

19th November, 1985.

POLICE COURT APPEALS.

A.G. -v- Colin Raikes

**DEPUTY BAILIFF:** This has not been an easy case to decide, we are satisfied however, that the learned Assistant Magistrate at the back of his mind had the case of Hall very much to be considered and in that case it was said it was almost inconceivable that were persons to perjure themselves they would not go to prison for at least 3 months. We think that is the right approach and the Magistrate is correct in starting off from there but then he had to ask himself whether in the case of each accused, there were such mitigating factors that he could depart from that principle because as was rightly said in the Hall case, perjurers fight at the roots of justice and people who perjure themselves must normally expect to receive a prison sentence - sometimes considerably more than 3 months if it is even more serious than what one would call an ordinary 'run-of-the-mill' case of perjury, as to some extent this one was in as much as Duchesne and Raikes were friends and it arose out of an Article 16 prosecution against Raikes - on the Road Traffic Law, that is. We think that although the learned Assistant Magistrate quite rightly considered the positive aspect of Duchesne's previous character he did so to too great an extent and therefore we are satisfied that what we are dealing with today is a case where in our opinion the sentence imposed on Duchesne was unduly lenient and so we are put into the position as set out on page 72 of Thomas' Principles of Sentencing. While we have no power to increase the co-defendant's sentence (because he is not appealing in any case) and we are faced with the choice between upholding the sentence on Raikes and leaving the appearance of injustice or reducing his sentence to what we consider to be an appropriate level. The Court - subject to that case it is said, on page 72 - the practice of the Court is to reduce the more severe sentence, only if there is such a glaring difference between the treatment of one man as compared with another that a real sense of grievance would be engendered. We think a real sense of grievance would be engendered if we did not interfere to some extent with Raikes' sentence. On the other hand the learned Assistant Magistrate was quite right to consider his record and quite right to consider the circumstances giving rise to the prosecution for perjury and he was entitled, we think, from looking at the evidence on the facts to reach the conclusion that the instigator was, in fact, Raikes. Under all the circumstances we are going reduce the appellants sentence and allow the appeal and substitute a sentence of 2 months for the 4

months imposed. We think it was right to distinguish between a sentence of prison and a sentence of a fine in this particular case but we cannot reduce it to such a level that it would be, in our view, far too low. Therefore, as I say, we allow the appeal to that extent with legal aid costs.