

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 47/87

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA

VS.

WAYNE KNIGHT

K.D. Knight for the Appellant

Miss Y. Sibble for the Crown

April 18, 1988

ROWE P.:

The appellant Wayne Knight was convicted by Mr. Justice Ellis in the Gun Court Division of the St. Elizabeth Circuit Court for illegal possession of firearm and shooting with intent.

At the time of his trial he was not represented by Counsel. The note which we have of what transpired on the 24th of March, 1987 when the case was first called on is that Crown Counsel told the learned trial Judge that:

"The Crown is ready in the matter, M^r Lord,
the accused are still unrepresented."

His Lordship made no enquiry as to why Counsel was not present. We have however a note of what transpired on the 9th of March, the day when Circuit opened. The case was called and Crown Counsel said:

"M^r Lord, I would suggest a trial date of this Wednesday, M^r Lord; the 11th."

and the Judge said:

"Mr. Jacobs and Mr. Knight,"

and then he turned to Crown Counsel and said:

"You think you will get any assignment during that period."

There was no reply and the Judge continued in his address to the appellant and another man:

"We are going to try and help you with lawyers you see, but if we can't get through you come prepared that you are going to defend yourselves."

and the case was put for the 11th of March.

We have no note of anything that transpired on the 11th of March. What we have is that on the 24th of March the appellant was still unrepresented.

The Poor Prisoners' Defence Act provides that a person may apply for legal aid if he is charged with an offence the trial of which is to be held in the Gun Court. These were charges triable in the Gun Court and consequently the appellants were entitled to legal representation under that Act if they were unable to retain counsel of their choice and if they were prepared to accept counsel assigned under the Legal Aid Scheme.

In two cases which came before the Court during 1987, the Court drew attention to what it considered to be the appropriate procedure when a poor person is before the Court charged with an offence for which he is eligible to apply for legal aid. I refer to the second of those cases,

S.C.C.A. 130 and 131/84, R. v. Leroy Cargill and Patrick Roberts, in respect of which Judgment was given on the 5th of June, 1987. At page 18 of that Judgment we said:

"We agree entirely with what Downer J.A. (Ag.) said in R. v. Glenroy Williams, supra, that:

'It is always necessary to apply for legal aid from the preliminary enquiry or at the committal. To await the commencement of the trial to make such an application would in the circumstances of this case frustrate the trial!'"

Then our Judgment continued:

"In addition to the circumstances which he [Downer J.A. (Ag.)] instanced, we would add that in a Gun Court case triable in the High Court Division, the proper time for an application for legal aid to be made by an accused person is at the time of his arraignment. If an accused person, aware of his right to apply for legal aid, refuses to so apply and instead retains counsel of his choice who for any reason fails to attend and appear for him, the question of whether the trial should be adjourned to allow for the investigation and probable grant of legal aid, should be balanced against all the other factors in the case including the convenience of the court, the convenience of witnesses, and the general public interest that the trial of cases should not be unduly delayed."

In this particular case we are unable to say what happened at the trial of this appellant.

Firstly, was he told of his right to apply for legal aid?;

Secondly, did he so apply?;

Thirdly, having so applied, was he found to be eligible for legal aid?; and

Fourthly, what were the efforts made to find counsel to represent him at trial?

There is absolutely no information on the record as to these matters. When this matter first came before the Court last week Monday, it was adjourned for enquiry to be made from the shorthand writers as to what happened touching this particular case and the information which was made available

does not speak to any of the questions posed above.

This appellant was entitled to legal representation of his choice and it was a failure of the administrative machinery on the face of the record to so enable him to have that opportunity. We think that this procedural irregularity went to the root of the trial in the instant case and made it a nullity and in those circumstances the application for leave to appeal is treated as the hearing of the appeal. The appeal is allowed, the conviction quashed and the sentence is set aside. In the interests of justice it is ordered that there be a new trial at an early date.