

Application for Leave to Apply for Judicial Review (O.53, rule 3)
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. *279* OF 1999

BETWEEN:

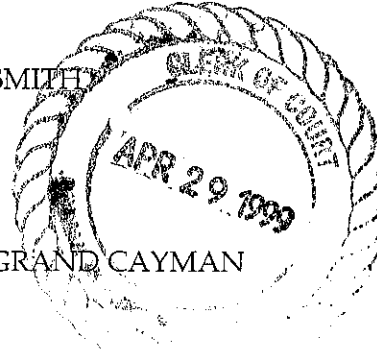
JEAN ERIC SMITH

Applicant

AND :

SUMMARY COURT OF GRAND CAYMAN

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	Jean Eric Smith presently on remand at HMP Northward
Judgment, order, decision or other proceeding in respect of which relief is sought	A decision of learned Magistrate Nova Hall in the course of criminal proceedings against the Applicant WHERBY on 28 th April 1999 with respect to oral submissions made on behalf of the Applicant that the issue of a potentially equivocal plea of a former Co-defendant who was in the process of giving evidence for the Crown should be resolved forthwith before his evidence continued IT WAS ORDERED on 28 th April 1999 that the evidence and the trial should proceed and the issue be resolved later by another tribunal.
Relief Sought	
<ol style="list-style-type: none"> 1. An order of prohibition to prevent the trial from continuing until the issue of the witnesses plea is resolved. 2. An order of certiorari to quash the decision to proceed with the trial before the issue of the witnesses plea is ruled upon. 3. An order of mandamus to oblige the Summary Court to deal with the issue of the status of the witnesses plea in advance of further testimony. 	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Quin & Hampson , Attorneys-at-Law, Third Floor, Harbour Centre, P.O. Box 1348, George Town, Grand Cayman
Signed <i>Quin & Hampson</i>	Dated: 29 th April 1999

GROUND ON WHICH RELIEF IS SOUGHT

THE FACTS

1. Jean Eric Smith stands charged before the Summary Court of Grand Cayman with a single allegation of being concerned in the importation of a controlled drug namely ganja, being more than a pound, namely 255.3 lbs, contrary to section 4(1)(a) Misuse of Drugs Law 1973. Nine other individuals were charged as a result of the same investigation concerning a shipment of ganja which arrived in West Bay, Grand Cayman in the early hours of the morning of 8th December 1998. Three of those charged have pleaded guilty to the substantial allegation of importation of the controlled drugs : Sidney Ebanks, Leroy Clarke, and Dwight Blake. Two other individuals, John Webster and Justin Webster, have pleaded guilty to being concerned in the importation of the particular consignment. For the purposes of the trial there remain five Defendants ; the Applicant, George Ian Duffel, John Todd Rivers, Robbie Rivers, and Gregory Rivers. The Crown propose to call as a Prosecution witnesses the five former Co defendants who have pleaded guilty to the charge which each faced. The trial commenced on 26th April 1999 before learned Magistrate Nova Hall. Crown counsel is Ms. Jane Rowley. John Todd Rivers and Robbie Rivers are legally represented by Mr. John Furniss. George Ian Duffel is represented by Mr. Delroy Murray. The Defendant Gregory Rivers is a litigant in person.
2. On 27th April 1999 the Crown proceeded to call its first live witness, Sidney Ebanks. Mr. Ebanks had pleaded on 28th January 1999 to importing the drugs. Sidney Ebanks captained the canoe containing the ganja from Jamaica to Grand Cayman between 7th and 8th December. In a witness statement provided to the Crown on 23rd December 1998 and in his evidence in chief on 27th April 1999 Mr. Ebanks purported to identify the Applicant as the organiser of and eventual recipient of the consignment of drugs. In the course of his evidence in chief Mr. Ebanks testified to the court that at the time the drugs were loaded onto the canoe in Jamaica he " didn't like the idea. There were 10 of them. I just took off. I was scared for my life." At that stage of the proceedings the propriety of

Ebanks' guilty plea was brought to the attention of the learned Magistrate. Whilst recognising and acknowledging at that stage the possibility of Ebanks' plea having been entered on an equivocal basis the learned Magistrate ruled that the witnesses testimony should proceed.

3. Later in the course of his testimony Ebanks gave evidence that Blake and Clarke were placed on the boat with him by the supplier of the drugs " to make sure stuff was delivered as I said I might have thrown it over. " He continued by saying that a phone that had been given to him by George Ian Duffel, the owner of the boat, was taken from him by the Jamaican supplier of the drugs. This was the phone he alleged he had for the ocean if he got in trouble. The general thrust of Ebanks' evidence was that he was in Jamaica for the sole purpose of returning the canoe to its rightful owner, Duffel, that he knew nothing about any drugs until the very last minute and that the transportation of the drugs was part of a deceitful plot.
4. The learned Magistrate was again addressed as to the propriety of Ebanks' purported plea of guilty given the indications in his evidence as to the issue of duress. After retiring to consider the position the learned Magistrate ruled that she would grant a special legal aid assignment so that, quite unusually, Ebanks could speak to an attorney about his plea before recommencing his evidence. Before the court resumed on 28th April 1999 Mr. Ebanks had the benefit of a legal consultation with Mr. Neville Levy. Mr. Levy did not appear on Ebanks' behalf in court but he made observations to the learned Magistrate in chambers.
5. Mr. Ebanks was recalled to the witness stand and the learned Magistrate conducted a series of exploratory questions with the witness. During the course of her questions Mr. Ebanks again reiterated the fact that he had been "afraid for [his] life" and " I plead not guilty Ma'm".
6. Submissions were made on behalf of all 4 represented Defendants that there was the clearest evidence that Mr. Ebanks' purported plea of guilty was, or at the very least may be, an equivocal one and that his testimony as a Crown witness could not proceed until such time as the issue of the propriety of the plea was determined to the satisfaction of the court.
7. After retirement the learned Magistrate ruled :-

" Mr. Ebanks is a witness for the Crown who has made certain statements in evidence which indicate that his plea is equivocal. He took legal advice and now wishes to plead not guilty. The court intends to continue to treat him as a witness for the Crown. The statements will be reviewed when the court considers the reliability of the evidence he has given against his co-accomplices. The court will deal with the issues of corroboration at the relevant time. His evidence will be open to cross-examination. At the end of the day the court will deal with the state of the issue of the state of his plea. The court will let the crown complete his evidence. As far as sentence is concerned his statements will be reviewed by another tribunal to decide what to do with his plea s given today. "

8. The substantive and justiciable aspect of the ruling was that the trial should proceed with Ebanks as a crown witness and the issue of his plea would be revisited on a date after the conclusion of the instant case. Application was made at that stage on behalf of the Applicant to adjourn to seek judicial review of the decision to proceed with Ebanks' testimony as a Crown witness with the question of his plea and therefore his status in the proceedings unresolved.

THE LAW

9. As the learned Magistrate remarked in her ruling Ebanks is presently before the court as a Prosecution witness. Because of his purported plea of guilty he is no longer a Co-Defendant of the Applicant and can therefore give evidence against him as part of the Crown's case. If Ebanks' plea is held to be an equivocal one and he enters a plea of not guilty then he becomes a Co-Defendant and the evidence which he has purported to give against the Applicant is inadmissible as part of the Crown case. The procedural and evidential result of Ebanks' testimony forming part of the Crown's case against the Applicant is that the Applicant is not afforded the protection of the testing of the sufficiency of the evidence by the court at the close of the Crown case. In effect what the court will do in the instant trial is consider if there is a prima facie case against the Applicant and as a central part of that consideration hear and use the evidence of Ebanks. The chronology envisaged by the

learned Magistrate in her ruling will mean that should a later tribunal determine that Ebanks' plea is equivocal his evidence should never have formed part of the consideration of whether there was a case to answer against this Applicant because it is the evidence of a Co-Defendant. The order in which the learned Magistrate proposes to deal with this issue will leave the status of Ebanks' testimony in an evidential no-man's land. At present he is called before the court by the Crown as a witness of truth and worthy of credit. As a corollary of the proposed timetable there exists the very real possibility that the Crown will find itself in proceedings against Ebanks in which his case and his testimony will be challenged. In the course of what would and should be the same proceedings the Crown would endeavour to admit as part of its case the evidence of a man who at the same time it contends is not worthy of credit. The evidence of Ebanks represents a central plank of the Crown case against the Applicant. The evidential result of the proposed chronologically flawed procedure is that the Applicant will be deprived of the protection of the half-way test in these proceedings and thereby will be deprived of the right to have a fair trial.

GROUNDS

10. In the premises the said decision was unlawful for the following reasons :-

Procedural Impropriety

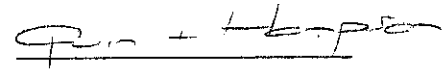
11. The said decision is procedurally improper in that it deprives the Applicant of the protection of the proper testing of admissible evidence at the close of the Crown case in determining whether he has a case to answer. He is thereby denied a fair hearing.

12. Additionally the decision may result in a breach of the principles of natural justice. The Applicant is entitled to know the case that he has to answer. Whilst he is aware of the way the case is put against him the Crown's position in so far as Ebanks is concerned is in some ambiguity. Is he presented as a witness of truth or is he not ?

Illegality

13. The said decision is an error of law in that the learned Magistrate misdirected herself as to the correct time that this issue should be resolved.

DATED 29th April 1999



QUIN & HAMPSON

Attorneys-at-law for the Plaintiff