

THE PEOPLE v JEFFERSON AND MONKS (1965) ZR 123 (HC)

HIGH COURT

CHARLES J

18th August 1965

Flynote and Headnote

[1] Criminal law - Sentences - in general - section 24 of Penal Code construed:

Section 24 of the Penal Code, which lists nine punishments which may be inflicted by a court, was intended only to be a general introductory statement of recognised punishments and, accordingly, cannot be used as the basis for punishment of offences for which the Code sets forth no specific punishment.

[2] Criminal procedure - Juvenile reformatories - juvenile adults not eligible - Juveniles Ordinance construed generally:

A juvenile adult cannot be committed to a juvenile reformatory.

[3] Statutes - Interpretation of statutes - implying a provision into a statute:

A provision cannot be implied into a statute from supposition or conjecture as to the legislative intent; in order to imply a provision into a statute, (1) the statute must clearly manifest an intention to achieve an object or purpose for which express provision has not been made; (2) the scope of the object or purpose must appear unequivocally; and (3) the implication must be the least that is necessary to achieve the object or purpose.

Statutes construed:

Juveniles Ordinance (1956, Cap. 8), ss. 89 - 105.

Judgment

Charles J: Clive Jefferson, a youth aged 18 years, and Lionel Eric Monks, a youth aged 19 years, were charged with another youth aged 17 years, before the senior resident magistrate's court at Livingstone with storebreaking contrary to section 273 (1) of the Penal Code (Cap. 6). The three youths pleaded and were found guilty and each was ordered to be detained in a reformatory. The seventeen - year - old youth unsuccessfully appealed to this court in respect of the reformatory order, and then successfully appealed to the Court of Appeal for Zambia which ordered him to be placed upon probation. The orders in respect of the other two youths have come before me for confirmation.

The record shows that the offence was a calculated and planned one which resulted in the theft and destruction of a safe valued at £60 and the loss of its cash contents, namely £124 4s 6d. The safe and cash were the property of a company by which two of the youths were employed. The circumstances of the offence were such as rendered a reformatory order appropriate against both Monks and Jefferson. A question, however, has presented itself: Was the reformatory order valid against Monks, who, on account of his age, is not a juvenile as defined in the Juveniles Ordinance (Cap. 8) but a juvenile adult?

The question arises thus. Under the Juveniles Ordinance provision is made for the establishment of reformatories and for the administration and effect of reformatory orders by sections 89 - 105 inclusive. None of those sections says who may be made the subject of a reformatory order, and the only express power conferred by the Ordinance to make a reformatory order is contained in section 71 (d). That power is confined to juveniles who, according to the definition of 'juvenile' in section 2, are persons who have not attained the age of nineteen years. The learned senior resident magistrate took the view that, nonetheless, the Ordinance impliedly authorises the making of a reformatory order against a person who has attained the age of nineteen years but has not attained the age of twenty - one years: the implication arising from the definition of such a person in section 2 as 'a juvenile adult', the definition of 'juvenile adult reformatory' in the same section as covering a juvenile reformatory established as a reformatory for juvenile adults, and the definition of 'reformatory order' in the same section as covering an order for detention in a juvenile reformatory and an order for detention in a juvenile adult reformatory. [1] An alternative argument as, I understand it, was that as retention in a reformatory was a punishment provided by law, it could be inflicted on Monks under section 24 of the Penal Code, which states, as punishments which may be inflicted by a court, eight specified punishments and concludes ' (9) Any other punishment provided by this Code or by any other law'.

With all respect to the learned senior resident magistrate the latter argument appears completely untenable. In effect, it is based upon a construction of section 24 of the Penal Code as authorising a court to impose for any offence any punishment it thinks fit provided that the punishment is one recognised in any way by law - a construction which would enable a court to pass sentence of death for theft or for any other offence for which that punishment has not been specifically prescribed. The fact that elsewhere the Penal Code proceeds to prescribe the punishment for different offences and to state the circumstances in which they may be imposed (see, for example, sections 26, 27 and 40) shows that section 24 was intended to be only a general introductory statement of recognised punishments which may be imposed in accordance with the Code or any other Law. Consequently, unless the Juveniles Ordinance itself authorised the making of the reformatory order against a juvenile adult offender the order against Monks cannot be supported under section 24 of the Penal Code and it is invalid.

The implication of such an authority from the definitions appears to me to be impossible. [2] A provision cannot be implied into a statute from supposition or conjecture as to the legislative intent in order to meet an apparent omission or hiatus. The conditions which must be satisfied to enable a provision to be implied into a statute are: the statute must clearly manifest an intention to achieve an object or purpose for which express provision has not been made; the scope of the object or purpose must appear unequivocally; and the implication must be the least that is necessary to achieve the object or purpose. I doubt very much whether satisfaction of those conditions can ever be found in a definition section alone. Such a section is not intended to be a substantive provision but only an ancillary provision for the purpose of supplying the particular enactment in which it appears with its own dictionary. Consequently, it may well be that definitions which are without substantive provisions to support them should always be rejected as superfluous on the ground that they may have been inserted inadvertently when drafting from other legislation or retained inadvertently after related substantive provisions had been deleted in the course of the legislative process. [3] Be that as it may, the three definitions relating to juvenile adults do not afford a clear manifestation of an intention to achieve the purpose of bringing juvenile adults within the ambit of reformatory orders since sections 90 (1), and 92 and 96 (2) and (3) of the Ordinance afford, by way of contrast, a strong indication that the Legislature only intended juveniles to be liable to reformatory orders. Further, the definitions are equivocal as to the scope of the suggested purpose as they do not show whether it is limited to authorising the detention of juvenile adult offenders only in juvenile adult reformatories or it extends to authorising their detention in juvenile reformatories as an alternative.

It follows that, in my judgment, the reformatory order against Monks was invalid and some other punishment will have to be substituted. In all the circumstances I think the appropriate sentence will be a suspended sentence of imprisonment. Monks has been given an opportunity to show cause in writing against such a sentence but has elected not to avail himself of it.

It would, I think, defeat the whole purpose of a reformatory order to leave Jefferson still subject to the reformatory order after he has seen one by one his colleagues freed from such an order, particularly as one of his colleagues is older than he and the other has parents who had the financial means to engage counsel to conduct an appeal to the highest court in Zambia. The only substituted form of punishment which is appropriate in all the circumstances of his case is, I think, a suspended prison sentence. He has not shown cause against the imposition of such a sentence although given the opportunity so to do in writing.

The following order is made in respect of each of the two offenders, Clive Jefferson and Lionel Eric Monks:

¹ The order for detention in a reformatory is not confirmed and a sentence of imprisonment with hard labour for two years is substituted, with effect from the 14th April, 1965, such a sentence to be suspended for three years as from the 19th August, 1965, subject to the conditions that the offender is not found guilty or convicted of any offence involving violence or dishonesty within three years from the date last mentioned and that he pays the sum of £61 8s 2d to Kohler's Garage Ltd, Livingstone, as restitution and compensation within the period of three years aforesaid. ¹

