CIRCULATE 24/8/2001

IN THE CAYMAN ISLANDS COURT OF APPEAL

Criminal Appeal No. 17 of 2001
(Summary Court Appeal No. 9 of 2001)

BETWEEN:

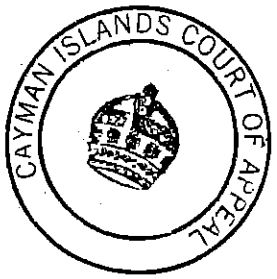
HER MAJESTY THE QUEEN

Respondent

- and -

SHANNETTE L. REID

Appellant



BEFORE: The Rt. Honourable Mr. Justice E. Zacca, President
The Honourable Mr. Justice G. Collett, J.A.
The Honourable Mr. Justice I. D. Rowe, J.A.

John Furniss instructed by Keith Collins & Co. for the Appellant.
Adam Roberts for the Respondent Crown.

Heard: August 10th 2001 Reasons released: August 24th 2001

REASONS FOR JUDGMENT

COLLETT, J.A.

On August 10th 2001 we dismissed this appeal and now set out our reasons for doing so.

The appellant on January 29th 2001 pleaded guilty in the Summary Court to one offence of importation of cocaine, contrary to section 3(1)(a) of the Misuse of Drugs Law

(2000 Revision), involving approximately 10 ounces of that drug. She was sentenced to serve eight years imprisonment to commence with the date of her arrest.

Having failed to give oral notice of appeal before the Magistrate in accordance with section 164 of the Criminal Procedure Code (1995 Revision) and having also failed to give written notice of appeal in the alternative within seven days of conviction under section 166(2) of the Code, the appellant on February 19th 2001 applied to the Grand Court for leave to extend time for giving notice of appeal. Under the terms of the proviso to section 166(2) of the Code, the Grand Court is invested with power in its discretion to extend such time.

The only reason advanced by the appellant in support of her application to extend time was her dissatisfaction with the conduct of her case by the attorney representing her in Summary Court. On March 14th 2001 Mr. Justice Panton in the Grand Court refused the application to extend time.

From this determination to refuse leave, the appellant next sought leave to appeal to the Court of Appeal and also against the severity of the sentence imposed upon her. A preliminary objection was taken at the hearing, on behalf of the Crown, that no appeal lies to this Court from the refusal of a Grand Court judge to extend time for giving notice of appeal under section 166(2) of the Criminal Procedure Code. After hearing argument we upheld the objection and dismissed the appeal.

The jurisdiction of this Court in criminal and civil matters is purely statutory and is founded upon the Court of Appeal Law (1996 Revision). Section 29(1) of that Law provides:

> "Any person, including the prosecutor, aggrieved by any judgment given or made by the Grand Court in the exercise of its appellate or revisional jurisdiction, whether such judgment has been given or made upon appeal or revision from a court of summary jurisdiction ... and whether or not the proceedings are civil or criminal in nature, may appeal, subject to this Law, to the Court on any ground of appeal which involves a point of law alone, or against sentence but not upon any question of fact."

It should be noted that, in accordance with the interpretation section (s. 2) of the Law "judgment" includes any sentence, decree, order or determination of any court. At first sight it might appear that, upon a liberal interpretation of this definition, a refusal to extend time might be categorised as an "order" or a "determination" of the Grand Court; and thus appealable to this Court.

The Crown however relied upon a unanimous decision of the House of Lords in England, *Lane v. Esdaile* [1891] A.C. 210, which clearly sets out the reasons why a refusal of necessary leave by an intermediate court is not regarded in law as either an order or a determination subject to appeal to the final court of review in the matter. At p. 212, Lord Halsbury L.C. in the leading speech observed:

> "... it is obvious that what was there intended by the Legislature was that there should be in some form or other a power to stop an appeal - that there should not be an appeal unless some particular body pointed out by

> the statute ... should permit that an appeal should be given. ... Surely if that is intended as a check to unnecessary or frivolous appeals, it becomes absolutely illusory if you can appeal from that decision or leave, or whatever it is to be called itself. How could any Court of Review determine whether leave ought to be given or not without hearing and determining upon the hearing whether it was a fit case for an appeal? And if the intermediate court could enter and must enter into that question, then the Court which is the ultimate Court of Appeal must do so also. The result of that would be that ... you might in truth have two appeals in every case in which, following the ordinary course of things, there would be only one ..."

In a concurring speech Lord Herschell referred to the Court of Appeal decision in *Kay v. Briggs* 22 Q.B.D. 343 where the court had to construe section 45 of the Judicature Act 1873 which provided that in appeals to a Divisional Court from inferior courts "the determination of such appeals respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court ..." Lord Herschell remarked at page 214:

> "In the case of *Kay v. Briggs* the Divisional Court had refused leave to appeal. Thereupon it was attempted in the Court of Appeal to review their determination in that respect. The Court of Appeal took the view that they were unable to entertain the question and could not review the decision of the Divisional Court; and the Master of the Rolls uses language which appears to me to be quite appropriate to the present question. He says:
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> > 'If this Court could overrule the discretion given by that section to Divisional Courts the practical effect would be to allow an appeal here in every case, because the facts of each case would be brought before us in order to enable us to decide whether or not we ought to overrule that discretion. I think that the real meaning of sect. 45 is to confine the power to give leave to appeal absolutely to the Divisional Courts."
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> Now if you substitute for "the Divisional Courts" "the Court of Appeal", every word of that is strictly applicable to the present case..."

This quotation makes it plain that the principles adopted by the House of Lords are of general application to cases where an appeal to an intermediate court can be brought only by leave of that intermediate court.

No more recent decision of the English courts has, so far as we are aware, modified or diminished the force of this authority; nor are there any reported decisions of the Cayman courts which touch upon the issue. In these circumstances we were content respectfully to follow and apply *Lane v. Esdaile* and to hold that we have no jurisdiction to review or overrule the exercise by a Grand Court judge of his discretion to refuse leave to appeal out of time from a decision of the Summary Court.

Zacca P.

CAYMAN ISLANDS COURT OF APPEAL

Collett J.A.

Rowe J.A.