JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL NO. 53/91

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA vs. ALTON BOYD

Miss Sandra Johnson for the appellant

Miss Marcia Hughes for the Crown

January 13 and February 12, 1992

WRIGHT, J.A.:

This nineteen year old appellant appealed against a sentence of eighteen months imprisonment at hard labour imposed on him on September 20, 1991, by Her Honour Mrs. N. McIntosh, Resident Magistrate for Saint Andrew, when she convicted him and another on a charge of shopbreaking and larceny. The two men had broken Shop number 2 at the Red Hills Mall, 105 Red Hills Road in Saint Andrew and stolen a record player and then, contrary to their plans, ran straight into the hands of an armed security guard who could scarcely restrain the urge to kill them. Accordingly, they did not profit from their excursion into crime.

The reasons for imposing such a sentence given by the learned Resident Magistrate are as follows:

> "(1) The offence is one which is very prevalent in the particular area. Between the commencement of this trial and the date of sentence no less than four other cases came before the Court involving business premises in the particular section of Red Hills Road where this complainant's business is located.

"(2) In all the cases the accused persons lived in the area.

(3) Both accused by the manner in which this offence was committed the consistency with which they lied (Boyd doing so on oath), and their general demeanour throughout the trial displayed characteristics which indicated that much more than counselling was required at this time. This reasoning was supported, in my view, by the Probation Officers' reports. I found nothing of a redeeming nature in the reports. Boyd admitting guilty to the Probation Officer stated that he participated in committing the offence because he wanted to buy clothes for the Independence holiday. He surely needs to learn at this stage that what he has done is not the acceptable method of shopping. He describes his premeditated criminal actions as a 'misunderstanding' and expressed a willingness to turn over a clean page only in the hope that that will earn for him a non-custodial sentence. In sum, he impressed me as a young man who needs a sharp lesson at this time to induce him to turn from a criminal life to an honest one.

Finally, it is my view that in the particular circumstances the paramount consideration in determining sentence must be the public interest. A duty is clearly owed to the business operators in the area who must be made to feel that they can count on the support of the system of law and order. A message must clearly be sent out by the Community that these offences will not be tolerated and that regardless of their ages those who commit these offences must expect to be imprisoned on conviction."

The single ground of appeal complains that the sentence is excessive and unreasonable but in her brief submissions the appellant's counsel contended that the learned Resident Magistrate did not have due regard for the provisions of section 3(1) of the Criminal Justice (Reform) Act, 1976 (The Act) which states:

"Subject to the provisions of subsection (2), where a person who has attained the age of seventeen years but is under the age of twenty-three is convicted in any court for any offence, the court, instead of sentencing such person to imprisonment, shall deal with him in any other manner prescribed by law."

By subsection 2, four categories of offenders are exempted from the more humane treatment envisioned by section 3(1). Subsection 2 provides:

> "The provisions of subsection (1) shall not apply where--
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> (a) the court is of the opinion that no other method of dealing with the offender is appropriate; or
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> (b) a sentence of imprisonment for such an offence is fixed by law; or
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> (c) violence or threat of violence has been used in the commission of the offence; or
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> (d) the person at the time of commission of the offence, was in illegal possession of a firearm or imitation firearm."

Subsection 3 shows the way where, in the opinion of the Court, no other method of dealing with the offender is appropriate. That subsection provides:

> "Where a court is of opinion that no other method of dealing with an offender mentioned in subsection (1) is appropriate, and passes a sentence of imprisonment on the offender, the court shall state the reason for so doing; and for the purpose of determining whether any other method of dealing with any such person is appropriate the court shall take into account the nature of the offence and shall obtain and consider information relating to the character, home surroundings and physical and mental condition of the offender."

It is clear that the intendment of the legislature, as expressed in section 3, is to protect offenders within the stated age limit from the early introduction to the horrors of prison life. The interest of the young offender is, therefore, accorded paramount importance which will only be lost when other factors successfully outweigh that protected interest. But that the law still does not abandon its original purpose is clear, by the provision that the sentencer shall state the reason for going counter to that which the law seeks to achieve i.e. the sheltering

of these offenders. This provision allows for meaningful review of what was done in the lower court.

In the final paragraph of the Reasons for Sentence the learned Resident Magistrate states that:

> "...in the particular circumstances the paramount consideration in determining sentence must be the public interest."

But that public interest must take into consideration provisions such as are reflected in The Act favouring young offenders. Having made the pronouncement cited above, the learned Resident Magistrate failed to show why the public interest could be served only by the imprisonment of this young man and for eighteen months at that. Some relevant factors from the Social Enquiry Report which should have entered into the Court's consideration are set out hereunder:

> "**HOME:**
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> Accused resides with his mother and other family members at Woodlawn Avenue, Arlene Gardens in close proximity to Red Hills Road. The house is a five bedroom with all other facilities. It is said to be owned by his mother.
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> **EARLY CHILDHOOD AND FAMILY BACKGROUND:**
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> Accused is the first child produced by both parents as result of a common law relationship. Reports are that father hails from St. Catherine and works as a farmer, mother is from Westmoreland and is a higgler. Accused first resided with his parents on Spanish Town Road and then Lizard Town a section of Tivoli Gardens.
>
> Reportedly at age five years the relationship between both parents severed and father went to live in Spanish Town and did not honour his obligations. Therefore accused upbringing was done by his mother who was the sole breadwinner. It is said that accused basic needs were not adequately catered to.
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> In his formative years accused was said to be well behaved and adhered to an acceptable form of behaviour exercised by his mother.
>
> He was said to be cooperative and is always willing to share what he has.

"Reportedly he has a good interpersonal relationship with family members.

When he was about thirteen years old he went to reside at Woodlawn Avenue with his mother.

INTERVIEW WITH MOTHER:

Accused mother stated that she is concerned about her son as he is well behaved because of the training she gave him. She said although she was the only bread-winner for the family she tried to do the best for them. Reportedly accused is very cooperative and loving. He has never got into trouble before. She is asking for leniency.

INTERVIEW WITH ACCUSED:

Accused admitted guilt and expressed how worried he is about his predicament. He said what he did was a 'misunderstanding'. When questioned what he meant he said he wanted some money to buy some clothes as the Independence was approaching. He however promised not to get himself involved again and is willing to turn over a clean page.

ASSESSMENT AND RECOMMENDATION:

Alton Boyd is a young adult who is making his first appearance before the court. He is the product of a common law relationship that turned sour while he was a tender age.

From reports his upbringing was done primarily by his mother. He spent most of his life in the depressed and violent areas of the city. Seemingly his life has been influenced somewhat by environmental factors. He seemed to get a great deal of family support although he was not privileged to earn support from a father.

Inspite of this it would be unfair to attribute his behaviour only to environmental factors as it is quite clear that for sometime he has been residing in a middle class community and during this time, should be able to conform to a better life style."

The picture then is of a young man who did not have the benefit of a father's guiding hand but whose mother endeavoured as best she could to supply that lack. She has provided him with a fairly comfortable and stable home and offers him love and care.

He was constantly of good behaviour and apparently fell victim to the lure of the material by espousing a wrong value-system. We are forced to ask the question whether even in normal circumstances such a case representing the offender's first encounter with the law a sentence of eighteen months imprisonment at hard labour would be appropriate? We think not. A short sharp sentence is indicated. But here, unless reasons are given why no other method but imprisonment would be appropriate, he ought not to be imprisoned.

This very problem has previously been dealt with by this Court. In **R. v. Alphanso Small** R.M.C.A. 100/88 delivered 20th November, 1988 (unreported), Carey, P. (Ag.), giving the judgment of the court, said at page 4:

> "This Court has previously observed that the provisions of this Act are not being taken into account by Resident Magistrates. We must deprecate this attitude. The law is clear that there is a bias against sending youngsters to prison unless that is the only appropriate method, and the law requires the Resident Magistrate to set out his reasons for treating him in that way."

From the Social Enquiry Report, it is clear to us that this appellant stands eminently in need of professional counselling on a regular basis in an effort to mitigate the injury occasioned by the absence of his father from his early childhood. In that way, we think that both his and the public interest will best be served.

Because of the failure of the learned Resident Magistrate to comply with the requirements of The Act and because section 3(1) forbids his imprisonment except in the specified circumstances, we allowed the appeal against sentence, quashed the sentence and, with the appellant's consent, substituted a Probation Order for two years with the conditions that:

1. He shall reside with his mother during the said period and,
2. He shall report to the Probation Officer at such time and places as he shall direct.

It is to be hoped that sentencing tribunals will treat the provisions of The Act seriously inasmuch as they are intended to be an amelioration of penalties imposed on our youngsters who are at a stage in their lives when that helping hand profferred could make all the difference.