



## Somner v. The Queen and Tucker v. Miller

[2016] SC (Bda) 81 App

**Country:**

**Region:** Americas

**Year:** 2016

**Court:** Supreme Court of Bermuda

**Health Topics:** Controlled substances, Health care and health services

**Human Rights:** Right to due process/fair trial

### Facts

These are two separate appeals where both appellants challenged the Magistrates' Court's decision on the jurisdiction of Drug Treatment Court (DTC) to deal with alcohol addiction and traffic offenses under Section 68 of the Criminal Code Act 1907. They were heard together because they raised the same legal issues.

Both appellants suffered from addiction to alcohol, committed traffic offenses and had pleaded guilty to impaired driving offenses. They were seeking to overturn their sentences in order to "gain the rehabilitative benefit" of the DTC Programme. They alleged that Section 68 of the Criminal Code Act 1907 shall be construed in a broader way to cover alcohol addiction and traffic offenses, thus they were eligible for the DTC Programme.

The Learned Senior Magistrate ruled that the DTC scheme did not apply to alcohol addiction as alcohol did not fall into the narrow definition of "drug", and it did not apply to traffic offenses as "they were distinct from criminal offenses." Both the appellants appealed and alleged that the Magistrates' Court erred in not properly applying Section 68.

Section 68 of the Criminal Code Act 1907 establishing the jurisdiction of DTC provided that,

(1) There is established a special magistrates court to be known as the Drug Treatment Court.

(2) The Chief Justice may designate any magistrate as a judge of the Drug Treatment Court.

(3) Where an accused other than a corporation

(a) pleads guilty to or is found guilty of an offence;

(b) appears to the court to satisfy the eligibility criteria; and

(c) is willing to undergo an assessment by a qualified person to determine his suitability for a drug treatment programme, the court may by order direct the offender to appear before the Drug Treatment Court.

### Decision and Reasoning

&nbsp;

The Court held that Section 68 covered alcohol addiction. Although there was no direct definition of "drug treatment" under Section 68 or the Explanatory Memorandum, in chemical or scientific terms alcohol was a potentially addictive drug. Secondly, Section 70B of the same Act in probation context applied to all drugs addiction including alcohol, so it made no sense to make treatment for alcohol addiction unavailable in the DTC context. In addition, the legislative history of Section 68 showed that the Parliament intended to extend a wider range of "non-custodial options" for offenders suffering from all forms of substance abuse, including alcohol abuse.

The Court also held that Section 68 applied to traffic offences when interpreting it together with the Eligibility Notice 2001. The language of Section 68 made any "offense" potentially eligible, and the list of "excluded offense" set out in the Eligibility Notice did not include traffic offence. Although the administrative authorities had been maintaining separate records of traffic offense and criminal offense, it was not the job of this Court

to exclude traffic offense which the Minister had not decided to include in the "excluded" list.

The Court remanded the matter back to the Magistrate's Court so that court could decide on the merits whether the appellants are suitable candidates for DTC.

### **Decision Excerpts**

It is not obvious or self-evident what legislative object would be achieved by making treatment for alcohol dependency available to offenders in the probation context but making it unavailable in the DTC context. (Para. 17)

It would be inconsistent with alternatives to incarceration impulses which informed the enactment of section 68 of the Criminal Code in its present form for the section to be construed as intended to deny access to the DTC for persons addicted to alcohol and, by extension, other intoxicants which are not controlled drugs. Such an interpretation also produces the absurd result that Parliament is deemed to have extended a wider range of non-custodial options for persons whose offending is materially influenced by illegal as opposed to legal drugs. (Para. 27)

&nbsp;

Copyright © 2015 [www.GlobalHealthRights.org](http://www.GlobalHealthRights.org)