[2003–04 Gib LR 375]

VICTOR v. ATTORNEY-GENERAL

SUPREME COURT (Schofield, C.J.): March 4th, 2004

Criminal Procedure—appeals—appeal against conviction—no appeal against conviction if guilty plea—may appeal against conviction if guilty plea invalid, e.g. not appreciating charge, not intending to admit guilt, equivocal plea, or pressurized into pleading

Criminal Procedure—pleas—guilty plea—pressure to plead guilty—recorded guilty plea may be ineffective in law if accused pressurized into plea—evidence needed of pressure strong enough to make accused lose power to make voluntary and deliberate choice

The appellant was charged in the magistrates' court with dangerous driving, contrary to s.31(1) of the Traffic Ordinance.

The appellant, with two other youths, was seen driving a moped at speed and, at first, refused to stop when a police officer signalled for him to pull over. The appellant was charged and convicted after pleading guilty to dangerous driving, and the sentence imposed was a fine of £100 and disqualification for eight months.

The appellant, in appealing against both his conviction and the sentence imposed, submitted that (a) he had been pressured into entering a guilty plea by his father and his counsel, so that his mind had not gone with his plea and therefore, even though s.293(1) of the Criminal

Procedure Ordinance did not allow appeals against conviction on a guilty plea, his plea did not amount to a plea of guilty in law and he should be allowed to appeal against his conviction; (b) he had not been advised as to the possibility of offering a plea to an alternative charge of careless driving, and accordingly his conviction should not stand; and (c) one of the other youths who had been involved in the incident had pleaded guilty to a charge of careless driving and had been fined £100 without disqualification, which was an unacceptable disparity and the disqualification part of the appellant's sentence should therefore be set aside.

Held, allowing the appeal in part:

(1) The appeal against conviction would be dismissed. It was true that a person who was recorded as having pleaded guilty might not in law have done so and therefore might be permitted to appeal against his conviction, *e.g.* if he had not appreciated the nature of the charge against him, not intended to admit guilt, made an equivocal plea, or been pressurized into pleading guilty to the extent that he was no longer able to make a voluntary and deliberate choice. In this case, however, there was only a bare assertion by the appellant that he was pressured by his father and counsel to enter a plea, and, although he may have done so reluctantly, there was no evidence that he had lost his power to make a voluntary and deliberate choice in the matter. There had been nothing in what happened during the course of the proceedings which could have caused the Magistrate to consider not accepting the guilty plea, and there was therefore nothing which gave cause to set aside the plea entered (paras. 6–8).

(2) The Magistrate had been entitled to take a serious view of the case, as he did, but in the interests of justice the youths should be treated similarly in terms of sentence. The period of disqualification imposed on the appellant would therefore be set aside (para. 9).

Cases cited:

(1) *R.* v. *Baker* (1912), 7 Cr. App. R. 217, considered.
(2) *R.* v. *Forde*, [1923] 2 K.B. 400; [1923] All E.R. Rep. 477, considered.
(3) *R.* v. *Inns* (1975), 60 Cr. App. R. 231; 119 Sol. Jo. 150, considered.
(4) *R.* v. *Peace*, [1976] Crim. L.R. 119, followed.

Legislation construed:

Criminal Procedure Ordinance (1984 Edition), s.293(1): The relevant terms of this sub-section are set out at para. 6.

S. Bossino for the appellant;
K. Colombo, Crown Counsel, for the Attorney-General.

1 **SCHOFIELD, C.J.:** On October 29th, 2003, Liam Victor was convicted by the Stipendiary Magistrate after pleading guilty to an

offence of dangerous driving, contrary to s.31(1) of the Traffic Ordinance. He now appeals against both his conviction and against the sentence imposed of a fine of £100, together with a period of disqualification of eight months.

2 The facts, as related to the learned Magistrate and apparently accepted by the appellant, who was represented at the hearing by Mr. Watts of counsel, were these. At 9.25 p.m. on November 8th, 2002, P.C. Bautista was patrolling in a police van in Europort Avenue when he saw three youths travelling at speed on their respective mopeds. One of these youths was the appellant. The area has a speed limit of 30 k.p.h. and speed limit signs are prominently displayed in Edinburgh House estate, which the youths entered at speed. P.C. Bautista followed them and observed them riding within the winding road of the estate at speed and weaving from side to side. They passed the Bishop Canilla Elderly Persons' Residence and by-passed several pedestrians, one of whom shouted at them, complaining of their manner of driving. P.C. Bautista chased the youths with his sirens and beacons in operation but they neither stopped nor slowed down. Indeed they looked back and accelerated on several occasions despite being signalled to stop. The youths continued into Queensway and then turned left into Reclamation Road where the police officer caught up with and stopped them.

3 Mr. Watts, in mitigation, asked the learned Magistrate to give the appellant the benefit of his plea. He pointed out that the appellant was a learner driver and got "carried away." He should have stopped but said he thought the vehicle behind was an ambulance. He also pointed out that there was no injury caused, that the appellant was of good character and is a student at the college. He submitted that a fine would be the appropriate penalty. The learned Magistrate indicated that he was considering disqualification and Mr. Watts repeated his submission relating to his client's plea and that he was a learner driver at the time of the offence.

4 In the event, the learned Magistrate took a serious view of the offence and, whilst giving credit for the plea, considered that a period of disqualification in addition to a fine was the appropriate penalty.

5 I have to say at once that, on the material before the learned Magistrate, he was fully entitled to accept the plea of guilty to dangerous driving and was also fully entitled to take a serious view of the offence. Had the matter rested on the above-stated facts, I would have had no hesitation in upholding his decision. However, the appellant claims that he was pressured by his father to enter a plea of guilty, and that that pressure was supported by his legal representative. The pressure was such that his mind did not go with his plea. Furthermore, he claims that he was not advised by his counsel as to the possibility of offering a plea to an alternative charge of careless driving. Accordingly, he appeals against his

conviction. He also appeals against the disqualification aspect of his sentence on the following basis. He was one of three youths involved in the same incident. One of those youths has pleaded not guilty and has yet to be dealt with. The third youth, one Mark Cheesewright, appeared before the magistrates' court on December 8th, 2003, and pleaded guilty, on the same facts as the appellant, to a charge of careless driving. This plea was accepted by Crown Counsel and by the Magistrate. In the event, he was fined £100 and no disqualification was imposed. The appellant is, not surprisingly, aggrieved by the disparity in approach between him and the young man, Cheesewright.

6 The right to appeal against a conviction or sentence imposed by the magistrates' court is contained in s.293(1) of the Criminal Procedure Ordinance, in the following terms:

> "A person convicted by the magistrates' court may appeal to the Supreme Court—
>
> (a) if he pleaded guilty, against his sentence;
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> (b) if he did not, against the conviction or sentence."

This limits a person who has pleaded guilty to an appeal against sentence. However, a person who is recorded as having pleaded guilty may not, in law, have done so and may be permitted to appeal against his conviction. For example, the defendant may not have appreciated the nature of the charge or may not have intended to admit he was guilty of it, or upon the admitted facts he was not shown to have been guilty of the offence charged (see *R.* v. *Forde* (2)). The plea may be equivocal, in that the defendant may say something in the course of the proceedings which shows that he did not admit every ingredient of the offence. Again, in those circumstances a defendant could not be said to have pleaded guilty (see *R.* v. *Baker* (1)). The defendant may have been harassed by the judge or counsel into tendering a plea when in fact his mind did not go with that plea. In such a case, the court does not regard the plea as free and proper (see, for example, *R.* v. *Inns* (3)).

7 What we have in this case is a bare assertion by the appellant that he was pressured by his father, supported by counsel, to enter a plea. He may have done so reluctantly, but there is no evidence upon which I can base a conclusion that the appellant lost his power to make a voluntary and deliberate choice in the matter (see *R.* v. *Peace* (4)). There was nothing in what happened during the course of proceedings before the Stipendiary Magistrate which could cause the Magistrate to take a step back from accepting the plea tendered. True, the appellant complains that he was not advised that there was a possibility of an alternative charge being put, but on the facts before the Magistrate, he cannot be faulted for accepting a plea to dangerous driving.

8 On all the material before me, I find that there is nothing which would give me cause to set aside the plea entered.

9 Turning now to sentence, I have already indicated that the Stipendiary Magistrate was entitled to take a serious view of this case. Be that as it may, the appellant is rightly aggrieved by the disparity in the approach of the court as between himself and Mark Cheesewright. I consider that it is in the interests of justice to treat the two youths similarly in terms of sentence. In the circumstances, I set aside the period of disqualification imposed by the learned Magistrate.

10 I would make one final point. This case demonstrates how important it is, when the court is dealing with several defendants involved in the same incident, who may be dealt with at different sessions of the court, for the Magistrate to keep his eye on the way the different defendants are dealt with. It is particularly important in such cases for Crown Counsel, who may be assigned to the court on any given day, to be kept fully aware of the progress of the cases against each such defendant. In this way, a situation such as arose in the present case can be avoided.

11 The upshot is that I dismiss the appeal against conviction. I allow the appeal against sentence to the extent of setting aside the order for disqualification.

Appeal allowed in part.