

SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 2 of 1989

BETWEEN:

AUGUSTIN PIERRE

- Appellant

and

THE QUEEN

- Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Dr. Nicholas J.O. Liverpool - Justice of Appeal
The Honourable Mr. Satrohan Singh - Justice of Appeal

Appearances: Mr. M.B.G. Gordon for the Appellant
Mr. E. Walker (D.P.P.) for the Crown

1993: May 26;
June 21

JUDGMENT

SIR VINCENT FLOISSAC, C.J.

On the 28th February 1989, after a trial by jury presided over by Byron J, the appellant was convicted of murder of Winston Gabriel and was sentenced to death by hanging. He then had a statutory right of appeal which was exercisable within the time prescribed by section 43 of the West Indies Associated States Supreme Court (Saint Lucia) Act No. 17 of 1969 (the Supreme Court Act) which provides as follows:

"(1) Where a person convicted desires to appeal under this Act to the Court of Appeal or to obtain the leave of the Court of Appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within fourteen days of the date of conviction.

(2) Except in the case of a conviction involving sentence of death, the time within which notice of an application for leave to appeal may be given, may be extended at any time by the Court of Appeal.

(3) For the purposes of this section the date of conviction shall, where the court had adjourned the trial of an indictment after conviction, be the date on which the court

sentences or otherwise deals with the offender."

The appellant failed to appeal against his conviction within 14 days thereof as required by the said section 43(1). However, on the 28th April 1989 (two months after his conviction), the appellant filed a Notice dated 14th April 1989 applying for an "extension of the time within which to appeal". On the 23rd February 1990, Moe J.A. (who was then a judge of this Court of Appeal) extended the said time to 17th March 1990. In so doing, the learned Justice of Appeal evidently relied on section 51 of the Supreme Court Act which provides that:

"The powers of the Court of Appeal under this Act -

- (a)
- (b) to extend the time within which notice of appeal or of an application for leave to appeal may be given;
- (c)
- (d)
- (e)

may be exercised by any Judge of the Court of Appeal in the same manner as they may be exercised by the Court of Appeal, and subject to the same provisions: but, if the Judge refuse an application on the part of the appellant to exercise any such powers in his favour, the appellant shall be entitled to have the application determined by the Court of Appeal as duly constituted for the hearing and determination of appeals under this Act."

On the 26th May 1993, after hearing arguments, this Court struck out and dismissed the appeal for want of jurisdiction and for reasons to be stated thereafter. Those reasons now follow:

The first question required to be answered is whether this Court has jurisdiction to extend the time prescribed by section 43(1) for giving notice of appeal or notice of application for leave to appeal against a conviction involving sentence of death. Since that time is statutory time, it can only be extended by the authority of a statute. No such statute has been identified. Section 43(2) which authorises this Court to extend the time within which notice of an application for leave to appeal may be given specifically denies that authority "in the case of a conviction involving sentence of death". The reason for the denial of that

authority is explained in *R v Twynham* (1920) 15 Cr. App. Rep. 38. There, *Reading L.C.J* said (at p 39):

"There is a very good reason for the Legislature making this provision, because the mere giving of a notice of appeal or a notice of application for leave to appeal against a conviction of murder or high treason, has the effect of postponing the date of the execution. Once that notice has been given, the execution cannot take place until a certain time after the hearing of the appeal. If it were possible to extend the time, it would be open to a murderer, having failed in one appeal, to give notice asking for an extension of time in order to bring some other matter before the Court, or not give the notice until the last moment, in order to provide for a further extension of time. Consequently, the Legislature deliberately declared that an appeal from a conviction involving a sentence of death must be made within the prescribed time. Therefore, this Court has no jurisdiction to extend the time for appealing or applying for leave to appeal against such a conviction."

We have therefore concluded that this Court has no jurisdiction to extend the time prescribed for giving notice of appeal or notice of application for leave to appeal against a conviction involving sentence of death. The same conclusion was reached by this Court (*Floissac C.J.* and *Byron & Joseph J.J.A.*) in *Richards & Brown v The Queen* (Criminal Appeals Nos 3 & 4 of 1992 of Saint Christopher & Nevis) and by the Court of Appeal of Grenada (*Telford Georges P* and *Haynes & Liverpool J.J.A.*) in *Gilbert v The Queen* (Criminal Appeal No. 6 of 1979). In both cases the Courts decided that they were denied jurisdiction by statutory provisions identical in terms with the said **section 43(2)**.

Counsel for the appellant invoked rule 11 of the Court of Appeal Rules (S.R. & O. No.10 of 1968) which provides that:

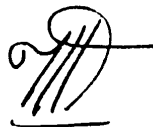
"Non-compliance on the part of an appellant in any criminal cause or matter with these rules or with any rule of practice for the time being in force shall not prevent the further prosecution of his appeal if the Court considers that such non-compliance was not wilful, and that it is in the interests of justice that non-compliance be waived. The Court may, in such manner as it thinks right, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed. The Registrar shall forthwith notify the appellant of any direction given by the Court under this rule where the appellant was not present at the time when such directions were given."

problem. Section 43(1) is not a rule of Court or a rule of practice and procedure. It is a statutory rule or substantive law, non-compliance wherewith is not caught by rule 11 and cannot be waived by the Court.

The second question to be answered is whether Moe J.A. had any authority or jurisdiction to extend the said time. In purporting to extend the said time, the learned Justice of Appeal purported to exercise the powers of this Court. Since this Court had no such powers, the learned Justice of Appeal clearly exceeded his jurisdiction when he granted the extension of time.

The ultimate question for determination is whether this Court now has jurisdiction to hear and determine the appellant's appeal. Since the appeal was out of time and the extension of time was granted without power, authority or jurisdiction in that behalf, the appeal has not properly been brought before this Court as a valid appeal in law. This Court cannot confer jurisdiction on itself by an order made *per incuriam* and without jurisdiction either by the full Court or by one of its Justices of Appeal. Nor can this Court properly assume jurisdiction by ignoring its lack of jurisdiction or by reason of its embarrassment or of the appellant's justifiable expectations.

In the judgment of this Court, the proper course to have adopted in these circumstances was to have dismissed the appeal for want of jurisdiction. These circumstances will no doubt be urged as factors to be taken into account elsewhere.



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SIR VINCENT FLOISSAC
Chief Justice

I concur.

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Mr NICHOLAS LIVERPOOL
Justice of Appeal

I concur.

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SATROHAN SINGH
Justice of Appeal