THE PEOPLE v ZULU (1965) ZR 75 (HC)

HIGH COURT

DENISON J

2nd June 1965

Flynote and Headnote

[1] Criminal law - Burglary - guilty plea - all ingredients of offence must be admitted:

See [3].

[2] Criminal law - Theft - guilty plea - all ingredients of offence must be admitted:

See [3].

[3] Criminal procedure - Guilty plea - necessity to admit all ingredients of offence:

The admission 'Yes, I stole' does not constitute an unequivocal plea of guilty to the offence of burglary and theft; an effective guilty plea must convince the magistrate that the accused admits each of the ingredients of the offence with which he is charged.

[4] Criminal procedure - Guilty plea - withdrawal of - prior to sentencing:

The plea of guilty may be withdrawn at the discretion of the court prior to sentencing.

Cases cited:

(1) *John v R* 1958 R & N 798.

(2) *R v Isaac* 1958 R & N 145.

(3) *R v Kingston* 1961 R & N 602.

(4) *R v Windasi* 1963 R & N 10.

(5) *R v McNally* [1954] 2 All ER 372; [1954] 1 WLR 933; 38 Cr. App. R 90.

(6) *R v Blakemore* (1948) 33 Cr. App. R 49.

(7) *R v Sell* (1840) 9 C.& P. 348; 173 ER 863.

(8) *R v Plummer* [1902] 2 KB 339; 71 LJKB 805.

Judgment

Dennison J: In this case George Douglas Zulu was convicted on his plea of the offences of burglary and theft and was sentenced to two years' imprisonment with hard labour. That sentence had come before this court for confirmation and the case has been reviewed. [1] [2] [3] I have concluded that this man should be retried and will therefore say as little as possible that might reflect upon the merits of the case. The aspect of the record which has done most to persuade me to such a course is the wording of the plea, showing that when the accused man was called upon to plead he said ' Yes, I stole'. This is far from being an unequivocal plea of guilty to the offence of burglary and theft, with all its constituent ingredients. [*Editor* - See Penal Code (Cap. 6), ss. 236,237, 271.] This point has been emphasised time and again in judgments of the High Court, and it may be helpful to magistrates to refer yet again in fuller form to the authorities upon the subject.

DENNISON J

See the cases of *John v R* 1958 R & N 798; *R v Isaac* 1958 R & N 145; *R v Kingston* 1961 R & N 602. Those were Nyasaland cases but the principles involved are equally applicable in this Republic. *See* also the views of Conroy, CJ, set out in the judgment in *R v Windasi* 1963 R & N 10, where the learned Chief Justice of the day said:

' It has been pointed out time again by the High Court that magistrates, before accepting a plea of guilt, must satisfy themselves that the accused admits each of the ingredients of the offence with which he is charged. Magistrates have been instructed that an answer "I admit" may be equivocal and that it must be elaborated. It is the duty of a magistrate to put questions to an accused, particularly if he is not represented, so that the magistrate satisfies himself that the accused admits each of the ingredients of the offence with which he is charged.'

Although it is not a publication to be quoted as authority the *Magistrates' Handbook* contains most useful advice on the subject in its Chapter 11, in which paragraph four at page 44 of the extant edition [A.R.W. Porter, *Ed.* 1964 (Lusaka)is relevant.

[4] A second aspect of the case now under review is of general interest and also calls for comment. When pleading in mitigation of sentence after conviction, the accused man said: 'I do not break into people's houses, I only steal chairs. I admitted this offence because I was beaten by the policeman.' The trial magistrate then said: 'I have already convicted you, I will not now go into the question of whether you are guilty or not guilty'. I am not prepared to express any firm view as to whether or not the magistrate had properly exercised his discretion at the stage when he used the words quoted from his notes. He certainly did not say, for example, 'I cannot' go into the question of the guilt.

There is apparent here a need to explain the state of the law in such a matter in the hope that it will be of assistance to magistrates who may be unfamiliar with such a stage in criminal proceedings. In *R v McNally* [1954] 2 All ER 372; [1954] 1 WLR 933, 38 Cr. App. R 90, the appellant had pleaded guilty when arraigned. After adjournment and some fifteen days later when he had heard the sentence passed on one of his fellow - accused, he had tried to change his plea to one of not guilty. On appeal Lord Goddard, Chief Justice, said [38 Cr. App. R 90, at 98]:

> ' We only put this case into the List as an appeal so that the court might have an opportunity of stating perfectly firmly what is the position with regard to a prisoner who desires to change his plea. If a prisoner has pleaded Guilty in circumstances from which the court can see that there is no question of mistake, the court is not bound to allow a prisoner to withdraw his plea. If certain grounds are shown or the court can see that there are sound grounds as, for instance, where a prisoner has pleaded Guilty to a charge or receiving stolen goods and then says: "I pleaded guilty and I received them, but I did not know they were stolen", then it becomes entirely a matter of discretion for the learned judge. The most that can be said in this case - and the court is indebted to Mr Fitzwalter Butler, whom they asked to represent the appellant so that they might have the relevant cases brought before them - is that the learned judge did not say to the appellant: " On what grounds do you want to withdraw your plea?" It is perfectly obvious that he had no grounds. In his notice of appeal, he does not suggest that he had any grounds, nor has his learned counsel been able to tell the court any ground on which he wished to withdraw his plea. It is perfectly obvious that, finding heavier sentences were being given than he expected, he wanted, as the learned judge said, to cause trouble, but we cannot say here that the learned judge did not exercise his discretion. He had the whole of the facts before him, and could see that there was no ground for withdrawing the plea.
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> The court desires to say this: The question whether a plea is to be withdrawn or not is entirely a matter for the learned judge. The judge is not bound to allow it to be withdrawn. If he came to the conclusion that there was a question of mistake or misunderstanding or that it would be desirable on any ground that the prisoner should be allowed to join issue, no doubt he would allow him to do it. We do not think the case of *Blakemore* (1948) 33 Cr. App. R 49, ought to be followed. That was a case in which Byrne, J, as he said in wholly exceptions circumstances, allowed a plea to be withdrawn after judgment. Once the sentence has been pronounced there is no power in the court to allow the plea to be withdrawn. That is the effect of the decision in *Sell* (1840) 9 C.& P. 348, where, after some doubt, the case was mentioned to several of the judges and they decided that once the sentence had been pronounced there was no power in the court to allow the plea to be withdrawn.
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> In *Plummer* [1902] 2 KB 339, a decision of the Court for Crown Cases Reserved, it was stated quite firmly in the judgment of Wright, J, that a plea cannot be changed after judgment. In this case it is true that the appellant asked to withdraw his plea before judgment was given. Directly the appellant pleaded Guilty, the learned judge could have proceeded to judgment, but he waited instead till he had heard the whole facts of the case, and then came to the conclusion that there was no ground for allowing the plea to be withdrawn. We are quite satisfied that the learned judge did exercise his discretion, and accordingly this appeal fails and is dismissed.'

It was decided in *R v Plummer* [1902] 2 KB 339; 71 LJKB 805, there mentioned by the learned Lord Chief Justice, that a plea of 'guilty' may be withdrawn with the leave of the court before sentence and, in the instant case, while one cannot be certain of everything which may have transpired at the hearing, I feel that the trial court should have done more than appears in the record to inquire into the circumstances indicating a change of plea. The prior noting of a conviction was, in itself, no bar to a change of plea.

In view of the uncertainties related to these two aspects it is ordered therefore that this accused man be retried by a Subordinate Court of competent jurisdiction, which order should be complied with expeditiously.