

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA #29/93

REGINA

v.

OWEN MARTIN McCafferty



25-02-94

Mr. William Helfrecht for the Crown

Mr. Shann McCann for the respondent

Schofield J.

This is an appeal by way of case stated against the decision of the Senior Magistrate acquitting the respondent on a charge of making a false statement contrary to section 74(1)(a) of the Caymanian Protection Law 1984.

The facts are not in dispute. The respondent, who is British, applied to the Caymanian Protection Board (then in operation) for the grant of a gainful occupation licence. His application, on the form provided, was dated 27th June, 1992. The form required the respondent to give details of any criminal proceedings taken against him whether in the Cayman Islands or in any other country. He gave details of a charge of "drunk driving", as he expressed it on the application form, which he said occurred in September, 1992. He failed to give details of convictions recorded against him, for which he was fined, in the

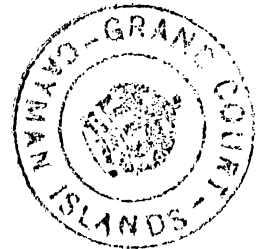
Falkirk Court in the United Kingdom, of assault, causing a breach of the peace and one other statutory offence. These convictions were recorded against him on the 7th October, 1986 and it was the respondent's belief that as, on the date of his application to the Board, more than five years had elapsed since the date of his conviction in the Falkirk Court, the convictions were "spent" within the meaning of the United Kingdom, and the Cayman, Rehabilitation of Offenders legislation. Nevertheless he was charged in the Senior Magistrate's Court for failing to declare the convictions in his application to the Board.

The learned Senior Magistrate was referred to section 4(2) of the Rehabilitation of Offenders Law, which, I am told, is similar to the United Kingdom statutory provision.

It reads:-

"4 (2) Where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority -

- (a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer thereto may be framed accordingly; and
- (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent conviction



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in this answer to the
question."

The learned Magistrate accepted Counsel's submission that the subsection applied to the respondent's case and that the convictions were "spent convictions" within the meaning of the Law and did not fall to be declared to the Board.

Section 4(2) does not preclude questions being asked about spent convictions before a judicial authority. Unfortunately the learned Magistrate's attention was not drawn to section 4(6) of the Law which reads:

"4 (6) For the purposes of this section and of section 7 "proceedings before a judicial authority" includes, in addition to proceedings before any court of law, proceedings before any tribunal, body or person having power.

- (a) by virtue of any law, custom or practice;
- (b) under the rules governing any association, institution, profession, occupation or employment; or
- (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder,

to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question."

Clearly the Caymanian Protection Board was a tribunal or body having power by virtue of law to determine questions



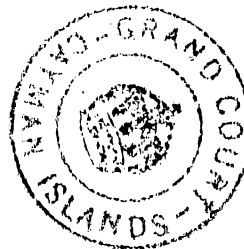
affecting the rights and privileges of non-Caymanians seeking work within these Islands. As such it was a judicial authority within the meaning of the Rehabilitation of Offenders Law and the application form, incorrectly completed by the respondent, formed an essential part of those proceedings. Section 4(2) of the Law did not operate so as to permit the respondent to fail to declare convictions which, in other circumstances, would be regarded as "spent". The learned Senior Magistrate erred in acquitting the respondent.

The Crown does not wish me to quash the learned Magistrate's decision or to remit the case for retrial. The Crown accepts that the respondent acted in good faith, albeit in error, and is content with this judgment setting right any erroneous impression created by the learned Magistrate's decision.

In the event I make no order on my findings.



Judge



Dated this 25th day of February, 1994