



[2012] JMSC Criminal 117

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
ON APPEAL FROM THE RESIDENT MAGISTRATE'S COURT  
FOR THE PARISH OF ST. CATHERINE  
PETTY SESSIONS APPEAL NO. 1 OF 2012**

**CLOVIS REID V REGINA**

RE: TICKETS NUMBERED 800/2012 ETC.

Ms. Jean Williams for the Appellant

Mr. David McLennon and Mrs. Lori-Ann Cole-Montaque for the Crown

**SENTENCING – PRINCIPLES APPLICABLE – CONSECUTIVE SENTENCES –  
GROUPING OF OFFENCES FOR SENTENCING – POLICY AND OBJECTS OF  
SENTENCING - THE “TOTALITY” PRINCIPLE.**

**IN CHAMBERS**

**CORAM: F. WILLIAMS, J**

**August 10, 14, & 22, 2012**

Introduction

[1] This matter comes to this court from the Resident Magistrate's Court for the Parish of St. Catherine. On June 8, 2012, a Resident Magistrate (presiding over the traffic court

for that parish and so exercising summary jurisdiction in the Court of Petty Sessions), sentenced the appellant in respect of some 53 traffic offences. The appellant had been brought before the court on an executed bench warrant which was ordered for him for not attending court in obedience to one of the various (and numerous) tickets and summonses issued to him. When finally the warrant was executed on him and he was taken to court, he pleaded guilty to all the 53 offences and was fined for all of them, with the alternative in each case being 10 days' imprisonment.

[2] The learned Resident Magistrate was informed by the police and/or clerk of courts that the fines that he thereafter imposed amounted to \$207,000; and the number of days totaled 530.

[3] What it appears that the learned Resident Magistrate did was to break up the 53 offences into 3 blocks. In respect of block 1, (composed of informations numbered 800-900/12), which amounted to \$71,000, 60 days were stated to be the alternative. For block 2, (composed of informations numbered 046-548/12, the penalty was stated to be \$71,000 or 60 days. And for block 3 (composed of informations numbered 848-319/12, the sentence was \$65,000 or 60 days. These sentences were to run consecutively.

### The Appeal

[4] The matter comes before this court pursuant to section 23 of the Justice of the Peace (Appeals) Act, (hereinafter referred to as "the Act"), which reads as follows:-

*"23. Every appeal shall be heard at the then next succeeding Circuit Court of the parish wherein the judgment appealed from was delivered, if such Court shall meet within one month after the perfection of such judgment;*

*but if a longer interval shall occur between the perfection of the judgment and the holding of the Circuit Court, then it shall be lawful for either the appellant or respondent to require, and for the Clerk of the Resident Magistrate's Court to transmit, a transcript of the information, summons, evidence, conviction, order, or judgment appealed from, and to submit the same for adjudication before any Judge of the Supreme Court in Chambers..."*

[5] The matter has been brought before a judge in chambers as the appeal appears to have been brought during the currency of the last circuit court sitting for the parish of St. Catherine; and "the next succeeding Circuit Court..." will not commence until September 17, 2012. Until then the appellant, who has failed to pay the several fines that were imposed on him, is serving a sentence of imprisonment. Since this is an appeal, not against conviction, but only against sentence, then circumstances required that the matter be dealt with with some expedition – even during the "long vacation", the liberty of the subject being at stake.

#### The Powers of the Court on Appeal

[6] Pursuant to section 36 of the Act, a judge of the circuit court or in chambers, hearing an appeal such as this, is empowered to quash the sentence; impose a sentence that is less severe than the one being complained of; or, of course, to dismiss the appeal and affirm the sentence of the Resident Magistrate.

[7] The power to dismiss the appeal is dealt with specifically in section 37 of the Act. Its terms are of sufficient significance (giving as it does the power to dismiss the appeal even if the appellant's case might have been successful), for it to be set out in full:-

*“37. The Appeal Court or Judge may, notwithstanding that the Court or Judge is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if such Court or Judge considers that no substantial miscarriage of justice has actually occurred.”*

[8] In the case of **R v Anthony Lewis (RMMA # 2 of 2005)**, the Court of Appeal, on a case stated by Her Honour Mrs. Marva McDonald-Bishop, Resident Magistrate for the parish of Manchester (as she then was), outlined, among other things, the difference in procedure between the Traffic Court for the Corporate area (where the Resident Magistrate there sits exercising a special statutory summary jurisdiction pursuant to the Traffic Court Act); and courts dealing with traffic matters in the other parishes (in which the Resident Magistrates sit exercising their summary jurisdiction in Petty Sessions). Appeals from the former court go directly to the Court of Appeal (pursuant to section 13 of the Traffic Court Act); whereas appeals from the other courts go the route set out in section 23 of the Act.

#### The Ground(s) of the Appeal

[9] The appellant's main ground of appeal is focused on the imposition of the consecutive sentences, requiring him to serve a total of 180 days in default of payment. His complaint is that this is excessive and not in keeping with the principles of sentencing. There are no consecutive sentences endorsed on the informations and the maximum sentence endorsed on any of the tickets or informations is 10 days. (See paragraph 8 of his written submissions).

The Crown's position, in the main, is that the learned Resident Magistrate was empowered to have imposed the sentences that were imposed and that, therefore, the appeal should be dismissed.

[10] In order to ascertain whether the sentences offend against any principle of sentencing, it is best to review at least some of these principles and objects against which the sentences passed might be measured. As the gravamen of the complaint in the instant case is with the imposition of consecutive sentences, some special attention will be given to that particular area.

#### The Principles and Objects of Sentencing

[11] The objects of sentencing have been set out in a number of judgments and texts by learned authors and are by now fairly well known.

[12] In the case of **Benjamin v R** (1964) 7 WIR, 459, Wooding, CJ, delivering the judgment of the Trinidad & Tobago Court of Appeal, set out the various objects as:

- (i) the retributive or denunciatory, which is the same as the punitive;*
- (ii) the deterrent vis-à-vis potential offenders;*
- (iii) the deterrent vis-à-vis the particular offender then being sentenced;*
- (iv) the preventative, which aims at preventing the particular offender from again offending by incarcerating him for a long period; and*
- (v) the rehabilitative, which contemplates the rehabilitation of the particular offender so that he might resume his place as a*

*law-abiding member of society.*

[13] In our own jurisdiction, Harrison, JA, delivering the judgment of the Court of Appeal in the case of **Everald Dunkley v R** – SCCA # 55 of 2001, stated:-

*“The aim of the sentence is to satisfy, the goals of:*

- (a) Retribution;*
- (b) Deterrence;*
- (c) Reformation and*
- (d) Protection of the society*

*or any combination of such goals, depending on the circumstances of the particular case”.*

### Consecutive Sentences

[14] With specific reference to the imposition of consecutive sentences, much of the learning and the current correct approach to this topic have been set out in the very helpful judgment of Brooks, JA (Ag) – as he then was- in the case of **Kirk Mitchell v R**, SCCA # 131/2007.

[15] In that case, Brooks, JA reviewed a number of authorities, many of which will not be discussed here; as they (like the **Kirk Mitchell** case itself), relate mainly to crimes involving the use of firearms and not traffic offences, as in the instant case.

[16] Happily, however, there are two cases mentioned in the judgment and in the book, **Principles of Sentencing** by D.A. Thomas, which are somewhat different. Both of them

relate specifically to traffic offences. These are **R v Sydney George Wheatley** (1983) 5 Cr App Rep (S) 417; and **R v Paul Harvey**, [2006] 2 Cr. App. R. (S) 47.

[17] In **Wheatley**, the appellant appealed against his sentence (he having pleaded guilty), of 12 months and six months, respectively, both to run consecutively, that had been imposed for the offences of driving whilst disqualified and driving with an excess of alcohol in his blood. The Court of Appeal took the view that the consecutive sentences should be upheld although the offences arose out of the same matter or transaction – mainly in light of the appellant’s consistently outrageous behavior. The court observed in that case that to do otherwise than impose consecutive sentences, the appellant “...would have a licence to drive with excess alcohol without any added penalty”.

[18] In **Harvey’s case**, the Court of Appeal upheld consecutive sentences totaling two years for traffic offences, stating that in the circumstances of that case “...consecutive sentences are not only appropriate but should be regarded as usual”. (page 51 of the reported judgment).

[19] In the somewhat different case of **Maloney v R**, (unreported judgment # 3094/66, delivered on 16.1. 67), the English Court of Appeal upheld consecutive sentences for rape and burglary in circumstances in which the appellant had broken into his landlady’s room and there raped her and stole money, before returning to his own quarters in the same house as that occupied by his landlady. This was so although the two offences occurred in one transaction and on the same day.

[20] In the **Kirk Mitchell** case, Brooks, JA made several observations that are of importance in this case. They may be summarized thus:

- a. "The recent approach is that, where the offences committed are a part of a single transaction, then all the sentences should run concurrently." (para 34 of the judgment).
- b. Quoting from **R v Delroy Scott** [1989] 26 JLR, 409 "The court is concerned to ensure that whatever sentence or sentences are imposed, viewed globally, the punishment should not be manifestly excessive". (para 36 of the judgment).
- c. "...where consecutive sentences are considered appropriate, then the total effect of the sentence must be considered". (see para 41 of the judgment).
- d. Consecutive sentences may be appropriate where "the maximum sentence available for the offences are relatively short...Where long sentences are a part of the court's arsenal, it may well be unnecessary to adopt that approach." (para 55 of the judgment).
- e. "Where the offences arise out of the same transaction and the appropriate sentence for each offence is a fine, only one substantial sentence should be imposed" (See para 57 b. of the judgment).
- f. "...if the maximum sentences allowed by statute, do not adequately address the egregious nature of the offences, then consecutive sentences, still subject to the 'totality principle' may be considered". (see para 57 g of the judgment).

[21] In **Principles of Sentencing**, a snippet of what the learned author has to say in respect of consecutive sentences is reflected in this quotation, taken from page 47 of his work:

*"The exercise of these powers is subject to two general limiting principles. The first is that sentences imposed for what is essentially one incident or transaction must be ordered to run concurrently; it is not permissible to inflate the effective sentence by adding consecutive sentences for what are essentially alternative or lesser charges. The second principle is that the aggregate of the sentences must bear some relationship to the gravity of the individual offences".*

[22] In relation to the totality principle the learned author also observed at page 56 of his work:

*"The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence*

*for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'."*

[23] That, then, is a summary of the applicable principles. The question is: were they applied in this case?

### Analysis

#### Reasons for Sentence

[24] In the written reasons for sentencing, the learned Resident Magistrate highlights a number of matters as the basis for the decision to impose the sentences that were imposed and in the way that they were imposed. For example, it is mentioned that: "The Court is of the view that if the sentences are to run concurrently then this would defeat the ends of justice, as in default of payment of the fines imposed, Mr. Reid would only serve ten (10) days."

[25] Also mentioned in the reasons is that court's consideration of the following: "The Court was therefore seeking to strike a balance, one that would protect the interests of justice whilst simultaneously prevent Mr. Reid from being exposed to undue hardship."

[26] These reasons make it apparent that the learned Resident Magistrate was aware of the totality principle and had it in mind in the reviewing of what was conveyed to the court as having been the total sentence – that is 530 days; and in the final sentences that were imposed.

[27] It appears to me that what the learned Resident Magistrate did was to attempt to apply something in the nature of a “rough-and-ready” approach to dispensing justice summarily as was required. The totality principle was applied to the figure of 530 days and doing so led to it being reduced to the sentence that was imposed.

[28] One argument that might be propounded (Argument A), is that the court fell into error in imposing consecutive sentences in the way that it did. The pitfall (it might be argued) by which the court was led into error, was in the acceptance of the figure of 530 days as the total sentence. (It is apparent that what those calculating this figure did, was simply to multiply the number of tickets or informations (53) by the alternative sentence imposed in each case (10)). For each offence the fine ranged between two and four thousand dollars with the alternative being 10 days in each case. Those propounding the view that the court fell into error in doing so would say that this approach was erroneous, as, for some of the fines, they related to offences committed on the same day and at the same time as others and, arguably, concurrent sentences should have been imposed for these.

[29] However, the other, opposing view (Argument B), would be that the learned Resident Magistrate did not fall into error in using the 530 days as the point of departure. Those propounding this argument would ask the court to consider the particular facts and circumstances of this case; and to consider, against that background, the cases of **Wheatley**, **Harvey** and **Maloney**, previously cited. These

cases, the argument runs, show that there is judicial precedent for the approach taken by the learned Resident Magistrate.

[30] After very careful consideration of these two approaches, the court is persuaded by the latter approach (Argument B), and is, therefore, of the view that in light of the cases previously cited, the learned Resident Magistrate cannot be said to have fallen into error, as there is existing, persuasive authority (not having been struck down on appeal), providing guidance for the approach taken in the instant case.

[31] When one looks at the total number of days over which the 53 offences were committed, they amount to 21 days. Additionally, these offences were committed over a 7-month period. The principles which have been previously discussed would have allowed the court to arrive at the view that there were, therefore, at the very least, some 21 different "transactions" for which consecutive sentences could have been imposed (even if Argument A were to be accepted). That would have amounted to 210 days. The sentence that was imposed in this case was three sixty-day periods, totaling 180 days. That is, a period less than the total of 210 days that could have been imposed, (had Argument A been accepted).

#### The Circumstances of the Particular Case

[32] One of the principles of sentencing that should guide sentencers is that there should be a consideration of the particular facts and circumstances of the case(s) before the court for sentencing.

[33] What are the particular facts and circumstances of this case? As previously indicated, a perusal of the record shows that these offences were committed on some 21 different days over a period of some 7 months. These offences were committed

whilst the appellant was the driver of a public passenger vehicle (PPV). They include offences as varied as having no fire extinguisher, obstructing traffic; stopping at places where he was prohibited from stopping; taking up and setting down passengers at places other than bus stops and so on. In some cases there were two or three offences committed on the same day and the same offences committed on days in close proximity to one another. In some instances, the very same offence was committed at different times on the same day (see, for example the offences committed on September 9, 2011 – traffic tickets numbered 003183695 (STC 27320/11) and 003182590 (STC 27319/11)).

[34] By any standard, this must be regarded as egregious behavior or downright defiance of the law on the part of the appellant. The appellant's conduct speaks to a man determined to go his own way, regardless of the requirements of the law and road-traffic regulations, which, largely are designed to attempt to ensure good order on our roads; and for the protection of the members of the public. The appellant in this case must clearly be regarded as a repeat – even a determined - offender – if ever there was one.

[35] In the court's view the period of imprisonment that is imposed as an alternative to the payment of a fine must be of sufficient significance or weight to pose a real choice for the person who is sentenced. In the court's view, for example, an alternative of 10 days in total would not be a proper alternative to the payment of the sum of \$207,000. If it were, then that would be a virtual invitation for drivers of public passenger vehicles, such as the appellant, to flagrantly flout the law at will, incur as many tickets as possible, in the knowledge that even if the total fine amounted to, say, a million dollars, they could obviate paying this sum by serving the relatively paltry period of 10 days.

[36] In **Principles of Sentencing**, the learned author states at page 219 that:

*"Fines are primarily governed by the same principles  
as fixed term sentences of imprisonment..."*

[37] Among these principles, it will be remembered, is that of deterrence – deterring both the particular offender and like-minded persons as well from committing these offences. Both the fine and the alternative period of imprisonment must, therefore, be geared toward having this effect.

There is no lengthy sentence in the court's arsenal for these particular offences in respect of which the appellant was before the court. The maximum sentences are relatively short and do not, in the court's view, sufficiently address the flagrant disregard of the law that this appellant has demonstrated. Hence consecutive sentences might properly be resorted to (see Brooks, JA's observations in paragraph 20 of this judgment).

[38] The court, however, is not aware of any principle that permits the grouping of the sentences in the way that the learned Resident Magistrate did. However, what is important at the end of the day is a consideration of whether, looking at the matter globally or in its totality, any injustice or substantial injustice (in the words of section 37 of the Act), was done. The court sees the grouping of the offences as a method adopted by the learned Resident Magistrate, in an attempt at speedily and summarily trying to decide in a "rough-and-ready" way, what sentence was best in all the circumstances. (If this occurred on a day on which traffic matters are normally dealt with, then these present matters (in the court's experience) would have formed but few of a large volume of matters to have been dealt with on that day). That this was so might very well be the reason for the absence from the court sheet (or, at any rate, the copies with which the

court was provided) of the usual, required order of the court (as to how the sentences were to have run) as mandated, it appears, by section 13 of the Justices of the Peace Jurisdiction Act, to which the court's attention has been directed by counsel for the appellant. Neither is a period of disqualification stated. (The court notes that the court sheet indicates that it was done in respect of another offender dealt with before the appellant's matters were addressed). However, the potential for uncertainty that this omission might have caused is absent in this case as reflected by the appellant's understanding of the sentences imposed on him, which correspond with what has been indicated by the learned Resident Magistrate.

[39] Any doubt that remains in this matter that arises from the grouping of the sentences can be the subject of a disaggregation of the said sentences by the learned Resident Magistrate, to whom the matter will be remitted for that purpose.

[40] It is worth mentioning as well another matter that was brought to the court's attention by counsel for the Crown – that is, that the fine of \$20, 000 (or 10 days) that was imposed for the appellant's not having had a fire extinguisher in the vehicle appears to be excessive. (That fine was imposed in respect of traffic ticket number 003182379). From a perusal of sections 107 and 108 of the Road Traffic Act and the regulations made thereunder (in particular, regulation 92), it seems that the maximum permissible fine for this offence is \$5,000 – it being governed by section 108. That fine of \$20,000 imposed by the learned Resident Magistrate will therefore be varied to one of \$5,000 or 10 days.

[41] Taking this approach, although it seems that there was an error and/or omission in some two or so respects in the way in which these matters were dealt with; having regard to all the circumstances of this case and to what the court considers to be the egregious conduct of the appellant, the court is of the view that no injustice (or, if

injustice there be at all, then certainly no substantial injustice), has been done to the appellant in this case. The appeal will therefore be dismissed. The court will, however, accede to the appellant's request for the effective date for the fines and/or imprisonment to be the date on which they were imposed – that is June 8, 2012.

The orders will therefore be:

- a. Appeal dismissed.
- b. Sentence(s) of imprisonment (in default of payment of the fines imposed) to commence on June 8, 2012.
- c. Fine of \$20,000 imposed in respect of traffic ticket number 0031823759, varied to \$5,000.
- d. Matter remitted to the learned Resident Magistrate for the disaggregation of the sentences that were grouped; and any further clarification of the order that might be or become necessary.