

COURT OF APPEAL

de JERSEY CJ  
PINCUS JA  
BYRNE J

CA No 334 of 1999

THE QUEEN

v.

PAUL C DOZSA

Applicant

BRISBANE

..DATE 04/02/2000

JUDGMENT

THE CHIEF JUSTICE: The applicant appeared on 23 February 1999 without legal representation in the Magistrates Court at Southport, where he pleaded guilty to one count of what is conventionally called fraud in that on 22 February 1999 he dishonestly gained a benefit, namely food and beverage, for himself.

He obtained a meal in a restaurant at Jupiter's Casino without paying the bill of \$142.50. As the transcript shows, the Magistrate fully explained to the applicant his right to seek legal representation, but the applicant declined that invitation.

The Magistrate also sought confirmation from the applicant that he understood the charge, and explored in the usual way the validity of the plea of guilty.

The applicant indicated to the Magistrate that he accepted the truth of the Prosecutor's account of the relevant facts which included the applicant's concession to the restaurant management when challenged as he sought to leave that, "He had no money and was unable to pay."

The applicant had a long previous history of similar offending and had frequently been imprisoned. This offence occurred shortly after his release from prison, where he had been serving a term for a similar offence. On this occasion he was sentenced by the Magistrate to nine months' imprisonment to be suspended after three months for an operational period of four years.

He was released after that period of three months and then again similarly offended, leading to his being required to serve the balance of six months.

The applicant appealed to the District Court. That appeal was unsuccessful. It was heard on 10 May 1999 in Toowoomba. One of the applicant's current complaints is that the appeal was brought on four days earlier than expected.

Significantly, however, the Judge who heard the case observed that the applicant had argued his appeal in an articulate, logical way.

The learned Judge gave comprehensive, cogent reasons for dismissing the appeal which plainly appears to have been argued fully and robustly. I note the Judge's reference to the applicant's having understood exactly what was going on and his apparent ability to make relevant submissions as he saw fit.

The applicant must now seek leave to appeal to this Court although he challenges that characterisation of the proceedings. He prefers to approach it on the basis of a review of the sentence imposed upon him in the Magistrates Court. Plainly at this stage of the matter the only avenue by which he could seek to ventilate that complaint is by first obtaining leave to appeal.

To do that he should have filed any application within 28 days of 10 May 1999. See Lewis CA204 of 1998. He filed the application approximately four months late on 5 October 1999. Apparently realising this point he has offered an explanation for the delay although it is not particularly compelling to my mind.

That aside, leave should not in my opinion be granted because the judgment of the learned District Court Judge in dismissing the appeal was plainly right.

In the material put before us the applicant has sought to raise some new matters which should be briefly mentioned. In so far as he now claims to have been drunk or as he put it here this morning half drunk at the time of his appearance in the Magistrates Court, one notes that that appearance occurred on 23 February in the ordinary court hours of the morning and he had been detained the night before at 10.50 p.m.

The transcript of the proceedings before the Magistrate shows the applicant responding coherently, himself raising issues and apparently understanding the charge he was meeting.

Secondly, in so far as he has raised a rather vague claim to free meals because of an alleged membership of a high rollers club, that, to my mind anyway, sits inconsistently with the Prosecutor's statement of the response he made to management when challenged at the restaurant, which he had accepted he had made.

Third, there was no problem about his being charged as he was under the Criminal Code and not under the Regulatory Offences Act.

Section 6 subsection 1 of that Act would have exposed him to a maximum penalty of \$300, whereas the Code offence, section 408C(1)(d) exposed him to imprisonment.

It was a perfectly reasonable course for the police to take to use the latter provision in view of the applicant's persistent similar offending over a lengthy previous period.

I would refuse the application.

PINCUS JA: I agree. The applicant appears to me to be an intelligent person with some worthwhile qualities. When he appeared before the Magistrate in the case which we are considering, he attributed his difficulties to excessive drinking and suggested that he might be able to overcome that. One hopes that he is able to do so.

BYRNE J: I agree with the Chief Justice.

THE CHIEF JUSTICE: The application is refused. Thank you, Mr Dozsa.

APPLICANT: May I ask one more question, your Honour, what exactly I should do? I mean, in all fairness I've done more than ten months' gaol for an offence which I was sentenced for nine months. What action should I hope-----

THE CHIEF JUSTICE: It was inappropriate for us to enter into that today partly because we don't know your history of subsequent offending. The ten months you have said you have served may well be explained by the fact that when released, after having served the three months, you again reoffended. I know that that activated the six months' balance term but it may be that some

further term of imprisonment was then imposed.

I suggest you take up this issue with Mr Davies, the Crown Prosecutor, who may be able to assist you in that regard, Mr Dozsa. It's not appropriate for us to enter into that any further.

APPLICANT: Your Honour, he already did this by providing my criminal history which very clearly shows - it is an updated sort of thing - so it's very clearly shown that I have been fined for various other offences but that I have been sentenced to gaol on 24th of-----

THE CHIEF JUSTICE: Well, I'm going to interrupt you and ask you to take up the matter with the Prosecutor who I am sure will do his utmost to ensure that you are being regularly treated, thank you.

APPLICANT: Thank you very much, your Honour.

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