

CJ/618
NOTED

IN THE GRAND COURT OF THE CAYMAN ISLANDS

5-02-04
CASE NO: 5972/03 (1-3)
SCA NO: 50/03

BETWEEN:

RONO ORLANDO HENRY Appellant

AND:

REGINA Respondent

Before: Hon. Madame Justice Priya Levers

Appearances:

Counsel for the Appellant: Mrs. M. Jaffa-Bodden of XIX Fort Street

Counsel for the Respondent: Mr. S. Wilson of the Legal Department

Date of hearing: 16th January, 2004

REASONS



Levers J.

This is an appeal by the accused Rono Orlando Henry of his conviction in the Summary Court for the following offenses:

1. Working without a work permit, contrary to section 42 (1) of the Immigration Law (2003 Revision). Particulars of offence are that Rono Henry in Grand Cayman on dates between 15th October 1999 and 2nd October, 2003 was engaged in employment without having been authorized by the Immigration Board; and
2. The offence of overstaying, contrary to section 61 (1) (c) of the Immigration Law (2003 Revision). Particulars of offence: Rono Henry on the 22nd October 2003 was found in North Sound Estates, Savannah, Grand Cayman when

authorization to remain in the Cayman Islands expired on the 15th October 1999.

The brief facts are that on the 2nd October, 2003 when Immigration Officers visited a house, Mr. Henry was apprehended therein. He was observed inside the house running towards the rear when the officers were given access to the house. Subsequently, they arrested him when hiding under the ceiling under some insulation. He admitted that he had been supporting himself financially by odd jobs around the place for \$50-\$80 a day, but mostly that he was supported by his girlfriend. He was taken before the Summary Court and pleaded guilty to the charges outlined above. He was also charged with failure to produce a passport for inspection, contrary to section 84 (1) (b) of the Immigration Law. This charge was not proceeded with and left on file.

Grounds of appeal have been filed by Mrs. Jaffa-Bodden. They come in the form of handwritten notes. The grounds are as follows:

1. lack of legal representation
2. unfair arrest and trial
3. breach of rules of natural justice
4. manifestly unfair sentence
5. failure of the Court to fully investigate the factual background and afford the accused a full and fair trial.

I feel that I must say something in general about the manner in which this appeal has been conducted by counsel. Mrs. Jaffa-Bodden was willing to proceed with the appeal without any detailed submissions or evidence being put before this Court as to some serious allegations that were being made about the arrest and the conduct of the trial. These allegations pertained to fundamental breaches of the appellant's right. Allegations of breach of a person's fundamental rights either in the Summary Court or at the hands of officers employed to the State must be viewed with extreme concern. When such allegations are made evidence must be laid. This Court is bound to ensure that such rights are not whittled away by the State. Equally it is important to remember that allegations of a breach of a person's fundamental rights by lack of due process before the Courts, if proven, are a serious indictment on the judicial officers and the officers conducting the arrest and search. It is for this very reason that the appellate court must be given supporting evidence of these allegations, which should not be made lightly. It is to be deprecated that Counsel chose not to put any evidence before this Court, but nonetheless expected this Court to rule on the unsupported allegations.

The first ground of appeal is that the appellant did not have legal representation. The context was nonetheless simple. Immediately on arrest, the appellant was interviewed and admitted the offences. The absence of a legal advisor does not negate the validity of a guilty plea. There is no evidence that he was denied legal representation. At common law the accused is entitled to legal representation on request. There having been no request for one nor a denial of legal representation, there can be found to be no breach of this common law right.

Another ground of appeal was that he was denied a fair trial. There were no details to support this ground of appeal. The record shows that the accused pleaded guilty to two charges. The responsibility of pleading guilty or not guilty is that of the defendant himself. There is no evidence before me that the arrest was unfair and/or that the trial was unfair to the accused person. The Court cannot function to review matters in abstracto and in the absence of any evidence, this ground must also fail.

The next ground of appeal in the widest vaguest terms was that the rules of natural justice were breached. There is nothing before me to show that there was a breach of any rule of natural justice. Indeed, the appellant's counsel

could only put forward the fact that the Crown did not produce the interview with the accused and that during the arrest the defendant was frightened by the Immigration Officers. He appears to have raised no such objections or concern before the Summary Court, when his plea was voluntarily proffered and accepted. That ground of appeal must fail because of the lack of evidence to substantiate such an allegation especially in view of the accused's guilty plea and the record before me.

The next ground of appeal was that the sentence was manifestly excessive. I do not agree in the circumstances. The accused remained in the Island for a number of years, working illegitimately. The sentence cannot be said to be manifestly harsh and excessive.

The final ground of appeal was the failure of the Court to fully investigate the factual background and thereby afford the accused a full and fair trial. I believe this ground has already been canvassed in the above grounds of appeal and I have already held that there is no evidence in support thereof.

During the course of this appeal, Counsel brought it to the attention of the Court that the accused was in fear of returning to Jamaica and for the reason

that he has “a right to family life”, the Court was being asked to impose a stay against deportation. Counsel informed the Court that the accused wished to get married,” and went on to say “it is the same difference my lady asking the court to rule that he should be allowed to remain in the Island as a denial or a deportation would mean a breach of his right to family life as he wishes to get married to a Caymanian.” If counsel was in earnest in this application she would have undoubtedly researched the point and made an application using the proper procedure under the Law. There has been no interference with the applicant’s right to family life. The application, made as loosely as it was for a stay against deportation or removal from these Islands, could not to be said to be genuine or serious. The power of deportation is one reposed in the Governor-in-Council by the Law. Restraints upon its use can only properly be imposed by the Courts in well defined circumstances such as, for example, on grounds of illegality upon judicial review irrationality or irregularity. None of these is presented here.

All the grounds of appeal therefore fail. It is perhaps convenient to remember that the main object of the appellate Court in these matters, is to review the decision of the Court below in relation to a persons rights with a view to achieving fairness and to ensure a proper application of the law in dealing

with an accused or suspected person. It is a serious concern that an appeal can be mounted in this cavalier manner with allegations of this nature being made which could have far-reaching consequences for the participants in the trial. Continuation of this practice, will and must inevitably lead to the imposition of strictures to prevent repetition. My hesitation now to impose an order for wasted costs upon Mrs. Jaffa-Bodden is the result only of my impression that she has argued this appeal out of a sense of over exuberance. My impression will be less kind the next time around.

Dated this 5th day of February, 2004



Madame Justice Priya Levers
Judge of the Grand Court

