

NEWMAN v. DORSEY

Supreme Court
Spry, C. J.

22 March 1978

Criminal procedure—plea of guilty—disagreement on facts

The appellant pleaded guilty to two counts of assault occasioning actual bodily harm. The prosecutor gave the usual statement of the facts. Defence counsel then offered a different account. The justices proceeded to pass sentence. On appeal against sentence—

HELD: The justices could not know what were the facts without evidence. They appeared to have accepted the prosecution version. Rather than remit the proceedings, the court would assume the defence version to be correct and the sentence would be reduced.

Per curiam. On a plea of guilty, after the statement of facts, the defendant should always be asked if he accepts it as correct. If not, evidence should be called or, if the difference is substantial, he should be advised to change his plea.

Appeal

This in an appeal against sentence from the magistrates' court.

A. V. Stagnetto for the appellant
E. Thistlethwaite for the respondent.

Spry, C. J.: The appellant pleaded guilty to two counts of assault occasioning actual bodily harm. He was sentenced to concurrent terms of two months' imprisonment.

What troubles me in this case is the procedure that was followed. After the prosecutor had delivered the usual statement of the facts, the defence called a witness as to good character and defence counsel made a plea in mitigation. He began by saying that the defendant had another version of the facts and he proceeded to give that version. It appears to be materially different. Mr. Thistlethwaite informs me that the clerk of the

court then reminded counsel of the plea, when he was told that the defendant did not wish to change his plea, that he admitted using excessive force in self-defence and that he did not wish to expose one of the victims of the assault, a young girl, to the ordeal of appearing in court.

The result was that the justices were faced with two versions of the facts and no evidence on which to decide where the truth lay.

In my opinion, the proper procedure in all cases where the plea is one of guilty should be this. After the prosecution has given a statement of the facts, the defendant himself, not his counsel, should be asked if he accepts the statement as correct. If he does, the plea in mitigation and sentence follow. If the defendant does not accept the statement as regards some detail, the prosecutor may concede it, if he does not regard it as material or if he thinks the defence version may possibly be the truth. If not, evidence must be called as to that issue. This can be done without a change of plea. On the other hand, if the defendant says that the prosecution statement is substantially untrue, he should be advised to change his plea, since it will no longer be unequivocal.

Returning to the present case, the justices did not make any finding on the facts — indeed they could not do so—but I think it is clear from the sentence they passed that they accepted the prosecution version. On that basis, the sentence would not have been unreasonable and this court would not have been justified in interfering. But I do not think they were entitled to do that, in the absence of any evidence.

In this unsatisfactory situation, it would not be right to remit the matter, with all the delay it would entail and I think the only course I can adopt is to accept the appellant's version of the facts, confused and obscure as it is. On that basis, I do not think a custodial sentence is justified, bearing in mind the appellant's good record and the very grave consequences which would result from it. Accordingly, I set aside the sentence of the lower court and substitute a fine of £150. As the appellant has served a not inconsiderable part of his sentence, the amount payable will be reduced by the proportion which the number of days of the sentence served bear to the number of days of the sentence. In default of payment, the appellant will serve the two months' imprisonment.