



[2021] GCHCD 2

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE GUN DIVISION

CLAIM NO. CAHC2019GC00248

BETWEEN

REGINA

CROWN

AND

VIVIAN RAINFORD

DEFENDANT

Mrs. Leinster Lewis- Meade Assistant Director of Public prosecution for the Crown.

Mr Mathew Hyatt instructed by Knight Junior and Samuels for the Defendant.

Heard: 26th July, 1st and 22nd October, 2021.

Fitness to plead – Illegal Possession of Firearm – Wounding with intent – Section 25 of the Criminal Justice Administration Act

L. SHELLY- WILLIAMS, J

Background

- [1] The defendant was charged for the offences of Illegal Possession of Firearm and Wounding with Intent. The defendant, is presently ninety-two (92) years old. He is alleged to have been a licensed firearm holder. On the 19th of July 2019, he was at home with his wife, when he used his firearm to shoot and injure her. She was rushed to hospital where she was treated. He was arrested and charged for the abovementioned offences.
- [2] The case against the defendant came up for hearing in the Gun Court Case Management court and on the application of defence counsel, the learned Judge

ordered that the defendant be assessed by two psychiatrists. The matter was then set for hearing to determine the issue of Fitness to Plead.

The Law

[3] In determining the issue of whether the Defendant is fit to stand trial I considered two primary things. These were :-

- (a) Should the hearing be by Judge and Jury or by Judge alone?
- (b) What evidence should be led to satisfy such a finding?
- (c) If the defendant is found Unfit to Plead what are the options available to the Court?

Should the proceedings be by Judge and Jury or Judge alone?

[4] Section 25 of the Criminal Justice Administration Act details the proceedings for Fitness to Plead. Section 25 (4) of the said Act speaks to cases that are tried by Judge alone. Section 25 (4) of the Criminal Justice Administration Act states that:-

- (4) Where the issue of fitness arises in respect of a defendant –*
 - a) who is being tried, or is to be tried, before a court other than a court composed of a judge and jury; or*
 - b) in any other criminal proceedings at any stage other than those referred to in subsection (2),*

the court shall try the issue and render a verdict.

[5] Since the defendant was charged with offences that were to be adjudicated in the Gun Court, I proceeded to hear the application without a jury.

Who may bring the application?

- [6] Section 25 (1) (2) of the Criminal Justice Administration Act indicates that the court, the prosecution, or defendant may bring an application for determination of Fitness to Plead. It states that :-

Where at any stage of criminal proceedings any question arises as to the fitness of a defendant, the Court may of its own motion, or on the application of the defendant or the prosecutor, direct that the issue of the fitness of the defendant be tried.

Burden of Proof

- [7] The burden of proof in an application concerning fitness to plead, varies depending on who raised the issue. The burden of proof in an application for fitness to plead, if raised by the prosecution, is beyond reasonable doubt. This was laid down in a number of cases including the case of **R v. Sharp** 41 Cr. App. R. 197. It was opined in that case that the burden of proof for the prosecution was beyond a reasonable doubt.
- [8] The standard differs if it is raised by the defendant. In **R v. Podola** [1960] 1 Q B 325, it was held that if a defendant claims unfitness he has the burden of proof on a balance of probability.
- [9] In a case where the motion is brought by the Judge, there does not appear to be any clear position as to the standard of proof. In the case of **R v McCartney** (1967) 1 QB 68, it was held that a Judge on his own volition may raise the issue, however that authority did not opine as to standard of proof to be adhered to.

Evidence to be led in a Fitness to Plea Hearing

- [10] Section 25 (5) of the Criminal Justice Administration Act speaks to evidence that is to be led in a hearing of fitness to plead. Section 25 (5) states that :-

(5) *A court or jury, as the case may require, shall not arrive at a verdict on the issue of the fitness of a defendant except on the written or oral evidence of two or more duly qualified medical practitioners, at least one of whom is an approved medical practitioner.*

[11] In this particular case written reports were agreed and placed into evidence under Section 31 (C) of the Evidence Act. The reports were from two psychiatrists. The qualifications of the psychiatrists were included in the reports that were admitted into evidence pursuant to the agreement.

Analysis

[12] The defendant was examined by two psychiatrists Doctor Clayton Sewell B. Sc. (Hons) MBBS, DM (Psychiatry,) and Doctor Mindi Fitz-Henley, MBBS, DM (Psychiatry). Doctor Clayton Sewell who is a Consultant General and Forensic Psychiatrist, examined the defendant and expressed his opinion in a report that was presented to the court. He gave a summary of his examination of the defendant in which he stated that:-

Summary

- *Vivian Rainford has a reported history of intermittent unusual behaviour for over the past 5 years. This included becoming withdrawn, irritability, paranoia and apparent hallucinations.*
- *He was subsequently diagnosed with a mental illness and prescribed medication with good effect but was at times non-complaint.*
- *Based on Vivian Rainford's and his family's report, he appears to have been acting under the influence of an abnormality of his mind (being deluded about the threats on his life and experiencing auditory and visual hallucinations of people plotting to kill him) at the time of the alleged offence.*
- *He understands the incident as being a result of these perceived threats.*
- *He currently meets the criteria for psychiatric disorders, namely a Major Neurocognitive Disorder with Psychotic Features.*

- *He currently has no suicidal or homicidal ideas and has a low risk of imminent violence, though he still has some thought and perceptual abnormalities.*
- *Vivian Rainford is unfit to plead, as he appears unable to:*
 - *Plead with understanding to the nature of the charge*
 - *Exercise the right of challenge.*
 - *Generally understand the nature of and follow court proceedings.*
 - *Comprehend the evidence given against him*
 - *Instruct legal advisors.*

[13] Doctor Sewell went on to find that :-

1. *Vivian Rainford is currently unfit to plead and therefore is unable to participate sufficiently in court proceedings.*
2. *It should be ensured that he complies with the medications prescribed (Risperidone) as he remains symptomatic of his illness.*
3. *He can continue to be closely supervised by his family with regular mental health review and treatment.*

[14] The defendant was also assessed by Doctor Mindi Fitz-Henley, MBBS, DM (Psych). Her assessment of the defendant was :-

Assessment

- i) *Based on the psychiatric evaluation, Mr. Rainford does have a psychotic disorder, with predominantly persecutory delusions. This is likely due to medical condition: his previous stroke, diabetes and hypertension. He will need to continue his medications, follow-up for his chronic medical illnesses and psychotic disorder.*
- ii) *At this time, he remains **UNFIT** to plead. His follow-up date is in one month.*

Decision

[15] I found that the defendant had satisfied the burden of proof. Based on the evidence as contained in the two psychiatric evaluation reports I found the defendant to be unfit to plea.

Options available to the court on a finding of Unfit to Plea

[16] On a finding of the defendant being unfit to plea the options available to the court are detailed in Section 25 C (2) of the Criminal Justice Administration Act. Section 25 C (2) states that :-

(2) The Court may –

- a) order that the defendant be remanded in custody at the Court's pleasure;*
- b) order, in accordance with the provisions of the Fifth Schedule, that the defendant be admitted, at the Court's pleasure, to a psychiatric facility named in the order;*
- c) make, in accordance with the provisions of the Sixth Schedule, a supervision and treatment order in respect of the defendant;*
- d) make, in accordance with the provisions of the Seventh Schedule, a guardianship order in respect of the defendant.*

(3) A verdict of unfit to stand trial shall not prevent the defendant from being tried subsequently if he becomes fit.

[17] In reviewing the options that are available to the courts on a finding of unfit to plea I have to take into consideration the safeguards and the dangers in relation to each.

[18] Under Section 25 (2) (a) the defendant may be remanded at the Court's pleasure. Once this order is made there is the safeguard that is dictated by Section 25 (D) of the said act, which is that monthly reports are to be submitted by the

Commissioner of Corrections to the Court. This monthly report would then guide the Court as to the direction it should take in the case. The danger in relation to this order is that the defendant may be in prison for an extended period of time for a fairly minor offence.

- [19]** The second option is that the defendant be remanded at the Court's pleasure at a psychiatric facility. This option may seem quite attractive, as the defendant would be at a facility that is suitable to address his mental requirements. Once he becomes fit to plea, then the case would then be placed on the court's list to be adjudicated. The difficulty with this option is that there does not appear to be any psychiatric facility that would accept the defendant, due to the fact that is charged with these offences. Enquires were made of Bellvue and it was indicated that they are unable to accommodate him at this time.
- [20]** The third option is to make a Supervision or Treatment Order. This would require:-
- a. a probation officer and aftercare officer appointed under Section 68 of the Corrections Act, that would be willing to be named in the order as being the person to supervise the defendant.
 - b. The evidence, oral or written, of two qualified practitioners, at least one of whom is an approved medical practitioner, that the condition of the defendant is such as requires, and is susceptible to treatment.
- [21]** The treatment itself would have to be specified in the order, and the order would have to indicate, where it required the defendant to submit to treatment as a resident patient.
- [22]** In making such an order, the Probation Officer that is appointed, would be required to undertake various duties. These duties are detailed in the Sixth Schedule of the Criminal Justice Administration Act, which include:-

- a. circulating the order of the court to the various parties including the medical practitioner and the facility that the defendant is to reside if the court so orders.
- b. Giving a report to the court on the progress of that defendant so that the court can make a decision as how to proceed.

The difficulties that may arise with this option are:-

- a. the availability of a Probation Officer to supervise the defendant.
- b. risk factor given the diagnosis and offences.
- c. if the order requires the defendant to reside in facility, identifying such a facility.

[23] The final option is the making of a Guardianship Order. This is where the court appoints someone to be the guardian of the defendant. That guardian would have to indicate to the court that he is willing to become the guardian of the defendant. The duties of the guardian would include :-

- a. Requiring the defendant to reside at a particular location.
- b. Requiring the defendant to attend at places and times so specified for the purpose of treatment, occupation, education or training,
- c. Giving access to the defendant at any place the defendant is residing, to any approved medical practitioner, probation and aftercare officer, or other person so specified.

[24] In attempting to arrive at a decision as to the most suitable option, I requested a Social Enquiry Report. The Social Enquiry report indicated that the members of the community found the defendant to be friendly and quiet. They had no objections to him remaining in the community. The wife of the defendant, through the said Social Enquiry Report requested leniency for him.

[25] In coming to a decision I took into consideration :-

- a. The age of the defendant.
- b. The offences he was charged with.
- c. Whether the defendant had any support from either his family, friends or neighbours.
- d. Whether there are any community based mental health facilities in or near the community, the defendant resided in.

[26] After reviewing:-

- a. the submissions of counsel for the defendant.
- b. The social enquiry report.
- c. The report from the psychiatrists.

[27] I found that the most suitable option for the defendant was a Guardianship Order. Mr. Errol Rainford, the sixty-two years old son of the Defendant, volunteered to become his guardian. He was sworn to true answers and he indicated that he was willing to take on all the responsibilities of being a guardian.

Orders

1. Mr Errol Rainford is appointed Guardian of the Defendant.
2. The Registrar is to be provided with medical reports of the Defendant every three months.
3. The Registrar is keep a register with the updates of the medical reports.
4. The Defendant is to be placed back before the Court if he is found to be Fit to Plead.
5. The case is to be reviewed two years from this date.