



In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2017: No. 008

A(a minor)

Appellant

- and -

THE QUEEN

Respondent

EX TEMPORE JUDGMENT

(in Court)

Appeal against sentence—two years’ corrective training for dishonesty offences – appropriateness of custodial sentence when three Court reports and the Prosecution supported rehabilitative sentence

Date of hearing: 26th of July 2017

Mr. Saul Dismont, Marshall Diel & Myers Limited, for the Appellant

Ms. Karen King, Office of the Director of Public Prosecutions, for the Respondent

Introduction

1. In this matter the Appellant appeals against his sentence of two years corrective training imposed on him in the Magistrate’s court on 24th of January 2017 (the Wor. Archibald Warner). That sentence was imposed for three offences of dishonesty involving property of worth in the region of \$3000.

The facts before the sentencing court

2. The position at sentencing was that the Prosecution agreed with the Defence that a non-custodial sentence was appropriate. This was because there was a battery of reports before the Court (a Social Inquiry Report, a Psychological Report and a Psychiatric Report), all of which emphasized the need for a young man who has spent much of his life in care due to circumstances for which he is not at all to blame to receive support, in particular in connection with ADHD.
3. His condition makes decision-making, or rational, sensible decision-making, difficult. And the offences, it was I believe agreed, were committed during a time when he was homeless and lacking family support. By the time of sentence he had the support of an uncle and an aunt and was in fact able to do electrical work with his uncle.
4. The Learned Magistrate despite all this material and the position adopted by the Crown imposed a sentence of corrective training. He had concerns, which are understandable, about the fact that there had been offences committed while the Defendant was on bail.

Appropriateness of sentence

5. In my judgment the weight of reports before the Court did not justify the Court imposing a custodial term without finding a solid basis for believing that the treatment approach would not work. In the absence of any such findings by the Learned Magistrate I am bound to find that he erred in principle in imposing the custodial sentence.
6. The law clearly requires as regards young persons an approach which says in very exceptional circumstances involving cases of violence which gives priority to the interest of reforming the offender over the interest of punishment¹.
7. In this case Mr. Dismont has submitted that the Appellant has access to no support of the kind contemplated as necessary by the various reports while he is in custody at the Co-ed Facility. This lack of appropriate support is concerning because the entire purpose of corrective training as spelt out in Section 51 of the Young Offenders Act 1950 is in fact to reform the offender. And this offender is not being reformed if he is

¹ Mr Dismont placed an array of authorities before the Court, including the United Nations Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), the Children Act 1998, the Minors Act 1950, the Young Offenders Act 1950 and *Re J and S-v- the Attorney-General* [2016] SC (Bda) 6 Civ (20 January 2016).

not being given the support he needs. And the support that he needs in particular is to be assisted to function in mainstream society.

Disposition of appeal

8. In these circumstances I am bound to set aside the sentence of corrective training and substitute a probation order for a period of three years with conditions to be decided after hearing further from Counsel.
9. I will just say to young Mr. [A] that there is a saying, an African saying, that it takes a village to raise a child. And the fact that you are where you are today is perhaps more a reflection on the failings of the village to take care of you than it is a reflection on your own shortcomings.
10. Having said that, you have an important role to play in taking advantage of whatever support that is given to you in the future. I know that from everything that is said about you that you do have the potential to make a success of your life despite the disadvantages that you have had. I hope that you will seize every opportunity that you get with open arms.

Dated this 26th day of July, 2017 _____
IAN R.C. KAWALEY CJ