

C.A. CRIMINAL LAW. Plead guilty ^{Sentence} Count 1 uttering a forged document
- 2 attempting to obtain amount on forged document - Sentence
to concurrent terms of 9 months imprisonment at hard
labour. Pleaded guilty 14/7/88 Sentenced 28/7/88. Appellant
in custody since 28/6/88.
Documents took two months to reach Court of Appeal
Residing for Sutton Street - JAMAICA - R.M. Court

Whether sentence manifestly excessive - appellant 20 years
old - whether appellant ought to have been treated in accordance
with R.M. CRIMINAL APPEAL NO. 100/88 S3 of Criminal Justice Reform Act.
- Reasons for custodial sentence not stated by Resident
Magistrate - Social enquiry report recommended probation

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)

THE HON. MR. JUSTICE WRIGHT, J.A.

THE HON. MISS JUSTICE MORGAN, J.A.

R. vs. ALPHANSO SMALL

Robin Smith for appellant

Canute Brown for Crown

October 20, 1988

CAREY, P. (Ag.):

This is a most distressing case. The appellant,
Alphanso Small who is now aged 20 years, pleaded guilty in the Sutton
Street Resident Magistrate's Court before His Honour Mr. C.S. Orr, on the
14th of July, to two counts on an indictment which charged him firstly, for
uttering a forged document, namely, a Citibank United States Money order
payable to Gary Edwards in the sum of Ten Thousand, Five Hundred United
States Dollars (US\$10,500.00); count 2 charged him for attempting to obtain
by false pretences, the amount on that forged document. Sentence was post-
poned to the 28th of July, at which time it appears the learned Resident
Magistrate had before him a social enquiry report prepared by a Probation
Officer. The appellant was sentenced to concurrent terms of 9 months
imprisonment at hard labour. This appellant has been in custody since his
arrest on the 28th of June.

1 Sentence
2 Administration of Justice
3 Criminal Justice
Reform Act

We observed that the matter is distressing and it is distressing for a number of reasons. In the first place, a conviction was recorded on the 28th of July of this year; there were no notes of evidence taken by the Resident Magistrate and therefore very little had to be done to prepare the record. Nevertheless, it took some two months for the relevant papers to be received in the Registry of this Court from the Sutton Street Court. We have, before this, had occasion to speak of these delays, these inefficiencies in the system from the court's office: Something is rotten in the 'State of Denmark'.

This morning Mr. Robin Smith has argued before us that the sentence imposed was manifestly excessive. The main thrust of his argument is that the appellant, who is 20 years of age, ought to have been treated in accordance with the provisions of Section 3 of the Criminal Justice Reform Act. We would like to remind of the provisions of that section which is in the following form:

"3. Subject to the provisions of subsection 2 where a person who has attained the age of 17 years but is under the age of 23 is convicted in any Court for any offence, the court instead of sentencing such persons to imprisonment shall deal with him in any other manner prescribed by law."

Subsection 2 removes from the purview of the section four categories:

- (a) where the Court is of opinion that no other method of dealing with the offender is appropriate;
- (b) a sentence of imprisonment for such an offence is fixed by law;
- (c) violence or a threat of violence has been used in the commission of the offence;
- (d) the person at the time of the commission of the offence was in illegal possession of a firearm or imitation firearm.

Where the Court is of opinion that no other method of dealing with offender is appropriate, then subsection 3 is brought into play, and that states -

"Where a Court is of opinion that no other method of dealing with an offender mentioned in subsection 1 is appropriate and passes a sentence of imprisonment on the offender, the Court shall state the reason for so doing, and for the purpose of determining whether any other method of dealing with any such person is appropriate the Court shall take into account the nature of the offence and should obtain and consider information relating to the character, home surroundings, and physical and mental conditions of the offender."

In the circumstances of this case, the learned Resident Magistrate did obtain a social enquiry report. He did not, as required by subsection 3, state his reason for a custodial sentence. It is necessary, therefore, to see whether there were any factors stated in the social enquiry report which made imprisonment the only appropriate method.

We have carefully considered that report and we would like to call attention to this assessment and recommendation which was made by the probation officer. It was therein stated:

"Defendant Alphonso Small enjoyed a stable and reputable familial lifestyle. Although his father disappeared at the tender age of two years his step father seemed to have been an adequate father substitute.

Throughout defendant's adolescent years emphasis was placed on the acquisition of a sound education. At the age of twenty years, he was anxious to enter tertiary education after which he hoped to enter a professional career.

There are strong indications that Alphonso being an immatured and inexperienced youngster, was systematically influenced by a rogue to enter blindly into the business of Attempting to Obtain Money by False Pretence.

This is defendant's first court appearance. He is penitent. He has been the subject of good conduct in his home and community, but he now stands at a Cross Road. This conviction has posed a serious threat to his career aspirations.

In order for him to set aside the impact of this unfortunate incident and to prevent a barrier in the pathway of his career aspiration, I am recommending that he be made the recipient of a Probation Order where he may benefit from professional supervision."

It was plain on the facts that the appellant did not benefit from his excursion into crime. He pleaded guilty. We know that, according to the report, he was penitent; we know also that this was his first conviction; that he has had the benefit of a mother and a step-father and other siblings and a good background. We would have thought that all this would be more than adequate indicia against dealing with him in the manner in which he was dealt.

This Court has previously observed that the provisions of this Act are not being taken into account by Resident Magistrates. We must deprecate this attitude. The law is clear that there is a bias against sending youngsters to prison unless that is the only appropriate method, and the law requires the Resident Magistrate to set out his reasons for treating him in that way. We think that the learned Resident Magistrate in this case erred and erred grievously. The result of his action has been that the appellant has been in custody from the date of his arrest to date, some three months or more. This is the second distressing facet.

The appeal will be allowed, the sentences imposed by the learned Resident Magistrate are set aside and by consent, a probation order is made for twelve months in substitution therefor.