

IN THE GRAND COURT OF THE CAYMAN ISLANDS

582  
CAUSE NO. OF 1997

BETWEEN: THE ATTORNEY GENERAL

APPLICANT

AND

THE HONOURABLE GRACE DONALDS  
MAGISTRATE

FIRST  
RESPONDENT

AND

PETER O'NEIL GOODEN

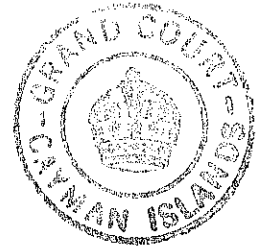
SECOND  
RESPONDENT

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To The Clerk of the Court, Law Courts, George Town, Grand Cayman

Name, Address and  
Description of Applicant:

The Honourable Richard Coles  
Attorney General of the Cayman Islands



Legal Department  
P O Box 907  
4th Floor  
Tower Building  
George Town,  
Grand Cayman  
Cayman Islands



Judgment, Order  
Decision or other  
Proceedings in respect  
of which relief is sought:

The decision of The Honourable Grace Donalds,  
Magistrate, in the Summary Court of Grand Cayman,  
on the 18th day of June 1997 to permit the Defendant  
Peter O'Neil Gooden to elect trial in the Grand Court  
upon a charge that Peter O'Neil Gooden on Friday 17th  
January 1997 was concerned in the importation of a

controlled drug into the the Cayman Islands, namely cocaine, being more than two ounces, namely over 2 lbs. The proceedings whereby Peter O'Neil Gooden elected trial in the Grand Court accordingly. Further, the decision of the Learned Magistrate to order the holding of a Preliminary Enquiry in these circumstances.

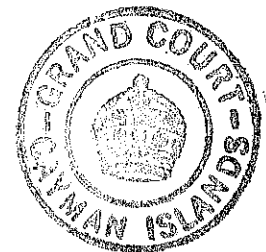
The said charge was:-

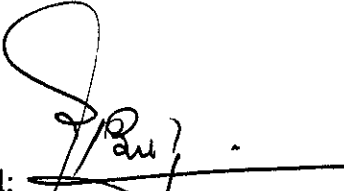
Being Concerned in the Importation of Cocaine, Contrary to section 4(1) of the Misuse of Drugs Law, (1995 Revision).

- Relief Sought:
- (1) Order of Certiorari to remove to the Grand Court the decision of the Honourable Magistrate to permit Peter O'Neil Gooden to elect trial in the Grand Court, the proceedings whereby Peter O'Neil Gooden elected trial in the Grand Court accordingly, and the decision to order the holding of a Preliminary Enquiry in these circumstances, for the purpose of the said decisions and proceedings being quashed.
  - (2) Declaration that the aforesaid charge is triable summarily and not otherwise.
  - (3) Order of Mandamus to remit the matter to the Summary Court of the Cayman Islands with a direction that it reconsider the matter and reach a decision in accordance with the findings of the Grand Court.

Name and address of Applicant's attorneys:

Samuel Bulgin  
Senior Crown Counsel, Criminal  
Legal Department  
P O Box 907  
4th Floor  
Tower Building  
George Town  
Grand Cayman  
Cayman Islands



(Signed:   
Samuel Bulgin Senior Crown Counsel  
for the Attorney General

Dated: 2<sup>nd</sup> day of July 1997

## GROUND ON WHICH RELIEF IS SOUGHT

1) It is submitted that the Learned Magistrate made an error in law which appears on the face of the records in the reasoning which she gave for her decision, or, in the alternative, the Learned Magistrate exceeded her jurisdiction.

2) It is submitted that the law applicable to this Application is as follows:

a) Section 4(1) of the Misuse of Drugs Law ("The Law") states:

Offence to have dealings  
in controlled drugs  
unless authorised

4. (1) Whoever, without lawful excuse or without being authorised in that behalf,-

- (a) imports;
- (b) exports;
- (c) produces;
- (d) stores;
- (e) sells, buys or otherwise deals in;
- (f) supplies;
- (g) distributes;
- (h) dispenses;
- (i) issues a prescription for;
- (j) administers;
- (k) possesses, constructively or otherwise
- (l) consumes; or
- (m) has in his possession, whether lawfully or not, with intent that it be supplied, whether by himself or some other person, and whether in the Islands or elsewhere to another person in contravention of this subsection,

any controlled drug, utensil or thing used in the preparation or consumption of any controlled drug, or who attempts, assists or is concerned in any such matters is guilty of an offence.

In the instant case the second Respondent was charged with the unambiguous and identifiable statutory offence of being concerned in the importation of the controlled drug cocaine.

b) Section 17(5) of the Misuse of Drugs Law states:

(5) Notwithstanding subsection (1), whoever is guilty of an offence that -

- (a) is contrary to any provision of this Law;
- (b) is specified in Part B of the Second Schedule; and
- (c) is in relation to a controlled drug that is a hard drug,

is, on summary conviction liable to imprisonment and a fine in accordance with the provisions of Part B of the Second Schedule.



It is submitted that the offence of being concerned in the importing of a hard drug of 2 ounces or more upon first conviction attracts a maximum penalty of 20 years in prison and an unlimited fine, as specifically provided in Part B of the Second Schedule of the Law. It is further submitted that cocaine is a hard drug as specified in Part 1 of the First Schedule of the Law as read with the definition of "hard drug" contained in section 2(1) of the Law.

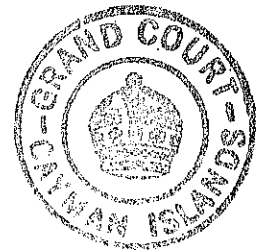
In the premises, section 17(5) of the Law confers exclusive summary jurisdiction and the Law makes no provision expressly or by necessary implication for the trial of this charge other than by summary process. In other words, the proper venue for trial is governed by section 17(5) of the Law alone.

c) Section 59 of the Misuse of Drugs Law states:

Procedure in respect of certain offences	59. (1) Notwithstanding the provisions of any other section of this Law, where a person is charged with any offence of selling, dealing in, distributing, supplying, dispensing, storing, issuing a prescription for, administering, importing, exporting, producing or attempting, contrary to section 4(1) which relates to a controlled drug that is a hard drug, then such offence shall be deemed, for the purpose of determining the mode of trial, a category B offence in accordance with section 5 of the Criminal Procedure Code.
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It is clear from this language that the offence of being concerned in the importation of a hard drug has been specifically and explicitly excluded from section 59 of the Law and from the deemed procedural ambit of those category B offences which would be governed by section 5(1) of the Criminal Procedure Code in the following terms:

Mode of trial of particular offences	5: (1) For the purpose of determining the mode of trial before a court, offences shall be classified into three categories -  Category A - offences triable upon indictment and not otherwise;  Category B - offences triable upon indictment which, with the consent of the prosecution and the person charged (or all of the persons charged if there be more than one), may be tried summarily; and  Category C - offences triable summarily and not otherwise.
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Accordingly, section 59 in terms and upon a proper construction supports the Applicant's previous proposition that this charge is triable summarily and not otherwise.

d) The Learned Magistrate in rejecting this legal analysis was further led into error of law upon the face of the record and/or exceeded her jurisdiction by placing formal and express reliance upon and acting upon a misinterpretation of the decision in *R. v. Whittaker and Watler* (1986-87) CILR 189. It is respectfully submitted that this authority determined issues relating to the offences of dealing in cocaine and the procurement of such dealing, in the context of transitional procedures resulting from the Misuse of Drugs (Amendment) Law 1985. It is further submitted that although the offence of dealing in a hard drug is now clearly and explicitly included within the scope of section 59 of the Law, there is no corresponding inclusion in the section for the offence of being concerned in the importation of a hard drug. In the premises, the authority has no bearing upon the instant case.

e) Section 84 of the Criminal Procedure Code states:

Court to hold preliminary inquiry.	84. Whenever any charge has been brought in a Summary Court against any person in respect of an offence-  (a) not triable summarily; or (b) which may be tried either summarily or on indictment and which the prosecution or the accused person desires to have tried on
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indictment,

the court shall hold a preliminary inquiry subject to this Code and the Evidence Law (1995 Revision).

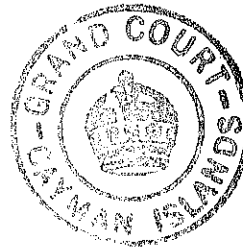
It is submitted that in the instant case neither condition (a) nor (b) was satisfied, and in the premises the Learned Magistrate both erred in law upon the face of the record and/or exceeded her jurisdiction in permitting the Second Respondent to elect an indictable Grand Court trial and in ordering that a Preliminary Enquiry be held.

f) Section 186 of the Criminal Procedure Code states:

Powers of Grand Court  
in respect of habeas corpus etc.

186. Nothing in this Code shall be construed to affect or limit the powers of the Grand Court to issue orders of certiorari, habeas corpus and mandamus in respect of proceedings thereupon and for any purposes connected therewith.

Accordingly, it is submitted that an application for Judicial Review of the aforesaid decisions and proceedings is appropriate in all the circumstances of the case, and no adequate alternative remedy to Judicial Review exists.



IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No.582 of 1997

IN THE MATTER OF THE MISUSE OF DRUGS LAW (1995 REVISION)  
AND IN THE MATTER BETWEEN

THE ATTORNEY GENERAL

Plaintiff

- AND -

THE HONOURABLE GRACE DONALDS  
MAGISTRATE

First Defendant

- AND -

PETER O'NEIL GOODEN

Second Defendant

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on *Oct. 6, 1997* at *10:00 a.m.* or as soon thereafter as counsel can be heard, by counsel on behalf of the Attorney General for the following relief:

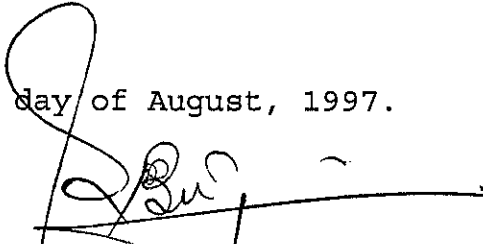
- (1) An Order of Certiorari to remove to the Grand Court the decision of the Honourable Magistrate to permit Peter O'Neil Gooden to elect trial in the Grand Court, the proceedings whereby Peter O'Neil Gooden elected trial in the Grand Court accordingly, and the decision to order the holding of a Preliminary Enquiry in these circumstances, for the purpose of the said decisions and proceedings being quashed.
- (2) A Declaration that the aforesaid charge is triable summarily and not otherwise.
- (3) An Order of mandamus to remit the matter to the Summary Court of the Cayman Islands with a direction that it reconsider the matter and reach a decision in accordance with the findings of the Grand Court.

AND FURTHER TAKE NOTICE that the grounds of this application are

set out in the statement in support of an application for leave enclosed herein.

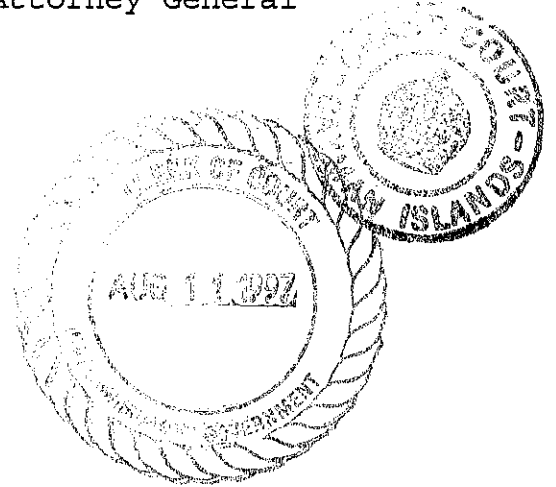
Dated at George Town on this

day of August, 1997.

  
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Samuel Bulgin  
Acting Solicitor General  
(For) Attorney General

TO: Clerk of Courts  
AND TO: Hon. Grace Donalds  
AND TO: Peter O'Neil Gooden

Estimated length of hearing: 3 hours



This Notice of Originating Summons was filed on behalf of the Attorney General whose address for service is the Legal Department, 4th Floor, Tower Building, Box 907, Grand Cayman, Cayman Islands.