GN4.G.2

7/1963

IN THE PRIVY COUNCIL No. 11 of 1962

ON APPEAL

FROM THE SUPREME COURT OF BERMUDA

BETWEEN:-

ALMON EUGENE HARDTMANN Appellant

- and -

THE QUEEN Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment, dated the 8th February, 1961, of the Supreme Court of Bermuda (Smith, Ag. C.J.), whereby the Appellant was convicted on his own confession of three offences of breaking and entering with intent to steal, two offences of arson and one offence of breaking and entering and stealing, and was sentenced to terms of imprisonment amounting to 17 years. P. 39

2. The following provisions of the Young Offenders Act, 1950 are relevant to this appeal:

Section 2(1)(i) the expression "young person" means a person who has attained the age of sixteen years but is under the age of twenty-one years.

Section 2(2) Any question that arises out of the provisions of this Act in relation to the age of a person shall be determined as provided in section eighty-one of this Act.

x x x x x x x

Section 6(2) No court shall impose imprisonment on a person who (though not a child) is under the age of eighteen years unless the

court is of the opinion that no other way of dealing with him is appropriate; and for the purpose of determining whether any other way of dealing with any such person is appropriate the court shall obtain information relevant to the circumstances of the offence of which he has been convicted and such information as can with reasonable expedition be made available to the court relevant to his character, environment and antecedents and to his mental and physical condition, and the court shall take into account any information so obtained and any other information before the court which is relevant to the matters aforesaid.

x x x x x x x

Section 81(1) Where in any proceedings taken before a court under this Act the age of a person is material, the court shall make due enquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming, and the age presumed or declared by the court as the result of such enquiry to be the age of that person shall for the purposes of the proceedings be deemed to be his true age and -

(a) the court shall not be deprived of jurisdiction to complete the proceedings by any subsequent proof during the course of the proceedings that the age so presumed or declared was not the true age of that person; and

(b) any conviction, sentence, order or other decision of the court in connection with the proceedings shall not be

invalidated by any subsequent proof that the age so presumed or declared was not the true age of that person.

3. The Appellant appeared before the Supreme Court on the 6th February, 1961, on an indictment charging him with the following offences:- PP.35-36

(1) On or about the 13th December, 1960, in the City of Hamilton, attempting to break and enter the offices of the British American Insurance Company with intent to steal therein;

(2) At the time of committing the offence specified in the first count, having in his possession an imitation firearm;

(3) On or about the 14th December, 1960, in the City of Hamilton, breaking and entering the Ideal Furniture Store with intent to steal therein;

(4) On the date and at the place specified in the third count, wilfully and unlawfully setting fire to the building known as the Ideal Furniture Store;

(5) On or about the 18th December, 1960, in the City of Hamilton, breaking and entering a shop known as the T.C. Electric Shop with intent to steal therein;

(6) On the date and at the place specified in the fifth count, wilfully and unlawfully setting fire to furniture and furnishings so situated that the building in which the T.C. Electric Shop was located was likely to catch fire therefrom;

(7) On or about the 20th December, 1960, in the City of Hamilton, with William Green Hardtmann, breaking and entering Gosling Brothers Liquor Store and stealing therein £57.10s. cash, one automatic pistol, two penknives and a quantity of cigarettes and beer;

(8) On the date and at the place specified in the seventh count, with William Green Hardtmann,

RECORD

breaking and entering a bonded warehouse owned and occupied by Gosling Brothers Limited with intent to steal therein.

PP.37-38 4. On the 6th February, 1961 the Appellant pleaded 'not guilty' to the first two counts of this indictment and 'guilty' to the remaining six counts. These pleas were accepted by the Crown. A police
P.38 L.11 officer, Sergeant Doyle, was then sworn, and gave evidence that the Appellant had one previous conviction, for stealing a cycle, for which he had been sentenced to corrective training. Sergeant Doyle said that at the time of that conviction the Appellant had been a juvenile, and "now" (i.e. on the 6th February, 1961) was 17 years old. Counsel for the Appellant admitted this previous conviction,
P.38 L.17 and asked for time to get information about the
P.38 L.19 Appellant. The case was accordingly adjourned to the 8th February, 1961, for sentence.

5. At the resumed hearing on the 8th February, 1961, counsel for the Appellant addressed the
P.38 L.24 learned Chief Justice. He said the Appellant wanted to marry a girl, whom he had made pregnant. He was earning £13.10.-. per week, and had broken into the various premises in order to get more money. He (the Appellant) did not know why he had set fire to the Ideal Furniture Store; he had set fire to the T.C. Electric Shop because he did not find any money there. Counsel then went on to describe the Appellant's antecedents and family background, his inability to read or write very
P.39 L.8 well and his record at work. He referred to the Young Offenders Act, 1950, section 6(2), and submitted that imprisonment was not the answer, but emphasis should be on the Appellant's reform. The learned Chief Justice then proceeded to pass sentence as follows :-

P.39 L.12 (1) Three years' imprisonment on count three and seven years' imprisonment on count four, the two sentences to run concurrently;

(2) Three years' imprisonment on count five and seven years' imprisonment on count six, the two sentences to run concurrently with each other but consecutively with the sentences passed on counts three and four;

(3) Three years' imprisonment on count seven and three years' imprisonment on count eight, the two sentences to run concurrently with each other but consecutively with the sentences on counts three, four, five and six.

RECORD

The Learned Chief Justice directed that the sentence should be served in prison. P.39 L.24

6. The Appellant was in fact born on the 30th January, 1943. He was therefore aged 18 at the time of his appearance before the Supreme Court. Sergeant Doyle was mistaken in saying in his evidence that the Appellant was then 17 years old.

7. The Respondent respectfully submits that the learned Chief Justice had jurisdiction to sentence the Appellant to imprisonment, because at the time of the trial the Appellant was 18 years old. If, by virtue of section 81(1) of the Young Offenders Act, the Appellant must for the purposes of the proceedings in the Supreme Court be deemed to be 17 years old, the learned Chief Justice none the less had jurisdiction to sentence him to imprisonment, because the requirements of section 6(2) of the Act were satisfied. The Court obtained information relevant to the circumstances of the offences of which the Appellant was convicted, to his character, environment and antecedents, and to his mental and physical condition. This information was obtained partly from Sergeant Doyle on the first day of the trial, the 6th February, 1961, and partly from counsel for the Appellant on the second day, the 8th February. The adjournment from the first day to the second was granted on the application of counsel for the Appellant, who asked for it expressly in order that he might "get information about the accused". He gave to the Court on the 8th February the information which he had received, and at the close of his address referred to section 6(2) of the Young Offenders Act and submitted that in the Appellant's case "imprisonment /is/ not the answer". It is therefore clear, in the Respondent's submission, that the Learned Chief Justice had in mind the matters specified in section 6(2) and, after taking these matters into account, was of the opinion that no way of dealing with the Appellant other than imprisonment was appropriate.

8. The Respondent respectfully submits that the Supreme Court of Bermuda had power and jurisdiction to sentence the Appellant to imprisonment and this appeal, so far as it is based upon a challenge to that power and jurisdiction, ought to be dismissed, for the following (amongst other)

R E A S O N S

1. BECAUSE the Appellant attained the age of eighteen years before his trial:

2. BECAUSE the Supreme Court obtained and took into account the information specified in the Young Offenders Act, 1950, section 6(2):

3. BECAUSE the Supreme Court was of the opinion that no way of dealing with the Appellant other than imprisonment was appropriate:

4. BECAUSE the Supreme Court must be presumed to have acted regularly, and in accordance with the Young Offenders Act.

J. G. LE QUESNE

No. 11 of 1962

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF BERMUDA

B E T W E E N:

ALMON EUGENE HARDTMANN — Appellant

- and -

THE QUEEN — Respondent

C A S E FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2.

Solicitors for the Respondent