2015-HC-DEM-CIV-CM-56

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

(CONSTITUTIONAL AND ADMINISTRATIVE DIVISION)

In the matter of the Constitution of Guyana Chapter 1:01

-and-

In the matter of an Application for Constitutional Redress under Article 153 for contravention of Applicant's fundamental rights and freedoms guaranteed by Articles 40, 139, 141 and 144 of the Constitution of the Cooperative Republic of Guyana.

BETWEEN:

SAMUEL NIKOLAI HINDS

Applicant

-and-

THE ATTORNEY GENERAL OF GUYANA

Respondent

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Peter Hugh and Ms. Latchmie Rahamat representing the Applicant

Ms. Prithima Kissoon, Deputy Solicitor General and Mr. Rajendra Jaigobin appearing for the Respondent.

Delivered October 16th 2015

RULING

The Applicant, Samuel Nikolai Hinds, by way of this Motion seeks several Declarations that various rights guaranteed to him under the Constitution of Guyana have been infringed by the Judiciary and consequently, further seeks orders from this Court staying the prosecution of two criminal charges brought against him in the Magistrates' Court.

The undisputed facts that precede and gave rise to this Motion are as follows;

It was alleged that on the 27th day of February 2014 used threatening behaviour and unlawfully wounded Tenza Lane in Georgetown. The Applicant was subsequently charged with the offences of "using threatening behavior" and

"unlawful wounding" contrary to the relevant sections of the Summary Jurisdiction (Offences) Act, CAP 8:02.

The Applicant appeared before the Magistrates' Court and pled not guilty to both charges on March 3rd 2014 and the matters were then transferred to Magistrate Chandan-Edmond for trial.

Magistrate Chandan-Edmond tried both matters together and the evidence of both the State and the Applicant was concluded on June 3rd 2014 after which the State and the Applicant addressed the Court and on February 6th 2015 Magistrate Chandan-Edmond delivered verdicts of guilty on both charges.

Both matters were adjourned to February 20th 2015 for the presentation of a probation report in favour of the Applicant and then further adjourned to February 27th 2015 again for the presentation of the probation report, however, Magistrate Chandan-Edmond was dismissed before this date.

Both matters are now before Magistrate Annette Singh.

The Applicant submits, firstly, that his rights under Article 144(5) of the Constitution of Guyana has been breached in that the Applicant having been found guilty of the offences by Magistrate Chandan-Edmond cannot be tried again, de novo, by Magistrate Singh.

There is nothing before this Court to suggest that Magistrate Singh has determined or indicated that she will conduct new trials for the charges against the Applicant.

On the facts as stated by the Applicant there has been no breach of his rights under Article 144(5) of the Constitution of Guyana.

The Applicant argues that it would be unfair for Magistrate Singh to sentence him for the offences which Magistrate Chandan-Edmond found him guilty since she would not be familiar with the facts of the case and at the same time also argues that Magistrate Singh cannot conduct new trials of the offences as this would breach the Applicant's rights under Article 144(5) of the Constitution of Guyana.

It is well established that a Court, including a Court of Summary jurisdiction has jurisdiction of cases until sentence since the sentencing of a person found guilty of an offence marks the point of final adjudication. [*See* S (an infant) *v* Recorder of Manchester [1971] AC 481 @ 507 per Lord Upjohn.

Though, as indicated, there has been no breach of the Applicant's rights under Article 144(5) of the Constitution of Guyana, it follows from the aforestated position that in the circumstances of the present case, a plea of *autrefois convict*

would not be available to the Applicant. Of course this is purely academic obiter dictum since there has been no breach of the Applicant's rights under Article 144(5) of the Constitution of Guyana nor does there exist any legal barrier preventing Magistrate Singh proceeding to sentence.

Counsel for the Applicant reliance on the case of R *v* Sheridan [1937] 1 KB 223 is unfortunate since that case was overruled by their Lordships more than two decades ago. Counsel's interpretation of Order III rules 4 and 5 of the Court of Appeal Rules, CAP 3:01, (not sections 4 and 5 of the Court of Appeal Act as cited), is misconstrued as can be seen from reading the last part of Order III rule 4, which states "... *whether the judge of the court of trial shall have* ***passed sentence or pronounced final judgment*** *upon him on that date*".

The Applicant's second submission is that Magistrate Singh would not have had the benefit of hearing mitigating factors led during the leading of the Applicant's defence and it would therefore not be fair for her to sentence him on the convictions. This is simply preposterous.

It is indeed at this stage that the Applicant would present to the Court whatever it is he believes may mitigate his sentence and certainly the Magistrate would fully acquaint herself with the facts and circumstances.

It is noteworthy that the position in England under the Magistrates' Court Act 1980 is that if the Court that passes sentence consists of justices who were not sitting when the offender was convicted, then the Court must make such inquiry into the facts and circumstances of the case as will enable them to be fully acquainted with the facts and circumstances.

If this submission is taken to its logical conclusion then in the same vein it would not be fair for a court of appellate jurisdiction to vary a sentence.

In any event the Summary Jurisdiction (Offences) Act; CAP 8:02 prescribes the penalties for the offences for which the Applicant has been found guilty.

As a matter of public policy it would be wholly unacceptable and would in fact endanger the lives of members of the judiciary should the law be that persons cannot be sentenced by a Court should the Judge/ Magistrate become "unavailable" between finding of guilt and sentencing while awaiting the production of a probation report.

The Applicant's third submission is that the circumstances, to wit, that the fact that the Applicant was charged more than two years ago and convicted more than seven months ago and still not sentenced is an abuse of process that warrants a stay of all further prosecution in the matters.

The Applicant was in fact charged 19 months ago and was convicted within 11 months of the charges being read to him in the Magistrates' Court despite the cases being adjourned on at least 6 occasions due to the absence of the Applicant and/ or his Attorney-at-Law.

The submission is premised on the Magistrate opting to conduct trials *de novo* and so really does not warrant consideration based on the foregoing. Nevertheless, it is the Court's view, obiter, that there really has not been any substantive delay in the trial of these cases. In fact based on the Applicant's submissions the taking of the evidence was completed in both matters within 90 days of the charges being read to the Applicant.

In the circumstances the relief and/ or Declarations prayed for in (a), (b), (c), (e), (f), (g) and (h) of the Notice of Motion are denied.

No relief is prayed for in (d) of the Notice of Motion and in any event the Applicant has provided no evidence in support of the assertion made therein.

Consequently no Orders are made (i) and (j) of the Notice of Motion.

Costs in the sum of $50,000 to the Respondent.

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Justice N. A. Singh