

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 25 OF 2003

IN THE MATTER OF RODNEY TEELUCK

AND

IN THE MATTER OF AN APPLICATION OF A WRIT OF HABEAS CORPUS

AND SUBJICIENDUM

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO APPELLANT

AND

RODNEY TEELUCK RESPONDENT

CORAM:

Sharma, C.J.
Jones, J.A.
John, J.A.

APPEARANCES:

Mr. F. Hosein S.C and F. Fariaz instructed by Mr. K. Douglas for the Appellant.

Ms. D. Seetahal and Mr. R. Rahim for the Respondent.

DELIVERED: Wednesday 5th May, 2004.

JUDGMENT

DELIVERED BY SHARMA C.J.

Background

This appeal raises an issue of major significance to the criminal justice system:- to what extent, if any, does *section 72 of The Summary Courts Act, Chapter 4:20* fetter the sentencing power of a Magistrate in imposing *consecutive* terms of imprisonment?

Section 72 of the Summary Courts Act Chapter 4:20 provides:

“Where a sentence of imprisonment (whether peremptory or in default of payment of a penalty) is passed on any person by a Summary Court, the court may order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced, so that where two or more sentences passed by a Summary Court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed three years where one or more of the offences concerned is an indictable offence or a summary offence punishable with imprisonment for more than twelve months and two years in any other case.”

This court must determine whether the limit of the aggregate term of imprisonment applies exclusively to consecutive sentences imposed by a summary court on the same occasion or extends to consecutive sentences imposed by a summary court (either the same or different summary courts) on different occasions.

Facts

The habeas corpus application

On the 29th January 2003 Rodney Teeluck (Teeluck) applied ex parte for a writ of Habeas Corpus ad Subjiciendum on the ground that the consecutive sentences imposed on him by two Magistrates' were illegal and contrary to section 72.

The sentences

On the 7th July 1999 Teeluck pleaded guilty to three charges before Magistrate Mckenzie. He was sentenced to serve the following terms of imprisonment consecutively:

- I. 180 days hard labour
- II. 3 years hard labour
- III. 3 years hard labour

On the 5th of October, 1999 whilst still serving the sentences imposed on the 7th July 1999, Teeluck pleaded guilty to a charge of robbery with personal violence before Magistrate Bekoe. He was sentenced to three years hard labour to run consecutively with the terms being served under Magistrate McKenzie's order.

The aggregate of the sentences imposed by both magistrates amounted to 9 years and 6 months.

The High Court's determination of the habeas corpus application.

At the hearing of the habeas corpus application Teeluck's counsel argued that the aggregate sentence exceeded the three-year limit imposed by section 72 and urged Madam Justice Dean-Armorer to declare the sentences null and void. The learned judge noted that the House of Lords in *Forrest v. Brighton Justices Hamilton v Marylebourne Magistrate's Court*¹ construed the equivalent English provision as limiting the aggregate sentence only when the consecutive sentences were imposed on the same occasion. Justice Armorer, however, admitted that this decision was not before the Court of Appeal in *Snaggs v. Ramdeo*² when it imposed the three-year limit in a case where consecutive sentences were imposed on different occasions. Nonetheless, she applied the interpretation in *Snaggs v Ramdeo* as she was bound by it. She quashed the sentence imposed by Magistrate Bekoe, ordered that it run from the day on which it had been imposed and ordered that Teeluck be discharged from custody.

The Appeal

This appeal challenges Justice Dean-Armorer's order and raises two issues:

1. *The interpretation of section 72:* is a magistrate ordering a consecutive sentence to commence at the expiration of the term of imprisonment being served, limited by section 72, notwithstanding that the consecutive sentences were imposed on two different occasions?
2. *The effect of a per incuriam decision:* Is this court bound by its decision in *Snaggs v. Ramdeo*?

¹ [1981] 2 ALL ER 711.

² Magisterial Appeal #12528

The issues considered

1. *The interpretation of section 72*

There are two conflicting interpretations of section 72. On one hand, there is the interpretation, which suggests that the section 72 aggregate limit applies whether or not the consecutive sentences were ordered on the same occasion or on different occasions. This is evident from the decisions of *Snaggs v Ramdeo* and *Bernard v Kennedy*³.

In *Bernard v Kennedy* 5 sentences were imposed to run consecutively on the same occasion. The aggregate sentence was 21 years and 8 months. On appeal, de la Bastide C.J. held that “the magistrate had no power in law to order these sentences to run consecutively. The power contained in section 72 allowing a magistrate to order consecutive sentences is subject to the limit of 3 years imprisonment.”

In *Snaggs v Ramdeo* the appellant was sentenced to a term of 5 years consecutive to the sentence of 6 years which he was currently serving. These sentences were imposed on different occasions. The Court varied the 5-year sentence to commence on the day it was imposed. de la Bastide C.J. said: “that sentence ought not to have been made to run consecutively following the earlier sentence but should run from the date it was imposed.”

On the other hand, there is the more restrictive interpretation which suggests that the section 72 limit applies only when the two sentences were imposed on the same occasion and not when the second sentence was imposed subsequent to that currently being served. This interpretation was applied in 2 English cases, *Forrest v. Brighton Justices* *Hamilton v Maylebourne Magistrate’s Court* and *R. v Metropolitan Stipendiary Magistrate for South Westminster, ex parte Green*⁴. These cases were based on section 108 (1) of the Magistrate’s Court Act 1952 which provides:

“A magistrate’s court imposing imprisonment on any person may order that the term of imprisonment shall commence on the expiration of any other term of imprisonment imposed by that or any other court; but where a magistrate’s court imposes two or more terms of imprisonment to run consecutively the aggregate of such terms shall not, subject to the provisions of this section exceed six months.”

³ Magisterial Appeal #293 of 2001

⁴ [1977] 1 All ER 353

The *Forrest Case* concerned consecutive sentences imposed on different occasions which exceeded the aggregate limit of 12 months. The House of Lords construed section 108 restrictively. The Court held that section 108 (1) was clear and unambiguous and imposed a limitation only on aggregate sentences imposed on the same occasion. Lord Fraser of Tullybnelton explained this at page 717 a-b:

“When one comes to the second part of subsection (1) after the semi-colon, the provision is applicable where a magistrate’s court imposes two or more terms of imprisonment to run consecutively and in my opinion the natural and plain and ordinary meaning of these words as referred to imposing two or more terms of imprisonment on the same occasion. I agree with Omrod LJ and Lloyd LJ that the subsection on its natural meaning does not limit the power of the magistrate’s court to imposing sentences of a total amount of 6 months or 12 months in all the circumstances.”

The same “simple straightforward construction” was given to section 108(1) by the High Court in *Ex Parte Green*. May J stated at page 355 letter e:

“I think that one just has to look at 108(1) and without seeking to read anything into it unless it is essential to do so, to ask oneself what it says.”

And at letter g:

“I can find nothing in section 108(1) which requires me to read any qualifying phrase into it. Nor can I find any reason, when I look at the remaining subsections of section 108 to require me to do so. Indeed although counsel for the applicant based a part of his argument on the provisions of section 108(4) in my view those provisions tend to support the simple straightforward construction of section 108 which I think is the correct one.”

Section 72 is not an ambiguous provision – “so that where two or more sentences passed by a Summary Court are ordered to run consecutively, the aggregate term of imprisonment shall not exceed three years.” There is nothing in this section to indicate that it referred to consecutive sentences imposed by two different summary courts or the same summary court on two different occasions. If that were the intended effect it would have been made plain by the Legislature. This court is bound to take the section as it finds it. It is not open to this court to read anything into the section to remedy any potential anomalies or to implement its own preferences or policies. The natural and ordinary meaning of section 72 is that a summary court imposing two sentences

consecutively must ensure that the aggregate sentence does not exceed three years or ten years as required by the Summary Courts (Amendment) Act #6 of 2004. The effect of section 72 therefore does not extend to consecutive sentences imposed by different summary courts on different occasions.⁵ The construction adopted in *Snaggs v Ramdeo* would lead to curious results, as this appeal poignantly illustrates. If Teeluck's matter was not heard before Magistrate Bekoe, while he was serving the sentence imposed by McKenzie then clearly he will not have the benefit of Section 72. On the other hand, if it is heard while he is serving the sentence, he benefits from Section 72. In my view that result is neither juridically tenable nor penally sound.

Is this court bound by its decision in Snaggs v Ramdeo?

This was a magisterial appeal before two (2) judges of the Court of Appeal. In *Young v Bristol Aeroplane Co. Ltd*⁶ the issue was whether the Court of Appeal was bound by its previous decisions. It was held that a full court of the Court of Appeal has no greater power than any division of the Court and that the Court of Appeal is bound to follow previous decisions of its own as well as those of Courts of co-ordinate jurisdiction with three exceptions:-

- (a) it may choose between two conflicting decisions of its own;
- (b) it must refuse to follow a decision of its own, though not expressly overruled, is inconsistent with a decision of the House of Lords;
and
- (c) it is not bound to follow a decision of its own given *per incuriam*.

Applying the reasoning in the *Bristol Aeroplane* case, it seems to me that the matter under consideration does not find support. *Bristol Aeroplane* was a civil case and the rule therein seems applicable only to such cases.

We must therefore look to authorities in the criminal jurisdiction.

In *John William Taylor* 34 Cr. App. R. 138, the Court of Appeal of England sitting with seven (7) judges had occasion to consider the powers of the Court of appeal to review

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⁶ [1944] 3 All ER 293

its own decision. This was a case in which the appellant was charged with two (2) counts of bigamy. He pleaded guilty. The point which arose for consideration was whether the decision in *Treanor (1939)*, 27 Cr. App. R. 35 in which it was held that where more than one bigamous ceremony was shown, the prisoner was deprived of the defence that his wife had been continually absent for seven years then last past and had not been known by him to be living within that time. The Court was of the view that that case needed further consideration. The Lord Chief Justice in dealing with the judgment of the Court said at p. 142 – 143:

“I should just like to say one word about the reconsideration of a case by this Court. A Court of Appeal usually considers itself bound by its own decisions or by decisions of a Court of co-ordinate jurisdiction. For instance, the Court of Appeal in civil matters (our emphasis) considers itself bound by its own decisions or by the decisions of the Exchequer Chamber, and, as is well known, the House of Lords also always considers itself bound by its own decisions. In civil matters, it is essential, in order to preserve the rule of *stare decisis*, that that should be so; but this Court has to deal with the liberty of the subject, and if this Court found on reconsideration that, in the opinion of a full Court assembled for that purpose, the law had been either misapplied or misunderstood and that as a result a man had been deprived of his liberty, it would be its bounded duty to reconsider the earlier case with a view to determining whether he had been properly convicted. The exceptions which apply in civil cases ought not to be applied in this case, and in this case the full Court of seven Judges is unanimously of opinion that the case of *Treanor* (supra) was wrongly decided, for a reason which I will indicate in a moment.”

In *Anthony Williams v R* (1974) 26 WIR 541, a decision of this Court, Hyatali CJ, Corbin and Rees, JJA, the position of reversal in criminal cases was considered. At p. 548, Rees JA said:

“Although in civil matters a court of appeal subject to certain exceptions proceeds on the basis that it is bound by its own decisions (see *Young v Bristol Aeroplane Co. Ltd* (16)) the same rule does not apply to criminal appeals for the very salutary reasons that in such appeals the liberty of the subject is involved. Previous decisions of the courts, however, will not be disturbed lightly but where the court is convinced that one of its previous decisions in a criminal matter is wrong it is its duty to reconsider the matter. See *R v Taylor* (17).”

In the more recent case of *R v Simpson [2004] QB 1-118* the grounds upon which the Court of Appeal will overrule an earlier decision of its own, were reviewed and updated by Lord Woolf CJ.

'The Facts

The defendant pleaded guilty in the Crown Court to an indictment containing six counts arising from a value added tax fraud. The prosecution served notice on the court that it considered it appropriate that the court should proceed under section 71 of the Criminal Justice Act 1988¹ with a view to making a confiscation order and a confiscation order was subsequently made against the defendant. The defendant appealed against that order on the ground, inter alia, that the confiscation notice served on the court was defective since it did not comply with section 72 of the 1988 Act, as amended by the Criminal Justice Act 1993, and therefore, in accordance with the Court of Appeal decision in *R v Palmer*, the court was deprived of jurisdiction in the confiscation proceedings. The defendant contended that the amendments made to the 1988 Act by section 1 of the Proceeds of Crime Act 1995² under which the court could proceed with confiscation proceedings of its own volition, did not apply since section 1 of the Act was not in force when the offence alleged in one of the counts was committed, even though the confiscation order was not based on that count. Before the hearing of the defendant's appeal, the Court of Appeal decided that *Palmer* was wrongly decided and should not be followed. The defendant argued that, as a matter of precedent, the Court of Appeal had not been entitled to decide that one of its own previous decisions was wrong.

On the defendant's appeal –

Held (1) that rules as to precedent reflected the practice of the courts, and were of considerable importance because of their role in achieving the appropriate degree of certainty as to the law, but they should not be regarded as so rigid that they could not develop in order to meet contemporary needs; that it was not safe to rely on a decision that was given in the absence of relevant information if it was at least probable that, if the information had been known, the decision would have been affected by it; that, although the Court of Appeal (Criminal Division) would not normally look behind one of its previous decisions, it had a residual discretion to decide whether a decision should be treated as binding when there were grounds for saying that it was wrong; that the

¹ Criminal Justice Act 1988, as amended, s 71: see post, paras 7, 9-10, 12

S 72: see post, paras 8-11

² Proceeds of Crime Act 1995, s 1: see post, para 10.

S 16(5): see post, para 12.

discretion to depart from a previous precedent was not to be exercised lightly and, in exercising that discretion, the constitution of the court was of relevance; that, although the previous cases were each dealing with different procedural failures, the approach to interpretation required in both cases was the same; that the law was misunderstood and misapplied in *Palmer* and there were ample grounds for the Court of Appeal subsequently to regard it as not binding; and that, accordingly, if the 1995 Act did not apply at the relevant time, any defects in the confiscation notice served on the court did not deprive the judge of jurisdiction to make the confiscation order (post, paras 27, 35-38, 41).

R v Sekhon [2003] 1 WLR 1655, CA applied.

R v Palmer The Times, 5 November 2002, CA not followed.

At p. 127 of the judgment the Lord Chief Justice said –

25. “Mr. Walker, when developing his submissions, relies on *Halsbury’s Laws of England*, 4th ed reissue, vol 37 (2001), para 1242, as to the situations in which it is appropriate for the Court of Appeal to depart from a decision otherwise binding on the court. The situations are stated to be: (i) where the court has acted in ignorance of a previous decision of its own court or a court of co-ordinate jurisdiction which covered the case before it. If this is the case the court must decide which case to follow, (ii) where the court has acted in ignorance of a decision of the House of Lords, (iii) where the court has given its decision in ignorance of the terms of a statute or a rule having statutory force, or (iv) where in exceptional and rare cases, the court is satisfied that there has been a manifest slip or error and there is no prospect of an appeal to the House of Lords.

26. He also refers to two further passages in the same paragraph of *Halsbury* as to the Court of Appeal (Criminal Division). The first stating that a full Court of Appeal has no greater powers than the usual constitution of the court of three judges and, except in the cases mentioned above, has no power to overrule a previous decision of the court. The other citation is that:

“In its criminal jurisdiction the Court of Appeal applies the same principles as on the civil side, but recognizes that there are exceptions (a) where the applicant is in prison and in the full court’s opinion wrongly so; (b) where the court thinks that the law was misunderstood or misapplied; and (c) where the full court is carrying out its duty to lay down principles and guidelines in relation to sentencing.”

27 These statements from *Halsbury* are unexceptional and are soundly based upon the authorities to which they refer. Prominent among them is the decision in *Young v Bristol Aeroplane Co Ltd [1944] KB 718*. However, the paragraphs in *Halsbury* should not be read as if they are contained in a statute. The rules as to precedent reflect the practice of the courts and have to be applied bearing in mind that their objective is to assist in the administration of justice. They are of considerable importance because of their role in achieving the appropriate degree of certainty as to the law. This is an important requirement of any system of justice. The principles should not, however, be regarded as so rigid that they cannot develop in order to meet contemporary needs.

28 One of the earliest statements on the rationale underpinning this doctrine was made by Parke J (*Mirehouse v Rennell (1833) 1 Cl & F 527, 546*) when he stated:

“Our common law system consists in the applying to new combinations of circumstances those rules of law which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency and certainty, *we must apply those rules, where they are not plainly unreasonable and inconvenient, to all cases which arise*; and we are not at liberty to reject them, and to abandon all analogy to them, in those to which they have not yet been judicially applied, because we think that the rules are not as convenient and reasonable as we ourselves could have devised.” (Emphasis added.)

29 In Lord Greene MR’s judgment in *Young v Bristol Aeroplane Co Ltd [1944] KB 718*, Lord Greene was careful to provide for a degree of flexibility. He stated, at p. 729:

“We do not think that it would be right to say that there may not be other cases of decisions given per incuriam in which this court might properly consider itself entitled not to follow an earlier decision of its own.”

30 The House of Lords is in a special position because it is, so far as this jurisdiction is concerned, the final court of appeal in both criminal and civil matters, but the reasons for it departing from its previous practice are worth repeating. They appear in the *Practice Statement (Judicial Precedent) [1966] WLR 1234*:

“Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordships nevertheless recognize that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to

depart from a previous decision when it appears right to do so. In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law. This announcement is not intended to affect the use of precedent elsewhere than in this House.”

31 The passage from *Halsbury* makes a distinction between the position of the Criminal and Civil Divisions of the Court of Appeal but there is no general power in the Court of Appeal (Criminal Division) equivalent to that contained in the *Practice Statement*.

32 That the position in the criminal jurisdiction of the Court of Appeal should be different from that in the civil is derived from the judgment of Diplock LJ in *R v Gould* [1968] 2 QB 65, 68-69. The relevant passage reads as follows:

“In its criminal jurisdiction, which it has inherited from the Court of Criminal Appeal, the Court of Appeal does not apply the doctrine of stare decisis with the same rigidity as in its civil jurisdiction. If upon due consideration we were to be of opinion that the law had been either misapplied or misunderstood in an earlier decision of this court or its predecessor, the Court of Criminal Appeal, we should be entitled to depart from the view as to the law expressed in the earlier decision notwithstanding that the case could not be brought within any of the exceptions laid down in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 as justifying the Court of Appeal in refusing to follow one of its own decisions in a civil case (*R v Taylor* [1950] 2 KB 368). A fortiori, we are bound to give effect to the law as we think it is if the previous decision to the contrary effect is one of which the ratio decidendi conflicts with that of other decisions of this court or its predecessors of co-ordinate jurisdiction.”

33 What Diplock LJ said in *Gould* has to be read in the light of his later comment in *R v Merriman* [1973] AC 584, 605. There he stated:

“These decisions it rightly treated as binding, for although the Criminal Division of the Court of Appeal is not so strictly bound by its own previous decisions as is the Civil Division, its liberty to depart from a precedent which it is convinced was erroneous is restricted to cases where the departure is in favour of the accused. This would not be the case in the instant appeal.”

34 There is nothing to suggest in *Merriman* that Lord Diplock was reminded of what he said in *Gould* [1968] 2 QB 65. We appreciate that there may be a case for not interpreting the law contrary to a previous authority in a manner that would mean that an offender who otherwise would not have committed an offence would be held to have committed an offence. However, we do not understand why that should apply to a situation where a defendant, as here,

wishes to rely upon a wrongly decided case to provide a technical defence. While justice for a defendant is extremely important, justice for the public at large is also important. So is the maintenance of confidence in the criminal justice system. If the result in the *Palmer* case The Times, 5 November 2002 had to be applied to other cases even though the Court of Appeal had acted in ignorance of the appropriate approach this would indeed, reveal a most unattractive picture of our criminal justice system's ability to protect the public.

35. Here we prefer the approach indicated in *Bennion, Statutory Interpretation*, 4th ed (2002), p 134, which states:

“The basis of the per incuriam doctrine is that a decision given in the absence of relevant information cannot safely be relied on. This applies whenever it is at least probable that if the information had been known the decision would have been affected by it.”

The wide principles postulated in the English jurisdiction, and to the lesser extent repeated by our Court of Appeal, leave me in no doubt, that this Court has the power to overrule its decision in *Snaggs v Ramdeo*. If it were allowed to stand it would clearly lead to a miscarriage of justice. A miscarriage of justice does not only take place when a guilty person is acquitted or the innocent convicted, it also occurs when the law is misconstrued or misapplied, and this leads to a decision where a person found guilty is sentenced to a term of imprisonment less than what he is lawfully required to serve.

It is clear that the Court in *Snaggs v Ramdeo* did not have the benefit of the decision in *Forrest v Brighton Justice Hamilton v Marylebourne Magistrate's Court* and *R. v. Metropolitan Stipendiary Mag. For South Westminster, ex parte Green*. There was no argument since counsel appearing for the State conceded the point.

This Court recognizes the need for finality and certainty in the law. More importantly though, this Court recognizes that it cannot perpetuate inaccuracies and it is duty bound to correct itself. In the circumstances the decision in *Snaggs v Ramdeo* was wrong. Accordingly I am of the opinion that the trial judge was wrong in the decision to which she came, and *Snaggs v Ramdeo* is therefore overruled. The appeal is allowed. This decision, however, does not in any way reverse the order of the trial judge releasing the respondent from custody. The terms of section 8(i) of the Habeas Corpus (Amendment) Act 1996 are clear:

“An appeal under section 7 shall not affect the right of the person restrained to be discharged in pursuance of the order under appeal and, unless an order under subsection (2) is in force at the determination of the appeal, to remain at large regardless of the decision on appeal.”

There shall be no order as to costs, as this is a legally aided matter.

S. Sharma
Chief Justice.

L. Jones,
Justice of Appeal.

S. John,
Justice of Appeal.