JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 22/88

BEFORE: THE HON. MR. JUSTICE ROWE, P.
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA

VS.

PATRICK WHITE

Mr. Robin Smith for appellant

Miss Carol Malcolm for the Crown

April 12, 1989

CAREY, J.A.:

In the Resident Magistrate's Court for St. Andrew held at Half-Way-Tree on the 22nd of June last year, this appellant was convicted on an indictment which charged him on two counts of obtaining money by false pretences and a third for obtaining money by fraud. In fact there were some twenty odd counts against him, but in the event the learned Resident Magistrate did not return a verdict on those counts. He was sentenced to concurrent terms of two years imprisonment at hard labour and he now appeals against his conviction and sentence.

The facts are quite simple: Sometime in June 1985 a divorcee, Mrs. Daphne Hylton, met this appellant who made a most favourable impression upon her; he said that he was from Italy and he was now living in the United States of America; that he was a Pilot with American Airlines and that he owned a Jewellery Store in Miami in the United States of America; he had a house in New York; that he had buried his daughter

recently and had a large sum of money, $1.3 million in the Bank of Jamaica which apparently was frozen so he could not put his hand on it; he had been staying at the Pegasus for sometime. He was terribly lonely and Mrs. Hylton took him in. He also, on the finding of the learned Resident Magistrate, took her in, because he induced her over a number of months to give him large amounts of money, amounting to some twenty-seven thousand dollars on various pretexts. He had promised that he could obtain a car for her, a cooker and a fridge from the United States but those things were never ever forthcoming. What he did was to obtain these amounts under some sort of instalments plan, suggesting to her that they were payments towards Customs Officers, wharfage and towards the car. The facts disclosed that the appellant had an affaire with Mrs. Hylton and that facilitated the passing of these large amounts of money to the appellant.

Insofar as two of the counts are concerned, they related to his obtaining some thirteen hundred dollars, being six hundred and fifty dollars on each of the counts, from a Mr. Bladwin White who is a brother of Mrs. Hylton, by pretending that he could obtain a job for him in Guantanomo Bay, Cuba. Of course, none of these promises were fulfilled; the appellant never had the power to procure the jobs; the monies were never recovered. Indeed, Mr. Bladwin White effected a citizen's arrest on the appellant at a bar near the City Centre Police Station. The defence of Mr. White acknowledged that there was an intimate relationship with Mrs. Hylton. He admitted that he received some amounts as gifts but he denied getting the large amounts which was suggested by Mrs. Hylton.

The learned Resident Magistrate did not believe a word the appellant said and having seen and heard the witness as he did, he was in a position of advantage to make up his mind where the truth lay. In our view, the facts were all one-way. The appellant reminds one of a character from a current television show called "The Charmer", that is a person who battens on to gullible and lonely women and sucks them of what they have.

Mr. Smith who argued before us this morning vainly tried to suggest that the learned Resident Magistrate had not applied his mind to

the defence put up by Mr. White. We are unable to agree; his defence was short and simple, "I didn't get the amounts suggested". This was eminently a question of fact for that tribunal and we see no reason whatever to interfere. There was an argument as to the sentence which was imposed, it being suggested that the sentence imposed was manifestly excessive.

In our view, the learned Resident Magistrate erred on the side of leniency. There were two separate and distinct areas of fraud. One related to Mrs. Hylton and one to her brother and in our view, a proper sentence would have been to make the sentences run consecutively not concurrently. There is absolutely no reason whatever to interfere with this lenient sentence imposed upon this appellant. In the circumstances, the appeal is dismissed; the conviction and sentence affirmed and the Court directs the sentence to run from the 1st October, 1988.