

IN THE PRIVY COUNCIL

No. 22 of 1974 (?1975)

O N A P P E A L
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

EATON BAKER and PAUL TYRELL Appellants

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

- 10 1. This is an appeal from a decision of the Court of Appeal of Jamaica (Smith, Edun and Hercules, JJ.A.) delivered on the 31st July, 1972 dismissing the Appellants' applications for leave to appeal against conviction and sentence imposed by the Home Circuit Court at Kingston, Supreme Court of Jamaica. (Parnell J. and a jury). The Appellants were convicted on the 3rd March, 1971, and sentenced on the 5th March, 1971.
- 20 2. The Appellants were charged, with eleven other men, with the murder of one, Reginald Tait, on the 26th November, 1969. Six of the Thirteen persons so charged, were convicted and sentenced to death. All six applied to the Court of Appeal for leave to appeal against conviction and, in the case of the Appellants, for leave also to appeal against sentence. Upon the hearing of the applications the convictions of two such appellants were quashed and their sentences set aside. The other applications were dismissed.
- 30 3. The four whose convictions were upheld petitioned for special leave to appeal against the orders upholding conviction and, in the case of the Appellants, against the order upholding sentence. Leave to appeal against the orders upholding conviction was refused. Special leave, limited to that part of their Petition seeking leave to appeal against the dismissal of the applications for leave to appeal against sentence,

was granted to the Appellants on the 5th December, 1974.

4. Upon conviction on the 3rd March, 1971, evidence was led as to the ages of the Appellants. The learned trial Judge accepted, and it is not now in issue that the Appellant, Baker, was born on the 14th July, 1952, and the Appellant, Tyrell, on the 25th July, 1952. Thus, both Appellants were under eighteen years of age at the time of commission of the offence, but had attained eighteen by the date of conviction. 10

5. It was then submitted to the learned trial Judge, for the Appellants, that prior to the introduction of the Jamaica Constitution, sentence was determined by reference to the age of the convicted person as on the day of conviction. This was in accordance with the provisions of the Juveniles Law, c.189 of the Laws of Jamaica, 1953 Edition, Section 29(1). However, the effect of the Jamaica Constitution, and in particular Section 20(7) thereof, was to extend the meaning of the Juveniles Law, Section 29(1), so that sentence fell to be determined by reference to age as on the date of commission of the offence. In support, reliance was placed upon the decision of the Judicial Committee of the Privy Council, given the 1st December, 1969, in Maloney Gordon v The Queen (Privy Council Appeal No.15 of 1969). A later decision to the contrary, by the Court of Appeal of Jamaica, (Regina v Ronald Williams) was given per incuriam. This decision held that the Constitution did not have the effect, accepted by the Judicial Committee in Maloney Gordon v The Queen, of altering the provisions of the Juveniles Law, and that the law as to sentencing remained as it was prior to the introduction of the Constitution. 20 30

6. The relevant statutory provisions are set out in the Appendix to this Case.

7. The learned trial Judge delivered a ruling rejecting the submission made for the Appellants. His Lordship said that the Juvenile Law, s.29(1), followed, almost word for word, the language of the original s.53(1) of the Children and Young Persons Act, 1933. He was not entitled to read into s.29(1) any provision to the effect that the determining date was that of commission of the offence. Such provision had been expressly brought in, in England, by statutory amendment 40 50

of the 1933 Act. There was no such amendment of Jamaican Law, nor did the Constitution alter the relevant law. As to the effect of the Jamaica Constitution, s.20(7), this derived from the Declaration of Human Rights, Article 1102. Article 1102 was concerned with ensuring that no court should impose a penalty heavier than that which could have been imposed at the time the offence was committed. The Fundamental Rights Chapter of the Constitution was concerned with protecting existing rights, and s.26(8) provided expressly that nothing contained in any existing law should be held to be inconsistent with the provisions of the Fundamental Rights Chapter. The question which arose in Maloney Gordon v The Queen was as to the evidence which was led about the age of the Appellants, and His Lordship agreed with the Jamaica Court of Appeal (in Regina v Ronald Williams) that the remark made by the Judicial Committee to the effect that a Court had no jurisdiction to pass sentence of death on a convicted person who was under Eighteen at the time of commission of the offence was obiter dictum.

8. The Appellants, in their applications for leave to appeal against sentence, complained that the learned trial Judge had erred in holding that the relevant date was the date of conviction.

9. The Court of Appeal rejected the applications summarily. Smith, J.A., delivering the judgment of the Court, stated that the applications were precluded by the decision of that Court in Regina v Martin Wright. This decision was given in February, 1972, that is, after the ruling of the learned trial Judge.

10. The Respondent respectfully submits that the Appellants were rightfully and lawfully sentenced. The learned trial Judge, having accepted the evidence of age tendered on behalf of the Appellants, as he was entitled to do, had, it is respectfully submitted, no option but to sentence the Appellants as he did. It is further submitted, respectfully: that the correct interpretation of the Juveniles Law, s.29, is the one attached to it by the learned trial Judge; that the Jamaica Constitution has in no way altered that interpretation; and, that insofar as the decision in Maloney Gordon v The Queen (Privy Council Appeal No.15 of 1969) appears to find otherwise, such

finding is obiter dictum which ought not to be followed. As to this, it is submitted that the issue on that appeal was not as to the effect of the statutory provision, but as to whether the learned trial Judge was entitled to draw the conclusions he did draw, as to age, from the evidence before him.

11. It is further submitted, respectfully, that the Court of Appeal were right in dismissing the applications, and right for the reasons given in their earlier decision in Regina v Martin Wright. This was a decision of a full Court of five judges, there being one dissention. 10

12. The Respondent respectfully submits that the judgment of the Court of Appeal of Jamaica was right and ought to be affirmed, and the appeal ought to be dismissed for the following (among other)

REASONS

- (1) BECAUSE, where a person convicted of murder is eighteen years of age at the time of conviction, then the imposition of sentence of death is mandatory. 20
- (2) BECAUSE the Appellants were eighteen years of age at the time of conviction.
- (3) BECAUSE of the other reasons of the learned trial Judge and the Court of Appeal.

GERALD DAVIES 30

(See Schedule over)

S C H E D U L E

Children and Young Persons Act, 1933 (23 Geo.5
c.12)

S.53(1) "Sentence of death shall not be pronounced on or recorded against a person under the age of eighteen years, but in lieu thereof the Court shall sentence him to be detained during His Majesty's pleasure"

10 This Section was amended by the Homicide Act, 1957, s.9(3) to :

"Sentence of death shall not be pronounced on or recorded against a person convicted of an offence who appears to the Court to have been under the age of eighteen years at the time the offence was committed"

20 The Section was re-amended by the Murder (Abolition of Death Penalty) Act, 1965, ss.1(5), 4, to :

"A person convicted of an offence who appears to the Court to have been under the age of eighteen years at the time the offence was committed shall not, if he is convicted of murder, be sentenced to imprisonment for life, nor shall sentence of death be pronounced on or recorded against any such person....."

The Laws of Jamaica. 1953 Edition

30 The Juveniles Law, c.189

S.2(1) In this Law -

.....

"child" means a person under the age of fourteen years.

.....

"juvenile" means a person under the age of seventeen years.

.....

"young person" means a person who has attained the age of fourteen years and is under the age of seventeen years.'

PART IV JUVENILE COURT AND THE TRIAL OF JUVENILE OFFENDERS

S.29(1) "Sentence of death shall not be pronounced on or recorded against a person under the age of eighteen years, but in place thereof the court shall sentence him to be detained during Her Majesty's pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of this Law, be liable to be detained in such place (including, save in the case of a child, a prison) and under such conditions as the Governor may direct, and while so detained shall be deemed to be in legal custody". 10

(2) "A juvenile shall not be sentenced to penal servitude or imprisonment, whether with or without hard labour, for any offence, or be committed to prison in default of payment of any fine, damages or costs. 20

.....

(4) "The Governor may release on licence any person detained under subsection (1) or (3) of this section"

The Jamaica (Constitution) Order in Council, 1962 No.1550 30

S.2 "Subject to the provisions of sections 49 and 50 of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".

CHAPTER III

Fundamental Rights and Freedoms

S.20(7) "No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such 40

offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time it was committed".

10 S.26(8) "Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter; and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions".

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CHARLES RUSSELL & CO.,
Hales Court,
Lincoln's Inn,
London W.C.2.