JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CRIMINAL APPEAL NO COA2019PCCR00004

BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE EDWARDS JA

MICHAEL FRANCIS v R

Miss Melrose G Reid instructed by Melrose G Reid & Associates for the appellant

Miss Latoya Bernard for the Crown

25 September 2019 and 29 January 2021

PHILLIPS JA

[1] The sole issue for determination in this appeal was whether the failure of a Resident Magistrate (now called Parish Court Judge pursuant to the 2016 amendment to the Judicature (Parish Courts) Act (the Act)) to endorse an order for an indictment to be proffered, rendered the trial and the plea of guilty that had been entered a nullity. After hearing submissions, and having regard to the Crown's concession of this appeal, we made the following orders on 25 September 2019:

> "1. Appeal against convictions and sentences are allowed.

2. Convictions in relation to informations nos 8129-8174/2007 are quashed and the sentences are set aside.

3. The trial in the matter is declared a nullity."

What follows is a fulfilment of our promise to reduce the reasons for our decision into writing.

[2] Mr Michael Francis (the appellant) was provided with living accommodations by the complainant after his deportation from the United States of America on 7 May 2007. Just one month later, on 10 June 2007, he fraudulently obtained a driver's licence in the complainant's name. A month, thereafter, in July 2007, he stole the complainant's National Commercial Bank 7th Heaven Master Card Credit Card, and on 11, 17, 18 and 19 July 2007, used the complainant's credit card to conduct several transactions totalling $370,499.00. These actions resulted in the appellant's arrest and charge with 46 counts: 15 counts of forgery, 15 counts of obtaining credit by false pretences, 15 counts of uttering forged documents, and one count of making a false declaration.

[3] At his arraignment before Senior Parish Court Judge, Miss Judith Pusey (as she then was), on 31 July 2007, at the Corporate Area Criminal Court, the Crown only proceeded on 20 counts: one count of forgery, three counts of uttering forged documents, 15 counts of obtaining credit by false pretences, and one count of making a false declaration. The appellant pleaded guilty to all 20 counts that had been laid against him, and he was sentenced to imprisonment to be served consecutively.

[4] The appellant filed notice and grounds of appeal on 10 August 2007. Shortly thereafter, he was granted bail pending appeal. However, his appeal was not heard until 25 September 2019. There is nothing on the record to indicate why the matter lay dormant for over a decade.

[5] In her reasons for judgment, the learned Senior Parish Court Judge recited the facts in the instant case and stated that:

> "Unfortunately no note was made of what had transpired in court on arraignment. The file could not be located for several years and only came to hand on the 23rd day of January 2019. Now over ten (10) years later I am unable to recollect what transpired.
>
> In addition, there is no Number 1 Information on the file with the Indictment Order or sentence recorded on it with the counts properly listed to assist the rehearsing of what transpired and to assist the Court of Appeal in its determination."

[6] The grounds of appeal that were initially filed indicated that the appellant challenged his convictions. He also challenged the sentences imposed on the basis that they were manifestly excessive. The appellant also filed an affidavit in support of his appeal where he made allegations that on the first day he appeared before the court, he felt pressured to enter a plea of guilty, and his indication that he had legal representation and his intention to provide information on mitigation were all ignored.

[7] At the hearing of the appeal, counsel for the appellant, Miss Melrose Reid, argued that his convictions ought to be quashed and his sentences set aside as no order for the indictment was endorsed on any information that charged the appellant. Miss Reid also

argued that information no 8129/2007, which purportedly charged the appellant with making a false declaration, did not outline the offence with which the appellant had been charged, and she also highlighted the fact that a portion of that information was blank. It is admirable that the Crown acknowledged, at the outset, the deficiencies in the case as outlined by Miss Reid. Indeed, in our view, the Crown was correct to concede the appeal.

[8] A Parish Court Judge is empowered pursuant to section 268(1)(d) of the Act to try the indictable offences under the Forgery Act with which the appellant was charged, namely, forgery, uttering forged documents, and obtaining credit by false pretences (see sections 4(2)(a), 9(1) and 10 of the Forgery Act, respectively). However, as the information that charged the appellant with making a false declaration does not outline the allegations against him, nor does it state the law that was breached, we are unable to state the basis upon which the Senior Parish Court Judge assumed jurisdiction to entertain a plea to this offence.

[9] The Act prescribes that before a defendant can be tried in the Parish Court for an indictable offence, an order for trial on indictment must first be endorsed on the information and signed by the Parish Court Judge, as a condition precedent to the commencement of a trial. Section 272 of the Act states that:

> "**On a person being brought or appearing before a [Parish Court Judge] in Court or in Chambers, charged on information and complaint with any indictable offence, the [Parish Court Judge] shall**, after such enquiry as may seem to him necessary in order to ascertain whether the offence charged is within his jurisdiction, and can

> be adequately punished by him under his powers, **make an order, which shall be endorsed on the information and signed by the [Parish Court Judge], that the accused person shall be tried, on a day to be named in the order**, in the Court or that a preliminary investigation should be held with a view to a committal to the Circuit Court." (Emphasis supplied)

[10] Brooks JA (as he then was) in **Shadrach Momah v R** [2013] JMCA Crim 52, accepted as an "accurate statement of the law" the ratio decidendi in **R v Joscelyn Williams et al** (1985) 7 JLR 129. In **R v Joscelyn Williams**, a Parish Court Judge commenced a trial without first endorsing and signing the order for an indictment to be proffered. That order was ultimately endorsed and signed six days later, during the trial, after counsel for the appellant raised the issue and despite his objections. The Parish Court Judge overruled counsel's objection on the basis that the order for the trial had been made on the day the trial had commenced, but through inadvertence, he had not signed the order. He, thereafter, signed and pre-dated that order. The appellants were convicted. The Court of Appeal, consisting of Cundall CJ (Ag), Semper and Duffus JJ, allowed the appeal and declared the appellants' trial a nullity. Semper J, on behalf of the court, outlined the reasons for that decision, at pages 132 and 133, as follows:

> "In the present appeal we have come to the conclusion that it would not be right, in all the circumstances, that an order for trial on indictment should be made by word of mouth and sometime after the indictment is presented following such verbal order that the same be endorsed on the information and signed by the [Parish Court Judge].
>
> In our opinion a [Parish Court Judge] acting under section 272 must comply strictly with the provisions of that section. **It is that section which gives him jurisdiction**, after such inquiry as may seem to him necessary, to make an order either for the trial of an accused person by indictment or the

> taking of a preliminary investigation in the charge preferred against him. **It is this order of the [Parish Court Judge] that empowers the Clerk of the Courts to act under section 274 of the law and prefer his indictment against the person named** and on the day named in the order for the offence or offences which the [Parish Court Judge] acting under section 273 may order the accused person to be tried for.
>
> Section 272 does not require the order of the [Parish Court Judge] to be under seal but in the language of this section the order 'shall be endorsed on the information and signed by the [Parish Court Judge], that the accused person shall be tried, on a day to be named in the order'; as we have already indicated, and state again, **the endorsation of this order and signature of the same by the [Parish Court Judge] are acts to be performed prior to the presentation of an indictment or the taking of a preliminary examination**....
>
> **Finding as we do, we are of the opinion that the appeal must be allowed and that the proceedings relating to the order for trial, indictment and conviction be accordingly set aside and annulled. While we do not here order a new trial, the proceedings being declared a nullity, it will be a matter for decision by the Clerk of the Courts whether he will now ask for an order on the information charging the appellants so that proceedings may be taken against them *de novo* either under section 274 by way of indictment or by way of a preliminary investigation**." (Emphasis supplied).

[11] This court once again examined the issue of the absence of an order for an indictment in **R v Monica Stewart** (1971) 12 JLR 465. In that case, the appellant pleaded guilty and was sentenced to six months' imprisonment at hard labour. The sole issue on appeal against her conviction was whether a plea of guilty entered before a Parish Court Judge was a nullity due to non-compliance with section 272 of the Act, in that, the order charging the appellant with an indictable offence was not endorsed on the

information or signed by the Parish Court Judge. No objection was taken at the trial that the indictment "was bad and should have been quashed".

[12] The court ultimately held that even without an objection, the fact was that the endorsement on the information signed by the Parish Court Judge in order to hear the case, was a condition precedent to hear the case, and if not obtained, makes the conviction a nullity. The court also accepted that **R v Joscelyn Williams** correctly states the law on the interpretation of section 272 of the Act. Edun JA, on behalf of the court in **R v Monica Stewart**, stated that section 272 of the Act "constituted the condition precedent which the [Parish Court Judge] had to comply with before assuming any jurisdiction at all". The Parish Court Judge therefore had no jurisdiction without compliance with that provision. In the absence of evidence that proved compliance with section 272 of the Act, the court allowed the appeal, quashed the conviction, and the sentence imposed was set aside.

[13] Although **R v Joscelyn Williams** and **R v Monica Stewart** are authorities of some vintage, we accept as accurate, the statement of the law therein on the interpretation to be given to section 272 of the Act. There must be strict compliance with the provisions of section 272 to ground jurisdiction for a Parish Court Judge to try an indictable offence. The endorsement of an order on the information for an indictment to be proffered, that is signed by the Parish Court Judge, must be completed before a Clerk of the Court can proffer his indictment against any person. Where the provisions stated in section 272 of the Act have not been complied with, the trial will be declared a nullity (as was the case in **R v Joscelyn Williams** and **R v Monica Stewart**).

[14] In the instant case, as indicated, no order for an indictment to be proffered was endorsed on any of the 46 informations presented to the court. Indeed, there was no indictment before us. The Parish Court Judge's recollection of the events that had transpired before her would not have affected this court's decision, in this case, as the absence of an endorsement on the informations, signed by her, for an indictment to be proffered (in accordance with section 272 of the Act), deprived her of jurisdiction to try the offences and rendered the appellant's trial a nullity. The appellant's trial on the count that charged him with making a false declaration, was also declared a nullity due to our inability to ascertain the basis upon which the Parish Court Judge exercised jurisdiction to entertain a plea to that offence.

[15] Bearing in mind the circumstances of this case, it is important to emphasise the duty of a Parish Court Judge to note clearly what transpires before the court when a defendant pleads guilty. Indeed, Duffus P in **R v Cecil Green** (1965) 9 JLR 254, accepted the ratio decidendi in **Cantebury v Joseph (Police Constable)** (1963) 6 WIR 205, and stated that in:

> "… cases where a guilty plea is entered by an accused, the learned [Parish Court Judge] **must** note clearly what has transpired before the court. Any statement made by the Clerk of the Court or other prosecuting officer should be noted, and any statement made by the accused or by his counsel should also be noted as forming part of the record of the trial, otherwise, it will be impossible for the Court of Appeal to know what in fact did transpire in the court below." (Emphasis supplied)

[16] We find it of great significance also that it appears that the appellant was pleaded and sentenced on the same day, without being permitted to consult his legal

representative, and without being afforded an opportunity to mitigate his sentences. This is a practice that should be eschewed. All litigants who plead guilty, but particularly those who are self-represented, should, if they require to do so, be given every chance to make representations on their own behalf or obtain counsel to assist them in doing so.

[17] In the light of all these egregious errors; the fact that almost 14 years would have elapsed since the commission of the offence and the hearing of this appeal; and the absence of any evidence and/or material to support these counts (as only the informations were located), we did not consider this to be a suitable case for proceedings to be commenced anew.

[18] It was for all these reasons that we made the orders stated at paragraph [1] herein.