JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 129/88

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

REGINA

VS.

BRENDON BLAIR

Messrs. Delroy Chuck and Robin Smith for appellant

Miss Paula Llewellyn for the Crown

January 18, 1989

CAREY, J.A.:

In the Kingston Resident Magistrate's Court held at Sutton Street on the 5th of April, 1988, before His Honour Mr. C. S. Orr, this appellant was convicted on an indictment which contained four counts, three of which charged him with the offence of bribery under the Prevention of Corruption Act, the fourth count averring attempted bribery. He was sentenced to two years imprisonment at hard labour in respect of the first three counts, but on the fourth count the sentence of two years was suspended for three years. Additionally, he was ordered to pay a fine of $1,000 in respect of each of the four counts, in default of payment he was ordered to be imprisoned for six months at hard labour. It was further ordered that in respect of count 1 he should pay the amount of $4,300 which represented the amount of money collected as a bribe white on count 2 that sum was $4,500. In relation to count 3, the amount was $2,000. He was also adjudged to be incapable of being elected

or appointed to a public office for seven years from the date of his conviction and he was to forfeit the office held by him on that date. Against that conviction and sentence the appellant now comes before this court.

In so far as the question of the conviction was concerned, Mr. Chuck with commendable pragmatism has conceded that there was no point of merit to be argued. He did put forward a ground which was in the following form, namely:

> "That the learned Resident Magistrate in starting the trial and continuing it when a fiat from the Director of Public Prosecutions had not been obtained ab initio breached a mandatory provision of section 10 of the Corruption Prevention Act which states as follows -
>
> > 'A prosecution for an offence under this Part shall not be instituted except by or with the consent of the Director of Public Prosecutions'."

It was pointed out to Mr. Chuck that when the order for indictment was made, there was, in the court the necessary fiat from the Director of Public Prosecutions. There was therefore, no factual basis on which he could mount any argument in respect of that ground, a fact which as we said, he has candidly conceded. The main burden of the submissions to us this morning, relate to the question of sentence and it is therefore, necessary to outline the facts upon which this appellant was convicted.

Shortly stated, between the 21st of November, 1987 and the 14th December, the appellant collected the amounts which we have already detailed in the four counts from relatives whom he approached with a view to stifling a prosecution for the offence of possession of cocaine allegedly committed by one Roel Myles, Bernard Sheriff, Dalton Baddington and Barbara Richards. The appellant promising he could, for the amount of $5,000 each, stifle the prosecution. In the event he did collect the amounts which we have already stated on counts 1 to 3. In so far as count 4 was concerned, the person to whom the appellant made the representations did not, in fact, pay over any money. One of these payees who had reported

the appellant's conduct was given an amount of marked notes which he paid over to the appellant and that amount was eventually recovered from him by the police. We should also point out that in his defence the appellant made very serious and unwarranted allegations against two senior officers in the police force, a circumstance which was more than embarrassing to counsel who has appeared on his behalf in the court below.

What we would emphasize is that the facts which we have adumbrated showed that this was as brazen an example of corruption as one could find in the police force. The appellant, over a period, continually pestered these persons in an endeavour to collect large amounts of money and succeeded in his aim. So that no mitigating factors could really be urged in his favour.

The learned Resident Magistrate imposed the maximum sentence under the Act and really what was being urged before us was that the sentence of incarceration should have been made to run concurrently. We note that the learned Resident Magistrate had in fact imposed two consecutive sentences in respect to the terms imposed on counts 1, 2 and 3 but section 14 of the Criminal Justice Administration Act, in our view, does not permit that exercise of power. What we propose in that regard is to vacate the order which was made on count 3, that the sentence should run consecutive to that on count 2 which itself had been made consecutive to count 1. The result is that count 2 is consecutive to count 1 and count 3 is to run concurrently with count 1.

It was further argued that by ordering the payment of fines and in consequence, alternative terms of imprisonment, the effect was to render the global sentences manifestly excessive. We were not impressed with that argument. As we pointed out to learned counsel, the Act permits the learned Resident Magistrate not only to order imprisonment but additionally to order that a fine be paid. The only question would be whether, having regard to the circumstances in this case, an additional penalty was warranted. In our view, the imposition of those fines was eminently deserved.

There was an argument that since there was but one transaction, all the sentences should have been made to run concurrently. We do not agree with that view of the facts. It is true that there was one prosecution by the appellant of some four persons under the Dangerous Drugs Act, but he approached four persons on different occasions and certainly was successful in obtaining money from three relatives of those persons. We cannot regard that as being one transaction, and therefore, we are in entire agreement with the learned Resident Magistrate when he imposed a consecutive sentence on count 2.

We find this a very distressing case because it concerns a member of the Jamaica Constabulary Force. We would have thought that the incidence of corruption within the Force has been sufficiently publicized. This court has on occasions, prior to this, intimated that the sort of sentences which should be imposed for corruption by members of the Force will in fact be serious and condign. It is a matter of regret that police officers choose to continue to ignore what they know to be correct procedure and correct action on their part. They have taken an oath to uphold the law and are well aware that they cannot sell their services in this way. We wish to repeat, that if officers in the police force are caught and convicted of acts of corruption, they must expect sentences of the sort which were imposed in this case. In our view, the learned Resident Magistrate did not fall into error on this aspect of the case and we see no reason, therefore, to interfere with the sentences. In the circumstances, the appeal is dismissed, the conviction and sentences are affirmed save for the order substituted for consecutive sentence on count 3 the word "concurrent". The court will order the sentence to commence from a date when the appeal would normally be heard which we put at six weeks after the date of his conviction. In the result, sentences will commence to run from the 19th May, 1988.