

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CRIMINAL APPEAL NO: 08/09

BEFORE: THE HON. MR. JUSTICE PANTON, P.
 THE HON. MRS. JUSTICE HARRIS, J.A
 THE HON. MR. JUSTICE MORRISON, J.A.

KHYRON VASSELL v. R

Mr. Hopeton Clarke for the appellant

Ms. Kathy-Ann Pyke & Ms. Melissa Simms, Crown Counsel (Ag.)
for the Crown

3rd April 2009

ORAL JUDGMENT

PANTON, P.

1. In this matter the appellant Mr. Khyron Vassell pleaded guilty in the Spanish Town Resident Magistrates' Court before Her Honour Miss Lorna Errar. The offence that was charged was that he took within the correctional facility where he was employed as a correctional officer certain prohibited articles which are listed in the information. They include cigarettes, rizzla, cash, DVD, cellular phone, cellular phone charger and a bottle containing a clear liquid which was suspected to be rum. All these were taken in, in breach of section 80 of the Corrections Act.

2. The appellant pleaded guilty and was sentenced by the Resident Magistrate to 12 months imprisonment at hard labour. The Magistrate in sentencing Mr. Vassell said that she took into account his plea of guilty but pointed out that that plea may have been predicated by the sheer number of the witnesses that were amassed against him. These included officers at the facility, Overseer Nehemiah Morgan and Staff Officers D. Shaw and D. Morgan. These officers had observed Mr. Vassell entering the facility with a bulge in his cap and when he was asked to remove that cap the items were found thereunder in a black plastic bag. Those were quite a huge amount of items to be kept under a cap. The folly of it is demonstrated by the fact that he never anticipated that there would have been a bulge that would have been visible to persons observing him.

3. The penalty provided under the law is a fine not exceeding \$1000.00 or to imprisonment for a term not exceeding one (1) year. Mr. Clarke has submitted that the sentence is manifestly excessive given the fact that Mr. Vassell pleaded guilty and he advises us that Mr. Vassell is 34 years old and he did not waste the court's time in that he pleaded guilty at the first proper opportunity.

4. We agree with Mr. Clarke that the sentence is manifestly excessive given the circumstances that he has mentioned. Accordingly, we are

allowing the appeal and we are quashing the sentence and substituting therefor a sentence of 3 months imprisonment to run from the date on which Mr. Vassell was sentenced which would have been the 5th of March 2009.