

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 17/06

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A
THE HON. MR. JUSTICE MORRISON, J.A.**

CARL WILLIAMS V R

Keith Jarrett for the appellant

**Mrs. Lisa Palmer-Hamilton, Senior Deputy Director of Public
Prosecutions, & Mrs. Nadine Atkinson-Flowers, Crown Counsel (Ag.)
for the Crown**

28th July 2009

ORAL JUDGMENT

PANTON, P.

1. The appellant Carl Williams was convicted in the Resident Magistrate Court for the Corporate Area held at Half-Way-Tree, St. Andrew. He pleaded guilty on the 21st June 2006 to 2 indictments each containing 3 counts. We have been able to discern this from the assistance that we have received from the Senior Deputy Director of Public Prosecutions as the record is not necessarily in the condition that one would have expected it to be in, it having been put together rather hurriedly over the past few days. This is the first occasion that

the matter has been listed for hearing in the Court of Appeal, the appellant having appealed the sentence after its imposition. He pleaded guilty on the 21st June 2006 and sentence was deferred to the 12th July 2006 and then further postponed to the 30th August 2006, when the Resident Magistrate imposed concurrent terms of five years imprisonment in respect of each count.

2. There has been really no explanation for the delay in submitting the record to the Court of Appeal. Indeed, the notes made by the Resident Magistrate add up to a grand total of two typewritten pages.

3. The circumstances are that the appellant was employed to Kingston Wharf and he used his position in such employment to trick unsuspecting persons into believing that he was in a position to acquire motor cars for them. He received in total from the two (2) complainants involved in this matter, Nine Hundred and Sixty-Five Thousand Dollars (\$965,000.00). Needless to say no cars were produced, no refunds made and the appellant was eventually arrested and charged.

4. The learned Resident Magistrate in imposing sentence, according to the notes made by her, was influenced by previous convictions that the appellant admitted; the nature of such convictions was not clearly specified but was stated as being for the same offence with similar modus operandi. The Resident Magistrate said she was influenced by his lack of contrition and also by the loss incurred by the members of the public who were duped. She felt, to quote her,

"that the maximum sentence was not unworthy in the circumstances of the case."

5. Learned Counsel Mr. Keith Jarrett who appeared then for the appellant and this morning, submitted that the sentences imposed were manifestly excessive and that consideration ought to be given by this court to the fact that no discount was given in respect of his plea of guilty. We are satisfied that that submission is a sound one, that all pleas of guilty should attract some measure of discount.

6. In making the decision that we make today, we are taking into consideration the fact that the appellant ought to have had his appeal heard long before now. We are on the verge of three (3) years and given the fact that there were no notes of evidence to be typed, no massive record to be put together, it is really unconscionable that he had to wait three (3) years for his appeal to be heard.

7. We take the opportunity again to urge on the Resident Magistrates' Courts that every effort is to be made to submit the record of appeal to the Court of Appeal promptly particularly, in cases where persons have pleaded guilty and are appealing the sentence. There is no excuse that can be offered by any Resident Magistrate or Court Administrator for not submitting to the Court of Appeal promptly, the record of appeal when persons have pleaded guilty and have been sentenced to imprisonment. Resident Magistrates are to take note of their

statutory obligations in the Judicature (Resident Magistrates) Act as to what is to happen in these cases and the Clerks of the Courts are to implement the provisions of that Act.

8. In the circumstances we allow the appeal against sentence and reduce it in a manner to allow for Mr. Williams' release from custody today, he having now completed his term of imprisonment.