

C.A. BR. Corruption Prevention Act — receiving fee for abstaining from
prosecuting for a breach of the Road Traffic Act.
Sentence two years imprisonment at hard labour
Counsel for appellant concedes he can find no concurrent
Sentence: whether excessive JAMAICA No previous convictions.
Appeal against conviction dismissed. Appeal against sentence
allowed sentence of nine months at hard labour substituted.

IN THE COURT OF APPEAL
RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 64/88

✓ comp

No Case referred to

BEFORE: THE HON. MR. JUSTICE ROWE, P.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

REGINA

VS.

DAVID MORGAN

Sentence
Police

Mr. D. Daly for the appellant

Miss A. McKain for the Crown

July 13, 1988

WRIGHT, J.A.:

On the 17th June, 1987, the appellant was convicted before the Resident Magistrate for the parish of Kingston and sentenced to imprisonment for two years for a breach of the Corruption Prevention Act; the charge being that on the 10th December, 1986, he had received from one Errol Francis a sum of money as reward or fee for abstaining from prosecuting the said Errol Francis for a breach of the Road Traffic Act.

The facts briefly are that on the morning of the 10th December, 1986, Mr. Francis was proceeding along the Bull Bay main road in his motor car driven by one Mr. Barrett, who was a mechanic. It is his evidence that the car was being worked upon and as a result the front licence plate was propped up against the windshield in front where it could be seen because the screws for affixing it to the front could

not be found. When he reached at the deep corner by the Copacobana Housing Estate they came upon a parked police motor car in which was the appellant and another officer. The car was stopped and the appellant threatened to arrest both occupants of the car for driving without the licence plate being affixed. The reason for it's position at the time was explained but he was adamant and he said that Mr. Francis would have to go to prison, telling him that for that sort of offence the fines would be five hundred dollars. He took Mr. Francis' I.D. from him and on discovering that he worked at the Income Tax Department - Mr. Francis is an Intelligence Officer at the Income Tax Department - he told Mr. Francis that since he was from that Department he would be able to find two hundred dollars and that is the only way that he was going to avoid going to jail that day. It would be a hundred dollars for each of them. Mr. Francis did not have the money and told him so but upon the insistence of the appellant they went towards his office with a view to borrowing the money. Mr. Francis' evidence is that members of his staff saw them arrive and shouted out, asking "What is it Franko"? Mr. Francis went to one Mr. Samuels' business place nearby, borrowed a hundred and ninety dollars and with it he put ten dollars which he had, quickly copied off the numbers of the notes and then he went and handed the money to the appellant. He was walking away when the appellant asked why he did not come to see that he was writing "collect" on the paper, so he witnessed the appellant write "collect" on the paper beside Mr. Francis' name.

The matter was reported to the police and shortly thereafter the appellant's car was tracked down and the appellant was seen to enter a betting shop and just at the moment when he was about to pay for his debt, Inspector Levine grabbed his hand with the money. The notes that he was about to

tender were those with the numbers corresponding to those copied by Mr. Francis and given to the Inspector. So, there was clear proof of the money that had been obtained from Mr. Samuels being found in the possession of the appellant within a very short time thereafter.

The appellant's defence was that he had not been at the point where Mr. Francis said that they encountered him but rather he was patrolling along the Palisadoes Road from the round-about and while there he heard the tooting of a horn behind him. Then a car pulled up ahead of him and he saw Mr. Francis, whom he did not know, come out of that car. Mr. Francis asked whether he was David Morgan and upon his answering "Yes" he was told by Francis that he had been given some money by a friend who had gotten it from his mother for the appellant's baby. The mother, who also testified, said that she had given money even to persons whom she did not know to be passed on to the appellant.

The evidence was so overwhelming that Mr. Daly has admitted that he can find nothing to complain about concerning the conviction. On the sentence of two years he submitted that the appellant had served the country for seven years and even though he had now fallen foul of the law, some consideration should have been given for the years of service.

There is some merit in that submission and, reprehensible though his conduct is, we think that the sentence could be ameliorated. In the circumstances we will dismiss the appeal against conviction but will allow the appeal against sentence so that for the sentence of two years imprisonment there will be substituted a sentence of nine months imprisonment with hard labour.