

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE V HARRIS JA
THE HON MR JUSTICE LAING JA (AG)**

PARISH COURT CRIMINAL APPEAL NO COA2021PCCR00003

ONEIL BARRETT v R

Walter G Melbourne for the appellant

Miss Natallie Malcolm, Mrs Christina Porter and Marvin Richards for the Crown

16 March, 10 November 2022 and 27 January 2023

V HARRIS JA

[1] The outcome of, what may aptly be described as, this purported appeal demonstrates the necessity for parties (attorneys-at-law and litigants) to familiarise themselves, whenever required, with the relevant provisions of the Judicature (Parish Courts) Act ('JPCA') concerning criminal appeals. It also underscores the importance for trial judges (whether of the Parish or Supreme Courts) to strictly adhere to the relevant law and procedure when exercising their discretion to allow or extend time to pay a fine. Given the unusual circumstances of this case, only a very brief outline of the background facts is necessary.

Background facts

[2] Mr Oneil Barrett, a detective constable of police (at the material time), was convicted on indictment for the offence of attempting to pervert the course of justice, contrary to common law, on 6 January 2020. This was by a judge of the Parish Court ('the learned judge') at the Saint Catherine Parish Court. On 6 March 2020, he was sentenced to pay a fine of \$150,000.00 or serve three months' imprisonment. The fine was paid on 30 November 2020.

[3] The undisputed facts which gave rise to Mr Barrett's conviction were that he was assigned, along with Detective Corporal Tracey Ann Cooper Prince, to investigate the murder of recording artist Dacia McCalla Minott otherwise called "Nanny Mystic" (the deceased), who was killed on 15 November 2016, at Jericho District, Linstead, in the parish of Saint Catherine. During their investigations, Mr Barrett and Detective Corporal Cooper Prince became aware of a potential witness. The witness was located and interviewed by them. Their joint view was that the witness had information that would have been crucial to their investigations. However, Mr Barrett testified that the witness was uncooperative and demanded a payment of \$30,000.00 (which the learned judge viewed as a bribe) to give a statement or sign a statement she had given.

[4] Thereafter, Mr Barrett spoke with several members of the deceased family, including her sister ('Ms McLeod'), who resided overseas. He had several conversations with Ms McLeod on the social media platform known as WhatsApp about the payment of the \$30,000.00 to the witness. The contents of the messages between them were captured in a digital forensic report which was admitted into evidence as an exhibit. The messages revealed that Mr Barrett made several attempts to get Ms McLeod to send the money to him. As averred by Mr Barrett, once he paid the \$30,000.00 to the witness, this would have enabled him to get the statement from her (or have the witness sign the statement she had given) so that he could question and ultimately charge a suspect who was detained at the time. However, Ms McLeod was persuaded by one of her siblings, an attorney-at-law in Canada, to do nothing of the sort. Subsequently, Ms McLeod, with the assistance of that sibling, reported the matter to the police.

[5] Following investigations by the Major Organised Crime and Anti-Corruption Agency ('MOCA') on 9 October 2018, Mr Barrett was arrested and charged with the offence of attempting to pervert the course of justice. He was subsequently convicted and sentenced, as indicated above at para. [2].

[6] After his conviction and sentence, Mr Barrett filed a notice of appeal with a single ground of appeal on 17 December 2020. We heard the appeal on 16 March

2022. However, during the preparation of the judgment, it appeared to us that there were certain anomalies in the record, as well as in the written submissions that were made on behalf of Mr Barrett and the Crown in respect of the date he was sentenced. We also could not determine from the documents, which we had, whether Mr Barrett had given verbal notice of appeal before filing his written notice. This caused us to closely scrutinise the court's file, as the endorsements on the copies of the indictment and the information and the date stamp on the notice of appeal were not very legible. Having done so, we were prompted, through the learned deputy registrar of this court, to obtain certified copies of the court sheets on the various days the matter was before the Saint Catherine Parish Court, as well as an affidavit from the learned judge who presided over the trial. For reasons that will shortly be made clear, it was apparent from those documents that Mr Barrett's right of appeal had ceased and determined, so that when we heard the matter, there was no existing appeal before this court.

[7] As a result of our discovery, Mr Melbourne and Miss Malcolm, counsel for Mr Barrett and the Crown, respectively, were notified and invited to make further submissions before us on 10 November 2022. Although initially, Mr Melbourne valiantly attempted to convince us otherwise, he eventually conceded that in the light of the unambiguous language of sections 294 and 295 of the JPCA (now sections 297 and 298 by virtue of an amendment to the legislation on 2 November 2021) and what occurred post-sentence, there was no appeal. Miss Malcolm, relying on **Sylvester Stewart v R** [2017] JMCA Crim 4, readily acknowledged that this was, in fact, the case. However, she urged us to consider if there was any way we could render a decision on the appeal, having heard it. But, inevitably, we concluded that the law does not permit us to do so.

[8] To shed light on our reasons for arriving at the posture we have taken, it is necessary to set out the relevant statutory provisions and the procedural background of the matter.

The statutory framework

[9] At the time of Mr Barrett's conviction, the procedure for criminal appeals to this court from the Parish Courts was governed by sections 294 and 295 of the JPCA. Given

the focus of the impending analysis, sections 294(1) and 295 are the relevant provisions, which are set out in full below:

“294.- (1) Any person desiring to appeal from the judgment of a [Judge of the Parish Court] in a case tried by him on indictment or on information in virtue of a special statutory summary jurisdiction, shall either during the sitting of the Court at which the judgment is delivered give verbal notice of appeal, or shall within fourteen days from the delivery of such judgment give a written notice of his intention to appeal, to the Clerk of the Courts of the parish.

(2) ...

295. **If the appellant shall fail to give the notice of appeal as herein provided, his right to appeal shall cease and determine.”** (Emphasis added)

[10] Therefore, it is beyond debate that a defendant who is convicted on indictment or information in respect of an offence that is within the special statutory summary jurisdiction of the Parish Court and who intends to appeal the conviction and/or sentence must either give verbal notice of appeal during the sitting of the court when the judgment is delivered or file a written notice of appeal with the Clerk of the Courts for the parish within 14 days of the date of the delivery of the judgment. Since the language of the legislative provisions is framed in mandatory terms, a failure to give verbal or written notice of appeal, as provided by section 294(1), terminates a defendant’s right of appeal.

[11] We wish to note in passing that even before the 2021 amendment, which now states specifically that for the purposes of section 297 of the JPCA, the term “judgment” includes a decision or sentence (see section 297(2)(b)), this court, by virtue of section 2 of the Judicature (Appellant Jurisdiction) Act (‘AJJA’) regarded the written notice of appeal as being properly filed if done within 14 days of conviction or sentence. Verbal notice of appeal was also considered properly given if done during the sitting of the court when the conviction or sentence is pronounced.

[12] It is well-known that section 22 of AJJA gives this court the jurisdiction to hear an appeal from any judgment of “[a judge of the Parish Court] in any case tried by

him on indictment, or on information in virtue of special statutory summary jurisdiction". Section 2 of JAJA provides in part:

"'judgment' or 'sentence' includes **any order of a court made on conviction with reference to the person convicted** or his children, and any recommendation of a court as to the making of a deportation order in the case of a person convicted..." (Emphasis supplied)

[13] In ***R ats Gunter v Tucker*** (1967) 10 JLR 12, a judgment of this court, Fox JA (Ag) helpfully provided a definition of this section (which was then section 2 of the Judicature (Appellate Jurisdiction) Law, 1962, Law 15 of 1962) within the context of section 21 of the legislation (now section 22 of JAJA) and section 293 of the then Judicature (Resident Magistrates) Law, Cap 179 (JPCA section 293). At page 15, he opined:

"... the Judicature (Appellate Jurisdiction) Law, 1962, Law 15 of 1962, s. 21 ... gives the right of appeal 'from any 'judgment' of a resident magistrate in any case tried by him on indictment', and section 2 which defines 'judgment' to include 'any order of a court made on conviction with reference to the person convicted.'"

[14] Therefore, based on section 2 of JAJA and the authority of ***Gunter v Tucker***, it seems to us that Mr Barrett would have been required to file his notice of appeal within 14 days of 6 January or 6 March 2020 once he did not give verbal notice of appeal on either of those dates, during the sitting of the court.

The chronology of events leading up to the purported appeal

[15] As previously indicated, the date of Mr Barrett's conviction was 6 January 2020. He was sentenced on 6 March 2020. As confirmed by the records and affidavit evidence of the learned judge, he neither gave verbal notice of appeal nor lodged a written notice of appeal with the Clerk of the Courts for the parish of Saint Catherine as specified by section 294(1) of the JPCA. The notice of appeal was not filed until 17 December 2020, some 11 months after the date of conviction and nine months after the sentence was imposed. Therefore, given the provisions of sections 294(1) and 295 of the JPCA, there is absolutely no doubt that there was no existing or valid appeal at the time we heard the matter on 16 March 2022 because Mr Barrett's right of appeal

had ceased and determined when he failed to adhere to the procedure specified in section 294(1), which then triggered the operation of section 295 of the JPCA. As a result, the notice and ground of appeal filed by Mr Barrett must be struck out. The authorities of **Sylvester Stewart v R, Nicola Bowen v R** [2010] JMCA Crim 80 and the older case of **Rex v Savage** (1941) 4 JLR 24 are supportive of our conclusion.

[16] Nonetheless, to further explain the reason we have arrived at the position we have taken in this matter and, as a reminder to trial judges, on the applicable law and procedure to be engaged by them when a decision is made to allow or extend time to pay a fine, the chronology of events that occurred on and subsequent to the date sentence was passed (6 March 2020) will be outlined.

[17] The information that follows was extracted from the endorsements in the court sheets, on the back of the original indictment and information, the record of proceedings as well as the affidavit of the learned judge:

- a) On 6 March 2020 – a fine of \$150,000.00 or three months' imprisonment at hard labour in default of payment was imposed. The sentence was then "postponed" until 6 April 2020 "for fine to be paid". The learned judge then extended Mr Barrett's bail for him to return on that date to pay the fine. On 6 April 2020 – Mr Barrett (as well as other defendants who were scheduled to appear before the court) was absent due to the outbreak of the Covid-19 virus on the island. The matter was dealt with by another judge of the Parish Court and was adjourned to 7 September 2020.
- b) On 7 September 2020 – Mr Barrett did not appear, and a bench warrant was issued for his arrest by yet another judge of the Parish Court, but its execution was stayed until 11 September 2020.
- c) On 11 September 2020 – the bench warrant issued on 7 September 2020 was vacated, again by another judge of the Parish Court, and the matter was set for "sentence" on 30 October 2020 before the learned judge. Mr Barrett's bail was again extended.

- d) On 30 October 2020 – the matter of “sentence” was postponed until 27 November 2020 because Mr Melbourne was absent, although another attorney held for him.
- e) On 27 November 2020 – Mr Melbourne was again absent. The endorsements in the court sheet read, “Fine not paid. A (meaning Mr Barrett) remanded into custody”. The matter was once more not before the learned judge on this date.
- f) On 30 November 2020 – it was endorsed on the back of the information (no court sheet was provided for this date) that \$150,000.00 was paid over to the accountant, and Mr Barrett had his bail restored and extended to 21 December 2020.
- g) On 17 December 2020 – the notice and ground of appeal were filed at the Parish Court’s office in Spanish Town, Saint Catherine.
- h) On 21 December 2020 – Mr Barrett appeared before the learned judge. Mr Melbourne was present. The fine that was imposed on 6 March 2020 was again endorsed in the court sheet with the notation “fine previously paid”. In her affidavit, the learned judge indicated that her endorsements were “just a record of the sentence that was previously imposed” (on 6 March 2020).
- i) The learned judge also averred in her affidavit that verbal notice of appeal was given on 21 December 2020, and this was not done before that date. Curiously, verbal notice of appeal was given four days after the written notice of appeal had been filed.

Discussion

[18] The correct procedure to be deployed by judges of the Parish Court who wish to allow or extend time for the payment of a fine is set out in the JPCA at section 195. That section provides as follows:

“195.- (1) Where jurisdiction is given to any Court to impose a fine, and no express provision is made as to the mode of enforcing payment of the same, payment may be enforced by the [Judge of the Parish Court] ordering that in default of payment forthwith of such fine the person on whom such fine is imposed shall suffer imprisonment, with or without hard labour, for a period not exceeding six months.

(2) Where any fine has been imposed, the Court, at the time when such fine is imposed or at any time thereafter, may -

- (a) allow time for the payment of the fine; or
- (b) direct that the fine be paid by instalments; or
- (c) extend the time allowed for the payment of the fine or for the payment of any instalment thereof,

and the person liable to pay the fine may be required, if the Court thinks fit, to enter into recognizances, with or without surety, to the satisfaction of the Court for the due payment thereof.

(3) Where any fine is directed to be paid by instalments, the person liable to pay the fine shall, on making default in the payment of any instalment thereof, be liable to be imprisoned for such proportion of the full term passed upon him in default of payment of the fine, as the sum remaining unpaid by him bears to the fine imposed upon him.”

(See section 4 of the Criminal Justice (Reform) Act for similar provisions relating to the Circuit and Gun Courts.)

[19] Therefore, the learned judge adopted an erroneous approach on 6 March 2020 when she imposed a fine and then extended Mr Barrett’s bail to return to court to pay the fine. Several subsequent occurrences compounded this error: (a) after 6 March 2020, the matter was set before different judges of the Parish Court who extended Mr Barrett’s bail to return to court on several occasions. There was, therefore, no continuity of the matter before the learned judge, and this may have contributed to the confusion that subsequently unfolded regarding the date the case was finally disposed of; (b) a bench warrant was issued, and its execution subsequently stayed;

(c) his bail was revoked for failure to pay the fine; and (d) finally having his bail restored after payment of the fine was made. The blunder was further exacerbated when, on 21 December 2020, the fine seemed to have been “re-imposed” (our phrase and for want of a better one), with a notation in the court sheet that it was previously paid.

[20] As section 195 of the JPCA clearly illustrates, what should have been done was for the fine to be imposed and a date given for its payment. If the learned judge “thought it fit” that Mr Barrett was to enter into recognizance to pay the fine, whether with or without surety, the required order should have then been made. In those circumstances, the fine would be paid to the police (at a police station in the parish, which more likely than not would be the main police station in the parish). A warrant of commitment would also be issued by the Parish Court and sent to the relevant police station. That warrant would be executed upon Mr Barrett (who would then be taken into custody) if he failed to pay the fine on the date stipulated in the court’s order.

[21] The learned judge also had another option. As is often done in practice, and entirely a matter within the discretion of trial judges, after determining that the appropriate sentence in the circumstances would be a fine, the learned judge could also have enquired of Mr Barrett through his attorney if he had the money (having indicated how much this would be) to pay the fine at the time he is to be sentenced or if he wished to return at a future date to do so. If Mr Barrett indicated that he did not have the money to pay the fine, the sentencing hearing would then be postponed to a date convenient to the court and, presumably, Mr Barrett, for him to return with the funds to pay the fine. The fine would then be imposed on that date. This course, we believe, would have mitigated the irregularities that occurred following Mr Barrett’s sentencing hearing. The learned judge also had the choice to direct that Mr Barrett pay the fine by instalments.

[22] Before concluding on this issue, we also thought it was fitting that we should remind trial judges that once a judge imposes sentence, the matter is at an end, and he or she is *functus officio*. This principle ought to be well-known by now. In **Beswick**

v R (1986) 36 WIR 317, a decision of the Privy Council, Lord Griffiths, writing for the Board, made it plain that where a Magistrate (as a judge of the Parish Court was then designated) convicted and then sentenced a defendant, he or she was *functus officio* and any subsequent order made is done without jurisdiction and of no legal effect. While this principle is subject to exceptions, none arose in the present case.

[23] We acknowledge that the erroneous and improper course employed by the court may have created confusion as to the date of the final disposition of the matter. This could have undoubtedly led to the procedural quagmire that followed when Mr Barrett decided to appeal his conviction and sentence. However, it is pellucid from all the records provided, and ought to have been equally crystalline to Mr Barrett and his attorney-at-law, that the fine was imposed (or sentence was passed) on 6 March 2020. Accordingly, for the purpose of commencing the appellate process, that would have been the final date for a verbal notice of appeal to be given. It would also have been the date from which time would begin to run for the filing of the notice and ground of appeal in the absence of a verbal notice.

[24] While we empathise with Mr Barrett and Mr Melbourne about the unsatisfactory manner in which this matter was dealt with post-sentence by the learned judge, nevertheless, we felt that it was also the duty of counsel to have been mindful of the legislative provisions and procedure relating to criminal appeals; to have instructed Mr Barrett accordingly; and to have taken the necessary steps to adequately secure his right of appeal in the event he wished to utilise it. It saddens us to observe, but we feel compelled to do so, that both the court below and counsel have contributed to Mr Barrett's hapless plight in this matter.

Conclusion

[25] For the preceding reasons, in the light of sections 294(1) and 295 of the JPCA and the various records that were made available to the court, we have arrived at the unavoidable position that at the time this matter was heard by us, Mr Barrett's right to appeal had ceased and determined. Accordingly, the notice and ground of appeal filed by Mr Barrett on 17 December 2020 are struck out.