

IN THE SUPREME COURT OF BELIZE A.D. 2019

INFERIOR APPEAL NO. 24 of 2017

MARIBEL MANZANERO

APPELLANT

AND

CASHELMARA KELLY W.P.C. #1291

RESPONDENT

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2019

15th May

Written Submissions

Appellant – 10th May

Respondent – 8th May

Decision

15th May, 2019

Ms. Matura for the Appellant.

Ms. Sherigne Rodriguez for the Respondent.

Keywords: Inferior Court Appeal – Criminal Offence – Magistrates Jurisdiction – Disciplinary Proceedings – Military Law – Concurrent Jurisdictions – Belize National Coast Guard Service Act Cap. 131.01 (the Act)

DECISION

1. The appellant was charged and convicted for the offence of harm against Susely Valdez. Both Ms. Valdez and Ms. Manzanero were members of the Belize Coast guard and the altercation took place at the Coast Guard

Headquarters. Counsel for the Appellant raised in the Court below that the Magistrate had no jurisdiction to hear the matter as the specific disciplinary procedure outlined in the Act was applicable. Having heard submissions the Learned Chief Magistrate overruled the objection and trial proceeded.

2. The first ground of the appeal lodged by Ms. Manzanero was bifurcated for trial. It states:

“That the inferior court has no jurisdiction in the matter as argued before the magistrate, as the alleged incident was a matter to be dealt with administratively by the Commandant who failed to carry out his administrative role and instead assisted otherwise.”

Consideration:

3. This Court finds no merit in this ground of appeal. Counsel for the Respondent directed the Court’s attention to section 3 of the Constitution which guarantees all persons equal protection of the law. More specifically section 6(10): *“nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of–*

(c) subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.”

4. Further, section 39(1) of the Sixth Schedule (Regulation 98) plainly states “The Commandant may institute disciplinary proceedings against any member whose conduct is the subject of:

- (a) criminal charge;
- (b) an investigation by the police
- (c) criminal proceedings in any court.

5. Regulation 40 continues:

“A member who is acquitted of a criminal charge in any court is not precluded from having proceedings instituted against him under these Regulations in respect of an alleged act of misconduct arising out of that criminal charge.”

6. This Court could find nothing in the Act, its Regulations or otherwise which allows for disciplinary proceedings to be taken under the Act exclusively for a crime which violates both the Act and civilian law. It is accepted that on becoming a member of the Coast Guard you immediately become subject to the disciplinary control and procedures outlined in the constitution and the Act. These are intended to preserve and enforce the good order and discipline necessary to ensure operational effectiveness. Regulation 91 (2) makes it clear that the Commandant has the jurisdiction to hear and determine all **disciplinary charges** against any member in respect of the offences against discipline.

7. The Act must certainly confer jurisdiction for the military specific crimes prescribed therein. However, from the sections referred to above there seems to be the acceptance of concurrent jurisdictions for those crimes which straddle both. It appears to me that conduct which may amount to both an offence against discipline under the Act and a criminal offence under civilian law is subject to both jurisdictions. The military jurisdiction is engaged when a disciplinary charge is laid pursuant to the Act but a disciplinary hearing is not a court of law. It is an administrative process under the authority of the Commandant. The applicable standard of proof is on a balance of probability and not beyond a reasonable doubt, as it is for the criminal courts. There are no guidelines for the applicability of either system. If, therefore, a victim who is also a member of the Coast guard

chooses to make a criminal complaint under the civilian system, he remains free to do so and is not bound to making a complaint under the Act.

8. In the case before this court there is no evidence of a charge having been laid to initiate the disciplinary proceedings. Furthermore, I am uncertain on what premise the Appellant grounds her assertion that the Commandant ought to have initiated disciplinary proceedings, how a failure to do this amounts to a violation of Ms. Manzanero's right to due process and furthermore how it affects the jurisdiction of the Inferior Court to hear the matter. Counsel for the Appellant sought to rely on judicial review cases which are of no assistance here. She also refers to Regulation 93 (1) and (4) under Regulation 98 which states:

"93 (1) If a member feels himself wronged in any matter by any officer other than his Commanding Officer or by any member, he may make a complaint with respect to that matter to his Commanding Officer.

(2) ...

(3) ...

(4) On receipt of any complaint the Commission or the Commanding Officer shall, as the case may be, under this regulation investigate and to take any steps for redressing the matter complained which appears to the Commission or him, as the case may be, to be necessary."

9. This really does not further her argument. The onus is placed there on the wronged member to lodge the complaint and the Commission or the Commanding officer is then mandated to investigate and address as they deem necessary. This in no way excludes the jurisdiction of the general civilian court.

10. Counsel then refers to Rule 33(1) and (3) which provides that:

"(1) In every case where it appears to the Commandant that the offence the accused has committed cannot be adequately punished with any of the punishments provided in sub regulation 96(2) he may order that the accused be taken before a Magistrate to be dealt with as provided in sub-regulation 3.

(2).....

(3) where an accused person is taken before a Magistrate under this section he shall be liable on summary conviction for an offence mentioned in sub-regulation 95(1) to a fine not exceeding three months' pay or to imprisonment for a term not exceeding six months, or to both such fine and term of imprisonment.:"

11. This she says empowers the Magistrate to act only when the procedures in the Act had been followed. She has confused two very distinct procedures. The Magistrate as a creature of statute is empowered to hear certain criminal charges against civilians under a completely different piece of legislation. Her ability to assist disciplinary proceedings under the Act is not in any way related to nor can it circumscribe her general jurisdiction to hear criminal charges properly laid.

12. For these reasons this ground of appeal fails.
Directions shall now be given for the expeditious conclusion of the remainder of this appeal.

**SONYA YOUNG
SUPREME COURT JUDGE**