GEORGE P. CONGER-THOMPSON, Appellant, c REPUBLI C OF LIBERIA, Appellee.

APPEAL FROM THE CIRC UIT CO URT OF THE FOURTH J UDICIAL CIRC UIT, MARYLA2'tD CO U2'tTY.

Argued April 30, 1962. Decided June 1, 1962.

1. Criminal prosecution of a public ofhcial on charges of nonfeasance in office is not barred by prior suspension or dismissal from ofiice on the same charges.
2. A judgment of conviction of nonfeasance in ofhce will be afhrmed when sup- ported by the evidence.

On appeal from a judgment of conviction of misfea- sance in public office, *jud gment affirm ed.*

*Darren ce H. Mor gan* and *Richard P. Dr ggs* for ap- pellant. *Solicitor General J. Dossen Richards* for appellee.

MR. CHIEF JUSTICE ILSoN delivered the opinion of the Court.

At the November, '959. term of the Circuit Court of the Fourth Judicial Circuit, Maryland County, appellant was indicted on presentment of the grand jury for said

term of court for commission of the crime of nonfeasance

in office.

During appellant’s employment by the Government as county attorney for Maryland County, theft was charged with having been committed on the new J. J. Dossen Hospital in Harper City; and a large quantity of medi- cines and other medical equipment, to the value of

$°.433 4s, were alleged to have been stolen from said

hospital at the time it was being set up for operation.

It is alleged that information of this theft was com- municated to appellant in his capacity as county attorney

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and prosecuting officer, yet he hesitated to take steps to apprehend and prosecute the criminals involved—thereby violating the obligation, trust and confidence reposed in him by the Republic of Liberia, against the interest, security, and safety of the State and of the general public. The theft was first made known in an anonymous letter addressed to the superintendent of the county. When no action was taken to apprehend the culprits, representation was made to the President of Liberia, who d erected that prompt, immediate and effective steps be taken to investi-

gate the situation.

During investigation proceedings held by the superin- tendent of the county, in which proceedings appeII ant participated as Government legal adviser, incriminating testimony led to his suspension from office; and subse- quently a recommendation for his dismissal was confirmed by executive action. Subsequently, a grand inquest lodged a presentment against appellant, and he was in- dicted for nonfeasance in office.

At the call of the case for trial, appellant moved the court to strike the case from the docket and discharge him without delay, on the ground that he had already been suspended and dismissed from ofhce as county attorney for Iailure to discharge the duties of said office. In sup- port of this motion, appeII ant quoted the following statu- tory definition of misfeasance:

“Any official or employee of the Government of the Republic of Liberia, who, while engaged in said office or employment, Iails, refuses or neglects to do or per- form any act or acts, which he is thereby specific ally commanded to do or perform, either by law or other- wise, whether or not to the prejudice of some person or persons or of the service in which he is then engaged, is guilty of a misdemeanor and punishable in the man- ner prescribed in section one hundred eleven of this Title. He shall be suspended from office pending trial and dismissed from office upon conviction.”

\*9s 6 Code, tit. zy, $ \*3-

The prosecution resisted said motion as legally unten- able and based on a misconstruction of the statute on which appellant relied. The trial court denied the motion; and this denial has been raised as an issue on appeal.

The case was tried before a jury who, after considering the evidence produced at the trial, returned a verdict of Guilty against defendant-appellant. Motions for new trial and in arrest of judgment were filed by appellant, and were denied. Final judgment was subsequently rendered upon said verdict. The defendant was sen- tenced to a fine of $2oo or imprisonment under hard labor in liquidation of said fine at the rate of $I 2 per month. To this final judgment the appellant excepted and prayed an appeal to this Court.

Before entering upon the merits of the charge, we must review the jurisdictional issue raised by appellant’s con- tention that an incurable blunder was committed in his suspension and dismissal from office before institution of criminal proceedings against him for an offense he is alleged to have committed whilst in office.

Our statute law on this point has already been referred to in this opinion ; but for emphasis we will now quote an authoritative summary of common law :

“It has been held that where a district attorney has been informed that crime has been committed and that no complaint thereof has been made before a judge or committing magistrate, the law makes it the duty of such officer to inquire, ex officio, into the fact, by caus- ing all persons whom he shall suppose have knowledge thereof to be summoned before a judge or magistrate, in order that their depositions may be taken.” 42 A.M.

UR. 2 4 *Pr osecuting H ttorne ys* § I g.

Under the above-quoted statutory and common-law authorities, we have no hesitation in holding that the interpretation sought to be placed on the statute in ques- tion is legally untenable. Suspension and dismissal of any public servant from office is an administrative and not a judicial act. A crime committed or alleged to have

been committed is not punishable by suspension from office, since relieving one from a public office does not expose him to loss of life, limb or property, as punishment for a crime would.

Suspension and dismissal from office prior to prosecu- tion, is an administrative procedure to which the court is not a party ; nor can there be mitigation of a crime except after judicial proceedings. It was, therefore, not error for the trial judge to deny appellant’s motion to strike this case from the docket.

Let us now see whether the evidence produced at the trial was sufficient to warrant the verdict of Guilty ren- dered against the defendant, now appellant. The record discloses that Police Inspector Joseph Gibson testified as follows:

*"Q.*

“A.

*“o.*



Say whether or not you, as Inspector of the Na- tional Police Force serving during the months of

August to October, '9s9. got knowledge of any stealing in connection with the ). J. Dossen Me- morial Hospital, Cape Palmas ; and if so, what

did you do as a police officer of this county 7 In other words, did you bring this to the knowledge of the prosecuting officer of the county?

Yes, sir ; when I got the fruit of crime I reported it to the county attorney, the defendant, and he told me all right, I should wait, and I waited, and from that time I have not heard any more of the matter.

If you can recall, tell us the whereabouts of the fruit of crime which you presented to the county attorney, now the defendant.

The fruit of crime was sent to the house of Mr. john Williams by Inspector Addade. This was done purposely for the county attorney, now ap- pellant, to issue or give instructions that we should go to search the home of Mr. Williams.”

On the cross-examination, the same witness was asked:

“Q. Do you mind telling this court and jury the nature of your report which you alleged you made to the county attorney, now appellant?

“A. I reported to the county attorney, now appellant, that Mr. John Williams gave me two bedsheets for sale, and I found out that they were the prop- erty of the Liberian Government.”

The giving of information to the county attorney, now appellant, by Inspector Gibson on the veranda of the ad- ministrative building was testified to by Insp•ctor Gibson and corroborated by Levi Williams. Besides this wit- ness, N. Theo Milton, superintendent of the county, testified that, after receiving the anonymous letter, he sent for the county attorney, now appellant, and directed that he get busy about the matter because “where you see smoke there is fire.” At the bottom of the said anonymous letter was a notation which read: “What became of the bedsheets, fruit of crime which was presented to the last grand jury?” Mr. Milton also testified that the county attorney, now appellant, had asked for a copy of the anonymous letter, and that he had promised he would try to get it for him, in the meantime suggesting that the de- fendant get in touch with the foreman of the grand jury. The defendant, now appellant, when on the stand as a witness in his own behalf, testified to having been re- quested to contact the foreman of the grand jury, but stated that the foreman had refused to appear when called, and that he was not clothed with authority to insist on the foreman’s appearance and disclosure of what happened in the grand jury room. The defendant also testified that the promise of the superintendent to furnish him with a copy of the anonymous letter, as well as a letter to the doctor and the doctor’s reply, was not Iulfilled; hence he could do nothing. To be more accurate about this state- ment, we quote the full text of the question put to him on

cross-examination and his reply thereto, as follows:

“Q. In your feeble attempt to exonerate yourself from

“A.

the charge against you, you say that you instructed the sheriff of this county to get in touch with the foreman of the grand jury and ascertain I rom him some facts in connection with the fruit of crime. Aside from the perfunctory effort on your part to apprehend and prosecute persons who might have been involved in the larceny case, what else did you do as county attorney P

You seem not to have followed my statement. I said before that the superintendent and I, in a conference held in his office, decided to take the matter up with the President in Monrovia, which he did. The only instructions left behind by the superintendent were that I should make contact with the foreman of the grand jury, which I did ; but the foreman refused to appear before me ; and knowing that, in keeping with the statutes, I was not clothed with authority to insist on his appear- ance and disclosure of what happened in the jury room, as also the failure on the part of the super- intendent to furnish me, upon my request, with a copy of the said anonymous letter, a copy of his letter to the doctor, and the doctor’s reply thereto, I could do nothing.”

This testimony seems intended to show that the Iailure

of the foreman of the grand jury to appear before appel- lant in his capacity as county attorney was a result of a lack of authority in the county attorney to compel the foreman’s appearance. The testimony also appears in- tended to emphasize the county superintendent’s failure to furnish copies of the anonymous letter, and the corre- spendence exchanged between the superintendent and the doctor in charge of the hospital. Appellant thus appar- ently sought to show that, in his capacity as county attor- ney, he lacked authority to initiate action to ascertain whether the rumors as to the robberies that had been committed at the hospital were well-founded. Inci-

dentally, however, the notation appended to the anony- mous letter did not refer to the grand jury then sitting; for the appellant could not have summoned before him, or in any manner required the foreman of the grand jury, or any of its members, to discuss any pending matters, except to a court of competent jurisdiction, they being sworn to absolute secrecy. But the notation to the anonymous letter expressly referred to the “last grand jury,” which had already been discharged. If bedsheets had been taken before that grand jury as suspected stolen property, either no basis had been found for the charge of robbery, and the county attorney would have been so informed, and the matter dropped, or a grave suspicion would arise from the grand jury having been discharged with the matter still before them. This makes the appel- lant’s claim of lack of authority a very weak and feeble excuse for his failure to question any person who served on this discharged grand jury, or to take other appropriate steps preliminary to commencing prosecution.

Moreover, there was no corroboration, either in the direct testimony of the appellant, or in that of the county superintendent, that at the time the appellant was in- structed by the county superintendent to contact the fore- man of the grand jury for information on a presentation of bedsheets to the grand jury at a past term of court, the appellant made known to the superintendent that he had no authority to do so, as he testified on cross-examination. Revealed in the record also is a statement made by Superintendent Milton that, during the investigation of this robbery at the Government hospital, statements of an incriminating nature, charging the appellant with com- plicity in the crime, were made which led to the following remarks of the county superintendent to appellant, who was participating in said investigation as a member of the superintendent’s official council and as county legal

adviser:

“I then turned to the county attorney and said to

him : ‘The palava catch you. I am depending on you as county attorney, and it looks like you are inside. Except you can exonerate yourself, I cannot have you on this board.’ ”

The superintendent further stated on cross-examination that, at a certain stage of this investigation, when the county attorney was required to be present at the investi- gation to exonerate himself, he absented himself.

On cross-examination, witness Levi Williams testified as follows:

“Jackson made the statement that the county attor- ney said he did not see how Williams and Howe could have sold any bedsheets to Inspector Gibson, because he knows the commissioner and his set of policemen are a bunch of crooks.”

The salient issue of fact, to which the trial judge cor- rectly referred, is whether information concerning the robbery was given to the appellant, whose official duty as county attorney was to prosecute, in the name of the State, for all crimes committed—which can only be done by timely investigation of any information tending to show that a crime has been committed. A county attorney should not have to be told to do this, even by the super- intendent of the county, who is the viceregent of the President.

Whether anonymous or not, the fact that this letter gave

notice of a robbery, which should have been the concern of any person interested in the welfare of the general public and of the state, was sufficient to have moved the county attorney to action independently of the superin- tendent’s warning and disclosure to him, and regardless of any correspondence that passed between the county superintendent and the doctor in charge of the hospital, or of any anonymous letter. But this, by appellant’s own statement when testifying in his own behalf, he f ailed to do because, as he contended, the superintendent failed to supply him a copy of said letter and of correspondence

between him and the hospital doctor, and because the foreman of a grand jury had ignored the bedsheets pre- sented to them as fruit of crime in a robbery that eventually was established to have been committed at the hospital.

Evidence of this kind is patently sufficient to support the conviction of a prosecuting officer for nonfeasance. Therefore, considering all the facts and circumstances connected with this case, we must conclude that the verdict of the empanelled jury is supported by the evidence ad- duced at the trial ; and the judgment confirming said verdict should not be disturbed.

The judgment appealed from is affirmed. The sen- tence of a fine of $zoo or imprisonment for a period long enough for liquidation of said fine, at the rate of $ i z per month at hard labor, is also affirmed. And it is so ordered.

*H ffrm ed.*