

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT CHRISTOPHER AND NEVIS

SKBMCRAP2023/0003

BETWEEN:

TYRIQUE JONES

Applicant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mde. Margaret Price Findlay
The Hon. Mr. Trevor M. Ward
The Hon. Mde. Esco L. Henry

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Ms. Nadia Chiesa with Mr. Craig Tuckett for the Applicant
Mr. Leslie Roberts for the Respondent

2025: March 11.

Application for conditional leave to appeal to His Majesty in Council - Section 99(1)(c) of the Constitution of the Federation of Saint Christopher and Nevis (the "Constitution") - Appeals as of right – Criminal appeal against sentence - Calculation of remand time in sentence – Whether the intended appeal raises a genuinely disputable question of the interpretation of sections 3(a) and 5(1)(b) of Constitution

REASONS FOR DECISION

[1] **WARD JA:** By Notice of Motion filed on 6th December 2024, Tyrique Jones, the applicant, seeks leave pursuant to section 99(1)(C) of the **Constitution of the**

Federation of Saint Christopher and Nevis (the "**Constitution**")¹ to appeal to His Majesty in Council. The decision sought to be appealed is the decision of the Court of Appeal dated 15th November 2024 in SKBMCRAP2023/0003- Tyrique Jones v The Commissioner of Police, wherein the Court dismissed the applicant's appeal against a sentence of three years' imprisonment each for the offences of possession of an unlicensed firearm and possession of ammunition, contrary to sections 20(1)(b) of the **Firearms Act**.² These sentences were imposed by the learned senior magistrate on 17th April 2023.

[2] The nub of the intended grounds of appeal as set out in the draft notice and grounds of appeal may be summarized in the following terms:

- (i) the learned senior magistrate's decision to include the remanded time of the applicant in the calculation of his sentence on 17th April, 2023;
- (ii) that the learned Senior Magistrate cited the 2018 sentencing guidelines for firearms as giving her the mandate to include the remanded time of the defendant in calculating the sentence;
- (iii) if the magistrate deducts time on remand instead of the prison authorities, it means that a defendant held on remand will always serve more time than those on bail;
- (iv) that based on previous court decisions, the appellant has a substantive and procedural legitimate expectation to have his time on remand to count and be calculated by the prison administration;
- (v) that for the magistrate to have deducted the time served on remand by the applicant was a breach of the applicant's right to liberty, guaranteed by sections 3(a) and 5(1)(b) of the **Constitution**.

¹ Cap 1.01 of the Laws of Saint Christopher and Nevis.

² Cap 19.05 of the Revised Laws of Saint Christopher and Nevis, 2009.

[3] It is necessary to consider the provision of the **Constitution** which the applicant invokes to ground the present application. Section 99(1)(c) provides that an appeal shall lie from decisions of the Court of Appeal to His Majesty in Council as of right in the following cases:

- “(a)...
- (b)...
- (c) final decisions in any civil or criminal proceedings that involve a question as to the interpretation of this Constitution.”

[4] In criminal matters, appeals to the Privy Council lie as of right in the case of a final decision of the Court of Appeal which involves a question of interpretation of the **Constitution**. Where leave is sought under section 99(1)(c) of the **Constitution** as of right, the Court of Appeal’s gate-keeping role is to determine whether the intended appeal raises a genuinely disputable question of the interpretation of the constitution. See: **Frater v R**;³ **Alleyne-Forte v The Attorney General of Trinidad and Tobago and others**;⁴ and **R v Lewis (Mitchell)**.⁵ In other words, its role is to establish whether a right to appeal exists.

[5] The provisions of the **Constitution** which the applicant submits are in need of interpretation are 3(a) and 5(1)(b). Section 3(a) provides:

“Whereas every person in Saint Christopher and Nevis is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his or her race, place of origin, birth, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely,

- (a) life, liberty, security of the person, equality before the law and the protection of the law;”

[6] Section 5(1)(b) provides:

“(1) A person shall not be deprived of his or her personal liberty save as may be authorised by law in any of the following cases, that is to say-

...

³ [1981] 1 WLR 1468 at p.1470.

⁴ [1998] 1 WLR 68.

⁵ [2007] CCJ, (3) (AJ).

(b) in execution of the sentence or order of a court, whether established for Saint Christopher and Nevis or some other country, in respect of a criminal offence of which he or she has been convicted;”

[7] A cursory look at the notice of appeal filed on 6th July 2023 discloses that it contained only two grounds of appeal, which I quote:

“a. That the learned magistrate erred in law and/or misdirected herself by failing to sentence the appellant less than his co-defendant on the same facts; and

b. That the learned magistrate erred in law and/or misdirected herself in the application of the Firearm Sentencing Guidelines by determining that the offence was Category 3/Level A, allocating only fifty percent (50%) discount of the maximum sentence being credited to the Appellant, instead of allocating seventy percent (70%) discount of the maximum sentence being credited to the Appellant.”

[8] In short, the first ground took issue with the fact that the learned senior magistrate imposed the same sentence on the applicant as his co-defendant; while the second contends that the learned senior magistrate erred in her application of the sentencing grid in determining the level of the offending.

[9] The notice of appeal contained no other ground, and in particular no such ground as that upon which this motion is predicated. In this regard, the provisions of section 176 of the **Magistrate’s Code of Procedure Act**,⁶ provides that an appeal is limited to reasons given in the notice of appeal.

“176. At the hearing of an appeal on motion it shall not be competent for the appellant to go into, or to give evidence of, any other reasons for appeal than those set forth in his or her notice of appeal:

Provided that where, in the opinion of the Court of Appeal, other reasons for appeal than those set forth in the notice of appeal should have been given, or the statement of reasons is defective, the Court of Appeal may in its discretion allow such amendments to the notice of appeal upon such conditions as to service upon the respondent and as to costs as the Court may think fit.”

⁶ Cap 3.17 of the Revised Laws of Saint Christopher and Nevis, 2017.

- [10] There is no record of the applicant having sought leave to amend his grounds of appeal, or of the Court of its own motion making any order granting leave to amend the said grounds of appeal to include any other ground whatsoever.
- [11] What is observed is that about one year after the filing of the notice of appeal, the applicant filed a document styled “Amended Submissions” on 16th May 2024 in which he purported to list 5 grounds of appeal. The intended ground of appeal to the Privy Council is listed as the 5th ground of appeal in that document. It reads:
- “That the learned magistrate erred in law and/or misdirected herself by subtracting the appellant’s time on remand instead of it being done by the Commissioner of Corrections in accordance with section 200 of the Prison Act Chapter 19.05 of the Revised Edition 2009 of the Laws of the Federation.”
- [12] It need hardly be said that no Rules of Court or statute governing appeals, provide for the amendment of a notice of appeal in skeleton submissions. Counsel for the applicant, Ms. Chiesa, accepts this. Be that as it may, it is worth noting, and Ms. Chiesa candidly concedes, that there is no mention whatsoever in that purported ground of appeal of any provision of the **Constitution**, far less one giving rise to a genuinely disputable interpretation, not even fleetingly. Indeed, the word Constitution is not used once in that document. We have consulted the recording of the appeal hearing, which confirms that there was no discussion whatsoever regarding the interpretation of any constitutional provision. Unsurprisingly, the brief digest recording the Court’s decision makes no mention of such an issue.
- [13] This Court notes further that the respondent’s filed submissions dated 13th November 2024 quite properly were confined to addressing only the two grounds of appeal contained in the notice of appeal. It is therefore not true, as averred at paragraph 3 of the applicant’s skeleton submissions in support of the application for leave, that **“the appeal was not defended by the respondent”**. It is also untrue to say at paragraph 7 of the “Draft Notice and Grounds of Appeal” that **“...in any event, and as was in evidence before both the first instance magistrate and the Court**

of Appeal in respect of the respondents, they agreed that remanded time should be calculated by the prison.”

- [14] No such agreement is recorded. It is a matter of grave concern that such palpably false assertions could be made in these proceedings when it is a matter of record that the respondent in its filed submissions invited the Court of Appeal to dismiss the appeal as having no prospect of success. In fairness to Ms. Chiesa, who was not counsel on appeal, she is acting on the instructions of Mr. Tuckett who was counsel on the appeal. Since the respondent was not permitted to make oral submissions on the appeal because of the late filing of its submissions, it is unsurprising that the record of the hearing does not reflect that the respondent made any oral concessions in relation to any ground of appeal. Bluntly put, there is no record of any concession being made by the respondent on the intended ground of appeal or any ground of appeal for that matter.
- [15] Even if the respondent had made any such concession, that is of no moment as it is the task of this Court to determine whether the applicant has satisfied the constitutional requirements for the grant of leave to appeal to His Majesty in Council.
- [16] Having reviewed the record of the hearing and the notice of appeal, for the reasons outlined in this decision, this Court is satisfied that the Court of Appeal was not asked to, and did not consider, any provision of the **Constitution**, nor did it make any decision that involved the interpretation of the **Constitution**. The applicant's grounds of appeal as reflected in the notice of appeal, and even the purported “ground 5” contained in the document captioned “Amended Submissions” did not refer to any constitutional provision nor allege the breach of any constitutional provision. He did not identify any issue that involved or called for an interpretation of any provision of the constitution. The issue was dealt with on appeal as a question of the correct sentencing methodology. Whether the magistrate was right to deduct the time served on remand from the sentence at which she had arrived

does not involve an interpretation of either section 3(a) or section 5(1)(b) of the **Constitution**, as Ms. Chiesa properly conceded.

- [17] This seems to be a case where, for whatever reason, the applicant's grounds of appeal appear to be experiencing constant metamorphosis. Taking heed of the remarks of Lord Diplock in **Frater v R** at page 1470, this Court must be astute to ensure that applications for leave to appeal to the Privy Council that invoke provisions equivalent to section 99(1)(c) really "do involve a genuinely disputable question of interpretation of the Constitution and not one which has merely been contrived for the purpose of obtaining leave to appeal to [His] Majesty in Council as of right."
- [18] In effect, the applicant is seeking conditional leave to appeal on an issue that did not engage the Court of Appeal, and on which it did not and could not express any opinion.
- [19] For these reasons, this Court holds that no right of appeal arises under section 99(1) (c) of the **Constitution** for leave to appeal to His Majesty in Council as the appeal does not involve the interpretation of the **Constitution of Saint Christopher and Nevis**. Accordingly, the application for leave to appeal to His Majesty in Council is dismissed with no order as to costs.

I concur.
Margaret Price Findlay
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Chief Registrar