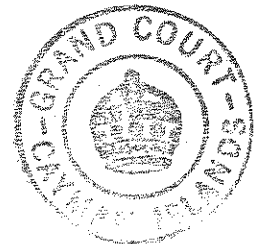
9 10. The Appellants now seek to appeal against that ruling on the grounds that:

10 (a) the Magistrate erred in law, and

11 (b) the decision of the Magistrate was unreasonable and/or unsafe.

12 11. Both grounds constitute an appeal based solely on a question of law. The first ground
13 makes clear that a question of law alone is involved. The second ground (although
14 expressed in terms of reasonableness and safety) is nonetheless an appeal based on the
15 correctness of the decision on a point of law. There were no questions of fact to be
16 determined by the magistrate in reaching his decision and there are none involved in
17 the determination of this appeal in which the only issues are whether the charges and
18 the criminal proceedings stemming from them were a nullity and whether the DPP had
19 the right or power to take over cases based on prematurely laid charges.

20 12. Ironically, as this appeal is based on charges said to have been a nullity, the
21 Respondent submits that this appeal is itself a nullity.

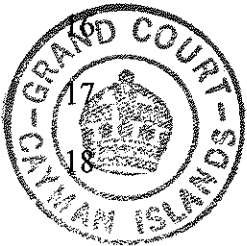


1 13. It is pointed out that s.165(1) of Part IX of the Criminal Procedure Code provides that:

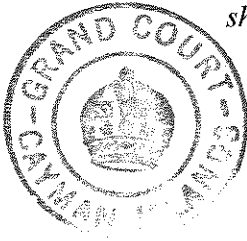
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3 *“Save as hereafter in this Code provided, any person who is dissatisfied with any*
4 *judgment, sentence or order of the Summary Court in any criminal cause or matter*
5 *to which he is a party may appeal against such judgment, sentence or order either*
6 *by motion on matters of law or fact (or both) or by way of case stated on a point of*
7 *law only ...”.*

8
9 14. As this appeal is concerned solely with a point of law, the Respondent submits that the
10 appeal process should have been by way of case stated. The Magistrate should have
11 been asked to state a case. The Magistrate could then have decided in his discretion
12 whether to agree or to refuse to state a case. A refusal might then have been subject to
13 administrative review. The procedure actually adopted denied the Magistrate the right
14 to consider and decide the application to him to state a case.

15 15. I do not accept the Respondent’s submission. Section 165 is permissive in nature. It
16 permits the Appellant to appeal by way of 2 alternative routes. Matters of law are
17 arguable via both methods. In the circumstances the fact that the Magistrate gave a
18 written ruling made appeal by motion the simpler course to adopt.



19 16. I turn to the grounds of appeal. I have been assisted by the detailed skeleton
20 arguments. It is submitted by Mr. Polack that s.82 must be complied with if the
21 ensuing proceedings are to be valid. However he accepts that, if the DPP had chosen
22 to re-charge the Appellants, that would have been a perfectly permissible course to
23 have taken. Of course, it might not have been possible to re-charge the Appellant
24 **Buckeridge** in the time available. The Respondent contends that it is not necessary to
25 re-charge the Appellants as the DPP can simply take over criminal proceedings under
26 s.57(2)(b) of the Cayman Islands Constitution which provides:



1 *“The Director of Public Prosecutions shall have power, in any case in which he or*
2 *she considers it desirable to do so –*

3 (a) ...

4 (b) *to take over and continue any such criminal proceedings that have been*
5 *instituted by any other person or authority;*

6
7 A similar provision appears in s.12(5) of the Criminal Procedure Code which states:

8 *“Notwithstanding any power conferred upon any person under this section to*
9 *institute or conduct any criminal proceedings, any such person shall at all times in*
10 *respect thereof be subject to the express directions of the Director of Public*
11 *Prosecutions who may in any case himself institute or conduct any criminal*
12 *proceedings or may take over and continue any criminal proceedings*
13 *instituted or undertaken by any person, including a private prosecutor”.*

14
15 17. I also note that s.14(1) of the Criminal Procedure Code provides that:

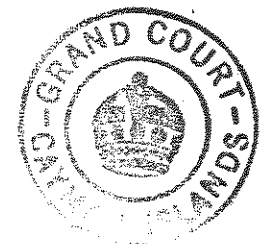
16 *“Criminal proceedings may be instituted either by the making of a complaint or by*
17 *the bringing before a magistrate of a person who has been arrested without a*
18 *warrant”*

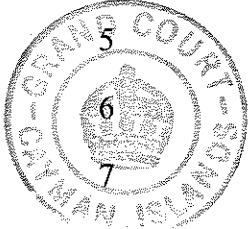
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20 It is further provided in the proviso to s.14(3) that a police officer may institute
21 proceedings by drawing up a formal charge duly signed by the officer in “conformity
22 with this Code” and presenting the charge to a Justice of the Peace for signature. Once
23 completed this is deemed to be a complaint for the purpose of sub-section (1). There
24 is, even now, no requirement that the charge should be drawn up in conformity with
25 any provision of the Police Law 2010 which must have been in the contemplation of
26 the legislature when the Criminal Procedure Code was amended in 2013. It is not
27 suggested that the charges did not conform to the provisions of the Criminal Procedure
28 Code.

1 18. I conclude that criminal proceedings may be commenced by various means including
2 the procedure set out in s.14(3) under which the use of the charging process provides
3 the foundation for the making of a complaint which itself institutes the proceedings. It
4 would be odd if the whole process could be vitiated by failing to obtain a decision from
5 the DPP as to whether a person should be charged. It is to be noted that a 'decision'
6 whether someone should be charged is not the same as a 'consent' to the
7 commencement of proceedings. The former is merely confirmation of the
8 appropriateness of a charge. The latter is a formal requirement without which
9 proceedings cannot be started.

10 19. The Appellants further argue that, because the charge was initiated without the DPP's
11 consent and thus in breach of s.82, it is a nullity and all subsequent criminal
12 proceedings flowing from it are also a nullity and cannot be cured by being taken over
13 because there is nothing to take over. Mr. Polack draws my attention to *R v. Clark; R*
14 *v. McDaid*¹ in which the House of Lords held that an unsigned Indictment did not
15 become a proper Indictment until it was signed and that, where a defendant was tried
16 on an unsigned Indictment, the defect could not be cured by signing it at the end of all
17 the evidence. There was a strict statutory requirement for the indictment to be signed.
18 The situation is somewhat different in the present case where the charges were not
19 defective in form or substance, the criminal proceedings that followed were conducted
20 in full knowledge of the breach of s.82, the DPP purported to take over the proceedings
21 – and thus, it is submitted by the Respondent, to cure the breach - before any
22 substantive hearings took place and it could not be said that anyone suffered prejudice
23 as a result of the breach.

¹ 2008 UKHL 8





1 20. I have also been referred to *The Queen (on the application of Saeid Rahmdezfouli v.*
2 *The Crown Court sitting at Wood Green*² where the Administrative Court quashed a
3 conviction based on a failure by the Magistrates Court to comply with the statutory
4 procedure under which the Defendant should have his trial and sentencing options
5 explained to him. As a result the Court took away the Defendant's statutory right to
6 make an informed choice. In the present case, there is no such statutory provision
7 affecting the rights of the Appellants whose rights have never been affected by this
8 procedural error on the part of the charging Police Officers. I take the view that s.82
9 does not affect the rights of the Appellants in any way.

10 21. The Respondent does not concede that the charges were a nullity and says that the DPP
11 cannot be restricted in her ability to continue proceedings by reason of an error on the
12 part of a charging police officer. That would, it is submitted, erode her power. It is
13 submitted that s.82 is merely procedural and does not affect the validity of an
14 otherwise correctly drafted and sound evidence-based charge. Why should the DPP
15 not be able to review a charge ex post facto and adopt it if there has been an error such
16 as occurred in these cases? Is it logical and sensible to deny the DPP the ability to
17 decide that an otherwise proper charge should proceed because of a procedural
18 oversight? No prejudice is shown to result from the error.

19 22. The Respondent also points to the DPP's decision that the Full Code test for
20 prosecution was satisfied when taking over the cases. The DPP had taken over the
21 cases and applied the Full Code test before any substantive hearing took place. The
22 charges were laid well within the statutory time limit and the resulting criminal
23 proceedings were progressed promptly. The Respondent further submits (and I have
24 already briefly touched upon the point) that a distinction is to be drawn between a

² 2013 EWCA 2998 (Admin)

1 decision by the DPP to charge a person with an offence and a requirement for consent
2 to prosecution such as that required under the Anti-Corruption Law (2014 Revision).
3 It is submitted that, if the legislature had intended a breach of s.82 to be determinative
4 of the outcome of subsequent criminal proceedings, it would have expressly provided
5 for that event and has not so provided. It is pointed out also that there is no unfairness
6 to the Appellants and that it is in the interests of justice that the cases should continue.

7 23. An appeal by way of motion is a re-hearing of the arguments. None of the restrictions
8 of an appeal by way of case stated apply here. The reasons given by Magistrate
9 Foldats need not be examined under the microscope although, even if they were, I can
10 find no reason to disagree with his conclusions. I find, as did the Magistrate, that s.82
11 is procedural and imposes no jurisdictional requirements, the charges are not rendered
12 null and void as a result of the failure to comply with s.82, the charging error can be
13 cured by the DPP taking over otherwise correctly prepared charges after ensuring that
14 the Full Code test is satisfied, the Appellants have suffered no prejudice and it is in the
15 interests of justice that the cases should be continued. The criminal proceedings
16 commenced by the filing of these charges were themselves perfectly valid and were not
17 invalidated by the failure of the charging officers to comply with s.82.

18 24. I therefore dismiss the appeals.

19
20 **Dated this the 21st day of November 2014**

21 

22 **Honourable Mr. Justice Malcolm Swift (Actg.)**
23 **Judge of the Grand Court**

