

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.10 OF 2004

BETWEEN:

THE ATTORNEY GENERAL

Appellant/Applicant

and

[1] BERNARD COARD
[2] CALLISTUS BERNARD
[3] LESTER REDHEAD
[4] CHRISTOPHER STROUDE
[5] HUDSON AUSTIN
[6] LIAM JAMES
[7] LEON CORNWALL
[8] JOHN ANTHONY VENTOUR
[9] DAVE BARTHOLOMEW
[10] EWART LANE
[11] COLVILLE MC BARNETTE
[12] SELWYN STRACHAN AND CECIL PRIME

Respondents

Before:

The Hon Mr. Michael Gordon, QC

Justice of Appeal [Ag.]

Appearances:

Mr. Rohan Phillip, holding for Mr. Karl Hudson-Phillips
for the Applicants/Appellants

Mr. Keith Scotland and Mr. Cajeton Hood for the Respondents
save for Mr. Ewart Lane

Mr. Ewart Lane in person

2004: April 22;
April 26.

JUDGMENT

[1] **GORDON, J.A. [AG.]:** By Fixed Date Claim Form filed on September 23, 2002, the Respondents sought certain declarations and orders under the original

jurisdiction of the High Court as provided for in Section 16 of the Grenada Constitution alleging breaches of their rights as set out in sections 3, 5 and 8 of the Grenada Constitution.

[2] The matter was heard on July 14 and 15, 2003 and judgment was given on March 16, 2004

[3] The Respondents are all in-mates of Her Majesty's Prison at Richmond Hill having been convicted of murder on December 4, 1986 and sentenced to death. On August 15, 1991, a Warrant headed "Commutation of Death Sentence and Warrant for Imprisonment" was read to each of the Respondents. The Warrant purported to grant a pardon to each of the Respondents on condition that he be kept in prison with hard labour for the rest of his natural life.

[4] The learned trial Judge made the following declarations:

- that the sentence of death imposed on the Respondents at their trial was unconstitutional and illegal;
- that the imposition of the term of imprisonment for the remainder of the Respondents' natural lives by the Governor General was unconstitutional, illegal, null and void;
- that the failure of the Appellant to provide the Respondents with written reasons, used to justify the dismissal of the Respondents' appeal against conviction was unconstitutional and illegal.

And the learned trial Judge ordered:

- (a) The sentence of imprisonment for the remainder of the Respondents' lives be quashed.
- (b) The Respondents be remanded in custody and brought before a judge of the High Court within 42 days to be sentenced under the convictions dated December 4, 1986

- (c) The Respondents be paid monetary compensation to be assessed by a Judge in Chambers and paid to the Respondents by the Appellant/Applicant as a result of the failure to provide the Respondents with written reasons justifying the dismissal of the Respondents' appeal against conviction.

The learned trial Judge also awarded costs to the Respondents.

- [5] The Appellant/Applicant has appealed against the judgment and has applied for a stay of execution and all further proceedings on the judgment of the Learned Trial Judge until determination of the appeal. The Notice of Application was accompanied by an Affidavit by the Attorney General. The Respondents resist the application and filed an affidavit in response.
- [6] At the hearing of the Application, Counsel for the Respondents raised three preliminary issues which he argued would resolve the issue in favour of the Respondents. The first preliminary point was that the Applicant has no audience before the Court of Appeal until he has sought and been refused a stay by the Court below. Counsel rested his argument on authorities that pre-dated the Civil Procedure Rules 2000 (hereafter "CPR"). CPR Part 62.16(1) (b) is quite clear. This states that a single Judge of the Court (defined for the purposes of Part 62 as the Court of Appeal) may make orders for a stay of execution on any judgment or order against which an appeal has been made pending the determination of the appeal. CPR contains no requirement that a stay must first be applied for in the Court below. This preliminary objection fails.
- [7] The second preliminary objection raised by Counsel for the Respondents was that paragraph 4 of the Affidavit filed with the Notice of Application should be struck out on the grounds that the Affiant did not state the source of the information in that paragraph as he was required to do pursuant to CPR Part 30.3 (2) and that further what is being deposed to is scandalous and irrelevant and on the basis of CPR

Part 30.3 (3) should be struck out. Suffice it to say that learned Counsel did not carry me with him. I find that the Affiant swore to matters of which he was aware and about matters which were at the very heart of this trial. This objection also fails.

[8] The third preliminary objection was that the Affidavit in support of the Application for a stay was deficient in law and in fact in that nowhere in the affidavit does it speak to “special circumstances” and on the basis of the authority of **Trinidad & Tobago Electricity Commission v Oilfield Workers Trade Union**¹ such a deficiency is fatal. Unfortunately the case cited was based on the old rules of the Supreme Court, Order 59 rule 13. This is no longer applicable as CPR has replaced those rules. This preliminary point also fails.

[9] Having disposed of the preliminary points, the issue now is whether in all of the circumstances of this case it is a proper case for the exercise of the Court's discretion in ordering a stay of execution. The case of **Linotype-Hell Finance v Baker**² is the modern authority on the circumstances in which a Court will exercise its discretion on the granting of a stay. The head note reads in part:

“Where an unsuccessful defendant seeks a stay of execution pending an appeal to the Court of Appeal, it is a legitimate ground for granting the application that the defendant is able to satisfy the court that without a stay he will be ruined and that he has an appeal with some prospect of success.”

In the course of his judgment Staughton LJ said:

“It is, in my opinion, an arguable appeal. It can be said that the judge should not have dismissed summarily the defendant's suggestion that he had not signed the authority to sign a guarantee. That may well have been a triable issue which should have gone to trial.”

I also am persuaded that the appeal before the Court is an arguable appeal. The Grounds of Appeal filed by the Appellant/Applicant raise a number of issues that have not come before this Court, such as whether the dicta in **The Queen v Peter**

¹ Trinidad & Tobago Civil Appeal Nos 154,155 &156 of 1984

² [1992] 4 All ER 887

Hughes³ is to be dealt with as having retrospective effect and whether, as an adjunct to the constitutional power of the Governor General to grant a pardon the Governor General has power to sentence.

[10] I am also influenced by the argument made by the Appellant/Applicant that if a stay is not granted the Respondents, or some of them, may be released from custody and it would then be “untenable if not impossible ... to re-incarcerate them in order to return to the status quo ante” if the Appellant/Applicant’s appeal is successful.

[11] In the exercise of my discretion, therefore, I hereby grant a stay of execution of the judgment of the learned trial Judge herein until the hearing of the appeal.

Michael Gordon Q.C.
Justice of Appeal [Ag]

³ Privy Council Appeal No. 91 of 2001