[2010] JMCA Crim 46

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 13/ 2010

BEFORE: THE HON. MR JUSTICE HARRISON J.A
THE HON. MISS JUSTICE PHILLIPS J.A
THE HON. MR JUSTICE BROOKS J.A (Ag.)

ERIC ALEXANDER v R

Christopher Townsend and Vernon Daley for the appellant

Miss Sanchia Burrell Crown Counsel for the Crown

8 June & 30 July 2010

HARRISON J.A

[1] This is an appeal from a decision of Her Honour Miss Judith Pusey, Resident Magistrate for the Corporate Area Resident Magistrate's Court (Criminal Division). The appellant had pleaded guilty to charges of forgery, possession of a forged Justice of the Peace stamp and uttering a forged Justice of the Peace stamp. He was sentenced to three (3) months imprisonment on each count to run concurrently.

[2] The appeal raises an important point of law with regard to the Resident Magistrate's criminal jurisdiction in relation to section 267 of the

Judicature (Resident Magistrates) Act and section 9(1) of the Criminal Justice (Administration) Act. The crucial question for consideration in this appeal is: how should the words "*may be in custody for such offence*" in section 9(1) of the latter Act, be construed? The answer to this question will no doubt depend upon the legislative intent of the particular provision in section 9(1) and the mischief at which it was aimed.

The facts and background to the appeal

[3] The facts in a nutshell are that on 15 September 2009 Detective Corporal Livingstone attached to the Fraud Squad went to the appellant's office at Portmore, St. Catherine with regards to reports that he was acting in the capacity of a Justice of the Peace without being duly commissioned. The appellant was escorted by the police to the Fraud Squad headquarters in Kingston where he was further interviewed. Upon completion of the interview he was arrested and charged for the offences of forgery, being in possession of a forged Justice of the Peace stamp and uttering a forged Justice of the Peace stamp. He was taken into custody at Denham Town Police Station, Kingston and was bailed to attend court at the Corporate Area Resident Magistrate's Court (Criminal Division), Half Way Tree on 17 September 2009. He duly attended court and was arraigned before Her Honour Miss Judith Pusey, Resident Magistrate. He pleaded guilty to the charges preferred against him.

[4] The guilty plea was accepted by the learned Resident Magistrate and a social enquiry report was ordered to be done in respect of the appellant. The appellant's bail was extended to 1 October 2009, the date set for sentence. The appellant failed to appear on 1 October 2009 and the Probation Officer informed the court that the appellant could not be located in order to assist in the preparation of the social enquiry report. The learned Resident Magistrate thereafter sentenced the appellant in his absence. The appellant was subsequently granted bail pending the hearing of his appeal.

[5] In her reasons for judgment, the learned Resident Magistrate stated that she had discovered that the court had no jurisdiction to have dealt with the matters in the Corporate Area Criminal Court since the offences were committed in the parish of St. Catherine. She therefore concluded that the conviction was a nullity for want of jurisdiction. She stated, "I would not be bold as to indicate what ought to be done but whatever you direct to be done to rectify this travesty of justice I will endeavour to have it done." It is abundantly clear from the statement made by the learned Resident Magistrate that she was aware that she was functus officio, so she left the matters entirely in the hands of this court.

Notice and Grounds of Appeal

[6] Notice and grounds of appeal dated 6 October 2009, were filed. The single ground of appeal reads as follows: "That the sentence was excessive under the circumstances". However, at the hearing of the appeal, Mr Christopher Townsend, for the appellant, sought and obtained leave to argue a supplementary ground of appeal which states: "That the conviction was a nullity for want of jurisdiction by the learned Resident Magistrate".

The Submissions

[7] Mr Townsend submitted that the learned Resident Magistrate was correct when she concluded that she had no jurisdiction to have accepted the guilty pleas in respect of the charges. He submitted that the location where the offences were committed was in excess of the one mile radius prescribed by section 267 of the Judicature (Resident Magistrates) Act (the Act). He also submitted that section 9(1) of the Criminal Justice (Administration) Act which gives the magistrate an extended jurisdiction could not be invoked for the following reasons:

a. The appellant was not apprehended in the Corporate Area.

b. He was not summoned but was bailed to appear at court.

c. He was not in custody since he was granted station bail at Denham Town Police Station to attend court.

[8] Mr Townsend referred to and relied on the case of **R v Douglas Beckford** RMCA No.12/2008 decided by this court on 9 October 2009. He submitted that the convictions were a nullity and that in the interest of justice, the court should not order a re-trial since it would amount to an abuse of the process of law. In the circumstances, he submitted, the convictions should be quashed, the sentences set aside and judgment and verdicts of acquittal entered.

[9] Mr Townsend submitted in the alternative, that if the court were to disagree with his submissions on the jurisdiction issue, the sentences imposed by the learned magistrate were "excessive" for the following reasons:

i. The appellant is a minister of religion and is well-known in the community where he ministers and hitherto he had not been in trouble with the law.

ii. He did not have the benefit of a probation report to speak to his background.

iii. He was not given the opportunity to speak on his own behalf in addressing the Magistrate before she pronounced sentence.

[10] Miss Burrell, Crown Counsel, submitted that at the time the appellant professed his guilt before the magistrate, she had the jurisdiction to deal with the matters by virtue of section 9(1) of the Criminal Justice (Administration) Act. She submitted that the appellant was held in custody in the Corporate Area at the time of his arrest and when the charges were preferred. She further submitted that when section 9(1) uses the term "*may be in custody for such offence",* it did not matter how brief the person had remained in custody before appearing in court or that the custody was interrupted by bail. In the circumstances, Miss Burrell submitted, the learned Resident Magistrate had fallen in error when she indicated in her reasons for judgment that "the conviction was a nullity for want of jurisdiction".

Lack of Jurisdiction Issue

[11] The Judicature (Resident Magistrates) Act governs the powers and jurisdiction of magistrates in Jamaica. It was originally enacted on 22 February 1928 and has been amended several times over the past seventy-two (72) years. The source of their jurisdiction is set out in section 267 of the Act as follows:

> "267. For the purposes of the criminal law, the jurisdiction of every Court shall extend to the parish for which the Court is appointed, and one mile beyond the boundary line of the said parish:"

[12] **R v York and Wynter** (1978) 25 W.I.R. 490 at 494; **R v Lloyd Chuck** (1991) 28 JLR 422; and **R v James Smith** (1990) 27 JLR 469 are all local cases and they have established that the court's jurisdiction is a limited one pursuant to section 267 (supra) and is extended by section 9(1) of the Criminal Justice (Administration) Act which provides inter alia, as follows:

> "9. (1) Every person who commits any indictable offence may be proceeded against, indicted, tried, and punished in any parish or place in which such person may be apprehended, or may be in custody for such offence, or may appear in answer to a summons lawfully issued charging the offence, as if the offence had been committed in that parish or place, and the offence shall for all purposes incidental to or consequential upon the prosecution, trial or punishment thereof, be deemed to have been committed in that parish or place."

[13] In **R v James Smith** Rowe P, pointed out that although the court's jurisdiction had been extended by virtue of section 9(1), that jurisdiction only applied in certain defined situations. He stated inter alia:

> "….. But even within that geographical boundary, the Resident Magistrate's Court does not have jurisdiction to try all criminal offences committed therein. Section 268 of the jurisdictional statute enumerates the several offences triable by Resident Magistrates. From the Offences Against the Person Act are excluded murder, manslaughter and all felonious injuries. Felonies under the Forgery Act are similarly excepted. Under the Larceny Act offences of stealing a will; title to land; original Court Records; a mail bag or the contents therefrom; certain frauds by trustees and company directors; etc.; are not triable by Resident Magistrates in that they are omitted from the enumeration in section 268 (1) (b).

> In sum, a Resident Magistrate's Court operates in a defined area and has jurisdiction over such criminal offences in that area as are prescribed by statute."
> The appellant in the instant case was charged with offences which fell within the jurisdiction of section 268 of the Act."

[14] There is clear evidence that the offences in this case were committed by the appellant in the parish of St. Catherine. He was apprehended in that parish and was taken to the Fraud Squad in Kingston where he was arrested and charged by the police and then bailed to attend court. The question which therefore arises for determination is this: was the appellant "in custody for such offence" pursuant to the provisions of section 9(1) of the Criminal Justice (Administration) Act when he appeared before the learned Resident Magistrate? In my judgment, the cases referred to in paragraph 12 (supra) do not provide any assistance in construing the term "*may be in custody...*" used in section 9 (1). It is also my view that the decision in **R v Douglas Beckford** (supra) does not assist the appellant. Panton P, who had delivered the judgment of the court in that case stated:

> "1. The appellant was convicted in the Corporate Area Resident Magistrate's Court on two counts of an indictment for forgery and obtaining money by false pretences, and sentenced on October 2, 2007 to serve two concurrent terms of six months imprisonment. The indictment charged the appellant with forgery, uttering forged documents and

obtaining money by means of false pretences, and alleged that these offences were all committed in the Corporate Area. The evidence presented, however, pointed to the offences having been committed, if at all, in the western parish of Saint Elizabeth.

2. It is agreed that the Resident Magistrate for the Corporate Area did not have jurisdiction….

….

Further, the evidence did not allow for section 9(1) of the Criminal Justice (Administration) Act to come into operation."

[15] It is not discerned from the judgment how Beckford came to be tried in the Corporate Area but the court concluded that in view of the lack of jurisdiction, the question for determination was what order should be made on the appeal. Panton P, concluded as follows:

"10. The evidence, however, was quite deficient so far as it concerns proving the case against the appellant beyond reasonable doubt. Firstly, there was no evidence that the transfer had not in fact been signed by the owner of the vehicle. Secondly, there was no evidence that the appellant had not seen the identification that he purported to have verified. Thirdly, there was no evidence from Miss Heidi Wright who allegedly collected the money and passed it to the appellant. This was most crucial for there to be a proper conviction in view of the fact that there was evidence that there was a discussion as regards the need to pay the arrears of taxes due on the vehicle being transferred.

11. We found it strange that an arrest was effected before such evidence had been secured. Given these glaring deficiencies, we concluded that no useful purpose would be served by the ordering of a new trial. It would have been unfair to the appellant to have allowed the prosecution the opportunity to attempt to correct the situation at this late stage. Accordingly, we allowed the appeal, quashed the convictions, set aside the sentences, and entered a judgment and verdict of acquittal."

[16] How then should the question posed in paragraph 14 be resolved? I turn first to the English Criminal Justice Act, 1925 which has been reproduced in Halsbury's Statutes of England Second Edition, Vol. 14 to see what assistance can be obtained. Part II of that Act is headed "Jurisdiction and Procedure – *Indictable Offences Generally*". Section 11 which deals with "Venue in indictable offences" provides inter alia:

"(1) A person charged with any indictable offence may be proceeded against, tried and punished in any county or place in which he was apprehended or is in custody on a charge for the offence or has appeared in answer to a summons lawfully issued charging the offence, as if the offence had been committed in that county or place, and the offence shall for all purposes incidental to or consequential on the prosecution, trial or punishment thereof, be deemed to have been committed in that county or place…"

[17] It will be observed that the wording of the English section 11(1) is mutatis mutandis similar in wording to our section 9 (1) (supra). The learned editors of Halsbury's (supra) have stated at page 936 in the "Notes" section, that the words "was apprehended or is in custody" had appeared in the Larceny Act, 1916 (c.50) (now repealed in England) and were construed in **R v Devon Justices, ex parte Director of Public Prosecutions** [1924] 1 KB 503. The headnote of that case reads as follows:

> "A person on board one of His Majesty's ships, which was then in commission and lying in the tidal waters of the Firth of Forth above the Forth Bridge, was alleged to have committed larceny as a clerk or servant to the Navy, Army and Air Force Institutes. He was placed under arrest by an executive officer of the ship, and, some days later, by which time the vessel had arrived in Torbay, he was apprehended by the Devon police and charged before the justices, who committed him for trial at the Devon Quarter Sessions. The indictment charged an offence contrary to s. 17, sub-s. 1 (a), of the Larceny Act, 1916, committed on the high seas. The prisoner was arraigned and pleaded not guilty and a jury was impanneled, but quarter sessions declined to proceed with the indictment upon the ground that s. 115 of the Larceny Act, 1861, which was said to give them jurisdiction, did not extend to offences committed in estuaries or rivers in Scotland, and that the offence charged was properly triable only by the Scottish Courts:-
>
> Held, that quarter sessions had jurisdiction to try the indictment inasmuch as it alleged an offence which, by virtue of the provisions of the Naval Discipline Act, 1866, was committed within the jurisdiction of the Admiralty of England, and, therefore, being an offence mentioned in the Larceny Act, 1861, it was triable, under s. 115 of that Act, in the county where the offender was apprehended."

[18] In my judgment, **R v Devon Justices** is also not helpful so far as construing the words "is in custody" in section 11 (1) of the Criminal Justice Act, 1925. The case really dealt with the court's jurisdiction where an offender is apprehended within the county.

[19] In **E v Director of Public Prosecutions** [2002] EWHC 433 (Admin) delivered 26 February 2002, Mr Justice Forbes, construed the word 'custody' to mean that a person in custody should be under the direct control of another. At paragraph 20 of the judgment, Mr Justice Forbes said this:

> "… for a person to be in custody, his liberty must be subject to such constraint or restriction that he can be said to be confined by another in the sense that the person's immediate freedom of movement is under the direct control of another. Whether that is so in any particular case will depend on the facts of that case."

[20] In **DPP v Richards** [1988] Q.B. 701 the word "custody" also came up for consideration. In that case a defendant had been released on bail in respect of charges preferred against him. The court held inter alia, that a person who surrenders himself into the custody of the court pursuant to section 2(2) of the Bail Act 1976, was in the custody of the court even though he might not be physically restrained and was free to move about the court building.

[21] The words "shall be apprehended or be in custody" which appear in the English statute 1 Will 4,c. 66 s.24 and stat. 11 Geo IV, were construed in the case of **R v Henry Smythies** (1849) 169 ER 344 reported at 2 CAR & K, 878. In that case, A was indicted at the Central Criminal Court for a forgery at common law. He had been on bail, and immediately before the trial commenced, had surrendered in discharge of his bail. There was no evidence that A had committed the forgery within the jurisdiction of that court, but, the court held, that he was triable there, as being in "custody" within the jurisdiction, under stat.1 Will 4,c. 66 s.24. That statute enacted inter alia, as follows:

> "….that if **any person shall commit any offence against this Act**, or shall commit any offence of forging or altering any matter whatsoever, or of offering , uttering, disposing of, or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case shall be indictable at common law, or by virtue of any statute or statutes made or to be made, **the offence of every such offender may be dealt with, indicted, tried and punished, and laid and charged to have been committed , in any county or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that county or place….**" (emphasis supplied)

[22] W.H. Cooke, for the defendant Smythies**,** submitted, that, as to the forgery there was no evidence that it was committed within the jurisdiction of the court, or that the defendant was in custody within the

jurisdiction of the court, he not having surrendered till the moment of trial, which would, he submitted, not satisfy the terms of stat 1 Will 4, c.66 s.24, which made persons charged with forgery triable in the jurisdiction in which they were in custody. Byles, Serjt., for the prosecution, contended however, that the surrender of the defendant to take his trial was a sufficient custody to give the court jurisdiction. The jury found, as to the first count, that the defendant was guilty of forgery, but that there was no evidence of it having been done within the jurisdiction of the court. Erle J., reserved the case for the opinion of the judges, on the basis of two questions, the first of which is relevant for the purposes of this appeal. He asked, "… was the defendant indicted when he was in custody, within the stat. 1 Will 4, c 66 s.24 he not being "shewn" to be in custody till the time of the trial ?"

[23] The matter came before Pollock, C.B; Parke, B.; Wightman, J.; Platt, B., and Talford, J in the Exchequer Chamber, on 20 November 1849. Parke B, delivering the judgment of the court stated inter alia:

> "Why is the conviction not good on the first count? The defendant was in custody within the jurisdiction at the time of the trial. It is exactly like the case of **Regina v Whiley**."

[24] The court held that the appellant was properly convicted on the first count. In **Regina v George Whiley** (1840) ER 754; (1840) 1 Car K 150,

one of the issues was whether it was necessary for there to be an averment in the indictment that the person charged was in custody. Cockburn for the prisoner argued that the indictment would be bad. Manning, Serjt. (after conferring with Maule J) reserved the point for the consideration of fifteen judges. The report reveals inter alia, the following dialogue between counsel for the applicant and the bench:

> "Gurney B – A person never can be tried for felony unless he is in custody.
>
> Cockburn – I put it that the grand jury, in a case like the present, cannot find a bill unless the party be then in custody in the county.
>
> Littledale, J – How would it be if the party had been bailed?
>
> Cockburn – He would then be in custody of his bail."

[25] Archbold "Pleading, Practice and Evidence In Criminal Cases" 37th Edition, has referred to the term "custody of his bail". At paragraph 201 the learned editor refers to the nature of bail and states inter alia:

> "Bail are sureties taken by a person duly authorized, for the appearance of an accused person at a certain day and place, to answer and be justified by law. Dalt c. 166,pt.2. The condition of the recognizance, as respects the sureties, is performed by the appearance of the accused person, though he stands mute: 2 Hawk. C. 15, s 84. The prisoner is **placed in the custody of his bail**; who may re-seize him (1 Hale 124) if they have reason to suppose that he is about to fly, or may bring him before a justice, who will commit him in discharge of the bail." (emphasis supplied)

[26] I do believe that section 6(1) of the Bail Act 2000 (Jamaica) is also very relevant when one comes to consider what constitutes custody. The section reads as follows:

> "6.(1) A person who is granted bail in criminal proceedings shall surrender to custody."

[27] The term "surrender to custody" has been interpreted in section 2(1) of the Act to mean:

> "... in relation to a person released on bail, surrendering himself into the custody of a court or the police at the time and place appointed for him to do so."

It is my view that once an accused person is held in a lockup, or surrenders to the custody of the court, that individual would fall within the provisions of section 9 (1) of the Criminal Justice (Administration) Act.

[28] In my judgment, the appellant was in custody for the purposes of section 9(1) supra. At the time of his arraignment before the learned Resident Magistrate, he had surrendered himself into the custody of the court and had voluntarily pleaded guilty to the charges.

[29] It is therefore my judgment that the learned Resident Magistrate was in error when she held that the conviction was a nullity for want of jurisdiction. She did have the jurisdiction to hear and determine the

charges preferred in the indictment as her jurisdiction was extended by virtue of section 9(1) of the Criminal Justice (Administration) Act.

The Sentence Issue

[30] Finally, I come now to the ground of appeal in relation to sentence. Mr. Townsend submitted in his written submissions that this ground is an alternative to the jurisdiction issue. He submitted that the sentences that were imposed by the learned Resident Magistrate were "excessive". However, in accordance with the principles that guide us in this court, a sentence ought not to be disturbed unless the court is of the view that it is manifestly excessive. Mr. Townsend submitted that in the circumstances of the case, the court should take the following matters into consideration in determining an appropriate sentence:

(i) The appellant is a minister of religion and is well-known in the community where he ministers and that hitherto he had not been in trouble with the law.

(ii) He did not have the benefit of a probation report to speak to his background.

(iii) He was not given the opportunity to speak on his own behalf in addressing the Magistrate before she pronounced sentence.

[31] What is abundantly clear from the records is that a plea in mitigation of sentence could not be made on behalf of the appellant due to his absence at the time of sentence. In my judgment, he should not complain that he was not given the opportunity to address the court since he really has no one to blame but himself. His bail was extended by the magistrate to return to court on 1 October 2009 for sentence but he failed to do so.

[32] There is no stated reason in the record why the learned Resident Magistrate chose to impose a custodial sentence but having given this matter my very best consideration, I am of the view that a sentence of three months cannot be said to be manifestly excessive or wrong in principle. One must bear in mind, (a) the seriousness of the charges and (b) that sentences of three (3) months are well within the range for offences of this nature.

[33] I am prepared nevertheless, to vary the sentence imposed by the learned Resident Magistrate for the following reasons. I accept from what the appellant has stated in an affidavit sworn to on 7 October 2009, that he did not have any previous convictions. This affidavit was relied on in support of his application on 20 October 2009, when he applied for bail pending the hearing of the appeal. I further take into consideration the

fact that the appellant had pleaded guilty to the charges and did not waste the court's time in engaging it in a trial.

Conclusion

[34] For the above reasons, I would affirm the conviction and order that the three months term of imprisonment be suspended for a period of one year. Accordingly, I would allow the appeal against sentence to that extent.

PHILLLIPS, J.A

[35] I have had the privilege and the advantage of reading the judgments of my learned brothers in this case but as it is such an unusual case I thought I too should add a few words of my own, particularly with regard to the sentence which ought to be imposed.

[36] This is an appeal from the conviction and sentence imposed upon the appellant in the Resident Magistrate's Court for the Corporate Area on 1 October 2009. The appellant had pleaded guilty to three offences, namely possession of a forged Justice of the Peace Stamp, uttering forged Justice of the Peace Stamp and forgery on 17 September, 2009. He was subsequently sentenced to three months imprisonment on all counts to run concurrently. The facts of the case have been set out in the

judgments of Harrison JA and Brooks JA (Ag) and I therefore see no need to repeat them here.

[37] The appellant had initially filed only one ground of appeal, namely:

"(1) That the sentence was excessive under the circumstances."

At the hearing of the appeal, however, he sought and was granted permission to argue an additional ground of appeal, and also to argue that ground first, namely:

"(2) That the conviction was a nullity for want of jurisdiction by the Learned Resident Magistrate."

This additional ground was no doubt triggered by the statements made in the reasons of the learned Resident Magistrate, which were as follows:

> "While preparing the reasons for sentence I read the file and noticed with astonishment that the Corporate Area Criminal Court had not the jurisdiction to hear the matter as the offence (sic) were committed in the parish of Saint Catherine. In those circumstances the conviction is a nullity for want of jurisdiction..."

[38] There does not seem to be any doubt, and none was raised in the submissions of counsel, that the Resident Magistrate would not have had any jurisdiction to have heard this matter pursuant to section 267 of the Judicature (Resident Magistrates)Act which states:

> "For the purposes of the criminal law, the jurisdiction of every Court shall extend to the parish for which the Court is appointed, and one

> mile beyond the boundary line of the said parish…"

The offence was committed in the parish of Saint Catherine, not therefore within the parish where the Court was appointed, nor was it committed within a mile beyond the boundary line of the parish. As stated above, it was on this basis that the Resident Magistrate stated that the matter was a nullity. The main issue in this case therefore, is whether the jurisdiction of the court had been extended by section 9 (1) of the Criminal Justice (Administration) Act, (the Act which states:

> "Every person who commits any indictable offence may be proceeded against, indicted, tried and punished in any parish or place in which such person may be apprehended, or may be in custody for such offence, or may appear in answer to a summons lawfully issued charging the offence, as if the offence had been committed in that parish or place, and the offence shall for all purposes incidental to or consequential upon the prosecution, trial or punishment thereof, be deemed to have been committed in that parish or place."

[39] Counsel for the appellant submitted that the court had no jurisdiction and relied heavily on the provisions of the statutes cited above, and the case, ***Douglas Beckford v Regina*** RMCA No. 12/2908 delivered 9 October 2009, which case he submitted seemed to be "on all fours with the case at Bar".

With regard to section 9(1) of the Act, counsel submitted that the court would only have jurisdiction if the appellant had been apprehended in the Corporate area, which was not the case, as based on the affidavit of Detective Corporal Garfield Livingston sworn to on 7 June 2010, he was apprehended on 15 September 2009, in the parish of Saint Catherine. He was not summoned to attend court; in fact he was bailed to do so and was therefore not in custody, it was submitted. As a consequence, the provisions of the Act, to extend the jurisdiction of the court, would not be applicable on the facts of this case. Counsel submitted further that although the appellant had been placed in custody at some point, in the Denham Town Police Station in the parish of Kingston, when he appeared in court he was not "in custody" and the words in the Act namely "may be in custody for such offence", suggest current and not past incarceration.

[40] Crown counsel in response submitted that the learned Resident Magistrate did have jurisdiction to deal with the matter, pursuant to section, 9 (1) of the Act, as at the time when the appellant came before the court and proffered his plea of guilt he was "in custody". Counsel submitted that "may be in custody" meant being in custody however brief, and custody even if interrupted by the grant of bail, nevertheless fell within the section. Counsel further submitted that, as there was no specific indication in the Act as to the meaning of that particular phrase,

one must use the ordinary and literal meaning which does not mean a particular type of custody, or when the Resident Magistrate is dealing with the matter, but that once he was in custody at some point in time in that parish, then he may be tried there.

Analysis.

[41] So then, what is the true meaning of "may be in custody for such offence"? In my view, the case of ***Douglas Beckford v Regina*** is not helpful, as although the offences were committed in the western parish of Saint Elizabeth and the matter was tried in the Corporate Area Resident Magistrate's Court, there was no other information given in the judgment with regard to how the appellant came to be before that court. Further and even more importantly, Panton, P, in giving the decision of the court, said that it was **agreed** that the Resident Magistrate for the Corporate Area did not have jurisdiction under the Judicature (Resident Magistrates) Act, and that the evidence (although it was not stated what that was) did not allow for section 9(1) of the Act to come into operation. The case therefore turned on its own particular facts. The court then went on to consider, in light of the "lack of jurisdiction" what order should be made on the appeal. The appeal was allowed, the conviction quashed, the sentences set aside, and a judgment and verdict of acquittal were entered, as the evidence did not reach the required standard of proof. The court went on to deal specifically with the requirement of the court,

pursuant to section 14 of the Judicature (Appellate Jurisdiction) Act, where if the appeal is being allowed, the conviction quashed and the sentence set aside, to order whether there would be a re-trial, for in the absence of such an order, it is presumed that the court had ordered that a verdict of acquittal be entered. And in such circumstances, an accused could plead autrefois acquit, if re-arraigned on the same indictment (or a new one charging the same offences). This case therefore was not, "on all fours with the case at bar", and of course in the case at bar, the appellant pleaded guilty to the offences with which he was charged, although I agree with my brothers that the accused could not clothe the court with jurisdiction if it had none.

[42] The word, "custody", means "imprisonment, arrest," (The Concise Oxford Dictionary, fifth edition) and in my view, the words, "may be in custody" must relate to present and not past circumstances. I accept the principles set out in the authorities canvassed in the judgments of my brothers Harrison, JA and Brooks, JA (Ag) in respect of the interpretation to be given these words, and I will only refer to two authorities which in my view are determinative of this appeal.

[43] The case of ***Rex v Hooley MacDonald and Wallis*** [1923] L.J.R 78 is very instructive. This case turned on the interpretation of section 39 (1) of the Larceny Act, 1916 in the UK, which is in similar vein to section 9 (1) of

the Act, and the challenge in that case was that the accused person should be tried in the locality where the offence took place. He had been convicted in London. The complaint was that the section "does not mean that an accused person can be tried in any part of England in which he happens to be in custody, irrespective of the place where the offence was committed". Chief Justice Lord Hewart dismissed this argument summarily as being entirely without merit.

[44] The case of ***Regina v Whiley*** [1840] 1 Car. &K. 150; 174 ER 754. is also instructive. In this case there were lengthy discussions as to whether on a proper interpretation, section 22 of the statute, 9 Geo I Vc 31, which reads, "and any such offence may be dealt with, inquired of, tried, determined, and punished in the county where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that county", required the indictment to state that the accused was in custody so as to give the court jurisdiction. The court accepted that the accused could be tried once he was "in custody". The accused was convicted and the court held that the conviction was right, "on the ground that the prisoner's being in custody in the county of Southampton would have sufficiently appeared from the caption of the indictment". Being "in custody", therefore, seemed again to have been construed as the person being incarcerated at the time of trial.

[45] With regard to the issue as to whether having been bailed at the Denham Town Police Station, the appellant "may be in custody" for the purposes of the Act, I accept the reasoning of my brothers Harrison, J.A and Brooks, J.A., (paras. 26-28 and 81-83 respectively), that:

> "(1) A person bailed to an adjourned hearing does not merely appear, but surrenders himself into custody,"(The Criminal Jurisdiction of Magistrates 3rd Edn., page, 94); and
>
> (2) A person granted bail shall surrender to custody and shall provide a surety to secure his surrender to custody; surrendering himself into custody means that if on bail, he shall surrender himself to the custody of a court or the police at the time and place so appointed (sections 2 and 6 of the Bail Act)."

[46] I have no doubt that from the above authorities and on the proper interpretation of the Act, the appellant was "in custody for such offences", as envisaged by the Act. The appellant having been bailed in the corporate area and having appeared in the Resident Magistrate's Court for the Corporate Area for trial, he would then have surrendered his bail and would have been in custody" at the time of his arraignment for the offences. The learned Resident Magistrate would therefore have had the jurisdiction to try the offences, as if they had been committed in that parish, and which for all purposes would have been deemed to have been committed in that parish. The hearing would not have been a nullity and the conviction stands.

[47] The next issue is whether the appellant should succeed on his appeal in respect of sentence. Although the appellant was not present in court on 1 October 2009, counsel in his written submissions, filed in this court on 4 June 2010, informed the court that the appellant had been unrepresented on 17 September 2009, when he pleaded guilty and the matter was adjourned for sentencing. The applicant incorrectly noted the date as 2 October and as he was on bail, he attended court on that date only to discover that he had been sentenced on the previous day, in his absence, to three months imprisonment on all counts to run concurrently. He was taken into custody, and having appealed the sentence, was granted bail pending appeal on 6 October 2009. He surrendered to custody on 8 June 2010 when he appeared for the hearing of the appeal and his bail was extended pending the determination of the appeal.

[48] On 17 September 2009, having accepted the guilty plea of the appellant, and set a date for the sentencing of the appellant, the learned Resident Magistrate ordered a social inquiry report. However, in her reasons for judgment she stated that the probation officer had indicated that the appellant could not be located to assist in the preparation of the report, and so she proceeded to sentence him in the absence of the same. As a consequence, whatever could have been disclosed in his favour was not before her, and we were told by counsel for the appellant

that prior to this matter, the appellant had not had any trouble with the law. It was counsel's contention that the appellant did not have an opportunity to make a plea in mitigation, and to receive favourable consideration of what counsel said was his background as a minister of religion, well known in the community where he ministers.

[49] In the final analysis, there is no mention in the reasons for judgment in deliberation on the sentence to be imposed: (1) that the appellant did not have any previous convictions (2) that he had pleaded guilty to the offences with which he was charged or (3) any other matter which could have been considered relevant pertaining to his good character. This may have been so, as the learned Resident Magistrate was then of the view, that the conviction was a nullity and she was sending the matter to this court for it to be dealt with accordingly.

[50] Counsel for the appellant referred the court to two cases, and although of some antiquity the principles remain, and continue to be endorsed and applied. ***R v Vincent Richards*** (1969) 11 JLR 245, concerned an appeal from conviction and sentence imposed on the appellant in the Resident Magistrate's Court for the parish of Clarendon on 26 February, 1969 when the appellant pleaded guilty to the offence of larceny of a cow, and was sentenced to nine months imprisonment at hard labour. The appellant's appeal against conviction was not pursued. In that case,

the appellant had no previous convictions and evidence of good character was actually given on his behalf by the virtual complainant, the owner of the cow. Evidence was also given by a police officer of the prevalence of larceny of cows in the area and the fact that the police had not been very successful in apprehending the perpetrators. The learned Resident Magistrate appeared to have focused on this aspect and not on the good character evidence of the appellant, or on the fact that he had pleaded guilty. The court found that although it is incumbent on the Resident Magistrate to be concerned with deterrence, the appellant was entitled to some consideration for his previous good record and his guilty plea. In the circumstances, the sentence appeared to be manifestly excessive and was reduced to three months imprisonment at hard labour.

[51] In ***R v Egbert Stewart***, [1972] 12JLR 865 this court held:

> " it will reduce a custodial sentence imposed on conviction on indictment, although it is of the view that it is not in principle excessive. It will do so where the circumstances surrounding the charge have changed materially so as to render unlikely a recurrence of the event, and where the personal circumstances of the appellant point to a reduction in the sentence imposed on him as being desirable".

In that case, the appellant was found guilty on an indictment charging him with unlawful wounding, and he was sentenced to three months

imprisonment at hard labour. This came out of an altercation between him and an adjoining farmer at White Hall in Saint Thomas. The appellant cultivated sugar cane, peas, potatoes and so on, and the complainant reared pigs. The appellant shot and killed a pig of the complainant's as the complainant damaged his crops. In an exchange with regard to the value of the damage sustained, an argument ensued which resulted in the appellant stabbing the complainant. The court indicated that although they could not say in principle that the sentence was excessive, they were encouraged to allow the appeal as to sentence, following the observations by the Lord Chief Justice Widgery in ***R v Pauline Margaret Jones*** *(*1971) 56 Cr. App Rep. 212, which they interpreted to mean that the court was enabled to take a humane view on sentencing in very special cases, and in their view that was one. The appellant had removed from the land, which was now in the possession of the landlord, the complainant had abandoned the lease, given up farming activities, moved away from the land and gone to reside in the corporate area. Thus, on humane considerations, the appellant's sentence was reduced from three months imprisonment at hard labour to a fine of $30 or three months at hard labour. In addition, the appellant was required to enter into his own recognizance with one surety in $50 to keep the peace and be of good behaviour for a period of one year from that date.

[52] The instant case also seems one to which we could give humane considerations. I do not think that there is enough information to say that the appellant had absconded. His counsel advised the Court that he had attended court on the following day. He had been unrepresented. It is possible that he incorrectly recorded the date for sentencing. It was said by his counsel that he is a minister of religion, is well regarded in his community, and prior to this matter had not had any trouble with the law. He pleaded guilty at the first opportunity before the court. He deserved some consideration of these matters which could be viewed favourably on his behalf, before a sentence of imprisonment was imposed on him.

[53] The principles pertaining to the exercise of the court's discretion in the sentencing of offenders have been enunciated more recently in the case of ***R v Collin Gordon,*** SCCA No. 211/1999 delivered 3 November, 2005. P. Harrison, J.A. (as he then was) in giving the decision of the court said this:

> "The sentencing of an offender lies in the discretion of the court and the punishment must be imposed in relation to the facts and circumstances of the particular case. The well known classical principles of retribution, deterrence, prevention and rehabilitation have to be borne in mind so that a court may determine which of them should be applied (***R v Sergeant*** (1974) 60 Cr. App. R 74.77).
>
> Some of these principles may overlap in their application to a particular case. In some cases, the paramount interest may be protection of the

> society, which is the ultimate aim. In others, it may be the rehabilitation of the offender. The circumstances of the case, including the conduct of the offender, are the determinant of the applicable principle.
>
> A guilty plea by an offender must attract a specific consideration by a court. This Court, following ***R v Delroy Scott,*** (1989) 26 JLR 409, said in ***R v Everald Dunkley*** RMCA No. 55/01 delivered July 2002:
>
> > 'A plea of guilty is an indication of repentance and a resignation to the treatment of the court. This act of pleading guilty must be a prime consideration in favour of the offender, who has admitted his wrong on the first opportunity to do so before the court. There ought to be some degree of discounting, that is, in a reduction of the sentence.'
>
> …
>
> The rationale in affording to an offender the consideration of discounting the sentence because of a guilty plea on the first opportunity is based on the conduct of the offender. He has thereby frankly admitted his wrong, has not wasted the court's time, thereby saving valuable judicial time and expense, has thrown himself on the mercy of the court and may be seen as expressing some degree of remorse."

[54] In my view therefore it would be appropriate to review the sentences imposed on the appellant in this case, in view of the fact that the appellant did not have the benefit of a plea in mitigation, with

specific reference to his plea of guilty, and other matters favourable to him already referred to above.

[55] In allowing the appeal against sentence, I was initially minded to substitute fines in lieu thereof. However I have been persuaded by the reasoning of my learned brothers, that notwithstanding the mitigating factors, a sentence of imprisonment may be warranted. I would therefore order that the appeal against conviction is dismissed, and the appeal against sentence is allowed, to the extent that the three months term of imprisonment is suspended for a period of one year.

BROOKS, J.A. (Ag)

[56] I respectfully agree that the appeal in this unusual case must be dismissed. Because of the importance of the matter, I add some words of my own.

[57] The appellant Mr Eric Alexander, by his own admission, has committed serious offences. He, on the account of the learned Resident Magistrate, before whom he appeared, "had in his possession a Justice of the Peace stamp and…proceeded to witness documents and act as if he was a duly commissioned Justice of the Peace when in fact he had not been so commissioned". The police took him into custody from a location in Saint Catherine, transported him to Kingston and later arrested and

charged him in Kingston. He was taken to the Denham Town Police Station in Kingston where he was bailed to attend the Resident Magistrate's Court for the Corporate Area.

[58] He attended court on 17 September 2009 in accordance with his bond and pleaded guilty to all three counts on the indictment. We were not provided with a copy of the indictment which was ordered drawn up by the learned Resident Magistrate, but note that the order stated:

> "Indict the accused herein before me this day for the offence of Possession of Forged Document contrary to Common Law, add a Second Count of Forgery Contrary to Section 4 (2) (a) of the Forgery Act; add a third count of uttering forged document contrary to Section 9 (1) of the Forgery Act."

An order was also made for the appellant's fingerprints to be taken.

[59] A social enquiry report was also ordered to be produced in order to assist the sentencing process. Sentencing was set for 1 October 2009 and the appellant's bail was extended to return on that date.

[60] He did not attend on that date but was sentenced *in absentia* to serve three months imprisonment at hard labour on each count. The sentences were ordered to run concurrently. On a later date, he did attend. He was, by then, represented by counsel and was granted bail pending appeal. He now appeals against both the conviction and sentence.

The issue

[61] The issue which has been raised on appeal is whether the Resident Magistrates' Court for the Corporate Area had the jurisdiction to hear the case, as the offences were committed in the neighbouring parish of Saint Catherine. It has not been suggested that the place, at which the offences were committed, was within one mile of the common parish boundary, so as to give the Corporate Area court jurisdiction, by virtue of geography, pursuant to section 267 of the Judicature (Resident Magistrates) Act.

[62] The essence of the point in dispute is the meaning of the term "in custody", as used in section 9 of the Criminal Justice (Administration) Act (referred to hereafter as section 9). May section 9, be so interpreted, as to extend the jurisdiction of a Resident Magistrate's Court, regardless of the location of the commission of the offence in question, to cover accused persons who have been released on bond and present themselves to that court, for their case to be dealt with? Put another way, the question is whether a person who is on bail, is "in custody" for the purposes of section 9, when he honours his bond and attends court.

The submissions

[63] Mr Townsend, for the appellant, submitted, in respect of a supplementary ground of appeal, that, the offences having been

committed in Saint Catherine, the Corporate Area Resident Magistrate's Court had no jurisdiction to hear the matter and the conviction was therefore, a nullity. He submitted that the conviction should be quashed and the sentence set aside.

[64] Learned counsel submitted that section 9 was not applicable to the instant case as the appellant was not apprehended in the corporate area, nor was he summoned to attend court there. He said that the appellant was on bail and being on bail, was not "in custody" for the purposes of that section. In his submissions, "in custody" refers to a present and not a past state of affairs.

[65] In support of his submissions, learned counsel relied heavily on the decision of this court in ***Douglas Beckford v Regina*** RMCA No. 12/08 (delivered 9 October 2009). In ***Douglas Beckford,*** a person alleged to have committed certain offences against the Forgery Act, was charged, tried and convicted for various offences in the Corporate Area Resident Magistrate's Court. This is despite the fact that the evidence indicated that the offences, if they had been committed at all, were committed in Saint Elizabeth. This court ruled that the trial was a nullity. It quashed the conviction, set aside the sentences and substituted a verdict of acquittal.

[66] Perhaps emboldened by that ruling, Mr Townsend submitted that an order for acquittal ought also to be substituted as the verdict in the

instant case. Learned counsel's reasoning was that a retrial would not be appropriate because the appellant has undergone the process of being arrested, charged and placed before a court. The Crown having had sufficient opportunity to present its case, it would be unfair to grant it another opportunity. Learned counsel also submitted that the appellant had spent two weeks in custody, but a perusal of an affidavit filed, by the Crown, for the purposes of the appeal indicated that the appellant was released on bond on the same day that he was arrested by the police.

[67] In the event that we should find that the conviction in the instant case was a nullity, it does not necessarily follow that an order for an acquittal would be the result. The critical difference between the instant case and ***Douglas Beckford***, in this context, is that the appellant in this case has pleaded guilty to the offences. In ***Douglas Beckford,*** this court found that the evidence against Mr Beckford was "quite deficient". It is for that reason that it directed an acquittal.

[68] Ms Burrell, for the Crown, submitted that section 9 extended the jurisdiction of the Resident Magistrate's Court to cover the situation in the instant case. Section 9 (1) states:

> "Every person who commits any indictable offence may be proceeded against, indicted, tried, and punished in any parish or place in which such person may be apprehended, **or may be in custody for such offence**, or may appear in answer to a summons lawfully issued charging the offence, as if the offence

> had been committed in that parish or place, and the offence **shall for all purposes incidental to or consequential upon the prosecution, trial, or punishment thereof, be deemed to have been committed in that parish or place**." (Emphasis supplied)

[69] Learned counsel submitted, on this point, that:

> "The clear inference to be drawn [from the section, is that] when an accused shows up in a court of law in which his/her matter is listed is that he or she was bailed [to] make an appearance in that particular court….the fact that the Appellant was on bail and made an appearance at the Corporate Area Resident Magistrates' Court (Criminal Division)…is a clear indication that he must have been in custody in the parish of Saint Andrew prior to the matter going before the Learned Resident Magistrate. It would therefore mean that section 9…cures the question of jurisdiction as it gives wider jurisdiction for indictable offences."

[70] Essentially, the submission was that the appellant fell within the provisions of section 9 because he had been "in custody" in the corporate area for the offences with which he was charged. The fact that he was, thereafter, bailed, did not deprive the Corporate Area Resident Magistrate's Court, of jurisdiction. Miss Burrell submitted that "custody, however brief, or interrupted by the granting of bail, is custody for the purposes of section 9". She submitted that practicality demanded that this interpretation be given to Parliament's intention as expressed in section 9. No case was cited in support of the submission.

The analysis

[71] It seems, at first blush, that the decision in ***Douglas Beckford*** supports Mr Townsend's submissions concerning the ruling that this court should make, in the instant case, on the question of nullity. The offence for which Mr Beckford was charged was undoubtedly an indictable offence. Mr Beckford's case is also similar, in that he was before the Corporate Area Resident Magistrate's Court for offences allegedly committed in another parish. There was, however, no indication from the judgment in that case as to the method by which Mr Beckford came to be before the corporate area court. Further, in the written judgment in that case, there was no detailed analysis of the issue of custody, as having the effect of extending the jurisdiction of the Resident Magistrate's Court, which issue, Ms Burrell has argued before us.

[72] The court and counsel on both sides that appeared in ***Douglas Beckford,*** took it as given, that the Resident Magistrate's Court for the Corporate Area, did not have jurisdiction. Paragraph 2 of the judgment in ***Douglas Beckford*** is instructive. It states, in part:

> "It is agreed that the Resident Magistrate for the Corporate Area did not have jurisdiction. Section 267 of the Judicature (Resident Magistrates) Act states:
>
> > "For the purposes of the criminal law, the jurisdiction of every Court shall extend to the parish for which the Court is appointed, and one mile beyond the boundary line of the said parish:…"

> Further, **the evidence did not allow for section 9(1) of the Criminal Justice (Administration) Act to come into operation**. That section reads thus:…" (Emphasis supplied)

The section was then quoted. The court then said at paragraph 3:

> "In view of the lack of jurisdiction, the question for determination is what order we should make on this appeal. Here again, [counsel on both sides] are at one. They are of the view that the Court should make an order in these terms: "Appeal allowed. Convictions quashed. Sentences set aside."..."

The court acceded to the submission of counsel and also, as indicated before, entered a judgment and verdict of acquittal.

[73] In ***Douglas Beckford,*** as mentioned before, there was no indication from the judgment as to the method by which Mr Beckford came to be before the corporate area court. It is not apparent why counsel and the court were, in that case, resigned to the fact that the Resident Magistrate had no jurisdiction. It may only be accepted that the court found that "the evidence did not allow for section 9(1) of the Criminal Justice (Administration) Act to come into operation".

[74] As distinct from that situation, the Crown, in the instant case, has placed evidence before this court in respect of the issue. The evidence demonstrates that the appellant had been in custody at a police station in the corporate area, that he had been bailed from that station to appear before the Corporate Area Resident Magistrate's Court and that

he did so appear. It is my view, that it is on the basis of this evidence, that ***Douglas Beckford*** may be distinguished from the instant case.

[75] There is no doubt that where an accused is in custody, the Resident Magistrate's Court for the parish in which he is in custody has jurisdiction in respect of indictable offences with which he is charged. An argument to the contrary was given short shrift by the Court of Appeal of England in ***Rex v Hooley, Macdonald and Wallis*** [1923] L.J.R. 78. In that case, counsel for Mr Hooley submitted that the Central Criminal Court had no jurisdiction to try him because the alleged offences were not committed within its jurisdiction. The statutory background to the submission was section 39 of that country's Larceny Act 1916 which stated:

> "A person charged with any offence against this Act may be proceeded against, indicted, tried, and punished in any county or place in which he was apprehended **or is in custody** as if the offence had been committed in that county or place; and **for all purposes incidental to or consequential on the prosecution, trial, or punishment of the offence, it shall be deemed to have been committed in that county or place**." (Emphasis supplied)

[76] It will be readily noticed that, for the purposes of the point in issue, the provision just cited, is materially indistinguishable from section 9. Learned counsel for Mr Hooley, in that context, submitted that the section "does not mean that an accused person can be tried in any part of England in which he happens to be in custody, irrespective of the place

where the offence was committed". The submission was rejected by the court, which stated that "there is nothing in the point". It therefore dismissed Mr Hooley's appeal.

[77] The formulation of section 9 has had its equivalent in several statutes in England, including the Larceny Act 1861 (section 115) and the Criminal Justice Act 1925 (section 11). These sections were respectively considered in ***Rex v Devon Justices (ex parte* Director of Public Prosecutions)** [1924] 1 KB 503 and in ***R v Blandford and Freestone*** (1955) 39 Cr. App. R 51 with a similar result to the decision in ***Hooley.*** It is not clear from the report in ***Hooley*** or in ***Devon Justices,*** whether the accused were on bail at the time of their respective trials. In ***Blandford and Freestone*** the accused had been summoned to appear before the court. The question in issue in ***Blandford and Freestone*** was whether the summonses had been lawfully issued.

[78] Before examining the meaning of "in custody" in the context of section 9, it is necessary to deal with one further aspect concerning jurisdiction. The fact that the appellant pleaded guilty cannot create jurisdiction where there is none. In ***Farquharson v Morgan*** (1894) 58 J.P. 495; [1891-4] All E.R. Rep. 595, Davey LJ, stated:

> "…the parties cannot by agreement confer upon any court or judge a coercive jurisdiction which the court or judge does not by law possess. To do so would be a usurpation of the prerogative of the Crown, and it has

> always been the policy of our law, as a question of public order, to keep inferior courts strictly within their proper sphere of jurisdiction..." (page 599 of the All ER Rep)

[79] In the context of section 11(1) of the Criminal Justice Act 1925 of England, which is in very similar terms to section 9, the English Court of Appeal in ***R v Michael Kulynycz*** (1971) 55 Cr. App. R 34 was invited to find that "custody" must mean "detained in lawful custody". The court said:

> "…without finally deciding the matter, this Court, as at present advised, considers that the words in the subsection "in custody" do mean "in lawful custody," and they are of that opinion notwithstanding that in dealing with a summons...the reference there is to a summons "lawfully issued"." (page 37)

[80] Can a person who is on bail be, at any point, considered as being "in custody" for the purposes of section 9?

[81] In his work ***The Criminal Jurisdiction of Magistrates*** 3rd Ed. at page 94 Brian Harris proffers a view concerning bail:

> "…A person bailed enters into recognizances, with or without sureties, to pay a sum of money should he fail to attend a certain place (usually a court) at a certain time. **Thus a person bailed to an adjourned hearing does not merely appear, but surrenders himself into custody**." (Emphasis supplied)

[82] The emphasised portion of that quotation is in keeping with the tenor of section 6 of the Bail Act. Section 6(1) states that a "person who is granted bail in criminal proceedings shall surrender to custody".

Subsection 2 of that section authorises a court to require, as a condition for granting bail, the individual charged to, among other things, "provide a surety to secure his surrender to custody".

[83] Section 2(1) of the Bail Act states that "surrender to custody":

> "means, in relation to a person released on bail, surrendering himself into the custody of a court or the police at the time and place appointed for him to do so;"

[84] From these provisions, it may be said that where an accused person does attend court in obedience to his recognizance, he is in lawful custody for the purposes of section 9 of the Criminal Justice (Administration) Act. The Resident Magistrate's Court in which he appears to answer his charge, the information having been laid before it, does therefore, have its jurisdiction extended to deal with the charge. This is despite any limitation, by way of geography, which section 267 might have imposed.

[85] In ***Director of Public Prosecutions v Richards*** [1988] 1 Q.B. 701 the ramifications of surrendering to custody were assessed. At page 711, Glidewell LJ, approved the following submission made in the context of the Bail Act of that country:

> "…once a person has reported to the appropriate court official…then he has surrendered to his bail. Thereafter…the person who has surrendered is in custody, even though he may not be detained in the

> cells, nor have a prison officer actually sitting next to him…If a person does not surrender to his bail until he actually gets into the court and into the dock at the time when his trial is about to commence, because the court is ready to commence it, then he is still on bail until that moment…"

The learned judge also ruled that:

> "…if a court provides a procedure which, by some form of direction, by notice or orally, instructs a person surrendering to bail to report to a particular office or to a particular official, when he complies with that direction he surrenders to his bail. Thereafter, albeit he may not be physically restrained…he is in the custody of the court…."

[86] One question which arises from the finding that a person surrendering to his bail is in custody is, "how will it be apparent to a review court that the particular first instance court had jurisdiction?" Will it be apparent from the fact that the accused was before the court and the court had an information laying charges against him? This question was considered in ***Regina v George Whiley*** (1840) 1 Car. & K. 150; 174 ER 754. It does not appear from the record of that case but in ***Regina v Henry Smythies*** (1849) 1 Den. 498; 169 ER 344, Parke B cited ***Whiley*** as deciding that "the indictment need not allege that the prisoner was in custody at the time of the inquisition, in the county of the finding". Parke B went on to state that the jury having found the prisoner guilty in those circumstances, the finding amounted to a conviction rather than a special verdict.

[87] The latter point is relevant to one further aspect of this curious case. The appellant had not surrendered himself to custody when the sentence was passed. He, having been convicted, as per the reasoning of Parke B, could not, then, deprive the court of jurisdiction by failing to attend on the day sentence was to be passed.

[88] In the circumstances, it is my view that the appellant was in custody in the Corporate Area, the moment he appeared before the Corporate Area Resident Magistrate's Court in obedience to his bail bond. His subsequent failure to attend, on the date that was set for sentencing, did not relieve that court of jurisdiction. He was properly convicted and sentenced. I reserve opinion on the point as to whether custody at the police station, before he attended court, by itself, conferred the jurisdiction. I would be inclined to doubt, however, that "may be in custody" as used in section 9, refers to a situation in the past, as Miss Burrell would have us find.

Sentence

[89] Mr Townsend, although it was not argued as the main ground of appeal, also submitted that the sentences were manifestly excessive. For my part, the sentences imposed by the learned Resident Magistrate were extremely lenient. There are horrendous dangers posed by persons impersonating Justices of the Peace and signing documents, purportedly

in that capacity. The issuing of passports, driver's licences and firearm licences are just a few of the glaring cases where the business of this country, in sensitive areas, may be compromised.

[90] Despite the above, certain mitigating matters have been brought to the attention of this court by Mr Townsend, which may cause reconsideration of the sentence. This is especially so, in light of the fact that the appellant did not have the benefit of a plea of mitigation before the learned Resident Magistrate. Based on these factors I agree that the sentence imposed below may properly be suspended, as proposed by my learned brother, Harrison JA.

The appropriate charge

[91] No complaint has been made about the sections under which the appellant was charged. It is my view, however, that proffering a charge pursuant to section 4(2)(a) of the Forgery Act does not seem to be applicable to the facts of the instant case. The relevant portion of that section speaks to the forgery of:

> "any valuable security or assignment thereof or endorsement thereon, or, where the valuable security is a bill of exchange, any acceptance thereof;"

It seems to me, that for the forgery of a stamp of a Justice of the Peace, is not contemplated by the Forgery Act. The appropriate provision would seem to be section 9(3)(a) of the Justices of the Peace (Official Seals) Act. That section seeks to punish a person, who "alters, duplicates or tampers

with the official seal of any Justice of the Peace". The section allows for, among other things, the imposition of a three-year sentence of imprisonment for a breach of its provisions.

[92] It is unclear, however, due to the absence of the indictment in the instant case, what was the subject matter of the charge made pursuant to section 4(2)(a) of the Forgery Act. In her reasons for judgment the learned Resident Magistrate gives a different impression from that given by the order for the indictment. She stated that the appellant was charged for "possession of a forged Justice of the Peace stamp, uttering forged stamp and forgery". In light of the uncertainty as to the subject matter of the forgery charge and for the reason that the sentence would not be affected, I would not make any further issue of the point concerning the appropriate charge.

Conclusion

[93] It is for those reasons that I agree that the appeal against conviction should be dismissed and the appeal against sentence allowed, to the extent that the sentence imposed below is suspended, as detailed by my learned brother, Harrison JA.

HARRISON, J.A.

ORDER

Appeal against conviction dismissed. Appeal against sentence allowed to the extent that the sentence of three months imprisonment is suspended for a period of one year from the date hereof.