

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN.

AMBERT DILLON SMITH V. REGINA

Mr. Furniss for the Appellant.
Ms. Escalante for the Crown.

J U D G M E N T

Ambert Dillon Smith (Appellant) was convicted by the Summary Court on his own plea of 'guilty' to three charges namely;

- (1) Remaining in the Cayman Islands without authorisation, contrary to section 56 (1) (c) of the Caymanian Protection Law;
- (2) Using an irregular passport, contrary to section 74 (1) of the Caymanian Protection Law; and
- (3) Making a false statement, contrary to section 74 (1) (a) of the Caymanian Protection Law.

The brief facts are that on the 28th December, 1988 at about 5 p.m. the appellant was attempting to leave Cayman to go to his home in Jamaica through the Owen Roberts International Airport. He presented a passport to an immigration officer which was in the name of his brother Philmore Valentino Smith. It transpires that the appellant had changed the photograph in the passport from that of his brother to his own. The appellant had come to Cayman after the hurricane to earn a little money and on arrival at the Airport had presented his brother's passport. He made out the relevant document on entry in the name of his brother and thus we have the third count of making a false statement. The appellant was granted up to the 28th of September, 1988, to remain in Cayman and had overstayed by some three months.

The sentences imposed were a three hundred dollar (\$300)

fine or 1 months imprisonment in default of payment on the first count, a five hundred dollar (\$500) fine or 1 month imprisonment in default of payment on the second count and on the third count an immediate sentence of three months imprisonment. He was also recommended for deportation. It is against those sentences that the appellant now appeals and indeed before me argument was restricted to the third count on which the appellant was sentenced to an immediate term of three months imprisonment. I have been urged to suspend the remaining portion of that sentence.

In the circumstance of these offences I am unable to say that the sentences imposed were other than legal and appropriate. As the learned Magistrate rightly pointed out the offences were deliberate and calculated. The appeal is accordingly dismissed.

One matter concerns me. The appellant was taken into custody at 5 p.m. on Wednesday the 28th of December, 1988 yet he did not appear before a magistrate until the 3rd January, 1989. The courts, and indeed the arresting and prosecuting authorities, must always be alert to the provisions of section 34 of the Police Law subsections (1) and (2) of which read:

'34 1. When any person has been taken into custody without a warrant for an offence other than an offence punishable by death, the officer in charge of the Police Station or other place for the reception of arrested persons to which such person is brought shall at once enquire into the case, and if, when the enquiry is completed, there is no sufficient reason to believe that the person has committed any offence such person shall be released forthwith.

2. If upon such enquiry there is reason to believe that the person arrested has committed an offence and, if the offence does not appear to be one of a serious nature, such officer being of the rank of sergeant or above, may, and shall if it does not appear practicable to bring such person before a magistrate within twenty-four hours after he has been taken custody, released the person on his executing a bond, with or without sureties for a reasonable amount, to appear before a magistrate's court at a

time and place mentioned therein."

I am told that between his arrest and his appearance before the learned Magistrate the appellant was in fact brought to court but that he was taken back into the custody either of the Immigration authority or of the Police because of some administrative problem. Of course administrative considerations must never override strict compliance with the law. It is a matter of serious concern that the appellant was held for some five days without being taken before a magistrate.

For the avoidance of doubt I order that the three months imprisonment on the third count shall take effect from the day of the appellant's arrest i.e. the 28th December, 1988.



D. Schofield
Judge

25th January, 1989