[2020] JMCA Crim 5

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CRIMINAL APPEAL NO COA2019PCCR00010

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE SIMMONS JA

VIN TALBOTT v R

Keith Bishop and Andrew Graham instructed by Bishop & Partners for the appellant

Miss Paula Llewellyn QC, Director of Public Prosecutions and Miss Syleen O'Gilvie for the Crown

10 February, 4 and 12 March 2020

BROOKS JA

[1] On 19 August 2014, Mr Vin Talbott pleaded guilty in the Resident Magistrates' Court for the Corporate Area (as the court was then named), to an indictment, containing 10 counts, charging him with embezzlement of sums totalling $1,288,400.00. On the occasion that he pleaded guilty, he repaid, in court, the sum of $100,000.00 to his employer T Geddes Grant Distributors Limited (the company). That date was his second appearance before the court. The case was thereafter set for mention on several occasions to allow him the opportunity to pay the balance of the sum stolen, but he paid no further sums.

[2] On 17 December 2014, the learned Resident Magistrate sentenced Mr Talbott to 18 months' imprisonment in respect of each count. She ordered that the sentences run concurrently.

[3] Mr Talbott promptly filed a notice of appeal. Curiously, he has not only contended that the sentences imposed by the learned Resident Magistrate were manifestly excessive, but has also appealed against his conviction. The thrust of his appeal against the conviction is that he was not provided with the statements and other disclosure, which the prosecution is usually required to provide, and he was not afforded the benefit of counsel to represent him. He was granted bail pending the hearing of this appeal.

[4] The facts that were outlined to the court below, in support of the convictions, as gleaned from the learned Resident Magistrate's reasons for judgment, were that:

a. Mr Talbott was employed to the company as a sales contractor;

b. he collected payments amounting to $1,288,400.00 from various customers of the company, but failed to pay over the sums to the company;

c. he was confronted with the misappropriation and he:

    i. confessed that he had used the company's money for his own purposes; and

    ii. asked for time to repay;

d. he did not make good on his promises to repay.

The appeal against conviction

[5] Mr Talbott's complaint about the conviction is that the procedure leading to his conviction and sentence was unfair. Mr Graham, on his behalf, submitted that the learned Resident Magistrate erred in accepting a guilty plea from Mr Talbott, when she did. Learned counsel argued that the learned Resident Magistrate first ought to have ensured that Mr Talbott had been provided with all the relevant documents and statements before she accepted his plea of guilt. Learned counsel argued that the learned Resident Magistrate also erred in failing to inform Mr Talbott of his right to obtain legal advice, by counsel of his choice, or by legal aid, if he was unable to afford privately retained counsel.

[6] Learned counsel argued that the correct and fair procedure would have been for the learned Resident Magistrate to ensure that Mr Talbott was so equipped and informed before accepting his plea. Mr Graham contended that, although it was not the law at the time, the procedure set out in section 2 of the Criminal Justice (Administration) (Amendment) Act, is the appropriate standard for all courts to apply in relation to the issue of disclosure.

[7] We are not in agreement with Mr Graham on this submission for three reasons. Firstly, there is no requirement that an accused person be provided with full disclosure before being pleaded. The authorities suggest that when an accused is pleaded he or she is aware of details of the offence and enters a plea voluntarily, indicating his

culpability or absence thereof. If the accused is unsure of the nature of the charge, it will be explained to him or her. Where the accused indicates any doubt, or suggests an explanation that suggests that the accused does not consider himself or herself guilty of the offence, the Resident Magistrate (now Parish Court Judge) will order that a plea of not guilty be entered against the charge.

[8] In **Peter Coleman v R** (1994) 31 JLR 347, Mr Coleman was charged with possession of ganja. He pleaded guilty before the Resident Magistrate, despite the fact that a forensic report had not yet been produced identifying the vegetable matter. This court held that the plea was validly accepted. The reasoning behind the decision is that Mr Coleman would have known what he had in his possession. Carey JA's lucid judgment is relevant to Mr Talbott's complaints. The learned judge of appeal said, in part, at page 348:

> "[Counsel for Mr Coleman] endeavoured to argue that the learned Resident Magistrate fell into error in accepting the plea of guilty without first obtaining from a chemist certification that the substance for which the appellant was charged was in fact ganja.
>
> We wish to say that there is absolutely no merit in that ground. **The best person to know what he has is the appellant. From the outset he admitted he had ganja. Where a defendant pleads guilty, there is no obligation on the prosecution to prove anything.** There was a prima facie case on the facts recounted by the Clerk of the Courts to the Resident Magistrate.
>
> It was also argued by [counsel] that the appellant 'fell into error' when he pleaded guilty to charges he never understood.

> This is absolutely without substance. The appellant could not have understood by any of the charges which were read to him as framed that he was being asked to plead that he was in a motor car with ganja." (Emphasis supplied)

Although that case was not triable on indictment, the principles outlined by Carey JA are relevant to the present case. (This position was also affirmed in the more recent decision of **Marc Wilson v R** [2014] JMCA Crim 41 at paragraphs [30] and [31].)

[9] In similar manner, the facts of the case that the prosecution outlined to the learned Resident Magistrate, not only showed a *prima facie* case, but also a consistency between Mr Talbott's confession to his company, that he had stolen its money, and his guilty plea. It showed that he had collected the money on behalf of the company, failed to turn it over, and converted it to his own use. That is the essence of the charge of embezzlement. Mr Talbott confessed to the offences before he was charged. The learned Resident Magistrate, without more, would have had no reason to be hesitant about accepting his guilty plea.

[10] Section 2 of the Criminal Justice (Administration) (Amendment) Act 2015 does not assist Mr Graham's submissions. The section defines the term "first relevant date" for the purpose of the entry of a guilty plea, but does not require disclosure before a plea is entered. A fair reading of the relevant definition of the term suggests that a not-guilty plea, on any occasion prior to the provision of adequate disclosure, would not deprive a defendant of the benefit of the level of discount afforded on a guilty plea, on the first occasion after adequate disclosure. The definition is outlined below:

> "'first relevant date' means the first date on which a defendant–
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> (a) who is represented by an attorney-at-law; or
>
> (b) who elects not to be represented by an attorney-at-law,
>
> is brought before the Court after the Judge or Resident Magistrate is satisfied that the prosecution has made adequate disclosure to the defendant of the case against him in respect of the charge for which the defendant is before the Court."

[11] Section 2 goes on to give effect to the definition cited above. It amends the principal Act by inserting the following, as part of section 42D:

> "(1) Subject to the provisions of this Part, where a defendant pleads guilty to an offence with which he has been charged, the Court may, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant, had the defendant been tried and convicted of the offence.
>
> (2) Pursuant to subsection (1), the Court may reduce the sentence that it would otherwise have imposed on the defendant in the following manner–
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> (a) where the defendant indicates to the Court, on the first relevant date, that he wishes to plead guilty to the offence, the sentence may be reduced by up to fifty *per cent*;
>
> (b) where the defendant indicates to the Court, after the first relevant date but before the trial commences, that he wishes to plead guilty to the offence, the sentence may be reduced by up to thirty-five *per cent*..."

[12] The second reason for disagreeing with Mr Graham is that there is no suggestion that Mr Talbott did not understand the nature of the offence for which he was being charged. There is no such indication on the record of proceedings, and there is no suggestion by Mr Talbott to that effect.

[13] Thirdly, and for the same reason just explained, there is no suggestion that Mr Talbott indicated any need for legal counsel in order to enter a plea. Had he pleaded not guilty to the offence, the issue of legal representation would have arisen. It would not have automatically arisen. It is true, that there is a benefit to having legal representation in order to secure the best outcome on sentence. It is also true that not being afforded an opportunity to obtain legal counsel may result in a denial of the right to a fair hearing (see paragraph [30] of **Beres Douglas v R** [2015] JMCA Crim 20). A defendant, however, has no absolute right to legal representation. Additionally, the Legal Aid Act, on the face of it, does not qualify a person in Mr Talbott's position, to representation under its aegis. Section 15 is the relevant section of that Act. It states, in part:

> "15.-(1) Legal aid may be granted to-
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> (a) any person who is detained at a police station or in a lock up, correctional institution or other similar place; or
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> (b) an accused in respect of the conduct of plea negotiations under section 4 of the Criminal Justice (Plea Negotiations and Agreements) Act, 2005,

in accordance with such regulations as may be prescribed establishing a scheme for the provision of legal aid in such circumstances.

(2) Where–

(a) an application for legal aid is made by or on behalf of a person in relation to an offence (other than an excepted offence); and

(b) it appears to the certifying authority [which includes a Resident Magistrate before whom the defendant appears], on an assessment made under section 19 [which is an enquiry of the applicant's means], that the person's means are insufficient to enable him to obtain legal services,

the certifying authority may grant to that person a legal aid certificate as described in subsection (3).

(3) The legal aid certificate referred to in subsection (2) shall-

(a) entitle the person to whom it is granted to such legal aid as may be specified therein for the preparation and conduct of his defence in the appropriate proceedings or in such of those proceedings as are specified in that certificate; and

(b) ...

(4) In subsection (3) 'appropriate proceedings' means-

(a) in respect of a legal aid certificate granted by a Resident Magistrate, committal proceedings, a trial or any appeal from conviction in a court below;

(b) …

(c) …

> (d) in respect of a legal aid certificate granted by any certifying authority, any proceedings preliminary or incidental to the proceedings mentioned in paragraphs (a) to (c), including plea negotiations and bail proceedings."

Section 4 of the Criminal Justice (Plea Negotiations and Agreements) Act, 2005, mentioned in that extract, refers to plea negotiations, which include the Director of Public Prosecutions. It does not apply to Mr Talbott's situation.

[14] In the circumstances, there is no unfairness associated with Mr Talbott's conviction.

The appeal against sentence

[15] Mr Graham made three main complaints in respect of the sentencing process, which the learned Resident Magistrate used in respect of Mr Talbott. He argued, firstly, that the learned Resident Magistrate ought not to have sentenced Mr Talbott without first having obtained a social enquiry report. Secondly, learned counsel argued, the learned Resident Magistrate did not apply the principle that a custodial sentence should be the sentence of last resort. Accordingly, Mr Graham submitted, the sentence imposed was inappropriate for Mr Talbott and manifestly excessive in the circumstances. Lastly, Mr Graham submitted that the learned Resident Magistrate did not apply the, now standard, procedure of imposing sentence.

[16] In support of his submissions, learned counsel referred to the fact that, having achieved the age of 49 years, the offence was Mr Talbott's first breach of the criminal law. He also relied on section 3 of the Criminal Justice (Reform) Act, the Sentencing

Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts (the sentencing guidelines), and two decisions of this court, namely **Marc Wilson v R** [2014] JMCA Crim 41 and **Clayton Smith v R** [2017] JMCA Crim 7.

[17] Miss O'Gilvie, for the Crown, submitted that the learned Resident Magistrate made no error in her approach to sentencing. Learned counsel submitted that the learned Resident Magistrate addressed all the issues both in favour of and against Mr Talbott insofar as the matter of sentence is concerned. The learned Resident Magistrate, learned counsel submitted, also explained her reasons for stating that a non-custodial sentence was not appropriate. Miss O'Gilvie also submitted that the authorities suggest that there was no obligation for the learned Resident Magistrate to have obtained a social enquiry report.

[18] Learned counsel, in support of her submissions, relied on the cases of **Michael Evans v R** [2015] JMCA Crim 33 and **Sylburn Lewis v R** [2016] JMCA Crim 30.

[19] In considering these submissions it is important to note that in an appeal against sentence, an appellate court must bear in mind that it is not at liberty to set aside the sentence simply on the basis that it would have imposed a different sentence itself. The appellate court may only disturb the sentence if it is demonstrated that the learned sentencing judge erred in principle in imposing sentence and that error resulted in a sentence that is manifestly excessive or that the sentence is manifestly excessive as being unreasonably out of step with other sentences for that offence. The rationale for that principle is that the sentencing judge, having seen the attitude of the offender and,

in some cases, the victim of the offence, has an advantage over the appellate court (see **R v Ball** (1951) 35 Cr App R 164, cited in **Clayton Smith v R**, at paragraph [18]).

[20] Miss O'Gilvie is generally correct in her assessment of the learned Resident Magistrate's approach. Although the now established principles involved in sentencing (as formalised in **Meisha Clement v R** [2016] JMCA Crim 26 and the sentencing guidelines), had not yet been succinctly set out as they now are, it is plain that the learned Resident Magistrate did follow a structured approach to the sentencing. That approach did not deviate greatly from that which is now formalised.

[21] The learned Resident Magistrate, in imposing the sentence that she did, took into account a number of factors. The aggravating factors are:

a. the amount of the loss;

b. the value of the loss to the company; and

c. Mr Talbott's uncooperative attitude toward any further repayment of the money that he stole.

[22] Those that she considered favourable to Mr Talbott were:

a. his age;

b. this was his first offence;

b. the guilty plea; and

c. the repayment of some of the money.

[23] The learned Resident Magistrate also explained her reason for rejecting a non-custodial sentence. She said:

> "The court, despite these mitigating factors felt that the conduct of [Mr Talbott] in the face of the court demonstrates that he felt that he should receive no punishment for this offence and the amount of money involved together with his lack of remorse required custodial punishment."

[24] Mr Graham is therefore not correct in saying that the learned Resident Magistrate failed to give a reason for imposing a custodial sentence. In that regard, she was faithful to that requirement in section 3(3) of the Criminal Justice (Reform) Act. The section states, in part:

> "3. -(1) Subject to the provisions of subsection (2), where a person who has attained the age of eighteen years is convicted in any court for any offence, the court, instead of sentencing such person to imprisonment, shall deal with him in any other manner prescribed by law.
>
> (2) The provisions of subsection (1) shall not apply where-
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> (a) the court is of the opinion that no other method of dealing with the offender is appropriate; or
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> …
>
> (3) **Where a court is of opinion that no other method of dealing with an offender mentioned in subsection (1) is appropriate, and passes a sentence of imprisonment on the offender, the court shall state the reason for so doing**; and for the purpose of determining whether any other method of dealing with any such person is appropriate the court shall take into account the nature of the offence and shall obtain and consider information relating to the character, home surroundings

and physical and mental condition of the offender." (Emphasis supplied)

[25] In considering the sanction imposed by the statute for these offences, it is to be noted that section 22 of the Larceny Act stipulates a maximum sentence of 10 years for the offence of embezzlement. The learned Resident Magistrate, however, was only entitled to impose a maximum custodial sentence of three years imprisonment for that offence (see section 268(2) of the Judicature (Resident Magistrates) Act, as the legislation was then entitled). It is also to be considered that section 60 of the Larceny Act allows for the imposition of a sentence of a fine, instead of, or in addition to, a custodial sentence, for this offence. The section states, in part:

> "(3) On conviction of a felony or misdemeanour punishable under this Act, the court, instead of or in addition to any other punishment which may lawfully be imposed for the offence-
>
> (a) may fine the offender; or
>
> (b) may require the offender to enter into his own recognizances, with or without sureties, for keeping the peace and being of good behaviour:
>
> …"

[26] Miss O'Gilvie helpfully cited the case of **Patricia Scotland v R** [2014] JMCA Crim 45, which provided some guidance as to an appropriate sentence. Ms Scotland was charged with 12 counts of embezzlement. She was convicted on all the counts. Sums totalling over $2,300,000.00 were involved. After failing to avail herself of the opportunity to make restitution, the Resident Magistrate, before whom she was tried,

sentenced Ms Scotland to 18 months' imprisonment on each of three of the counts, which were to run concurrently. She was admonished and discharged in respect of the other nine counts. This court did not disturb any of the sentences, but did not carry out any close examination of them.

[27] Without more, therefore, given the nature of the offence and the amount of money involved in the present case, a sentence of 18 months' imprisonment, would be appropriate for Mr Talbott.

[28] Two points may be made, however, in respect of the learned Resident Magistrate having deviated from the established procedure. Firstly, in reviewing the learned Resident Magistrate's sentencing of Mr Talbott, it cannot be ignored that her notes of the proceedings before her, including the prosecution's outline of its case against Mr Talbott, were not included in the record. The inclusion of that material in the record is a requirement. This was explained by F Williams JA in **Clayton Smith v R**. The learned judge of appeal gave sage advice to parish judges at paragraph [25]:

> "Parish Judges are being reminded once again of their duty to take notes of the sentencing process, whether in the case of a plea of guilty or sentencing after a trial. The importance of this duty where a plea of guilty has been entered has been underscored in several authorities from this court beginning with the case of **R v Cecil Green** (1965) 9 JLR 254, per Duffus P; and with several reminders thereafter, including that given in the case of **Marc Wilson v R** [2014] JMCA Crim 41, per McDonald-Bishop JA. So that, while the reasons for sentencing that are now being produced are always helpful, notes of the process (which, as the authorities show, it is incumbent on Parish Judges to provide), would shed more light on matters such as

> mitigation; the fairness of the process itself and would assist us greatly in reviewing sentences."

[29] Secondly, the learned Resident Magistrate did not order a social enquiry report in respect of Mr Talbott. She was, however, not obliged to do so, if the information required by section 3(3) of the Criminal Justice (Reform) Act, is otherwise available.

[30] In **Michael Evans v R**, this court gave guidance concerning the obtaining of social enquiry reports. McDonald-Bishop JA in giving the judgment of the court in that case, stated, in part, the importance of obtaining the information that a social enquiry report can provide. The learned judge of appeal also pointed to learning that showed that the failure to secure a social enquiry report will not necessarily be fatal to the sentencing exercise. She said at paragraph [9]:

> "We do recognize the utility of social enquiry reports in sentencing and cannot downplay their importance to the process. Indeed, obtaining a social enquiry report before sentencing an offender is accepted as being a good sentencing practice. John Sprack in A Practical Approach to Criminal Procedure, tenth edition, page 395, paragraph 20.33, in his discussion of the provisions of the Powers of Criminal Courts (Sentencing) Act 2000, as they relate to the use of pre-sentencing reports in the UK, noted:
>
> > 'Even if there is no statutory requirement to have a [social enquiry] report, the court may well regard it as good sentencing practice to have one, particularly if it is firmly requested by the defence. Nevertheless, even where the obtaining of a pre-sentence report is 'mandatory', the court's failure to obtain one will not of itself invalidate the sentence. **If the case is appealed, however, the appellate court must obtain and consider a pre-**

sentence report unless that is thought to be unnecessary.'" (Emphasis supplied)

In her judgment, the learned judge of appeal did not make reference to section 3(3) of the Criminal Justice (Reform) Act, but it is accepted, as opined by Mr Sprack, that the failure to obtain a social enquiry report will not, by itself, invalidate the sentence.

[31] Section 3(3) of the Criminal Justice (Reform) Act, in part, requires that the sentencing court should consider "the nature of the offence and shall obtain and consider information relating to the character, home surroundings and physical and mental condition of the offender". It is plain from the record of proceedings that the learned Resident Magistrate considered Mr Talbott's character. Her reference to his approach to the case reveals that consideration. She said, in part:

> "The conduct and posture of [Mr Talbott] concerning the restitution – he showed no real intention to repay, except for the initial sum paid and just kept seeking postponements and in the face of the court kept haggling the [company] about the restitution."

[32] Although she did not specifically mention them, the learned Resident Magistrate would also have seen Mr Talbott's physical condition, and assessed his mental condition, as he appeared before her. The record of proceedings does not show, however, whether the learned Resident Magistrate considered information relating to Mr Talbott's "home surroundings".

[33] In the circumstances of:

a. the absence of information about his home surroundings;

b. the absence of notes of the proceedings;

c. the absence of a social enquiry report; and

d. the guidance given by John Sprack, in A Practical Approach to Criminal Procedure, quoted above, that the appellate court may, itself, secure a social enquiry report,

this court decided that the sentence was one that could be reviewed, and considered it prudent to secure a social enquiry report in its review of the sentence imposed.

[34] The social enquiry report, which was received, states, in part, that Mr Talbott was 49 years old at the time of sentencing and is an attentive husband and father. He lives with his wife and children in a single-family dwelling with the usual amenities. Mr Talbott has secondary level education and post-graduation certification. He has been gainfully employed for most of his adult life. Although he does not have much interaction with the community in which he lives, there are no adverse responses emanating from that quarter. There were, however, some negative responses from two other sources involving suspicions that Mr Talbott may have been dishonest in other circumstances. These suspicions cannot be held against him in this exercise, as there was no conclusive evidence in respect of those matters.

[35] The social enquiry report may, therefore, be said to have been fairly good. Had she received such a report the learned Resident Magistrate might have been minded to accede to the recommendation of the Probation Aftercare Officer, given to this court, that Mr Talbott be given a suspended sentence. Her main motivation for imposing the custodial sentence seems to have been Mr Talbott's failure or refusal to make compensation to the company for the money that he stole. She took this as a symbol of a lack of remorse. The company, however, does have options to pursue Mr Talbott to recover the outstanding money in the civil court.

[36] The next question is whether, as the Probation Aftercare Officer has recommended, the sentence should not be custodial.

[37] Mr Graham submitted that the social enquiry report showed that Mr Talbott is not a risk to society and that he is a suitable candidate for rehabilitation. He pointed out that Mr Talbott had served two months of his sentence before this court granted him bail, pending appeal.

[38] Miss O'Gilvie stressed the negative impact on the company and submitted that, because Mr Talbott has refused to make any further restitution, the company is still being negatively affected by the offences. The learned Director of Public Prosecutions, however, in answer to questions from the court, indicated that the Crown would not be averse, based on the contents of the social enquiry report, to Mr Talbott being given a suspended sentence with supervision or being sentenced to community service (see sections 9 and 10 of the Criminal Justice (Reform) Act).

[39] The sections cited by the learned Director state, in part:

> "9.–(1) Where a court passes on an offender a suspended sentence the court may make a suspended sentence supervision order (hereinafter referred to as 'a supervision order') placing the offender under the supervision of an authorized officer for such period as may be specified in the order not exceeding the period during which the sentence is suspended.
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> …
>
> 10.–(1) Where a person of or over eighteen years of age is convicted of an offence punishable with imprisonment, the court before which he is convicted may, instead of dealing with him in any other way, make, with his consent, an order (hereinafter referred to as 'a community service order') requiring him to perform unpaid work in accordance with the provisions of this section for such number of hours (being in the aggregate not less than forty nor more than three hundred and sixty) as may be specified in the order:
>
> …
>
> (2) A court shall not make a community service order under subsection (1) in respect of any offender unless the court is satisfied-
>
> (a) that arrangements can be made in the area in which the offender resides, or will reside, for him to perform work under such order and for proper supervision of that work; and
>
> (b) after considering a report by a probation officer in respect of the offender and his circumstances and (if the court thinks it necessary) after hearing a probation officer, that the offender is a suitable person to perform work under such an order.
>
> (3) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted, the court may direct that the periods of

service shall be concurrent with or consecutive to those specified in any other of those orders:

Provided that where the court directs that the periods of service shall be consecutive the aggregate of such periods of service shall not exceed four hundred and eighty hours.

(4) A community service order shall specify the area in which the offender resides or will reside and the court shall cause copies of the order to he delivered to a probation officer carrying out duties in that area, hereinafter referred to as the relevant probation officer.

(5) An offender in respect of whom a community service order is in force shall-

(a) report to the relevant probation officer and subsequently from time to time notify him of any change of address; and

(b) perform for the number of hours specified in the order at such times as he may be instructed by the relevant probation officer.

…"

[40] The court has considered these submissions and the statutory provisions. It finds that, despite his persistent refusal to make any further payment to the company, Mr Talbott is a suitable candidate for rehabilitation by way of a non-custodial sentence. He is now 55 years old, and has been a productive member of society for all of his working life. He has two children, one of them is still dependent on him for financial and parental support. There, however, needs to be some impact, by way of retribution, on Mr Talbott, other than the existence of a suspended sentence. The appropriate punishment, the court finds, would be a community service order of 200 hours.

[41] The court, as a result of that finding, made enquiries of the Probation Aftercare Officer of the existence of facilities for Mr Talbott to perform work under the order, and of Mr Talbott as to his willingness to carry out the order. The report from the Probation Aftercare Officer is that while there is no convenient facility close to Mr Talbott's home, there is a convenient facility in an adjoining parish, which will also be convenient to Mr Talbott. Mr Talbott has also agree to perform the community service order and to the prospective worksite. The orders of this court, therefore, are:

a. The appeal against the conviction is dismissed;

b. The appeal against the sentence is allowed;

c. The sentence imposed by the learned Resident Magistrate is set aside;

d. In substitution for that sentence, it is ordered that the appellant serve, under the direction of the Probation Department, 200 hours of community service in respect of each count, which periods of service shall run concurrently;

e. During the time in which the appellant shall perform the community service ordered herein, he shall reside at Magil Palm Housing Scheme, Spanish Town, in the parish of Saint Catherine.