

WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE
ANTIGUA

8

(On Appeal from the Magistrate's Court District "A")

Criminal Appeal No. 7/1968

BERNARD MILLS

Appellant

v.

JOSEPH E. BYRON
SUPT. OF POLICE

Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Glasgow

L.H. Lockhart for the Appellant
Charlesworth Ross, Acting Legal Assistant, for
the Respondent.

1968, September, 26

The Judgment of the Court was delivered by -
Lewis, C.J.

In this case, the Appellant was charged with driving a motor car without being licensed to drive. The case was heard on the 18th of July this year. He pleaded guilty and he was fined \$60.00, and in default a sentence of three months imprisonment with hard labour was ordered. At the same time, he was charged in respect of the same incident with the offence of driving without having the requisite policy of insurance in force. He also pleaded guilty to that charge and he was fined \$100.00 or two months imprisonment, and was disqualified from holding or obtaining a driver's licence for twelve months. In both cases, according to the record, he was ordered to pay these sums forthwith; no time

/ was ...

was allowed.

The appeal is in respect of the licence case and an affidavit has been put in, which the Court was told has been served on the Magistrate, in which it is stated that he was given 14 days to pay, in the insurance case, and that he asked for time to pay in the driver's licence case but the Magistrate without stating any reasons, ordered him to pay forthwith. There is nothing in the record to indicate that this affidavit has been served on the learned Magistrate but learned Counsel at the Bar stated that he was so served last week Saturday, it could'nt be Saturday as this affidavit is dated the 23rd.

The Magistrate's notes on these two cases are extremely bare; they comprise just a few lines.

"Mr. Lockhart for Defendant; case No. 226/68 (which is the insurance case) Plea - Guilty; fined \$100.00 or two months; Defendant disqualified from holding or obtaining a driver's licence for 12 months. Case No. 227/68; Plea - Guilty; fined \$ 60.00 or three months hard labour." That is all; there is nothing in the notes of evidence to indicate that any application for time was made, or that the Magistrate inquired as to the means of this Appellant before he decided to make the amount payable forthwith. Complaint is made that the learned Magistrate ought to have made such an enquiry. That complaint is based upon Section 113 of the Magistrate's Code of Procedure Act (Cap. 48), which requires the Magistrate to make certain enquiries and satisfy himself as to means before he issues a warrant for the apprehension of a person against whom he has adjudged that a fine should be paid.

I want to say a word about this, because there seems

/ to ...

to be some misunderstanding, and the Court has been informed that Magistrates are not observing the prescribed procedure. Under Sections 109 of the Magistrates' Code of Procedure Act (Cap. 48), a Magistrate has power on adjudging a fine to be paid to make an order for imprisonment in the first instance, unless such sum be paid forthwith. Now the usual procedure that is followed where the law includes both Sections 109 and 113 is that the Magistrate, if he thinks it may be necessary to make an order for payment forthwith, goes through the procedure which Section 113 requires, that is to say, that he enquires from the convicted person whether he desires that time should be allowed for payment, and if the person does not express any such desire or fails to satisfy the Magistrate that he has a fixed abode within the Magistrate's district or the Magistrate for any other ^{expressly} special reason/directs that no time should be allowed, then in any of those circumstances he may issue his warrant. But the law, and I hope that Magistrates will take account of this because they will get themselves into very serious trouble if they don't, the law expressly forbids a Magistrate to send a person to prison for non-payment of a fine without first going through the procedure set out in S. 113. If he has not made the inquiry at the time of conviction, then before he issues his warrant, he must have the person brought back before him and give him an opportunity to make such representations as he may desire to make in order that the law may be complied with. And further, if a Magistrate decides to direct that no time shall be allowed, then he must make a note in his notebook of the reason which has impelled that decision, and on issuing the warrant he must state his reasons thereon. I hope this will be perfectly clear to Magistrates in the future.

/ Now, ...

Now, this young man is not yet eighteen years of age, it was his first offence and I should have thought that every lawyer would know that the policy of the Courts today is that unless there is some very, very serious reason, young people are not sent to prison peremptorily. We don't know what passed through the Magistrate's mind, he says he takes a serious view of these offences and this, of course, is a very proper thing for him to do. Still, if a person commits a first offence and he is a minor he ought, unless it is a very exceptional case, to be given an opportunity to mend his ways and not be sent to prison peremptorily. The Magistrate's notebook does not indicate any circumstances whatsoever which would warrant him in sending this young man to prison without allowing him time to pay a fine.

The Court has taken account of all the circumstances which have been put before it. The Court observes that whereas an alternative of two months was given in the case where a fine of \$100.00 was imposed, an alternative of three months was given in the case where the fine of \$60.00 was imposed. If a smaller fine was merited, it would seem to follow that ^a smaller period of imprisonment should be awarded as the alternative. The Court will therefore set aside the sentence and will substitute a fine of \$60.00 and in default two months imprisonment and will allow one month to pay the fine.