

IN THE SUPREME COURT OF GIBRALTAR

2016/CRIAP/004

BETWEEN:

PHILIP ARUNDEL VAN DER WESTHUIZEN

Appellant

-and-

HM ATTORNEY GENERAL FOR GIBRALTAR

Respondent

RESPONDENT'S SKELETON ARGUMENTS

1. The Appellant faced one charge of being a Non-Gibraltarian in Gibraltar without a valid permit or certificate on the 19th November 2015. He pleaded not guilty and the case was set down for trial on the 3rd March 2016.
2. The facts of the case were that at about 1810 hours on the 19th November 2015, the Appellant was arrested by PC 170 David Bragg in relation to another matter. He was conveyed to New Mole House Police Station and processed in the Custody Suite. At that time, it was ascertained that the Appellant was the holder of a South African passport and did not have a valid visa permitting him to be in Gibraltar. He was then arrested for the offence and on being cautioned by the officer, he replied "You don't have jurisdiction". He was subsequently interviewed by the officer but gave a no comment interview apart from claiming "No jurisdiction".
3. Prior to the trial, the Appellant presented lengthy written arguments setting out his reasons why the Court had no jurisdiction to try him.

Those written arguments have now been rehearsed before this Honourable Court and refer to numerous religious reasons why the Court cannot try him, based on the Appellant's personal religious beliefs. He also maintains that Her Majesty the Queen is not the rightful monarch for the reasons he sets out in his arguments.

4. Despite these arguments, the Appellant has not contested the fact that at the time of the offence, he only held a South African passport and did not have a valid visa for being in Gibraltar. At the trial, the Stipendiary Magistrate heard evidence from PC Bragg and Mr Lionel Victory, the Head of the Civil Status and Registration Office (now retired) and given that the Appellant did not contest the evidence from these witnesses, the learned Stipendiary Magistrate concluded that the offence was made out and convicted him. The Stipendiary Magistrate did not accept the Appellant's submissions that the Court had no jurisdiction over him for the reasons stated in his written arguments.
5. As during the trial the Appellant claimed to be an Austrian citizen, as well as a British citizen, the case was adjourned for sentencing to allow Mr Van Der Westhuizen time to regularise his position and obtain the necessary documents as these could affect the sentence to be imposed.
6. The Appellant subsequently produced an emergency Austrian passport which had been sent to him at his request but post-dated the offence with which he was charged. A full passport was subsequently issued to him. Further adjournments were given to allow the Appellant time to regularise his position and obtain the necessary permit from the Civil Status and Registration Office to remain in Gibraltar.

7. On the 23rd August 2016, the Appellant was finally sentenced to a fine of £200 and a removal order was made as he still had not obtained a permit. That sentence was varied on the 9th September 2016 in that the removal order was rescinded but the fine of £200 remained unaffected.
8. The arguments put forward by the Appellant do not affect the lawfulness of the conviction and sentence imposed by the Magistrates' Court. On the date in question, the Appellant was not in possession of a valid permit or certificate allowing him to be in Gibraltar at that time. That he has obtained these documents subsequently is a matter that goes to mitigation and as such, was duly considered by the Learned Stipendiary Magistrate when sentencing the Appellant.
9. The Crown submits that the verdict of the Magistrates' Court:
 - (a) was not unsafe or unsatisfactory;
 - (b) was not wrong on any question of law; or
 - (c) based on any material irregularity arising during the course of the trial;as referred to in Section 277(1) of the Criminal Procedure and Evidence Act 2011.
10. The Appeal should therefore be dismissed.

Sharon J Peralta
Crown Counsel