

IN THE SUPREME COURT OF THE TURKS AND CAICOS ISLANDS

HOLDEN AT PROVIDENCIALES

CL-APM 19/11

R

- v -

LOUIS RIGBY & ST MARTIN VALMERA

Heard on the 20<sup>th</sup> day of February, 2012

Mr George Missick for the Appellants

Ms JoAnn Melosch for the Crown

#### DECISION

- 1 This is an appeal from a conviction in the Magistrate's Court for removing sand from the coast contrary to section 3(1) of the Coast Protection Ordinance Cap 85.
2. The facts are that the police were conducting surveillance sometime after 7 pm on the evening of the 10<sup>th</sup> of February, 2010 in an area at Northwest Point which was well known for illegal sand mining. While there, they spotted a white flat bed truck heading through a narrow dirt road toward the beach. They followed the truck and at a certain point in the road, which the officers later identify as some 150 -200 yards from the beach, they observed men with shovels and buckets loading sand onto the truck.
3. As they approached the white pickup truck, three men ran off into the bushes. Officer Paul Dickenson proceeded to the back of the pickup and there spoke to the two remaining men who identified themselves as Louis Rigby and St Martin Valium, the appellants herein. The truck belonged to Rigby and was being driven on the night by Valmera. The appellants accepted they had gone there to remove sand and that they had no licence to do so.
4. In the course of his evidence, the appellant Rigby explained that he had gone to Northwest Point to "cut some sand" to carry out repairs on the public road in Five Cays which he had undertaken. He said he had been working for Crystal Bay Resort in 1997 and they had "franchised (him) to get some sand there," (page 17 of the record) and that he had cleaned that sand and deposited it at the fence of property that

is now owned by one Charles James. When he undertook the building of the road in Five Cays, he approached Mr. James for help and Mr. James gave him permission to remove the sand that he had stored on the property. In his own words: "He don't know the sand was there. I know sand was there because I was working for the hotel and Blue Caribe. We clean the sand before the hotel and we put the sand at the fence. From there, Blue Caribe gone\_ It first build, the Hotel then that becomes to the owner Mr. James"

5. It was this sand that he had stored at the fence that he went to get on the night in question with the help of the other men. He said he did not believe he was removing sand from the coast. "Coast means the beach to me. I did not believe I was doing something wrong at the time I was removing the sand."
6. Photographs were exhibited which showed where the men were found in relationship to the sea. The officer estimated the distance to the sea from where the men were found as 150-200 yards or "about a 5 five minute walk" to the beach. The appellant Rigby said they were some 400 yards away from the beach.
7. In her reasons for decision, the learned Chief Magistrate accepted the evidence of Officer Ewing that the area the men were removing the sand was 200 yards from the sea and that one could stand at the site and see the sea on a clear day. She found as a fact that 'the sand mining area was located on the coast as defined under section 2 of the Ordinance' and convicted both defendants.
8. The primary ground of appeal, which was also the primary challenge to the case for the Crown at trial, is that the area from which the sand was removed was not the coast and the learned Chief Magistrate was wrong to find that it was.
9. The resolution of the appeal turns on the proper construction of section 2 of the Ordinance which defines the coast as "land bordering on the sea or any tidal water and having its seaward boundary at the low water mark." While the Ordinance defines the edge of the seaward boundary, it does not define the land boundary, which perhaps accounts for the assertion by the conservation officer Ewing, that the land where the men were found "does border the sea because clearly you can see the sea from where you are standing on that track .....On a clear day, you can see straight to the beach. "
10. To define the coast as land from which you can see the sea is a construction of the Ordinance which is an affront to commonsense, as was conceded by Counsel for the Crown.

11. Giving the words in the Ordinance their ordinary meaning, and bearing in mind the apparent mischief of preventing illegal sand mining to protect and preserve beaches and guard against shoreline erosion, I construe the words "land bordering on the sea" as referring to that margin of land adjacent to the sea, the seashore, the beach, extending from the low water mark to the vegetation line.
12. If the Legislature had intended the word 'coast' to have a wider definition to include land at some distance from the beach, it could easily have used such words as 'including all coastal land above and within x yards of the mean high water mark' or words to that effect. Absent those words, the provision should bear the narrower construction I **have put on it**, not least because it is a penal statute which creates an offence of strict liability.
13. The evidence, including that of the photographs, clearly established that the sand was not being removed from the beach on the night in question. On the officer's evidence which the magistrate preferred, it was being removed from a place which was a 5 minute walk away from the beach. In the result, the learned Chief Magistrate erred in finding that the 'sand mining area was on the coast'.
14. The Crown argued that even if the area from which the sand was being removed on the night was not the coast, the appellant Rigby's conviction should be upheld on the strength of his admission that he had removing that sand from the beach at an earlier time.
  15. The learned Chief Magistrate. however, made no finding with respect to this admission, neither accepting nor rejecting Rigby's evidence about the earlier removal of sand and it is not for this Court to make findings of fact and render a verdict of its own.
16. Accordingly, the appeal is allowed and the convictions are quashed

DATED THE            DAY OF MARCH, 2012



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RIDGE OF THE SUPREME COURT