

Handled down 6/19/84

6-12-85

CAYMAN ISLANDS

IN THE COURT OF APPEAL
CAYMAN ISLANDS MISCELLANEOUS APPEAL No. 1 of 1984

BEFORE: The Hon. Mr. Justice Zacca, President
The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Georges J.A.

RAUL GONZALEZ v. R

Appeal from Order refusing grant of Bail

22nd November 1984

Mr. D. Muirhead and Mr. S. McField for appellant
Mr. A. Smellie for respondent

GEORGES J.A.

The issue for determination is whether the Court of Appeal has jurisdiction to entertain an appeal from a decision of a judge of the Grand Court refusing to grant bail to an applicant in custody awaiting trial.

The right to appeal to the Court of Appeal is purely statutory. The Court of Appeal has no inherent jurisdiction Widgery L.J. delivering the judgment of the Court in R v Jefferies [1968] 3 All E.R. 238 at p. 240 stated of the Court of Appeal Criminal Division:

"Whatever may be the powers of courts exercising a jurisdiction that does not derive from statute the powers of this court are derived from, and confined to, those given by the Criminal Appeal Act 1907."

In the Cayman Islands the powers of the Court of Appeal are those

set out in the Court of Appeal Law 9 of 1975.

A review of the Law shows that this jurisdiction is set out under two heads - Appellate Civil Jurisdiction defined in sections 3 and 4 and Appellate Criminal Jurisdiction in section 5. The jurisdictions are set out separately and, in my view, ought not to be intermixed. Section 5 reads:

"Subject to the provisions of this Law, the Court shall have jurisdiction to hear and determine appeals from the Grand Court by a convicted person -

- (a) against the conviction on any ground of appeal which involves a question of law alone;
- (b) with the leave of the Court, or upon the certificate of the Judge of the Grand Court before whom he was tried that it is a case fit for appeal, against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or upon any other ground which appears to the Court or the Judge aforesaid to be a sufficient ground of appeal; and
- (c) with the leave of the Court against the sentence passed on his conviction unless the sentence is one fixed by law."

It is quite clear that only a "convicted person" has a right to appeal to the Court of Appeal. The 'appellant' in this matter is not a convicted person and on the face of it has no right.

Mr. Muirhead pointed out that nothing in the Law forbade an appeal from a decision of the Grand Court refusing bail to a person in custody awaiting trial. In a sense this is true, and in dealing with jurisdiction in civil appeals specific restrictions are placed on appeals from certain orders either absolutely or conditionally upon leave being given. Basically, however, the issue is not whether the right of appeal is specifically denied in a given case but whether it is conferred. In criminal proceedings it is conferred only upon a convicted person and by inference upon no other person. By inference, accordingly it is, in the absence of other indications, denied.

Mr. Muirhead contended, in effect, that there were other indications. He sought to establish a cross linkage between appellate Civil Jurisdiction and Appellate Criminal Jurisdiction. Dealing with Appellate Civil Jurisdiction section 4 f (i) provides:

"No appeal shall lie -....."

" "(f) without the leave of the Grand Court, or of the Court, from an interlocutory judgment made or given by the Judge of the Grand Court except -

(i) where the liberty of the subject or the custody of an infant is in question;"

Section 13 of the Law falls under the heading Part IV

Supplementary provisions. It reads in part:

"For the purposes of an appeal under Part 111 [which deals with Appellate Criminal Jurisdiction] the Court may, if it appears to the Court to be necessary or expedient in the interests of justice -

(f) exercise in relation to the proceedings any other powers which may for the time being be exercised by the Court on appeals in civil matters, and issue any warrant necessary for enforcing any orders or sentences of the Court.".

Mr. Muirhead contends that section 13 (f) vests in this Court the power to hear appeals in cases where the liberty of the subject is concerned. This is so because it enables the Court to exercise powers exercised by the Court in appeals in civil cases and among those powers is the power to hear without leave appeals where the liberty of the subject is in question.

The argument appears to me to rest on an unwarranted extension of the meaning of the term "powers". It is used in Mr. Muirhead's argument as if it was synonymous with "jurisdiction". The law makes it clear that the concepts are distinct. Where the Court has jurisdiction to hear an appeal, it may exercise powers in relation to that appeal. Before the question of exercising powers can arise jurisdiction must be established. Thus section 5 sets out the jurisdiction of the Court in criminal matters. Sections 6 and 9 set out the powers which the Court can exercise in relation to an appeal of which it is seized. Section 13 (f) extends these powers by including the powers which the Court can exercise in civil appeals but it does not increase the jurisdiction of the Court in Criminal matters.

Mr. Muirhead pressed for a liberal interpretation to prevent anomalies from arising. He contended that any other interpretation would make access to the Court a matter of form - depending on the form

of the proceedings rather than the substantive issue. Had he sought his remedy by way of habeas corpus then access to this Court on appeal would be possible. Habeas corpus is one of the prerogative writs effective to secure the immediate release from unlawful or unjustifiable detention whether in prison or in private custody. It may be used either in criminal or in civil proceedings and the nature of the appellate process would depend on the nature of the proceedings in which the writ was used not on the fact that the writ was used.

This was made clear in Re Kray [1965] 1 All E. R. 710 where Lord Gardiner L.C. stated at p. 717 :

"In Re Hastings [1958] 1 All E.R. 707 a prisoner applied to a Divisional Court for a writ of habeas corpus on the ground that no valid sentence had been passed on him. His application was refused on the merits. He then appealed to the Court of Appeal who held that as it was a criminal cause or matter they had no jurisdiction."

A change in the form of the proceedings would not then have made possible access to this Court.

Mr. Muirhead also contended that refusal to entertain the appeal would place a convicted person in a better position than the one who had not been convicted. A convicted person who had appealed and whose application for bail had been refused by the Grand Court could apply to this Court. This is a direct result of the Court of Appeal Law which confers a right of appeal on convicted persons. Once there has been an appeal this court becomes seized of the matter and an application can be made to this court for bail not by way of appeal from the refusal of the Grand Court but by way of an application in a cause already before the Court. The applicant in this matter is also entitled to two hearings - before - the magistrate and before the Grand Court.


To permit an appeal in a case such as this would be a breach of a well established principle that in criminal matters appeals on interlocutory proceedings are not permitted. This principle is made secure by vesting the entitlement to appeal only on a convicted person.

Even though there may be some hardship, which is not conceded, the

English Courts have assiduously maintained this principle that only convicted persons may appeal. In R. v Jefferies [1968] 3 All E.R. 238 the appellant was convicted at the assizes, sentenced and ordered to pay £1,300 towards the costs of the prosecution. He gave prompt notice of application for leave to appeal but died before the application could be heard. His widow who was the sole executrix and residuary legatee sought to pursue the application contending that she had an interest since a successful pursuit of the appeal would relieve the estate of the payment of the costs. The Court of Appeal Criminal Division refused to allow her to do so. Widgery L. J. at p. 240:

"Although in this case the estate would benefit if the widow were allowed to continue the appeal and were successful, there is no procedure whereby she can be substituted as an appellant, and we do not see how there can be an inherent power in the Court to allow this when the appeal is itself the creature of statute. We would add that not only the wording of s. 3 of the Act of 1907 but the general tenor of the statute as a whole is such as to make the right of appeal strictly personal to the "person convicted."

For these reasons the application was refused.



T. Georges J.A.

6 December 1985.