

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S
CRIMINAL APPEAL NO. 88/73

Before: The Hon. President
The Hon. Mr. Justice Hercules
The Hon. Mr. Justice Swaby

Regina v. Vincent Atkinson

Mr. C. Hines for the Appellant.

Mr. R. Alexander for the Crown.

15th February, 1974.

THE PRESIDENT:

The appellant in this matter was tried on an indictment before the learned Resident Magistrate for the parish of Westmoreland, containing two counts. The first count charged him, "on a day unknown conspired with other person or persons unknown to obtain a Driver's Licence by fraud, except and in accordance with provisions of the Road Traffic Law Cap. 346." The second count of the indictment charged him with the offence of uttering a forged document contrary to Section 9 of (1), Cap. 135, that he, "on the 28th day of November, 1972, in Savanna la mar in the parish of Westmoreland uttered a certain forged document purporting to be a General Driver's Licence, knowing it to be forged and with the intent to deceive."

He was convicted and sentenced by the learned Resident Magistrate on the first count to twelve months imprisonment with hard labour, and on the second count also, to imprisonment at hard labour for twelve months, the sentences to run concurrently. He has appealed against his conviction and the sentences imposed by the learned Resident Magistrate.

Mr. Hines, the attorney who appears on behalf of the appellant in this court, has argued that the verdict on the charge of conspiracy is without foundation in law, in that the prosecution

/...had not

had not proven the elements or ingredients necessary to establish or support the charge, and that the charge of uttering had not been proven because there must be a forgery from which an uttering arises.

In the course of the argument and the exchanges which took place between Bench and Bar, Mr. Hines eventually conceded that his arguments were untenable.

Now, it appears from a study of the evidence in the case that the dates charged in the two counts of the indictment were not in fact the dates which ought to have been charged and were not supported by the evidence. This court, therefore, exercising the powers of amendment which it undoubtedly possesses will amend the first count by substituting for the words, "on a day unknown" the words, "between the 3rd and 8th day of August, 1972." The court will also in respect of the second count amend the count by deleting the words, "the 28th day of November, 1972" and substituting therefor, "between the 3rd and 8th day of August, 1972." The first count will then read, "Vincent Atkinson between the 3rd and 8th day of August, 1972, conspired with other person or persons unknown to obtain a Driver's Licence by fraud, except and under and in accordance with provisions of the Road Traffic Law Cap. 346." And in the second count the particulars will read, "Vincent Atkinson between the 3rd and 8th day of August, 1972, at Savanna la mar in the parish of Westmoreland uttered a certain forged document purporting to be a General Driver's Licence and knowing it to be forged, and with the intent to deceive."

In view of the observations which the court has already made, the appeals against conviction are, therefore, dismissed. There now remains the question of sentence. It is to be noted that the appellant was sentenced on the conspiracy charge to a sentence of imprisonment of no less than twelve months hard labour. Mr. Hines has argued that that sentence is manifestly excessive and has brought to our attention the case of the Queen and Verrier, 1966 3 All England Reports at page 568, and also the local case of the Queen and Peter Russell et al, in which this /...court

court laid down that in a case where a person was convicted of conspiracy he ought not to be sentenced to a more severe sentence for the conspiracy than he would have incurred had he been convicted of the substantive offence which grounded conspiracy. Applying those principles, therefore, to the case before us, the court quashes the sentence in relation to the first count of the indictment and imposes therefor a sentence of Seventy-five Dollars (\$75) or three months hard labour.

Considerations in Verrier's case do not, of course, apply to the second count of the indictment which deals with the offence of uttering a forged document. In relation to that sentence of twelve months and viewing the particular circumstances of the case, the court is of the view that a sentence of twelve months hard labour may be said to be excessive. The court, therefore, quashes the sentence of three months hard labour to run from the date of conviction. To that extent only the appeal is allowed.