

ROYAL COURT
(Samedi Division)

136.

31st July, 1992

Before: The Bailiff, and Jurats Bonn & Le Ruez

Her Majesty's Attorney General

-v-

Robert Christopher Dowden

On 3rd July, 1992, the accused entered a plea of guilty to the following counts in the indictment laid against him and two co-accused, and was remanded to the Superior Number for sentence:

2 counts of illegal entry and larceny (counts 1 & 2 of the indictment).

3 counts of receiving stolen property (counts 4, 7, and 9)

1 count of attempting to obtain money by false pretences (count 5)

1 count of larceny (count 6) and

1 count of obtaining property by false pretences (count 8).

Application for leave to change pleas from guilty to not guilty.

The Solicitor General for the Crown

Advocate R.G.S. Fielding for the Accused

JUDGMENT

BAILIFF: This is an application by Robert Christopher Dowden to change his plea of guilty to one of not guilty to an indictment laid against him, with others, of illegal entry and larceny *inter alia*. He was presented in this Court on 3rd July, 1992,

when he was represented by Counsel and pleaded guilty, although today he says he had insufficient time to give proper instructions to that Counsel. He was remanded in custody for sentencing by the Superior Number on the 6th August. His co-accused were dealt with likewise.

After two changes of Counsel, Mr. Dowden informed the Attorney General, through the Crown Advocate, and through Advocate Fielding who appears for him today, that he would be making the present application.

Two matters should be stated: first, Mr. Dowden pleaded guilty to the offences with which he is charged before this Court and although he says the charges were different when laid against him in the Police Court, he also pleaded guilty there. Secondly, throughout all his appearances he has been represented by Counsel. This Court has a discretion to allow an application of this nature but must, in considering it, act judicially. The principles followed in the English Courts in applications of this nature may be said to be these:- First, the matter is one of discretion and not one of right. Secondly, the discretion should be sparingly exercised in favour of the accused and only in clear cases. The authority for that statement is to be found in the case of South Thameside Magistrates' Court ex parte Rowland, (1983) 3 All ER 689, and in R -v- McNally, (1954) 1 WLR 933 C.A. Thirdly, representation by Counsel is one material factor among others which militates heavily against the application.

The reasons for the application are set out in a letter from Mr. Dowden to the Crown Advocate which I shall read in full. It is dated the 27th of July, 1992, and reads as follows:

"Sir, I have written to the Chief Viscount asking him to serve sub poenas on the antique dealers who received the archive documents from me and my accomplices. I do this as I am pleading not guilty to theft of archives as I was

should have been charged as originally, but because of the contentious nature, bearing in mind that the Prime Minister has asked for them to be handed over to the proper authorities to investigate, and the Attorney General refusing (I think it might be "refuting") that there were no sensitive or incriminating evidence in them whatsoever. He went further to say that the historian at the time read them and they were so boring at times that a lot of them were returned unopened. If that is the case, Sir, why was there a Hundred Year D Notice put on them. I will be asking for bail on this occasion as I have been inside nearly a year if you take remission into account and my co-accused were released. I look forward to a reply in the not too distant future. Yours sincerely, R. Dowden."

It seems to the Court that the main reason is not really a legal reason but rather that, as Mr. Dowden has suggested, he might wish to make a statement about the contents of the archives rather than about whether or not they had been stolen.

His original pleas were unequivocal, according to the Court records. He was, as we have said, represented on all occasions when he appeared before the Court and accordingly we do not feel that this is the sort of clear case where we should exercise our discretion to allow the plea to be changed. Accordingly the application is refused.

Authorities

Archbold (1992 Ed'n): ss. 4-168-4-170: change of plea.

Blackstone's Criminal Practice: Section D.9: Arraignment and Pleas: D.9.45,9.46.

R -v- Cantor [1991] Crim. L.R. 481.

The King -v- Plummer (1902) 2 K.B. 339

S (an infant) by Parsons (his next friend) -v- Recorder of Manchester & Ors. [1971] A.C. 481.

Dodd & Ors. (1981) Cr. App. R.50.

R -v- McNally (1954) 1 WLR 933 C.A.

R -v- South Thameside Magistrates' Court (1983) 3 All ER 689.

R -v- Drew (1985) 1 WLR 914 C.A.