

ROYAL COURT

(Samedi)

4.

7th January, 1991

Before: F.C. Hamon, Esq., Commissioner, and Jurats
Bonn and Le Ruez

The Attorney General

- v -

Christopher Donkin

Police Court Appeal - Appeal against refusal of the Assistant Police Court Magistrate to permit appellant to change his plea to not guilty on a charge of larceny as bailee (sale of motor vehicle still subject to a hire-purchase agreement) and the subsequent imposition of a binding over order.

The appellant was unrepresented when he pleaded guilty and believed that the hearing was a civil case. The case was adjourned for a social enquiry report for sentencing purposes and at that hearing the appellant was represented and the application to change plea was made.

Crown supported appellant's request that Royal Court remit the matter to the Police Court.

Advocate S.C.K. Pallot for the Crown.

Advocate M. St. J. O'Connell for the appellant.

JUDGMENT

COMMISSIONER HAMON: If it helps counsel the other case which I have also looked at apart from S. (an infant) is the case of Thomas McNally which is reported in 1955 Vol. 90 of Criminal Appeal Reports and Goddard LCJ there said at p.93: "We only put this case into the list as an appeal so that the Court might have an opportunity of stating perfectly firmly what is the position with regard to a prisoner who desires to change his plea. If a prisoner has pleaded guilty in circumstances from which the Court can see that there is no question of mistake, the Court is not bound to allow a prisoner to withdraw his plea. If certain grounds are shown or the Court can see that there are sound grounds, as for instance where a prisoner has pleaded guilty to a charge of receiving stolen goods and then says: "I pleaded guilty and I received them but I didn't know they were stolen", then it becomes entirely a matter of discretion for the learned judge".

Now in that case the Court did not allow the appeal because it said that the discretion had been properly exercised but as you say in the present case the learned Assistant Magistrate did not seem to think that he had a discretion. We are quite certain and we will go on record as saying this that looking at the case of S. (an infant) by Parsons (his next friend) -v- Recorder of Manchester and others which Mr. Pallot kindly cited to us, we are quite certain that a discretion does exist for the Magistrate and we agree with Mr. Pallot that the Magistrate should be given the opportunity to consider how his discretion should be exercised. So we will do exactly as you suggest, Mr. Pallot. We will quash the conviction, remit the case back to the Magistrate and allow the Magistrate at that point to consider how and in what form his discretion which he can exercise shall be exercised. We will not give him any guidance of course as to how that discretion should be carried out. Mr. O'Connell, you shall have your legal aid costs.

Authorities cited:

S. (an infant) by Parsons (his next friend) -v- Recorder of Manchester
and others (1969) A.C. 481.

R. -v- Thomas McNally (1955) 90 Cr. App. R. 93.