

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.6 OF 2001

BETWEEN:

BERNARD GEORGE

Appellant

and

THE POLICE

Respondent

Before:

His Lordship, The Hon. Sir Dennis Byron
His Lordship, The Hon. Mr. Satrohan Singh
His Lordship, the Hon. Mr. Joseph Archibald, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances :

Mr. Gildon Richards for the Appellant
Ms. Ola Mae Edwards for the Respondent

2001: September 20;
2002: May 21.

JUDGMENT

- [1] **BYRON, C.J.:** In this case, a dispute as to whether the appellant was wrongfully dismissed as a police officer settled in the criminal court. The prosecution's case was very simple. A handwritten document purported to be in the appellant's own handwriting dated 31st December 1991 resigning from the police force with effect from 22nd April 1992 was tendered in evidence. The resignation date coincided with the expiration of 113 days leave in respect of which a similarly handwritten vacation leave form dated the same day with the signed notation of approval by the Deputy Commissioner and the Commissioner of Police was also tendered. The resignation was formally accepted in writing by a letter from the Commissioner of Police dated 20th January 1992. There was a direct collision of the evidence on this issue as the appellant alleged that the resignation letter and vacation

leave forms tendered in evidence were fake documents which he never wrote or signed. The appellant had been a member of the police force since 1987. He contended that at the end of 1991 he was told that Commissioner of Police Desmond Blanchard had found him guilty of a disciplinary charge and it was the Commissioner's wish that he should resign. He alleged that there was a situation between himself and the Commissioner's daughter which lead to this problem. He contended that he had not been charged with any infringement and had not attended any hearing. He indicated that he had refused to resign whereupon he was ordered to take four months pre-resignation leave. At the end of the leave he was not allowed to resume duty as a police officer and his remuneration stopped at the end of the period of leave on 22nd April 1992.

[2] From time to time, over the years, he consulted lawyers, but he had never taken any legal proceedings to prosecute this claim. At the hearing his lawyer has suggested that financial constraints inhibited his taking any such action. Some seven years into this situation, on 14th April 1999 his attorney, Mr. Gildon Richards wrote the Police Commissioner setting out this position and his letter contained the statement, " I have advised my client to report for duty on Tuesday 27th April 1999 at 8.00 a.m." On the 4th May 1992 the appellant put on the uniform of a Police Officer and attended Police Headquarters and stated that he had reported for duty. Later that day a search warrant was executed on his premises and articles of police uniform were removed. He was charged with the offences of "putting on the dress of a member of the Commonwealth of Dominica Police Force, namely that of a Constable of Police in such a manner likely to bring contempt upon that uniform" and "making default after ceasing to belong to the Commonwealth of Dominica Police Force to forthwith deliver to the Commissioner of Police uniform which were supplied for the execution of your duties" contrary to sections 31(2)(a), and section 34 of Cap 14:01 of the Dominica Revised Laws of 1990 respectively.

[3] After hearing six witnesses for the prosecution and six witnesses for the appellant the learned Chief Magistrate convicted the appellant on both charges and imposed sentences of \$500.00 in default 2 months imprisonment and \$250.00 in default 1 month. This is an appeal against both convictions and sentences.

- [4] The 8 grounds of appeal posed the following questions:
- [i] Whether there was sufficient evidence before the Court upon which the learned Magistrate could find that the appellant tendered his resignation by way of the letter tendered in evidence.
 - [ii] Whether the Commissioner of Police had legal authority to accept the resignation of the appellant.
 - [iii] Whether the learned Magistrate unfairly deprived the appellant opportunity to cross-examine prosecution witnesses on the leave application form tendered in evidence.
 - [iv] Whether the conviction could be supported by the evidence.
 - [v] Whether the learned Magistrate gave the appellant an opportunity to be heard in mitigation of sentence.

The Letter of Resignation

- [5] The alleged letter of resignation in handwriting was tendered in evidence. Prosecution witness Inspector Casimir Joseph said that on 31st December 1991 he was the storekeeper for the police department and the appellant requested a sheet of foolscap paper. He gave the appellant a blank sheet of paper and loaned him a pen. He added, "he sat on a chair in my office and on my desk proceeded to write a letter of resignation. I could read what he was writing at the time. I saw the defendant sign the letter. He gave me back my pen and left the storeroom." He saw the appellant write the resignation and sign his Force Number 388 on it. Prosecution witness Former Commissioner of Police Desmond Blanchard said that he received the resignation letter from the appellant on 31st December 1991 and wrote a minute on the document and signed it on the same day. He was able to identify the document by his signature on it. The document was referred to the Administration staff for normal processing. An application for Annual Vacation Leave Form dated 31st December 1991 was also tendered in evidence it was signed by the applicant. It was for 113 days leave ending on 22nd April 1992. It was recommended by the Deputy Commissioner of Police and approved by the said Commissioner of Police. The witness Blanchard stated on oath that he recognized the writing and the signature of the appellant on both documents. The appellant suggested that the documents were forged and were

not written by him. He submitted specimens of documents written by him. Counsel argued that the learned Magistrate should not have accepted the authenticity of the letter of resignation unless expert witnesses had been called by the prosecution to establish the handwriting of the appellant.

[6] Counsel for the appellant referred to the authority Halsbury's Laws of England 4th Ed. Vol.17 para 210, 211 and to **Hetherington v Kemp** [1815] 4 Camp 193 in support of the proposition that there should be proof of the posting of the letter. This argument was irrelevant to the facts of this case where the evidence was that the letter was personally delivered by the appellant.

[7] Counsel also laboured the proposition, supported by the authority of **R v O'Sullivan** [1969] 2 All E.R. 237 and Stones Justice Manual 1998 Vol.1 pg.377 para.2-48, that there was a real danger when the court is making comparisons of handwriting in the absence of the testimony of experts. This too was irrelevant. In this case there was the clear evidence of Inspector Joseph that he saw the appellant write the letter of resignation. The learned Magistrate saw and heard all the witnesses on this issue. There is absolutely no basis on which to disturb her finding of fact.

Authority to accept the Resignation

[8] The power to remove police officers and to delegate that power is conferred upon the Police Service Commission by section 92[2] and [3] by the Constitution of Dominica:

"92[2] The power to appoint persons to hold or act in offices in the Police Force below the rank of Deputy Chief of Police [including the power to confirm appointments], and, subject to the provisions of section 93 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Police Service Commission.

[3] The Police Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under subsection [2] of this section in respect of officers below the rank of sergeant or of persons holding or acting in those offices to any one or more members of the Commission or, with the consent of the Prime Minister, to the Chief of Police or any other officer of the Police Force."

- [9] The procedure for resignation from the Police Force set out in Regulation 44 of the Police Service Commission Regulations prescribed that the departing officer's written intention to resign must be communicated to the Commission which then considers and determines whether to accept.
- [10] The Police Service Commission by virtue of a notice published in the Dominica Gazette of 22nd April 1982 in accordance with Section 92 of the Constitution whereby it delegated to the Commissioner of Police power "to appoint, exercise disciplinary control over and to remove from office", Officers below the rank of Sergeant. The Gazette was tendered in evidence and there was no evidence that it had ever been revoked. The learned Magistrate concluded that the Commissioner of Police had acted under the authority of this delegation of power.
- [11] Learned Counsel for the appellant referred to the textbook Administrative Law by H.W.R. Wade and a number of cases to support the valid proposition that statutory powers should be exercised by the authority on whom they are conferred and that where there is a delegation of powers the courts will construe the delegation strictly. He submitted that a power to remove from office does not include a power to accept a resignation and that therefore the delegation of authority from the commission did not include the power to accept the resignation. He relied on dicta from **Thomas v Attorney General** (1981) 32 WIR 375 at 384:
- " To 'remove' from office in the police force in the context of section 99(1), in their Lordships' view, embraces every means by which a police officer's contract of employment (not being a contract for a specific period) is terminated against his own free will, by whatever euphemism the termination may be described, as, for example, being required to accept early retirement."
- The contention of counsel for the appellant that the power to accept a resignation was reserved by the Commission is completely untenable. The Oxford Dictionary describes 'embrace' as being capable of bearing the meaning of the verb and "include" and "compromise".
- [12] In addition, the powers which were delegated in the Gazette notice were identical to the powers which the Constitution had conferred on the Commission. When the Commission

delegated its power to remove from office it did not reserve any aspect of that power. There must be a power vested in someone to put an end to or to determine the contract of appointment. Purposive construction requires that the word “remove” in the Constitution be interpreted to bear that meaning by whatever method the contract is determined. Since the Constitution must be construed purposively to confer that power on the Police Service Commission, it must therefore follow that the delegation of its powers to the Commissioner of Police included that power.

[13] I would think that an analogous situation to resignation would be when an employee under a contract for a term wishes to terminate the contract before the term is completed. Such a voluntary termination usually requires the agreement of the employee particularly where there may be an issue over termination benefits. In such a case, the power to remove from office would clearly include the power to terminate the appointment with consent of the employee. The point in this case is that a power to remove from office in the context of this Constitution is not limited to those situations where the removal is against the will of the employee.

[14] In the case of **McManus v Bowes** [1938] K.B. 98 there was concern over the extent of the power to “remove” a person appointed under a statutory power. The power to remove was described by Greer L.J. at p.117 in these terms “the section is required in order to give the power to appoint a man to begin his office and to determine the office”.

[15] I would therefore answer the questions argued by the appellant by concluding that the power to remove, includes the power to determine the employment with the consent or at the request of the employee. In this case the acceptance of the resignation did effect the removal of the appellant from the police services and in my view this was within the power delegated to the Commissioner of Police by the Police Service Commission.

The Application for Vacation Leave

[16] Mr. Blanchard, in his testimony in chief, tendered the letter of resignation and the acceptance. He was cross-examined at great length. After other witnesses were examined he was recalled for further cross-examination. During that session he was

cross-examined on the appellant's vacation leave. In reexamination he tendered the vacation leave application. The learned Magistrate did not deny any application for further cross-examination.

- [17] In my view, the prosecution had the right to rebut the suggestions in cross-examination by tendering the relevant document. I do not agree that the learned Magistrate erred in exercising her discretion in that manner. The record does not support for the allegation that the learned Magistrate refused further cross-examination. This ground of appeal also fails.

Whether the Evidence Supported the Conviction

- [18] Counsel for appellant argued that the learned Magistrate failed to consider the parts of the case that favoured the appellant's case. The particulars argued related to the finding that the appellant had written the letter of resignation himself. In my view the learned Magistrate gave reasons which showed a thorough and careful examination of the evidence and legal issues. I was satisfied that there was ample evidence to support the finding that the appellant did write the letter of resignation.
- [19] The learned Magistrate commented that the appellant never availed himself of his constitutional rights to seek redress for the wrongful termination of his employment as a Police Officer and that there was no principle akin to self-defence whereby the appellant could enforce his claim to be a police officer by assuming the role of a Police Officer. Counsel also argued that the element of mens rea was not established because there was evidence that he had the consent of Deputy Commissioner Lestrade and Superintendent Pierre-Louis to attend Police Headquarters in the uniform. Mr. Lestrade was called by the appellant as a witness and he did not support the allegations made by the appellant. The learned Magistrate's disbelief of these allegations was supported by the evidence.
- [20] Counsel argued that the appellant had made reasonable efforts to establish his claims and it was only his financial situation that did not permit steps other than those he had initiated. There was evidence that lawyers had written letters on his behalf from time to time. This

argument was also addressed to establish a lack of mens rea. In reality, counsel seemed to confuse intent with motive because he was really arguing that the appellant's motive was to protest against the decision not to reinstate him in the Police Force. These issues were fully agitated during the trial and the learned Magistrate although not setting them out seriatim clearly rejected them for the reason that the appellant was not entitled to use this method to protest.

Sentence

- [21] Appellant complains that he had no opportunity to mitigate. The learned Magistrate had reserved judgment and imposed sentence after giving decision without hearing the appellant in mitigation. The State has conceded this complaint which is clearly an irregularity. This however only goes towards sentence and does not vitiate it. It requires that we reconsider the sentence. We have considered the issue of sentence and the matters argued by the appellant. Once conviction was entered the nature of the offence required a financial sentence to be imposed that was sufficiently severe to emphasise to the appellant and others in his position that his conduct contravened the criminal law of the country. We agree that a custodial sentence was not required in this particularly as the antecedents of the appellant did not include any previous convictions. In all the circumstances a financial sentence was appropriate. The sentence was not excessive and we do not interfere with it.

Sir Dennis Byron
Chief Justice

I Concur.

[sgd.]
Satrohan Singh
Justice of Appeal

I Concur.

[sgd.]
Joseph Archibald, QC
Justice of Appeal [Ag.]

Headnote

Whether power to remove from office includes power to accept resignation – delegation of power to remove from office – relevance of handwriting expert evidence – whether to disturb finding of fact