

[2010] HCJAC 55

Appeals No: XJ826/07

OPINION OF THE COURT

delivered by LORD OSBORNE

in

BILL OF SUSPENSION

by

Lord Osborne

Lady Smith

Sheriff Principal Lockhart ALEXANDER ALLAN BOWES

Suspender;

against

PROCURATOR FISCAL, ABERDEEN

Respondent:

Suspender: Lamb, Q.C., Miss Mitchell; George Mathers, Aberdeen

Respondent: Ferguson, Q.C. Advocate depute; Crown Agent

8 June 2010

The Background Circumstances

[1] On 27 April 2006, the suspender appeared at Aberdeen Sheriff Court to answer a summary complaint, to which he pled guilty as libelled. The terms of the charge in that complaint were as follows:

"On 20 January 2006 at various roads between Banchory and Old Kemnay Road, Port Elphinstone, Inverurie, Aberdeenshire, you Alexander Allan Bowes did conduct yourself in a disorderly manner, utter comments of a sexual nature towards NC ... then aged 14 and did commit a breach of the peace."

On that date the court adjourned the diet for the purposes of obtaining social enquiry and community service reports until 25 May 2006. On the latter date, the suspender again appeared before the sheriff and, as had been the case on 27 April 2006, he had legal representation. The sheriff had available to him a transcript of the narrative of the offence, which had been put before the court on 27 April 2006. The sheriff also had available to him a social enquiry report and a community service report, along with a proposed probation supervision action plan and a report on the suitability of the suspender to participate in the joint sex offender project programme. The sheriff heard the suspender's solicitor in mitigation.

[2] The Crown narrative of the offence recorded in the transcript indicated that the suspender was a self-employed taxi driver, who had been contracted to collect the complainer, who was then aged 14, from school and take her back to the residential home where she was living at the time. He collected her and she got into

the front passenger seat of the taxi. She was the only passenger. He gave her a cigarette which she accepted. He asked her if she had a boyfriend. He asked her what year she was in at school, and she replied that she was in her third year. He told her that if she had been 16 her name would go into his "little black book". He showed her where he kept this "little black book", namely in the area of the sun visor of the passenger side of his taxi. He then asked her if she was "on the pill". He asked if her mother knew she was not on the pill, and then asked her if her mother knew about her sex life. It was indicated that the complainer became very alarmed and upset as a consequence of these remarks and questions. After arrival at the home, she reported the matter and the police were contacted. The suspender was subsequently interviewed by the police when he said that the complainer was a young female aged 14 or 15 and had been in school uniform. He said he had had a conversation with her about smoking. When he was asked about whether her boyfriend had been discussed, he said:

"I'll just have to think. I cannae mind off hand. I think she actually said she had a boyfriend. I mind saying watch what you're doing, you've got to be careful. What I was actually saying was don't fall pregnant and get into more bother than you are in."

He went on to say:

"I don't think I said make sure you're on the pill or he uses a condom. If I did say anything like that I was just trying to say it in a good way, not a bad way."

[3] On 25 May 2006, the suspender's solicitor advised the court that his client accepted he had caused upset, but did not accept that there was a sexual motive to his behaviour. However, the sheriff concluded that the offence did possess a significant sexual element. In these circumstances, the court certified, under section 92(2) of the Sexual Offences Act 2003, that the suspender had been convicted of the offence in question; that the offence was a sexual offence to which part 2 of that Act applied; and that the court had so stated in open court. The sheriff disposed of the case by making a probation order of 2 years duration.

[4] By note of appeal against sentence, dated 31 May 2006, the suspender appealed to this court against the probation order and against the sheriff's decision to make the suspender subject to the notification requirements of the Sexual Offences Act 2003. The contention advanced in that note of appeal was in these terms:

"It is submitted that in the absence of any explicit sexual content, the comments made by the appellant, while clearly upsetting and distressing for the complainer, fall short of containing what can reasonably be described as a 'significant sexual element' and that accordingly the sentence of 2 years probation is excessive as is the appellant's inclusion on the Sex Offenders' Register."

[5] The suspender's appeal against sentence came before this court on 8 December 2006, when the court, having heard counsel for the then appellant, continued the appeal to a date to be afterwards fixed, to allow him an opportunity to lodge a Bill of Suspension. Subsequently a Bill of Suspension at the instance of the suspender was lodged on 11 July, 2007. On 16 April 2008, the Bill of Suspension came before the court at a procedural hearing when the court ordered that it should be the subject of a full hearing, to hear submissions on the matters raised in paragraph 3 of the Bill. It also ordered that the sentence appeal should be called along with the Bill of Suspension. The whole matter came before the court on 2 July 2008 when counsel for the suspender intimated that she wished to withdraw from acting. That was allowed, whereupon the court continued the case to a date to be afterwards fixed. On 9 April 2009 the Bill of Suspension and the appeal against sentence came before a sentencing appeal court, constituted by two judges. On that occasion counsel for the suspender intimated to the court that the case of *Harris v Her Majesty's Advocate* (Appeal No. XC143/09), which was concerned with the nature of the offence of breach of the peace, had been remitted to an appeal court of five judges. In these circumstances a motion was made for the present case to be remitted to a bench of five judges. That course was opposed by the Crown. After discussion, the court continued the hearing, in order to afford counsel for the suspender an opportunity more fully to consider the position. The case was continued to a date to be afterwards fixed and parties were directed to lodge written submissions

prior to that hearing. The case finally came before this court on 19 January 2010, when full argument was heard.

The Bill of Suspension

[6] The Bill of Suspension, after narrating the relevant history of the case, goes on to set forth the grounds on which it is based, which are these:

"3. That the circumstances of the offence as narrated by the respondent did not amount to a breach of the peace. The conduct complained of was not such that it met the definition set out in *Smith v Donnelly* 2001 S.C.C.R. 800. In any event it is to be doubted that the content of his interview with the Police could be regarded as providing an admission sufficient to corroborate the complainer's account and for the court to draw the inference that a breach of the peace had been committed. If so then the prosecution was oppressive and represented an abuse of process.

4. That being so the complainer not having committed the crime of breach of the peace the conviction should be suspended *simpliciter*.

5. That in any event the complainer pleaded guilty under a material misapprehension. He had originally been charged with a separate offence. When advised by his then agent that the Respondent would be prepared to accept a plea of guilty to a charge of breach of the peace, the complainer thought that meant his position (advanced in mitigation) was being accepted. In other words he thought that there was no prospect of the offence being regarded as one caught by the Sexual Offences Act 2003. Had he thought otherwise he would have pleaded not guilty."

Submissions for the Suspender

[7] When the case came before us for a hearing, we had the benefit of written submissions framed on behalf of the suspender. In those submissions it was submitted that, in the light of the decision of a court of five judges in *Harris v Her Majesty's Advocate* [2009] HCJA. 80 and the reasoning in it, the present case could not be considered to involve breach of the peace. The suspender had uttered comments of a sexual nature to the complainer while she was within a taxi. He made the remarks during the course of a conversation. There were no third parties present during this time. The complainer became alarmed and upset and reported the matter at her home, whereupon the police were contacted. It was submitted that the present case was on all fours with *Young v Heatly* 1959 J.C. 66, which had been disapproved by the court in *Harris v Her Majesty's Advocate*. For the reasons given by the court in that case, it was submitted that the suspender had made comments which did not amount to the public order offence of breach of the peace.

[8] It was also submitted that there was no restriction on this court in relation to the quashing of a conviction for breach of the peace where the nature of the behaviour did not in fact amount to a breach of the peace, that is to say where the libel was fundamentally null, even in a situation where the suspender had pled guilty to the charge. At the time of the plea, the case of *Young v Heatly* was still considered to be good law. Since that time, it had been disapproved. The suspender had therefore pled guilty to something which was not the crime of breach of the peace. The plea was tendered in some sense in error, the suspender thinking that the behaviour which he admitted was criminal, presumably on the advice of his solicitor.

[9] It was submitted that it was important to note the terms of section 192(3) of the Criminal Procedure (Scotland) Act 1995. The words used in sub-section (3)(b), referred to a situation where "the accused had legal assistance in his defence". It was submitted that, in the present case the suspender had been placed in exactly the position just mentioned, although in fact he had legal advice at the time when the plea of guilty was recorded. The solicitors for the suspender could not have known that the case of *Harris v Her Majesty's Advocate* would have brought about a fundamental change in relation to whether the libel was one which disclosed a criminal charge, the decision in that case being given on 8 October 2009.

[10] This court had a long history of setting aside convictions where there was a fundamental nullity. In the case of *Jones v Carnegie* 2004 S.C.C.R. 361 the court had held that it was well established that, where an

appeal court was satisfied that an appellant had been convicted of something which was no crime at all, the fact that the point was not taken at first instance as an objection to the charge, or to the conviction, would be no bar to the court quashing the conviction.

[11] Senior counsel for the suspender expanded and amplified these written submissions. He emphasised the importance of the case of *Jones v Carnegie* 2004 in the circumstances of this case. Reference was made to the observations of the Lord Justice General at paragraph 43. A contrary view had been taken in *Cochrane v Her Majesty's Advocate* 2002 S.C.C.R. 1051, where section 118(8) of the 1995 Act had been relied upon in opposition to an appeal, which had been refused. That case was overruled in *Jones v Carnegie*. Senior counsel went on to refer to *Pickett v Her Majesty's Advocate* 2007 S.C.C.R. 389, a case in which an appeal under solemn procedure had been brought against a conviction following upon a plea of guilty by the appellant, who claimed that he had been under a serious misapprehension concerning the charges to which he pled guilty. After hearing evidence, the court held that there was no such misapprehension. Senior counsel went on to rely on *Harris v Her Majesty's Advocate* and in particular the passages in paragraph [16]-[26] of the opinion of the court. It had been held, in paragraph [25] of the opinion, that there had to be a public element in a situation before a breach of the peace could be committed. That feature was exemplified in *Paterson v Her Majesty's Advocate* 2008 S.C.C.R. 605, although the circumstances of that offence were different from those alleged here. In that case the offence had been committed in a private house, but other persons were present. That contrasted with the present situation in which the remarks made to the complainer had been made in a motor vehicle with no other persons than the complainer and the suspender present. The present circumstances were comparable to those in *Young v Heatly*, which had been overruled in *Harris v Her Majesty's Advocate*. In *Young v Heatly* sexually improper remarks had been made by a deputy headmaster of a technical school to four different youths, being pupils at the school, who had been seen separately in private. In all the circumstances the Bill should be passed and the conviction and the orders pronounced following upon it should be suspended.

Submissions of the Crown

[12] In this case the court had the benefit of written submissions from the Crown. Summarising these, it was submitted that the essence of the crime of breach of the peace was set out in *Smith v Donnelly* 2001 S.C.C.R. 800 in paragraph [17]. What was required was conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community. That definition had been accepted and followed in *Jones v Carnegie*. Likewise in *Paterson v Her Majesty's Advocate* the nature and character of the crime of breach of the peace, as explained in *Smith v Donnelly*, was affirmed. In the recent case of *Harris v Her Majesty's Advocate*, the position had been the same, although the court held that, in the circumstances of that case, the public element necessary for the offence had not been established.

[13] It was recognised that in *Harris v Her Majesty's Advocate* the earlier decision of *Young v Heatly* had been disapproved and overruled. The suspender had sought to argue that the present case resembled *Young v Heatly*. However, that was not the case. In the earlier case there was no evidence of alarm being caused to the boys, to whom the statements complained of had been made. In the present case, however, the complainer became very alarmed and upset as a result of the statements made to her. Secondly, the offences in *Young v Heatly* had been committed in an indisputably private place, namely the deputy headmaster's own room. Here, however, in contrast, the present offence had been committed in a public context. The *loci* of the offence were public roads and the offence itself had been committed in a publicly licensed taxi. That was a more public context than existed in the case of *Paterson v Her Majesty's Advocate* in which the conviction was upheld. It was sufficient that the conduct was such as to threaten disturbance; actual disturbance was not necessary. Here, if the conduct concerned had been discovered, it was clearly likely to have caused a serious reaction among other persons, both adult and youthful. Indeed, there was grave concern and indignation when the offence was disclosed by the complainer to those responsible for her welfare. The present case was analogous to *MacDougall v Dochrie* 1992 J.C. 154, where the accused had created a peephole in a toilet cubicle in order to view women undressing in an adjacent solarium. In all these circumstances, it could not be said that the suspender had pled guilty to something which was not a crime. There was no question of his conviction being fundamentally null.

[14] Turning next to the significance to the plea of guilty, the Advocate depute submitted that a plea of guilty could be withdrawn, or at least a conviction resulting therefrom suspended or quashed, only in exceptional circumstances. He relied on *MacGregor v MacNeill* 1975 J.C. 57. The approach in that case had been endorsed in *Pirie v MacNaughton* 1991 S.C.C.R. 483 and *Aitken v Reith* 1997 S.L.T. 2. It was also instructive to refer to *Mathieson v MacLeod* 1996 S.L.T. 660, where suspension was sought, in which a plea of guilty to a charge of lewd and libidinous practices had been made. It was suggested that the accused concerned was a suggestible person of low intelligence, who had tendered his plea on the basis of a genuine misunderstanding. The Bill was refused, since, after considering the original defence solicitor's notes, it was clear that the relevant matter of intention had been properly canvassed with the accused in advance of the plea. In the present case no such notes were available; however, the Advocate depute referred to a letter, dated 22 March 2006, from Messrs Gray & Kellas, then acting for the suspender to the Procurator Fiscal in Aberdeen. That letter made it clear that the suspender, having had the benefit of legal advice, was prepared to tender a plea of guilty, narrated as "per the complainer's statement". That letter made it clear that the suspender had been well aware of the nature of the offence to which he was prepared to plead guilty. Furthermore, there could have been no doubt that the offence possessed a significant sexual element within the meaning of paragraph 60 of schedule 3 to the Sexual Offences Act 2003. Thus the circumstances did not exist in which a conviction following on a plea of guilty could be suspended.

[15] The Advocate depute amplified and expanded his written submissions in the hearing before us. The Crown did not seek assistance from *Cochrane v Her Majesty's Advocate*, which had been the subject of adverse comment in *Jones v Carnegie* at paragraph [43]. In *Cochrane v Her Majesty's Advocate*, the court had not had the benefit of a full citation of authority.

[16] In his submissions to this court, the suspender had sought to argue that *Harris v Her Majesty's Advocate* had, in some way, altered the existing law. That was not so. While it disapproved and overruled *Young v Heatly*, the existing law was declared in an authoritative manner in *Smith v Donnelly*. When the suspender's plea was tendered that must have been done in the full knowledge of the law as explained in that case.

[17] In any event, even if the suspender and his advisors had been under some misapprehension as regards the law, a mere error on their part as to the effect of the law would not be regarded as such special circumstances as would justify the making available of the exceptional remedy of suspension in this case, as appeared from *Dirom v Howdle* 1995 S.C.C.R. 368 at page 369-370. The circumstances in which a conviction following upon a plea of guilty under solemn procedure might be quashed were considered in *Duncan v Her Majesty's Advocate* 2009 S.C.C.R. 293. Particular reliance was placed on the observations of Lord Wheatley, delivering the opinion of the court at paragraphs [8]-[11]. There was little, if any, scope for the withdrawal of a plea that had been tendered on legal advice and with the admitted authority of the accused. In the present case, the plea had been made on the advice of solicitors on behalf of the suspender, upon the basis of facts which were put before the court by the Crown, about which there was no dispute. It could not be said that the suspender's conviction amounted to a miscarriage of justice. The Bill should be refused. It would be necessary to continue the appeal against sentence until it was apparent what decision the court made on the Bill.

The Decision

[18] It appears to us that two issues arise in this case. The first is whether it can be said, in the circumstances of this case, that the suspender has been convicted, following upon his plea of guilty, of something which was no crime at all under the law of Scotland. If that were the case, then as recognised in *Jones v Carnegie*, the fact that the point was not taken at first instance as an objection to the charge would not constitute a bar to justice being done by the quashing of the conviction, or its suspension notwithstanding the provisions of section 192(3)(b)(i), in the case of a summary conviction, or section 118(8)(b)(i), in cases under solemn procedure. The second issue which we see as arising is whether in the circumstances of this case there exist such special circumstances of an exceptional nature as would justify the withdrawal of a plea of guilty, or at least the quashing or suspension of the conviction following upon it. It is these issues that we now consider.

[19] We have already narrated the factual circumstances of this case, as they were presented to the sheriff. The question therefore is whether these circumstances are such that the conduct of the suspender amounted to a breach of the peace under the law of Scotland. The modern law on breach of the peace was explained in *Smith v Donnelly*, in the context of a challenge to it based upon article 7 of the European Convention on Human Rights. In paragraph [17] of the opinion of the court in that case, delivered by Lord Coulsfield, it was said:

"The crime of breach of the peace can be committed in a wide variety of circumstances, and, in many cases, it is a relatively minor crime. It has therefore been said, more than once, that a comprehensive definition which would cover all possible circumstances is neither possible nor desirable. Equally, in our view it is neither possible nor desirable to derive a comprehensive definition from a close analysis of the facts of individual cases in which it has been held that a breach of the peace had been committed. If, however, we take as our starting point what was said by Lord Justice Clerk MacDonald in *Ferguson v Carnochan* it is, in our view, clear that what is required to constitute the crime is conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community."

The significance of that decision was considered in *Jones v Carnegie*, where, in delivering the opinion of the court constituted by five judges, the Lord Justice General noted that *Smith v Donnelly* had been considered by the European Court of Human Rights in *Lucas v United Kingdom* (2003) 37 EHRR CD 86. The issue of the character of a breach of the peace came before the court again in *Paterson v Her Majesty's Advocate*. Lord Coulsfield's conjunctively expressed language in *Smith v Donnelly* was approved by the Lord Justice General, delivering the opinion of the court, in paragraph [23]. Finally, the nature of the crime was again considered in *Harris v Her Majesty's Advocate* by a court of five judges. Once again the conjunctive test explained in *Smith v Donnelly* was approved, as appears from what is said in paragraph [15] of the opinion of the court, delivered by the Lord Justice General. *Young v Heatly* was considered in detail, the reasoning was disapproved and the decision was overruled. In explaining that position in paragraph [22] of the opinion, the Lord Justice General said:

"Having so reviewed it, we are satisfied that the reasoning was unsound. Essentially, it failed properly to take into account the true nature of breach of the peace as a crime which has at least a public element. Authorities before it (such as *Ferguson v Carnochan* and *Raffaelli v Heatly* (and authorities since such as *Smith v Donnelly* and *Paterson v Her Majesty's Advocate*) have emphasised that element. The reasoning in *Young v Heatly* ignores it. That reasoning we disapprove and the decision we overrule."

Having regard to the circumstances of this case, it is pertinent to consider also what was said in paragraph [25] of the opinion of the court. Speaking of the public element in the crime of breach of the peace, the Lord Justice General said this:

"It is unnecessary for the purposes of this opinion to seek to give definitive guidance as to what public element would be sufficient. Disturbance or potential disturbance of even a small group of individuals in a private house - as in *Paterson v Her Majesty's Advocate* - may suffice. The conduct need not be directly observable by third parties (as it was not in that case) but, if in private, there must be a realistic risk of it being discovered *Jones v Carnegie* at page 144, para 12."

[20] In the light of the cases that we have just considered, we do not think that it can be said that, in any sense, *Harris v Her Majesty's Advocate* effected a change in the law. What was involved in that case was a consideration of the application to the particular circumstances of the case of the principles explained in *Smith v Donnelly* and the other cases referred to. Of course, what was done in *Harris v Her Majesty's Advocate* was to disapprove of the reasoning in *Young v Heatly* and, in consequence, overrule the decision in that case. It does not appear to us that that aspect of the decision can be considered as in any sense, effecting a change in the law.

[21] In these circumstances, what has to be considered here is whether the admitted facts of this case constitute a breach of the peace, as it was explained in *Smith v Donnelly* in other cases. There are two

questions which have to be addressed. First, was the conduct of the suspender severe enough to cause alarm to ordinary people, and second, whether it threatened serious disturbance to the community. Looking at the first of these questions we have no difficulty in concluding that the conduct concerned was severe enough to be of the nature described. What was involved was the conducting by the suspender of a completely inappropriate conversation about intimate sexual matters with a 14 year old schoolgirl, who was temporarily in his charge, he being the driver of the taxi which had been hired to convey her from school to the home. The nature of the suspender's remarks was such as to cause upset and distress to the complainer herself, as might reasonably have been expected. Furthermore, coming from a man much older than the complainer, in our view, it was the kind of conduct which may be seen as severe enough to cause alarm to ordinary people. In that connection, we consider that any ordinary person would be justifiably indignant at such conduct and fearful of the intentions of the perpetrator.

[22] Coming to the second question that must be considered, whether the necessary public element existed in the context of this case, we conclude that it did. In that connection, it has to be borne in mind the *loci* of the offence were several public roads in Aberdeenshire. More particularly, the conduct occurred in a publicly licensed taxi which was available for hire to members of the public and indeed at the time in question, was on hire, being used to convey a schoolgirl, driven by a licensed taxi driver. We consider that to be a different situation from one in which conduct that might be objectionable occurred in a private motor vehicle. Furthermore, there was plainly a realistic risk of the conduct being discovered, as indeed occurred within a very short period of time following upon it, when its occurrence was reported to those who, in furtherance of a public duty, were responsible for the care of the complainer. In all these circumstances, we conclude that the suspender pled guilty to a crime which was known to the law of Scotland and there can therefore be no question of his conviction being interfered with upon the basis that there was no crime.

[23] We turn now to consider the second main issue in the case whether the circumstances in which the suspender pled guilty were so exceptional that it would be proper for the conviction following thereupon to be suspended. This area of the law has been considered in several recent cases. As was indicated in *Duncan v Her Majesty's Advocate*, a plea of guilty can be "withdrawn" only where, first, it has been tendered without the authority of the accused, second, under some real error or misapprehension, or, third, in circumstances in which the plea of guilty was so prejudicial to the accused that a miscarriage of justice occurred. In that connection we refer to what was said in paragraphs [11] and [14] of the opinion of the court. In *Dirom v Howdle*, at page 370, Lord Justice Clerk Ross said:

"What the complainer is really saying is that she was in error as to the effect of the law in this case, but we are not persuaded that that constitutes in this case such special circumstances as would warrant her obtaining the exceptional remedy which she is seeking in this Bill."

The legal position was forcefully stated by Lord Justice Clerk Gill in *Reedie v Her Majesty's Advocate* 2005 S.C.C.R. 407, in paragraph [11] of the opinion of the court, where he said:

"A plea of guilty constitutes a full admission of the libel and all its particulars (*Healy v Her Majesty's Advocate*). It is not a conditional admission that is subject to reconsideration in the light of a subsequent decision of the court (*Dirom v Howdle* [1995 S.C.C.R. 378 ...]), nor, in our view, in the light of a subsequent verdict in the trial of another party on the same charge. In view of the conclusive nature of such a plea, it can be withdrawn only in exceptional circumstances (*Dirom v Howdle*); for example, where it is tendered by mistake (*MacGregor v MacNeill* 1975 J.C. 57 ...) or without the authority of the accused (*Crossan v Her Majesty's Advocate* 1996 S.C.C.R. 279). There is little scope, if any, for the withdrawal of a plea that has been tendered on legal advice and with the admitted authority of the accused (*Rimmer, Petitioner* 2002 S.C.C.R. 1)".

[24] In the light of these principles, we now consider the circumstances of the present case. The question must be whether they are exceptional. There is no question here of the plea having been tendered without the authority of the accused. Indeed, that has not been suggested, nor could it be in the light of the circumstances.

In that connection we think it is appropriate to quote the letter from Messrs Gray & Kellas, then acting for the suspender, to the Procurator Fiscal in Aberdeen dated 22 March 2006, in which it was said:

"We act on behalf of Alexander Allan Bowes in respect of whom a trial is fixed on 31 March 2006. We have perused the enclosed statements along with our client and have to say that very little of the Crown case is disputed by Mr Bowes. He is horrified that the conversation he held with the complainer caused such distress and was not by any stretch of the imagination his intention.

He is eager to resolve the matter without the need for the complainer to have any more distress with having to attend court, however, on reading the statement of the complainer in detail [we] would have to submit that what is complained of falls short of the definition of lewd and libidinous practice as we understand it.

The behaviour complained of clearly constitutes a breach of the peace however and Mr Bowes would be willing to plead guilty to a breach of the peace narrated as per the complainer's statement."

Furthermore, it could not be said, standing these circumstances, that the plea was tendered under some real error or misconception, nor was that suggested. The only remaining question is whether what happened was so clearly prejudicial as to amount to a miscarriage of justice. We are quite unable to conclude that that is the position here. As we have held, the charge to which the suspender pled guilty did amount to a crime under the law. However, even if there had been some error as to the way in which the law might be applied, on the authority of *Dirom v Howdle*, that would be an insufficient basis for suspending the subsequent conviction.

[25] In all these circumstances, our conclusion is that there is nothing relating to the suspender's plea of guilty which would justify this court in suspending the conviction which followed upon it. We shall therefore refuse to pass the Bill. Since there is an outstanding appeal against sentence, a diet will require to be fixed for it to be heard at a suitable date.