

COURT OF APPEAL

12,

22nd January, 1990

Before: J.M. Chadwick, Esq., Q.C., (President)
R.D. Harman, Esq., Q.C., and
A.C. Hamilton, Esq., Q.C.

Attorney General

- v -

Derek George Foster

Preliminary point: right of
appeal, following a change of
plea to guilty in the
Court of Trial.

The Solicitor General
Advocate R.G. Day for the Appellant.

JUDGMENT

HARMAN, J.A: This is a preliminary point: whether there is a right of appeal against conviction following a change of plea to guilty in the course of a trial.

This appellant was indicted with fraud contrary to the common law of Jersey and he pleaded not guilty. His trial took place between the 7th and 30th November, 1988, on which day he was remanded for sentence to the

22nd December. On that occasion he was fined £45,000 and ordered to pay £5,000 costs.

The trial had begun, after arraignment and the Jury having been empanelled, with a plea in Bar. Advocate Day advanced a number of submissions and contended, inter alia, that the alleged offence is unknown to the modern law of Jersey, which is indeed the principal ground of appeal now sought to be advanced.

This submission was over-ruled (the Bailiff delivered a reserved judgment in the event on the 20th February, 1989) and the trial proceeded. Not surprisingly perhaps no further submission was made at the close of the prosecution case.

On the 30th November, 1988, while in the course of cross-examination the appellant changed his plea to guilty on the advice of his counsel. The Bailiff directed the Foreman of the Jury to return a verdict of guilty. The appellant was thus convicted by the Jury on his own confession in the course of a trial.

The law as to right of appeal is contained in Article 24 of the Court of Appeal (Jersey) Law, 1961 and the determination of appeals, in ordinary cases, by Article 25. It is common ground that Jersey law closely follows sections 3 and 4 of the Criminal Appeal Act (1907) and has remained unaltered since the Criminal Appeal Act of 1968 came into force in England.

We have been referred in written submissions to a number of cases including AG -v- Fossey (1982) JJ 223 in the Court of Appeal of Jersey (Superior Number) which for reasons set out in the Solicitor General's written submissions to this Court is necessarily of limited relevance, although the report contains this passage:

"As regards the application for leave to appeal against conviction the court adopted the principle set out in Archbold (41st edition) paragraph 4-58 that where the applicant has pleaded guilty the Court of Appeal will only entertain an appeal against conviction if it appears 1) that the appellant did not appreciate the nature of the charge, or

did not intend to admit that he was guilty of it; or 2) that upon the admitted facts he could not in law have been convicted of the offence charged".

It has been pointed out to us that at this time the relevant English statute was the Criminal Appeal Act (1968) which had replaced the Criminal Appeal Act of 1907.

We have also been referred to a number of English cases including R -v- Forde (1924) 17 Cr. App. R. 99, where Avery, J., adopted the principle set out in Archbold.

It is clear, in our opinion, that a plea of guilty is no automatic bar to an appeal against conviction. It is true as the Solicitor General has pointed out that there is no reference in Article 24 or Section 3 of the 1907 Act to there being such a right of appeal following a plea of guilty. Nevertheless, there is provision for a right of appeal to (and I quote) "a person convicted on indictment" against (again I quote) "his conviction".

This appellant was convicted by the Jury's verdict. It is therefore not necessary to consider further the case of R -v- Vickers (1975) 1 WLR 811 C.A., and the judgment of Scarman, L.J., at p.814. In that case it was nevertheless held that although the proceedings in which the judge's ruling was given were not part of the appellant's trial, nevertheless the judgment at the court of trial was his conviction entered on the plea of guilty, grounded on the ruling, and therefore the court was required to allow the appeal if the ruling was wrong in law.

It is further argued before this Court and pointed out by the Solicitor General that if Article 24 is to be read as a person convicted except on his own plea of guilty, which is not what it says, then an accused who pleads guilty is also deprived of any right to appeal against sentence under sub-paragraph (c), and also that different answers are achieved by inserting the additional words at different points of the Article where the word "conviction" appears.

We have considered in particular the judgment of Salmon, L.J., DPP -v- Shannon (1974) 3 WLR 155; (1974) 2 All ER 1009 at page 1049; and also the case of R -v- Whitehouse (1977) 2 WLR 925. We have also had the benefit of reading the case of Boyle -v- H.M. Advocate (1976) JC 33. As at 1976 in Scotland the determination of appeals was governed by Section 254 of the Criminal Procedure (Scotland) Act 1975 which follows very closely Article 25 of the Court of Appeal (Jersey) Law, 1961 in its wording. In that case, and I read from the headnote, John Boyle confessed and subsequently pled guilty to a crime he later alleged he did not commit. In his application for an extension of time to lodge an application for leave to appeal against conviction, the question arose whether it was competent for the Court to entertain an appeal against conviction where a plea of guilty had been entered from an accused acting with legal advice. It was held that the words in Section 254, sub-section 1(c) "on any ground", which also appear in Article 25 of the Court of Appeal (Jersey) Law, 1961, were of such width as to not prevent the Court giving a relief.

In short we are satisfied that it is open to this appellant as a person convicted to pursue his appeal and that this Court would be entitled, if it saw fit in such circumstances, to exercise its powers under Article 25.

Authorities

Court of Appeal (Jersey) Law, 1961, Articles 24 and 25.

Archbold (41st edition): Chapter 7, para 10: Appeal against conviction;
(a) After guilty plea.

Chapter 4, para 58: Effect of plea of guilty.

R -v- Vickers (1975) 1 WLR 812 CA.

Loi (1846) Réglant la Procédure Criminelle.

AG -v- Fossey (1982) JJ 223.

The Criminal Appeal Act, 1907.

The Criminal Appeal Act, 1968.

R -v- Forde (1924) 17 Cr. App. R. 99.

R -v- Rollafson (1969) 53 Cr. App. R. 389.

R -v- Casbolt (1869) 21 LT 263.

R -v- Inns (1975) 60 Cr. App. R 231.

Queen -v- Clark Law Rep 1 CCR 54.

R -v- Brown (1889) 24 QBD 357.

DPP -v- Shannon (1974) 3 WLR 155; (1974) 2 All ER 1009.

Alexander (1912) 7 Cr. App. R. 110.

R -v- Whitehouse (1977) 2 WLR 925.

Boyle -v- H.M. Advocate (1976) J.C. 33.

Criminal Procedure (Scotland) Act, 1975, S.254.