

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

GRENADA

GDAHCRAP2019/0011

BETWEEN:

BENEDICT ALEXANDER

Appellant

and

THE KING

Respondent

Before:

The Hon. Mde. Vicki Ellis
The Hon. Mde. Esco L. Henry
The Hon. Mr. Gerard Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal (Ag.)

Appearances:

Mr. Jerry Edwin for the Appellant
Mr. Howard Pinnock for the Respondent

2024: July 24
July 26.

Criminal appeal against sentence – Possession and Trafficking of controlled drugs – Right to a fair hearing – Whether the appellant has been afforded a fair hearing within a reasonable time under section 8(1) of the Constitution of – Whether the appellant should be sentenced to time served – What adjustments should be made to the sentences, if any and what if any relief should be granted in case an infringement of the fair trial constitutional provision is made out

JUDGMENT

Introduction

- [1] **HENRY JA:** This appeal brings into sharp focus the balance to be struck between, on the one hand, the public interest in maintaining an efficient and effective administration of justice system evidenced in part by the expeditious disposal of criminal cases and the judicious punishment of offenders; and on the other hand, the obligations inherent in the constitutional right to a fair hearing within a reasonable time. The public interest imperatives embody the public's legitimate expectation that persons convicted of criminal offences are punished to the fullest extent of the law. Such expectations can be frustrated to some degree if the State is delinquent in ensuring that its judicial branch is adequately resourced to optimize delivery of the necessary services and as a result such a failure is found to violate the fair trial constitutional protection.
- [2] In this case, the appellant Mr. Benedict Alexander complains that his constitutional right to a fair hearing of his appeal against sentence within a reasonable time has been infringed by the delay and non-production by the State of the transcript of proceedings of his trial. To vindicate this alleged constitutional breach he seeks a reduction of his sentence to time already served. The respondent acknowledges that there has been such a breach of the appellant's right and concedes that the appropriate remedy would be a reduction of sentence to time served.
- [3] The factual matrix is not complex or disputed and was outlined in submissions filed by the parties. In the absence of a transcript of the proceedings, the Court is forced to rely on those representations and the Minute of Conviction.

Factual Chronology

- [4] Based on the submissions, it emerges that on April 30th 2010, around 3.25 am the appellant was sitting in the front passenger seat of a Black Toyota Corolla vehicle as it approached the Windsor Forrest vicinity in Vincennes Saint David in Grenada.

His nephew Leonje Alexander sat on the rear passenger seat behind the driver Lyndon Collins.

- [5] Det. Cpl. No. 136 Derrick Blackette accompanied by other police officers stopped the vehicle and approached it. They noticed three fine bags on the back passenger seat next to the appellant's nephew and another in the trunk along with a cylindrical package wrapped in brown tape. On examining the contents of the bags and the package, the police officers observed that they contained dried vegetable matter resembling cannabis.
- [6] The occupants of the vehicle were - detained and arrested for possession and trafficking of a controlled drug. They all gave recorded interviews to the police. The appellant stated that the cannabis was picked up in Saint Andrew and belonged to his nephew Leonje.
- [7] An analysis of the plant material confirmed that it was cannabis. It weighed 137 lbs and was estimated to be worth \$310,716.00.
- [8] Leonje Alexander absconded prior to the trial and has not been apprehended since. The trial was adjourned repeatedly¹, Lyndon Collins and the appellant having first appeared in the Assizes on 1st October 2013. The case was subsequently case managed. It appears that the trial lasted only one day².
- [9] For his part, Lyndon Collins was also convicted of both offences. He had no prior convictions. He received a sentence of three years and 10 months on the possession count and 4 years and 10 months on the trafficking count.

¹ Adjourned on Oct. 1st 2013 and Oct. 2nd 2013.

² See paragraph 3 of the Submissions filed on the respondent's behalf

[10] The Appellant was indicted and convicted³ for the - offences and was sentenced as follows:

- (a) For Possession of a controlled drug, contrary to section 6(2) of the Drugs Abuse (Prevention and Control) Act – to 7 years and 4 months imprisonment.
- (b) For Trafficking of a controlled drug, contrary to section 18(2)(a) and (4) of the Drugs Abuse (Prevention and Control) Act – to 10 years and 11 months imprisonment; those sentences to run concurrently. Time spent on remand (being 2 months and 2 weeks) to be credited.

We understand that he had two prior convictions for possession of a controlled drug for which he was convicted on 21st January 2011 at the St. David's Magistrate Court. in respect of which he was- reprimanded and discharged -on one count and on the second was - fined \$3500.00 to be paid in one month, in default 6 months imprisonment.

[11] On 18th July 2019, the appellant as a pro se litigant, filed an appeal against sentence and conviction containing 2 grounds of appeal:

- (a) The sentence was manifestly excessive
- (b) The learned judge erred in law by failing to make the appellant plead to the matter.

[12] By Notice of Abandonment filed on 23rd July 2024, the appellant abandoned his appeal against conviction and gave notice of his intention to proceed with his appeal against sentence. He thereby effectively withdrew the second ground of appeal. Consequently, the appeal against conviction stands dismissed.

³ Indicted on September 2nd 2013, convicted on 9th April 2019; sentenced on 21st June 2019.

[13] In submissions⁴ filed amicus on the appellant's behalf, learned counsel Mr. Gerry Edwin raised for the first time the issue that the five-year delay in the preparation of transcript of the proceedings has infringed the appellant's constitutional right to a fair hearing within a reasonable time. This ground was not included in the Notice of Appeal. Learned counsel contended that the appellant is therefore entitled to a reduction in sentence. He submitted that in view of the circumstances of the case, the appropriate adjustment to the sentence would be to time served. He requested the Court to grant an early release to the appellant. He submitted further that the sentence imposed on the appellant was inordinately excessive and is another basis justifying a reduction of the sentences.

[14] During the course of the hearing on July 24th 2024, learned counsel Mr. Edwin made an oral application for permission to amend the Notice of Appeal by inserting the additional ground that:

‘the constitutional right to a fair trial has been breached by excessive delay of at least 5 years in the preparation of the transcript of proceedings setting out the statement of facts relied on by the court, as well as the court's reasons for the sentences, which failure constitutes a breach of the related requirement under the Supreme Court Act [and Rules].’

The respondent had no objections to the application. It was granted in identical terms and the Notice of Appeal was amended to include the additional ground of appeal.

[15] On the respondent's behalf, learned counsel Mr. Pinnock agreed that the 5-year delay in producing the transcript is excessive and amounts to a breach of the constitutional fair trial provision. He submitted that in the circumstances the appropriate remedy would be to make a declaration to such effect and to discount the sentence to time served. As to whether the sentences were excessive, he accepted that the sentence for possession of a controlled drug was excessive but argued that the sentence of 10 years and 11 months for trafficking was not and is within the acceptable range.

⁴ On July 19th 2024.

Issues

- [16] The issues that arise for consideration on appeal are threefold:
- (1). Whether the sentences imposed by the learned judge were manifestly excessive;
 - (2) . Whether the State's delay in providing the transcript of proceedings has infringed the appellant's constitutionally protected right to a fair hearing within a reasonable time; and
 - (3) What - adjustments should be made to the sentences, if any; and - what if any relief should be granted in case an infringement of the fair trial constitutional provision is made out.

Appellant's Submissions

- [17] On the issue of excessive sentences, the appellant submitted that the sentences were patently excessive. He argued that in circumstances where no violence accompanied the commission of the offences and no vulnerable persons were placed in peril those are factors which support a downward revision of the sentence.
- [18] Learned counsel Mr. Edwin argued further that several precedents exemplify the legal principle that the hearing of an appeal against sentence that is unreasonably delayed by the non-production of a transcript runs afoul of the fair trial protection under section 8(1) of the Constitution. He cited **R v Bell** SCCA 16/98 [2023]; **Alfred Flowers v R** [2000] 1 WLR 2396; **Bell v DPP** [1985] AC 937, **Dwight Victor v R**, **Monah v The Queen** and **Darmalingum v The State** [2000] 1 WLR 2303. He contended that this right is abrogated when the - transcript on which the appeal depends, is not produced within 5 years despite orders of the Court of Appeal for its production.
- [19] Learned counsel Mr. Pinnock accepted that the lengthy delay in the production of the transcript is unfortunate and unacceptable. On this basis, he conceded that time served would result in a just and appropriate disposition of this matter. He added

that in light of this concession, it is not necessary to address the allegation that the sentence is excessive.

Discussion

Breach of Fair Trial Provision

[20] In view of how the matter proceeded before the Court, it is prudent to start with the constitutional issue. In this regard, it is helpful to set out the relevant legislative provisions. Section 8(1) of the **Grenada Constitution** provides:

‘(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.’

[21] Also relevant is **section 16 of the Constitution** which vests the High Court with original jurisdiction to entertain and determine any application by an aggrieved person who alleges that his right to a fair trial or other protected right is being infringed. The High Court is also thereby empowered in appropriate cases to ‘make such declarations or orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement...’ of such provisions.

[22] It is now settled that the right to seek redress for the breach of fundamental rights and freedoms set out in the Constitution is not restricted to the initiation of proceedings in the High Court, but may also be invoked at the appellate level as a ground of appeal in criminal proceedings. This Court made that clear in **Rashid A. Pigott v The Queen ANUHCRA2009/0009**⁵ when considering section 18 of the Antigua and Barbuda Constitution which is in similar terms to section 16 of the Grenada Constitution. In delivering the judgment, Thom JA had this to say:

‘Where there is inordinate delay in the trial of an accused person, the issue of infringement of his/her constitutional right to a fair hearing within a reasonable time guaranteed under section 15(1) of the Constitution may be raised at the criminal trial. Similarly, where there is inordinate delay between

⁵ See also *Akim Monah v The Queen* GDAHCRAP2014/0002.

conviction and the hearing of the appeal it may be raised in the Court of Appeal as a ground of appeal against both conviction and sentence.'

- [23] The central question of whether a delay during the period post-conviction pending appeal, can amount to a breach of the fair trial provision of section 16 of the Constitution, is not a novel point. It is now well-established that the constitutional guarantee to a fair trial subsists through the appellate period and may be invoked at all levels including before the apex court – see **Melanie Tapper v Director of Public Prosecutions [2012] UKPC 26**.
- [24] A number of factors are to be considered in determining whether the criminal proceedings have been plagued by inordinate delay in the preparation of the record or a transcript. These include the complexity of the case; the appellant's behaviour and the conduct of administrative and judicial officials: **Boolell v The State**⁶. The instant case is quite straight forward involving as it does the offences of possession and trafficking of a controlled drug by three co-accused who were apprehended red-handed and without complication.
- [25] The appellant cooperated with the investigators prior to the trial and does not seek to challenge his conviction. He promptly filed his Notice of Appeal following conviction. It is not alleged that he contributed in any way to the delay in the production of the transcript and it is obvious that he did not. Therefore, the ongoing failure to produce the transcript lies squarely at the feet of the State and its administrative - officials, who have advanced no explanation for their default save to say that the transcript is still unavailable. It is beyond dispute that the delay is inordinate and inexcusable as has been properly conceded by learned counsel for the respondent. Without the transcript, the appellant and by extension the court are respectively unable to prosecute or entertain the appeal on its full merits. It follows that the delay that flow from it constitutes an infringement of the appellant's constitutional right to a fair hearing within a reasonable time.

⁶ [2006] UKPC 46.

[26] It is now well settled that the Court has at its disposal a raft of remedies which may be deployed in vindication of the violation of the right to a fair hearing within a reasonable time. These range from declaratory relief to reduction of sentence and even compensation – **AG’s Reference (No. 2 of 2011)**⁷, **Tapper v DPP** and **Pigott**.

[27] The Court has taken into account all the circumstances of the case in this appeal as rehearsed earlier. The Court has also considered that the appellant has served five years and three days of the sentences imposed. His earliest release date is said to be September 29 2026. The Court is satisfied that the appropriate redress in the circumstances would be a declaration that the appellant’s fundamental right to a fair trial has been breached and he should be granted a reduction of the sentence to time served as submitted by both counsel.

Excessive Sentence

[28] The issue of whether the sentences were manifestly excessive has been overtaken by the Court’s decision on the constitutional point. This is because the court’s determination will effect a reduction in the sentence. It is therefore unnecessary to consider that other ground of appeal. In any event, the absence of the transcript makes it virtually impossible to conduct the requisite evaluation of the case in accordance with the sentencing guidelines so as to properly assess whether the learned judge erred in calculating the sentences or to facilitate a methodical evaluation by this Court.

Deposition

[29] It is therefore ordered that:

1. Mr. Alexander’s appeal against conviction is dismissed.

⁷ [2004] 2 AC 72.

2. Mr. Alexander's appeal against sentence is allowed on the basis that the delay by the State in providing the transcript of proceedings of his trial and conviction infringed his fundamental right to a fair hearing within a reasonable time, provided by section 8(1) of the Constitution of Grenada.

As a consequence, the following redress is granted to him:

- (a) A declaration that the State of Grenada has breached his fundamental right to a fair hearing within a reasonable time.
- (b) Consequently, Mr. Alexander's respective sentences of 7 years and 4 months imprisonment for possession of a controlled drug and of 10 years and 11 months imprisonment for trafficking a controlled drug are set aside and a sentence of time served is imposed in relation to both convictions.

[30] The Court wishes to express thanks to counsel for their submissions.

I concur
Vicki Ellis
Justice of Appeal

I concur
Gerard Farara
Justice of Appeal [Ag.]

By The Court

Chief Registrar