

**COMMONWEALTH OF THE BAHAMAS  
IN THE COURT OF APPEAL  
MCCrApp. No. 119 of 2019**

**B E T W E E N**

**STANLEY ADAM PRATT**

**Appellant**

**AND**

**THE ATTORNEY GENERAL**

**Respondent**

**BEFORE:**           **The Honourable Sir Michael Barnett, P**  
                          **The Honourable Mr. Justice Isaacs, JA**  
                          **The Honourable Mr. Justice Jones, JA**

**APPEARANCES:**   **Ms. Simone Brown, Counsel for the Appellant**

**Mr. Neil Brathwaite, Deputy Director of Public Prosecutions, Counsel  
for the Respondent**

**DATES:**           **25 November 2020; 6 January 2021**

\*\*\*\*\*

*Criminal appeal – Jurisdiction of the Court following the filing of a Notice of Abandonment – Effect of the Notice of Abandonment – Jurisdiction of a magistrate once a defendant has been convicted and sentenced - Rule 52 of the Court of Appeal Rules*

The appellant was convicted on 12 July 2019 for the offence of possession of dangerous drugs with intent to supply and sentenced to one year imprisonment and a fine of \$2,000.00 or six-months imprisonment in default. On 15 July 2019 he appealed to this Court on the basis that the sentence was unduly severe. The following day, on 16 July 2019, the magistrate vacated the earlier sentence and imposed a fine of \$5,000.00 or one-year imprisonment in default.

The appellant was never in custody and the \$5,000.00 fine imposed by the purported second sentence has been paid. Further, the appellant is no longer in the jurisdiction.

Prior to the hearing of the appeal, a Notice of Abandonment of appeal was filed by the appellant.

*Held:* Pursuant to rule 52 the appeal, having been abandoned, is dismissed.

As per rule 52 of the Court of Appeal rules, an appeal terminates once an appellant gives notice of abandonment to the Registrar. Once such notice is given the appeal is automatically dismissed and

there is no need for the Court to pronounce upon the appeal; in effect, the ruling or decision being appealed from remains extant.

Once a magistrate has convicted and sentenced a defendant the magistrate becomes *functus officio* and may no longer exercise jurisdiction over the defendant in the same case.

*Attorney General v Omar Chisholm* MCCrApp No. 303 of 2014 considered

*Beswick v R* [1987] 1 WLR 1346 considered

*R v Barnett* (unreported), October 16, 1967 considered

*R v Brown* (unreported), June 5, 1972 considered

*R v Medway* [1976] QB 779 considered

*The Commissioner of Police v Webster* MCCrApp. No. 288 of 2014 considered

*The State v Brahamanand Agam* (1978) 26 WIR 68 applied

---

## J U D G M E N T

---

### **Judgment delivered by the Honourable Mr. Justice Isaacs, JA:**

1. On 1 December 2020, having heard the submissions of Counsel, we reserved our decision in this matter. We render it now.
2. The appellant was convicted on 12 July 2019 for the offence of possession of dangerous drugs with intent to supply. On the same day, Stipendiary and Circuit Magistrate Charlton Smith ("the Magistrate") sentenced the appellant to one year imprisonment and imposed a fine of \$2,000.00 or six months additional. On 15 July 2019, the appellant filed a Notice of Appeal indicating that the ground for his appeal was that the sentence was unduly severe.
3. The Magistrate's record revealed that the appellant, represented by attorney Simone Brown, appeared before the Magistrate again in respect of the same matter, apparently on 16 July 2019, one day after the appellant had filed his Notice of Appeal to this Court. The Magistrate's record reflects the following:

**"Date of Completion: 16th July, 2019**

**Defendant appeared in custody represented by Counsel Simone Brown. Court vacated prior sentence and imposes a fine of \$5,000.00 or one (1) year at Bahamas Department of Correctional Services."**

4. It appears from the records of The Bahamas Department of Correctional Services that the appellant never entered into their custody. We were informed during the course of the hearing that the appellant paid the \$5,000.00 fine imposed by the Magistrate's purported second sentence; and was no longer in the jurisdiction as he had traveled to Canada.
5. The appeal was fixed for hearing on 25 November 2020; but a Notice of Abandonment of appeal dated 20 November 2020 and signed by the appellant was received in the Court's Registry. The Notice states, inter alia:

**"I, Stanley Adam Pratt, having been convicted of the offence of Possession of Dangerous Drugs with the intent to supply in the Magistrate's Court #2 in the City of Freeport, Grand Bahama Island and having been desirous of and having appealed to the Court of Appeal herein against my conviction and sentence therein passed upon me, do hereby give you notice that I do not intend further to prosecute my appeal and I hereby abandon all further proceedings in regard to it as from the date of this notice."**

6. Although we have received a Notice of Abandonment, there is a matter that we must address that has been disclosed by the Magistrate's record, namely, the purported vacating of the prior sentence. However, we must first resolve the issue of whether this Court can act beyond the time a Notice of Abandonment has been received in our Registry.
7. Rule 52 of the Court of Appeal Rules ("the CA Rules") states:

**"52. (1) An appellant may, at any time before the hearing of his appeal or application for leave to appeal, abandon his appeal by giving notice of abandonment thereof in Form 14 in Appendix B to the Registrar, and upon such notice being given, the appeal shall be deemed to have been dismissed by the court.**

**(2) Upon receipt of notice of abandonment duly completed and signed or marked by the appellant or party authorised to sign notices under rule 37, the Registrar shall give notice thereof in Form 15 in Appendix B to the respondent, the prison authority, the proper officer of the court below and, in the case of an**

**appeal against conviction involving a sentence of death, in like manner give notice to the Attorney-General.**

**(3) The Registrar shall also return to the proper officer of the court below any original documents and exhibits received from him.”**

8. In **R v Medway** [1976] QB 779 the English Court of Criminal Appeal was faced with an appellant who had tried unsuccessfully to withdraw his abandonment of appeal notice. Having divided the history of the matters in which the issue arose into three stages, the Court looked at cases that fell within the period 1910 to 1932; and concluded, inter alia:

**"Since this stage ends in 1932 and we are not aware of any reported or transcribed judgments for the next 24 years, we can summarise the state of the authorities so far covered by concluding that the Court of Criminal Appeal had adopted the test of special circumstances of which misapprehension or mistake were illustrations (but not exhaustive categories), but that special circumstances could not be found where the applicant had made a deliberate decision to abandon."**

9. It appears that the posture adopted by the Court continued during the second stage it reviewed, 1957 to 1971. Two cases seem to have been treated differently, one of which was **R v Barnett** (unreported), October 16, 1967:

**"...The second such case is Reg. v Barnett (unreported), October 16, 1967. The court consisted of Edmund Davies L.J., Stephenson and James JJ. The application was based upon an improvement, since abandonment, in the applicant's mental and physical condition. In giving the court's judgment Stephenson J said:**

**'In the very exceptional circumstances of this case this court thinks it would be fair to treat the notice of abandonment as a nullity, it having been given for the medical reasons clearly set out (which this court accepts) in the solicitors' letter, and in the changed circumstances which now prevail the court gives the applicant quite exceptional indulgence, and we grant him leave to withdraw his notice of abandonment.'**

**Reg. v Barnett clearly raises the very question we have to decide."**

10. The last period was 1971 to 1976. The Court reviewed a number of cases including one considered an aberration, **R v Brown** (unreported), June 5, 1972. The Court said:

**"...in Reg. v Brown. Cairns LJ said:**

**'It is only in very unusual cases that this court will entertain an application to withdraw the abandonment of an appeal. There is no provision in the Criminal Appeal Act or in the rules made under it which authorises at all the withdrawal of a notice of abandonment. An abandonment is treated in almost all circumstances as being the end of the matter, and the application for leave to appeal is dead. But there are circumstances in which the court has been prepared to treat the abandonment as a nullity, and typical cases are where there has been some misapprehension of the applicant, some mistake of fact, any fraud or any bad advice from a legal adviser...' [Emphasis added]**

11. One of the rules under consideration in **Medway** was Rule 10(4) of the Criminal Appeal Rules 1968 which provided that where an appeal or an application for leave to appeal is abandoned, the appeal or application shall be treated as having been dismissed or refused by the court.
12. The Court held that the test of the jurisdiction to allow the withdrawal of a Notice of Abandonment is whether or not the abandonment can be treated as a nullity in the sense they had adverted to earlier in their judgment.
13. In **The State v Brahamanand Agam** (1978) 26 WIR 68, the appellant had been convicted of dangerous driving on his admission of guilt to that offence. He was sentenced to six months imprisonment and disqualified from driving for five years. He filed an appeal that same day. The next day he filed a Notice of Abandonment. Under Ord 3 r 19(2) of the Guyanese Court of Appeal Rules Cap 3:01, his appeal was deemed to have been dismissed by the court. Six days later he filed a motion to withdraw his Notice of Abandonment and to have his appeal reinstated.
14. The court understood Agam's reasons for reinstatement to be that he had been misled by fellow inmates who told him his sentence could be increased; and due to his belief that an application that he had made for bail had been refused. The Court of Appeal of Guyana refused the

application to restore the appeal. Haynes, C, speaking on behalf of the Court, concluded at page 74:

**"In our judgment in this case the applicant abandoned his appeal, regrettably, because of the advice given to him by other inmates of the prison. He weighed up the chances or prospect of success and concluded it was more advantageous to abandon it. We feel it would not be right to treat the notice of abandonment as a nullity on this ground. In all the circumstances therefore we do not think the applicant has made out a case of fraud or of mistake or that for any other compelling reason it would be just to give leave to withdraw the notice of abandonment and to re-instate his appeal. This appeal stood dismissed when the notice of abandonment was received in the Registry of this court on 10th February 1974 and it must remain legally and effectively dismissed." [Emphasis added]**

15. When regard is had to our rule 52 of the CA Rules, an appeal terminates once the appellant gives notice of abandonment to the Registrar. Thereafter, the Registrar is required to **"give notice thereof in Form 15 in Appendix B to the respondent, the prison authority, the proper officer of the court below ..."**. There is no need for the Court to pronounce the appeal dismissed, as that is the automatic result of the Registrar receiving a Notice of Abandonment. All that remains to be done is for the Registrar to carry out the duty to inform the parties of the result of the appeal using Form 15 found in Appendix B to the CA Rules.

### **The Effect of the Notice of Abandonment**

16. The appeal to this Court was against the decision of the Magistrate made on 12 July 2019. This means that the appeal against the sentence imposed by the Magistrate has ended in the failure of the appellant to have that sentence overturned; the ultimate result being that the sentence is extant, and the appellant remains subject to it.

### **Conclusion**

17. Absent an application to withdraw his Notice of Abandonment and plausible grounds proffered for the Court to exercise this exceptional jurisdiction to grant leave to withdraw it, the appellant is fixed by his prima facie deliberate decision to terminate all appeal proceedings against the 12 July 2019 sentence.
18. The appeal having been abandoned, the conviction for the offence of possession of dangerous drugs with intent to supply and the sentence and fine are left undisturbed.

19. It remains a matter for the State as to what course of action they will take in view of our decision, but if the utterances of Mr. Brathwaite during the hearing before us is any indication, namely that it would be unjust to impose the original sentence where the appellant has paid the \$5,000.00, implementation of the proper sentence is unlikely.
20. However, although not necessary for the determination of this appeal, we do not wish to conclude this judgment without reiterating our advice to magistrates, namely, that their jurisdiction to perform their functions are entirely statutory. Thus, they must conform to those statutes that touch and concern the cases before them. They ought also to be aware that once a magistrate has convicted and sentenced a defendant, the magistrate becomes *functus officio* and may no longer exercise jurisdiction over the defendant in the same case. Thus, it was not competent for the Magistrate to vacate his sentence. Any adjustment to the sentence he imposed can only be done on appeal or review of that sentence by a court of superior jurisdiction.
21. In the Jamaican case, **Beswick v R** [1987] 1 WLR 1346, an appeal arose out of a minor traffic offence. The essential facts (as taken from the headnote) are that Beswick:

**“... appeared before the judge of the traffic court, who was a resident magistrate assigned to the court.... [Beswick] pleaded not guilty and after hearing one of the prosecution witnesses the judge adjourned the case at the request of the defence to a later date. When the hearing resumed, she was on leave and another resident magistrate acting as traffic court judge... accepted the defendant's change of plea to guilty and imposed a fine of \$20, which the defendant paid. That judge later decided that he should not have accepted the plea of guilty, and he ordered the conviction and sentence to be vacated and the fine remitted. Subsequently, the defendant appeared before the original judge and she rejected his plea of *autrefois convict* holding that the previous conviction was a nullity. His trial continued and he was convicted and fined \$40. The Court of Appeal of Jamaica, upheld that conviction and sentence on the ground that a traffic court judge had no jurisdiction to continue a case already begun before another judge.”**

22. Beswick appealed to the Privy Council who addressed the issue of whether or not the first sentencing judge could properly vacate his conviction and sentence, and the Court determined, at pages 1350-51, that:

**"It follows that as Mr. Lopez had jurisdiction to accept the plea of guilty on 26 October 1984 the conviction he recorded and the sentence he passed were not a nullity. Once he had recorded the conviction and passed sentence Mr. Lopez had exhausted his jurisdiction to deal with the offence and was functus officio. His further order of 2 November was indeed made without jurisdiction and of no effect. The defendant was entitled to rely upon the plea of autrefois convict in respect of the conviction and sentence passed on 26 October when he appeared before Miss Francis on 6 March 1985."**

23. The decision of Adderley, JA in **Attorney General v Omar Chisholm** MCCrApp. No. 303 of 2014, at paragraph 19, buttresses the point. He stated:

**"19. Under section 7 of the Criminal Procedure Code Act a magistrate's court may pass any sentence authorized by law to be inflicted in respect of the offence for which it is imposed when that offence is tried by a magistrate's court. Once the sentence has been passed the magistrate becomes functus officio and that magistrate or any another (sic) magistrate is not authorized to pass sentence for the same offence (Webster)." [Emphasis added]**

24. In **The Commissioner of Police v Webster** MCCrApp. No. 288 of 2014, at paragraphs 9 and 10, Allen, P said:

**"9. Having heard Counsel on the point of jurisdiction, we are of the view that the magistrate had no power to resentence [Webster]. Indeed, having sentenced him on 28th July, 2014, the magistrate was functus officio, and could not lawfully review and vary the sentences previously imposed by him, nor could he grant any constitutional relief in respect thereof. The magistrate ought properly to have referred the matter either to the Supreme Court if constitutional relief was sought, or suggest an appeal to the Court of Appeal if a review of the sentence was sought."**

**10. Moreover, even if the mandatory minimum sentences were declared unconstitutional generally, the magistrate had no jurisdiction to resentence without the direction of a higher court..."**

25. In the future, magistrates should be aware of the limits of their jurisdiction; and govern themselves accordingly.

**Disposition**

26. Pursuant to rule 52 the appeal, having been abandoned, is dismissed.

---

**The Honourable Mr. Justice Isaacs, JA**

---

**The Honourable Sir Michael Barnett, P**

---

**The Honourable Mr. Justice Jones, JA**