

JAMAICA

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1, PRESIDENT
NER, J.A.
OON, J.A. (AG.)

No appearance for the Crown

On the 24th of September, 1986, the appellant Linford Wheatley pleaded guilty in the Resident Magistrate's Court in Black River to two separate counts of Obtaining Credit by Fraud and he was sentenced to serve three years imprisonment at hard labour on each charge. We are told that at the time of his sentence he admitted a number of previous convictions in relation to similar offences.

The charges arose firstly, out of the appellant's stay, at the "Bridge House Hotel", in Black River where he registered as a paying guest. While there he entered into negotiations with the proprietor of the hotel and gave the impression that he was a man of means and in a position to

purchase or to arrange for the purchase of the premises for a sum in the region of \$1,000,000.00. The appellant left those premises without concluding any agreement for sale and what is even more important, without paying his bill or making any arrangements for the payment thereof.

Then he went and registered at another hotel in Black River, the "Pontio Hotel" where he remained for a few days and again he left that hotel without paying his bill or making any arrangements for the payment thereof. These were the facts which led to his conviction in the Resident Magistrate's Court and the sentences which followed.

The appellant said that on the 3rd of October, 1986 he filed a Notice of Appeal while he was at the General Penitentiary and asked that this Notice of Appeal be forwarded to the Clerk of the Courts in Black River for processing in the normal way because he said, he felt that the sentence was somewhat excessive. Now, up to the 27th of January this year (1989) no documents whatever relating to the appellant's appeal had reached the Court of Appeal.

Our enquiries show that the Prison Authorities at the instigation of the appellant telephoned through to the Courts Office in Black River on the 24th of May, 1988 and enquired what was happening to Mr. Wheatley's appeal. The impression was given to them that the file could not be found.

We are told further that a second enquiry was made on the 31st of May, 1988 from the Courts Office in Black River and the Prison Authorities were then told that the file had been located and had been given to a typist for the Record to be prepared for transmission to the Court of Appeal. Then on the 31st of August when the Prison Officers enquired from the Court of Appeal it was disclosed that there was no Record of any

papers having been sent to the Registry in this matter. The Prison sat back for a while but on the 6th of December, 1988 a further enquiry to the Black River Courts Office from the Prison drew the information that the documents were still with the typist and had not yet been prepared for transmission to the Court of Appeal.

The appellant himself wrote a letter to the Hon. Chief Justice on the 17th of January, 1989, and that is what caused the Chief Justice to approach the Court of Appeal and then these Records, such as are, were sent up from Black River on our instructions.

This manner of procedure is unsupportable. It is not now whether or not the sentences imposed on this appellant were appropriate in the circumstances, but whether his appeal has been given a timely hearing. It is scandalous that for two years the documents relating to this appeal could remain in a Courts Office at Black River and not be transmitted to this Court while the appellant languishes in Prison. These were guilty pleas. There were no Notes of Evidence. The copying required was but a ten minutes operation, yet it took two years and four months to complete. This is a total disgrace.

We have taken into consideration the fact that it is no fault of the appellant that he has not been put to work while he was in Prison, and that throughout the period of his detention he has been specially treated as an appellant. Had the appellant been serving his sentence from September 1986 that sentence would with good conduct be now expiring. Whether

or not we would have approved of the sentences imposed could have become of academic interest only and someone in the position of this appellant would not have the confident assurance that his sentence was reviewed by the Court of Appeal.

In dismissing these appeals, we propose to impose such a sentence on the appellant in substitution for the three years sentence imposed on him in the Court below which will expire on the 1st of February, 1989.