

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 IND. NO: 0042+42D/2015
5 CRIMINAL APPEAL: 22/15
6

7 WALTER JORDAN MCLAUGHLIN
8 KEITH ROHAN MONTAQUE
9

10 v.
11

12 REGINA
13
14



15 **Appearances:**

Mr. Rupert Wheeler of Samson Law for the
Appellants

Mrs. Candia James Malcolm for the
Crown/Respondent

20 **Before:**

Justice Frank Williams (Actg.)

21 **Heard:**

13th September 2019
22
23
24

25 **HEADNOTE**
26

27 *Criminal Law – Cayman Islands (Appeals to Privy Council) Order 1984 – Court*
28 *of Appeal Law (2011 Revision).*
29

30 **JUDGMENT:**
31

32 **IN THE MATTER OF BAIL PENDING APPEAL TO THE PRIVY COUNCIL:**
33 **DOES THE GRAND COURT HAVE JURISDICTION TO HEAR AN APPLICATION FOR**
34 **BAIL PENDING APPEAL TO THE PRIVY COUNCIL**
35
36

Judgment. In the Matter of Bail Pending Appeal to the Privy Council: Does the Grand Court have jurisdiction to hear an application for bail pending appeal to the Privy Council. And in the Matter of McLaughlin (Walter Jordan) & Montaque (Keith Rohan) v. R. Ind. 42+42D/2015. Coram: Acting Justice Frank Williams. Date: 23.09.2019

1. This matter has come before me as an application for bail pending appeal to the Judicial Committee of the Privy Council.

2. By notice of application filed on the 22nd July, 2019, the Applicants have sought, from the Board, permission to appeal. That application has not yet been heard.

3. By way of brief factual background: The applicants were tried on firearm charges in October of 2015 and were acquitted on a submission of no case to answer. The Crown appealed pursuant to s.28 of the *Court of Appeal Law (2011 Revision)* and was successful in obtaining a re-trial. On their second trial, the applicants were convicted by a jury on the 31st March 2017. The first applicant/proposed appellant (Walter McLaughlin) was convicted of one count of possession of an unlicensed firearm and was sentenced to 12 years' imprisonment. The second applicant/proposed appellant (Keith Montaque) was sentenced to 15 years' imprisonment each on two counts of possession of an unlicensed firearm, with the sentences to run concurrently. Their appeals to the Cayman Islands Court of Appeal (CICA or "the Court") against conviction and sentence were dismissed on the 5th November, 2018. It is that decision that they seek special leave to appeal.

THE CROWN'S PRELIMINARY OBJECTION

4. The Crown has taken a preliminary objection to the making of this application for the grant of bail pending appeal to Her Majesty in Council. In a nutshell, the Crown's position might be seen in paragraphs 6, 7 and 10 of its submissions dated 13th September 2019. They read as follows:



1 a. [T]he Grand Court has no jurisdiction to grant bail in circumstances where the CICA
2 has finally determined an appeal from the Grand Court.

3
4 b. [I]f there is jurisdiction held by any court to consider bail pending appeal to the Privy
5 Council, this must reside with the CICA.

6
7 c. [T]he CICA can only grant bail pending a determination of an appeal to the CICA
8 itself. There is no provision for the grant of bail pending an appeal to the Privy
9 Council which is unsurprising given that the CICA cannot grant leave to the Privy
10 Council in criminal cases.

11
12 **SUMMARY OF THE APPLICANTS' CASE ON THIS APPLICATION**

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14 5. In making this application, the applicants are placing reliance primarily on s.6 of the
15 *Cayman Islands (Appeals to Privy Council) Order 1984* (hereafter referred to as "the
16 Order"). That section, at sub-section 6(b), grants to a single judge of the CICA, *inter*
17 *alia*, the power and jurisdiction:

18 "6 (b) generally in respect of any appeal pending before Her Majesty in
19 Council, to make such order and to give such other directions as he
20 shall consider the interests of justice or circumstances of the case
21 require..."

22
23 6. The substance of the Applicants' application might be seen in paragraphs 12, 13 and 20
24 of the written submissions dated 11th September 2019. This is how they read:

25 "12. Where an appeal is pending before the Privy Council, section 6 of
26 the Order allows a Single Judge of the [CICA] to make "such order
27 [...] as he shall consider the interests of justice or circumstances of
28 the case require."



13. *This gives the Single Judge a broad discretion to make any order that meets those criteria. That would include an order that a person is admitted to bail pending an appeal, if such an order was in the interests of justice.*

...

20. *The Court can hear the application and will be asked to grant bail in the interests of justice. The interests of justice call for the grant of bail due to the strength of the appeal before the Privy Council."*

COMMON GROUND BETWEEN THE PARTIES

7. Both the Crown and the Applicants have advanced the position that jurisdiction lies in a judge of the Grand Court to sit as a single judge of the CICA in matters relating to bail.

8. That position arises from a consideration of sections 2, 31(1)(d) and 33 of the *Court of Appeal Law (2011 Revision)* ("The Law"). In summary, s.2 defines "Judge" as a Judge of the CICA; and s.31(1)(d) indicates that the powers of the full Court of Appeal in relation to the grant of bail, may be exercised by a single judge of the court. Section 33 (so far as is relevant) reads as follows:

"All the powers conferred by this Law, any other law or rules of court on a single Judge may, for all purposes, be exercised by a judge of the Grand Court in the same manner as they may be exercised by a single Judge and subject to the same provisions and such exercise shall, for all purposes, be as valid as if that power had been exercised by a single Judge..."

9. So no issue lies with the fact of the constitution of the tribunal hearing the application. Where the issue is joined is in respect of the applicability or otherwise of s.6 of the Order to a matter such as this.

1 10. The arguments show that the issue might be even narrower. For the applicants it is
2 contended that s.6 and indeed the entire Order, relate to criminal as well as civil matters.
3 For the Crown, on the other hand, it is contended that s.6 and the Order in which it is
4 stated, relate to civil matters only and cannot be used as a basis for this application.
5

6 **DISCUSSION**

7 11. In relation to the Crown's contention that the CICA cannot grant leave to appeal to the
8 Privy Council, the case of *Gonzalez & Suarez v R*¹ was cited. Before embarking on a
9 brief discussion of that case, however, it should be noted that, on behalf of the applicants,
10 it was not being contended that the CICA has power to grant leave to appeal to the Privy
11 Council. In fact, it was the applicants' contention that such leave would be (or has been)
12 sought pursuant to s.22 of the Order, which reads as follows:

13 “22. *Nothing in this Order contained shall be deemed to interfere with the right*
14 *of Her Majesty upon the humble petition of any person aggrieved by any*
15 *judgment of the Court to admit his appeal therefrom upon such conditions*
16 *as Her Majesty in Council shall think fit to impose.”*
17

18 12. The facts of the case of *Gonzalez & Suarez v R* are not that important to a resolution of
19 this application. However, apart from confirming that this court has no power or
20 jurisdiction to grant leave to appeal to the Privy Council (which, I repeat, the applicants
21 were not contending), the case also contains a helpful discussion of, and useful *dicta* on,
22 the question of whether the Order applies to criminal appeals. Its usefulness is reinforced
23 by the fact that the case is a decision of the then Court of Appeal for Cayman – that is,
24 the Jamaican Court of Appeal, sitting as the Court of Appeal for the Cayman Islands. As

¹ [1984-85] CILR 256

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1 early in the judgment as at paragraph 1 of the headnote at page 257, the following useful
2 excerpt is to be found:

3 “(1) The court, sitting as the Court of Appeal for the Cayman Islands, did not
4 have jurisdiction to grant leave to appeal to the Privy Council in criminal
5 cases. Appeals to the Privy Council from the Cayman Islands were
6 regulated only by the terms of the Cayman Islands (Appeal to Privy Council)
7 Order 1965 and s.3(6) of that Order closely resembled earlier provisions
8 consistently construed by the Privy Council itself as applying only to civil
9 cases...” (Emphasis added).

10
11 13. Also, at page 7 paragraph 35, of the decision, Carberry JA, presiding, with whose reasons
12 Wright JA agreed, opined as follows:

13 “(a) The Judicial Committee, starting apparently from about 1910, published a
14 series of Orders relating to different territories, establishing controls and
15 conditions relating to the lodging of appeals. The nature of these Orders
16 will be explored below, but in general they provided for (i) cases in which
17 appeals might be brought as of right; and (ii) cases in which they might be
18 brought by leave of the court below. Those Orders did not relate to criminal
19 appeals. (b) The Judicial Committee, however, preserved to itself the right
20 to give leave to appeal, so exercising the royal prerogative, and in general
21 it was necessary for those wishing to appeal in criminal cases to seek such
22 leave, seeing that the general Orders did not provide for criminal cases. As
23 to (b), the position appears to be succinctly summed up in Halsbury, *ibid*
24 [volume 10, 4th edition], para. 786, at 367:

25 “**Special leave in criminal cases.** The Judicial Committee does not
26 as a rule grant special leave to appeal in criminal cases except
27 where questions are raised of great and general importance which
28 are likely to occur often and where the due and orderly
29 administration of the law is shown to be interrupted or diverted into
30 a new course which might create a precedent for the future, and
31 where there are no other means of preventing those consequences;
32 or it is shown that, by a disregard of the forms of legal process or
33 by some violation of the principles of natural justice or otherwise,
34 substantial and grave injustice has been done.”” (Emphasis added)



1 14. These *dicta* came from the Court after the Court's careful consideration of several
2 authorities, among them: *Chung Chuck v R*²; *Commissioner of Police v Harris*³; and
3 *Holder v R*⁴ as well as many others, the decision in each of which is based on detailed
4 analysis.

5
6 15. It seems to me to be clear, therefore, from these *dicta*, that the Order governs only civil
7 appeals to the Privy Council. Section 22 of the Order, to my mind, also (like the Order
8 in which it is to be found) refers to civil matters – that provision enabling a litigant whose
9 application for leave to appeal in a civil matter is refused by the CICA, to apply to the
10 Privy Council directly for such leave. Even if I am wrong in that regard and s.22 governs
11 criminal matters, there is nothing to link s.22 with the provisions of s.6, pursuant to
12 which this application is being made. In fact, all other sections of the Order, to my mind,
13 clearly refer to civil proceedings.

14
15 16. The case of *Gonzalez & Suarez v R* was decided on a *1965 Order*, which the current
16 Order revoked. Section 3 of the *1965 Order*, however, is not significantly different from
17 the current section 3; and so there is no reason not to follow the dicta in the case. Section
18 3 of the *1965 Order* is set out in the *Gonzalez* case in the judgment of Rowe JA at page
19 288 as follows:

20 “Subject to the provisions of this Order, an appeal shall lie-

21 (a) as of right from any final judgment, where the matter in dispute on the appeal
22 amounts to or is of the value of three hundred pounds sterling or upwards, or
23 where the appeal involves directly or indirectly some claim or question to or

² [1930] A.C 244

³ Court of Appeal, Criminal Appeal No. 2 of 1978, judgment delivered 27th July, 1978, unreported

⁴ [1980] A.C 115

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1 *respecting property or some civil right amounting to or of the said value or*
2 *upwards; and*
3 (b) *at the discretion of the Court, from any other judgment, whether final or*
4 *interlocutory, if, in the opinion of the Court, the question involved in the appeal*
5 *is one which, by reason of its great or general importance or otherwise, ought*
6 *to be submitted to Her Majesty in Council for decision.”*
7
8

9 17. Apart from the **Gonzalez** case, however, there is another consideration that will become
10 apparent when we compare the provisions of s.3 of the Order with a similar provision
11 dealing with appeals from another jurisdiction. Let us compare s.3 of the Order with
12 s.110 of the **Jamaican Constitution**. Section 3 of the Order reads as follows:



13 “3. (1) *Subject to the provisions of this Order, an appeal shall lie as of right*
14 *from decisions of the Court to Her Majesty in Council in the*
15 *following cases –*

16 (a) *final decisions in any civil proceedings, where the matter in*
17 *dispute on the appeal to Her Majesty in Council is of the value*
18 *of £300 sterling or upwards or where the appeal involves*
19 *directly or indirectly a claim to or question respecting property*
20 *or a right of the value of £300 sterling or upwards;*

21 (b) *final decisions in proceedings for dissolution or nullity of*
22 *marriage; and*

23 (c) *such other cases as may be prescribed by any law for the time*
24 *being in force in the Cayman Islands;*

25
26 (2) *Subject to the provisions of this Order an appeal shall lie from*
27 *decisions of the Court to Her Majesty in Council with the leave of*
28 *the Court in the following cases –*

29 (a) *decisions in any civil proceedings, where in the opinion of the*
30 *Court the question involved in the appeal is one that, by reason*
31 *of its great general or public importance or otherwise, ought to*
32 *be submitted to Her Majesty in Council; and*

33 (b) *such other uses as may be prescribed by any law for the time*
34 *being in force in the Cayman Islands.”*
35

36
37 18. In comparison, this is how s.110 of the **Constitution of Jamaica** reads:

1 “110. (1) An appeal shall lie from decisions of the Court of Appeal to
2 Her Majesty in Council as of right in the following cases:-
3

4 (a) where the matter in dispute on the appeal to Her in
5 Council is of the value of one thousand dollars or
6 upwards or where the appeal involves directly or
7 indirectly a claim to or question respecting property or
8 a right of the value of one thousand dollars or upwards,
9 final decisions in any civil proceedings;

10 (b) final decisions in proceedings for dissolution or nullity
11 of marriage;

12 (c) final decisions in any civil, criminal or other
13 proceedings on questions as to the interpretation of this
14 Constitution; and

15 (d) such other cases as may be prescribed by Parliament.
16

17 (2) An appeal shall lie from decisions of the Court of Appeal to
18 Her Majesty in Council with the leave of the Court of
19 Appeal in the following cases-

20 (a) where in the opinion of the Court of Appeal the
21 question involved in the appeal is one that, by
22 reason of its great general or public importance or
23 otherwise, ought to be submitted to Her Majesty in
24 Council, decisions in any civil proceedings; and
25 such other cases as may be prescribed by
26 Parliament.
27

28 (3) Nothing in this section shall affect any right of Her Majesty
29 to grant special leave to appeal from decisions of the Court
30 of Appeal to Her Majesty in Council in any civil or criminal
31 matter.” (Emphasis added).
32
33



34 19. This comparison shows that, although the relevant section (s.110) of the *Constitution of*
35 *Jamaica* was enacted from 1962 and provides expressly for criminal appeals to Her
36 Majesty in Council; the Cayman Islands Order, which came into effect more than two
37 decades later, does not do so; but clearly could have, if that had been the intention.
38

39 20. But, to return briefly to s.6: One other important observation must be made which has
40 the effect of also denying the Applicants the order that they seek. That is that, if, for
41 argument's sake, this court had the jurisdiction to make the order being sought by the

1 applicants, s.6 (on which the Applicants heavily rely) speaks to orders being made: “...in
2 respect of any appeal pending before Her Majesty in Council...”
3

4 21. Suffice it to say that, in the instant case, there is no “appeal pending before her Majesty
5 in Council”. What is in existence is an application for such permission. That permission,
6 as was previously indicated, is not lightly given, but is given only in certain very limited
7 circumstances. Additionally, the application for permission to appeal is at least six
8 months and possibly two years out of time. So that, any challenges posed by the
9 substance of the proposed appeal, would be compounded by questions of delay.

10
11 22. To conclude this matter, therefore, having given careful consideration to the submissions
12 that have been made in this application, I am satisfied that a Judge of the grand court,
13 sitting as a single judge of appeal, has no jurisdiction to grant or consider a grant of bail
14 to convicted applicants seeking permission to appeal to Her Majesty in Council.

15
16 23. In the result, the application is refused.
17
18

19 **Dated this the 23rd September 2019**
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21 

22 **Justice Frank Williams (Actg.)**
23 **Acting Judge of the Grand Court**
24

