IN THE SUPREME COURT OF BELIZE, A.D. 2013

(APPELLATE JURISDICTION)

APPEAL FROM THE INFERIOR COURT FOR THE CAYO JUDICIAL DISTRICT

Inferior Appeal No. 142 of 2012

BETWEEN:

(OSCAR HALLIDAY	**APPELLANT**
(	
(AND	
(	
(THE POLICE	**RESPONDENT**

BEFORE the Hon. Mr. Justice Adolph D. Lucas

Appearances: **The Appellant in person**

Ms. Kaysha T. Grant, Crown Counsel for the Respondent

JUDGMENT

[1] On 9 November 2012 the appellant was arraigned before the learned Chief Magistrate, in Belize City and on his own plea he was convicted for the following offences:

1. Assaulting a police officer;
2. Harm;
3. Driving a motor vehicle with alcohol concentration above

the prescribed limit;

4. Drove unlicensed motor vehicle;
5. Drove a motor vehicle not being the holder of a Belize Driving Licence.

[2] The record shows that the appellant was sentenced as follows:

1. One year imprisonment for assaulting a police officer.
2. For causing harm to the said police officer eighteen months imprisonment.
3. He was ordered to pay forthwith a fine of $250.00 for driving with alcohol concentration above the prescribed limit; in default of payment three months imprisonment.
4. For driving an unlicensed motor vehicle he was fined $250.00 to be paid forthwith; in default of payment three months imprisonment.
5. A fine of $125.00 was imposed on the appellant for the offence of driving a motor vehicle not being the holder of a Belize Driving Licence.

[3] Mr. Bryan A. Neal was the Attorney-at-Law of the appellant; but Mr. Neal withdrew his legal service before the hearing of the appeal. The appellant was granted a further adjournment in order to get another Attorney-at-Law. On the next adjournment date, 6 December 2013, the appellant informed me that he would make submissions on his behalf.

[4] The appellant experienced problems in making his submission pertinent to the grounds of appeal. On the face of the record of proceeding procedural flaws were apparent. Instead, I requested the learned Crown Counsel Ms. Kaysha Grant to begin her presentation on behalf of the respondent, which she respectfully accepted and she gracefully made her submission indeed as a minister of justice would have done.

[5] On receipt of the Notes of Evidence and other relevant documents I observed that the facts of the case were absent from the bundle of documents. Consequently, I caused the Deputy Registrar (Appeals) to retrieve the facts presented by the prosecutor to the learned Chief Magistrate. I later received a one page document purported to be the facts; but in fact it was a summary of the incident. So there were no facts of the case submitted for my perusal.

[6] I also noted the absence of inquiry from the appellant whether he accepted whatever facts were supplied in court.

[7] The learned Crown Counsel agreed with my observation that the "facts" presented were not adequate to cover the elements of each charge.

[8] It is the duty of a magistrate to record adequate facts which supports each of the elements of the charge or charges to which a defendant has pleaded guilty. This duty is sanctioned by section 44(5) of the Summary Jurisdiction (Procedure) Act, Chapter 99 of the Substantive Laws of Belize, Revised Edition 2000. It provides:

"The magistrate shall in every case take notes in writing of the evidence, or of so much thereof as is material, in a book to be kept for that purpose, and that book shall be signed by the magistrate at the conclusion of each day's proceeding."

[9] The term evidence stated above is not confined to a full trial. In **Canterbury v Joseph (Police Constable) (1963) 6 W.I.R. 205**, a case from British Guiana, now Guyana, reveals that Guyana section 27(5) of their Summary Procedure Ordinance is identical to our section 44(5) above. Crane J provided a very useful explanation of the subsection. At page 206 the learned Justice said:

"*It is important to observe that a magistrate must take evidence in every case, that is to say, whether the case is fought out or not. Evidence means evidence which is sworn or unsworn, and includes facts narrated by the prosecutor and the statement of a defendant on a plea of guilty. This duty cannot be whittled down by fact that the defendant has pleaded guilty to the charge."*

[10] In terms of the requirement for the trial magistrate to make enquiry of a defendant whether or not he accepts the facts, the learned judge quoted section 27(3) which is similar to our section 44(2) of Chapter 99 supra and continued at page 206 (I):

"The combined effect of these two subsections is that on the recording of a plea of guilty, the defendant should be asked by the magistrate for his reply to the facts stated by the prosecution as recorded by the magistrate and

such reply also recorded. The position is somewhat similar to the allocutus on indictment when the prisoner is asked to say why the court should not proceed to pass judgment against him. In our view, just as failure to put the allocutus invalidates the sentence on indictment...the failure of the magistrate to ask the defendant to show cause why an order should not be made against him and to record what was said, or if nothing was said that such was the case, invalidated the sentence."

[11] In light of the shortcomings in the procedure adopted in the proceeding, I allow the appeal with directions that the appellant be allowed to plead over before another magistrate who will hear and determine the case and make the necessary orders as justice of the case demands.

[12] The appellant is **ordered** to appear before the Chief Magistrate on Tuesday, 28 January 2014 for her to inform the appellant of his next appearance date before another magistrate in Belize City.

Dated: **15th** day of **January 2014**

(ADOLPH D. LUCAS)
Justice of the Supreme Court