

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 8 OF 2008

**BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

DAVE DENNIE

v

REGINA

Mr. Leroy Equiano instructed by **Mrs Donna-Kay McIntosh -Brice** for the Appellant

Mrs. Caroline Williamson-Haye and **Mrs. Sharon Millwood -Moore** for the Crown

ORAL JUDGMENT

July 14, 2008

SMITH, J.A.

1. On the 26th day of June 2007, the appellant, Mr. Dave Dennie, was charged with and convicted in the Resident Magistrate Court for the parish of St. Catherine of the offences of uttering false documents with the intent to defraud and attempting to obtain by false pretences.

2. The allegations against the appellant were that on the 28th May 2007 he went to the Registrar General's Department at Twickenharn Park, where he submitted a receipt claiming a refund of One Thousand Dollars (\$1,000) on an Express Fee and was issued the refund. On the 21st June 2007, the appellant returned to the Registrar General's Department again

and submitted a receipt for a refund of One Thousand Dollars (\$1000.00). It was then discovered that the refund in respect of that receipt had already been paid to him.

3. The Record of the proceedings indicates that when the appellant appeared before the learned Resident Magistrate, his lawyer was not present and he pleaded guilty to both charges. The appellant by his attorney has now appealed against conviction and sentence on the sole ground set out below:

"The Learned Resident Magistrate erred in law in her failure to allow the Appellant, in his Counsel's absence any opportunity to advance his defence in respect of which he had previously duly retained Counsel, Mrs. Donna-Kay McIntosh Brice, to the certain knowledge of the Court. In the result the appellant has suffered a grave miscarriage of justice."

4. Pursuant to **s. 20 (6) (c)** of the Jamaican Constitution, an appellant has a right to a defence. It states as follows:

"Every person who is charged with a criminal offence shall be permitted to defend himself in person or by a legal representative of his choice."

Thus an accused may choose to defend himself or employ the services of an attorney to do so. Since the appellant had retained the services of an attorney, the critical question is whether he was denied his right to be permitted to be represented by the counsel of his choice.

5. The appellant's attorney, Mrs McIntosh-Brice, in her affidavit in support of the appeal, asserts that she attended the Resident Magistrate Court in Spanish Town at 10 a.m. on the day on which the matter was set to be heard. She indicated to the two Clerks of Court present that she represented the appellant and that she intended to defend the charges. After being informed that the Resident Magistrate would be late, she agreed to a trial date for the 25th day of September, 2007 and then left at 11 a.m.

6. The learned Resident Magistrate in her Reasons for Sentence stated that neither the appellant nor the respondent had stated that the appellant had legal representation. As a result, having asked the appellant if the allegations were true, and having received what was in her view an unequivocal 'yes', she proceeded to sentence the appellant. In addition to this, there is the memorandum of one of the Clerks of Court in which that Clerk stated that on the day in question, the courtroom was very crowded, it being Return Day, and that when the appellant's name was mentioned, she made it known that the appellant was represented. Also of note is the memorandum of the other Clerk of Court who stated that he did not tell the Magistrate that the appellant was represented nor could he recall either the appellant or the other Clerk of Court telling the Magistrate this. Significantly, he too stated that the courtroom had been

overcrowded and that in those circumstances, it was easy for an oversight to occur.

7. Based on these statements, the circumstances surrounding whether the court had been informed that the appellant had retained the services of an attorney are not clear. On the other hand, it is quite clear that he was never able to avail himself of the services of his attorney whom he had retained specifically to represent him in this matter and who had herself shown her intent to do so when she had appeared in court earlier that morning and agreed to an adjourned trial date. We are therefore of the view that the appellant was denied the right to be represented by a legal representative of his choice and it is on this basis that this appeal must be allowed.

It is therefore the order of this court that the appeal be allowed, the convictions be quashed and the sentence set aside. In the interest of justice, the matter is to be remitted to the Resident Magistrate Court for a trial before another Resident Magistrate.