

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO. ANUHCR 2023/0071

BETWEEN:

THE KING

and

WINSTON ABRAMS

Appearances:-

Ms. Rashida Jonas, Counsel for the Crown

Mrs. Janice Young-Christopher, Counsel for the Defendant

2025: January 14th
February 17th
March 10th

Decision on Abuse of Process

- [1] **SMITH, J.:** The question whether or not to prosecute is for the prosecutor, not the court: **Environment Agency v Stanford [1998] 6 WLUK 534**, per Lord Bingham LCJ. However, the courts have an overriding duty to promote justice and prevent injustice. From this duty there arises an inherent, exceptional power to 'stay' an indictment (or stop a prosecution in the magistrates' court), if the court is of the opinion that to allow the prosecution to continue would amount to an abuse of the process of the court.
- [2] The court may do so if either of the following applies, and the court must consider each as a separate question, see **Connelly v DPP [1964] AC 1254 HL**, and **DPP v Humphrys [1977] AC 1 HL**:
- Is it impossible for the defendant to have a fair trial? - The first ground for abuse of process, "right to a fair trial".

- Is a stay of proceedings necessary to protect the integrity of the criminal justice system? -The second ground, “integrity of the justice system”.

- [3] A corollary to the exercise of that power, however, is that the court still retains an inherent power to protect its own process from abuse even in circumstances where the exercise of the DPP's powers amounts to an abuse of its process. See Halsbury's Laws, 8 in referencing the court's power to stay proceedings for abuse of process, points out that the power can be exercised in many different circumstances.
- [4] A well-recognized basis, apart from the case where the court concludes that a defendant cannot receive a fair trial, is where the court concludes that it would be unfair for the defendant to be tried. Among the examples cited is the deliberate and improper manipulation by the prosecution of the criminal process so as to take unfair advantage of the defendant.

The Defence Submissions

- [5] The defence has brought this application and their submissions are replicated below in their entirety. On the 18th day of June 2021 Mr. Winston Abrams was charged with perverting the course of justice, jointly with Rupert Cadette. It is alleged that he and his co accused Rupert Cadette sought to pervert the course of justice by promising to pay a sum of money to Cadija Henry who was the virtual complainant in a case of rape and serious indecency.
- [6] On 10 May 2022 Mr Winston's legal representatives wrote to the Director of Public Prosecutions (“DPP”). The letter included the following:

“The basis of my client's defence is that he was used by the co accused Rupert Cadette and drawn into a situation which had no benefit to him. His sole purpose in being involved was to seek to evangelize to Mr. Cadette and to help what he believed at the time was an innocent man who had been wrongly accused of a very serious crime. Since my client has now had sight of the evidence allegedly against him it is of the belief that he can be more of an assistance to the police in giving a statement against his co accused which will no doubt secure a conviction against him. It is with this intention in mind that he would request if the DPP would consider withdrawing the charge against him on the basis that he is prepared

to give a statement to the police which will assist in the prosecution of Rupert Cadette. If the DPP is prepared to consider this, an interview can be arranged with my client to see an officer to take his full statement to be used by the prosecution.”

- [7] The then DPP indicated that he would need to have in his possession a copy of the defendants signed statement. The defendant provided a statement to the police on 9th September 2022 and a further statement where is attorney was absent. He heard nothing of the matter until 2024 when the current acting DPP indicated that Mr Armstrong made no such assurances to Mr Cadette that the case would not proceed against him solely on the contents of said statements. It must be noted according to the defence that the defendant gave the statements relying on the email from Mr Armstrong.

The Crown's Response

- [8] Counsel for the Crown submitted that defendant has emphatically stated that the former DPP provided an unequivocal representation that the defendant would not be prosecuted if he provided a statement in support of the prosecution. However, it is their submission that the defendant has failed to furnish this court with any evidence from the Office of the Director of Public Prosecutions to substantiate this claim.
- [9] The Crown has responded that, the defendant relies on an excerpt of an email dated 8th September 2022, between himself and his counsel, to suggest that he was promised non-prosecution in exchange for his co-operation. The Crown submits that this email lacks any form of corroboration from any official documentation. It does not constitute evidence of any assurance, as it is not an official missive from the Office of the DPP and does not provide specific details of the alleged promise.

Reasoning

- [10] The inherent jurisdiction of the court to stop a prosecution to prevent an abuse of process is to be exercised only in exceptional circumstances: **Attorney**

General's Reference (No 1 of 1990) [1992] QB 630 CA; Attorney General's Reference (No 2 of 2001) [2004] 2 AC 72 HL.

[11] “The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances.”: **Attorney General's Reference (No 2 of 2001).**

[12] It is clear from the authorities and beyond argument that there is a strong public interest in the prosecution of crime and in ensuring that those charged with serious criminal offences are tried. Ordering a stay of proceedings, which in criminal law is effectively a permanent remedy, is thus a remedy of last resort”: **Crawley and others [2014] EWCA Crim 1028.**

[13] Courts should not use their inherent power to stay proceedings merely to discipline the prosecution or because the court has formed the view that the prosecution was unwise. The exceptional nature of the remedy of a stay of proceedings means that, absent bad faith, the power “should not be used to punish prosecutors where a fair trial remains possible”: **DPP v Gowing [2013] EWHC 4614 (Admin).**

[14] The case of **R v Hamza [2006] EWA Crim 2918** is of particular importance to this discussion.in that case The Court of Appeal considered a number of relevant authorities and noted the following [at 50]:

“...circumstances can exist where it will be an abuse of process to prosecute a man for conduct in respect of which he has been given an assurance that no prosecution will be brought. It is by no means easy to define a test for those circumstances, other than to say that they must be such as to render the proposed prosecution an affront to justice...

Only in rare circumstances will it be offensive to justice to give effect to this public interest.

- [15] A line of authorities, including **Telford JJ, ex parte Badhan (1991) 2 QB 78** and **Crown Court at Norwich, ex parte Belsham (1992) 94 Cr App R 382, DC**, establish that the burden is on an accused to show, on a balance of probabilities, that they are entitled to a stay of proceedings on grounds of abuse of process. In **Hamilton v Post Office Ltd [2021] EWCA Crim 577**, the Court of Appeal acknowledged the settled principles applying to abuse of process applications at paragraphs 64 onwards and reiterated the burden and standard of proof

Was an assurance given?

- [16] In **Hamza [2006] EWCA Crim 2918**, the Court of Appeal confirmed that the authorities “suggest that that it is not likely to constitute an abuse of process to proceed with a prosecution unless (1) there has been an unequivocal representation by those with the conduct of the investigation or prosecution of a case that the defendant will not be prosecuted and (2) that the defendant has acted on that representation to his detriment. Even then, if facts come to light which were not known when the representation was made, these may justify proceeding with the prosecution despite the representation.”
- [17] Counsel provided several authorities setting out the tests in abuse of process applications and we do not need to go through them. But what we need to do is to examine whether or not an actual assurance was made to the defendant by the then DPP Mr Armstrong.
- [18] I have had the opportunity to view the affidavit of the current acting DPP Mrs. Gittens and have noted its contents. In the said affidavit dated 27th February 2025, Mrs. Gittens deposes at paragraph 10 that she had despite her personal knowledge of the case contacted Mr Armstrong and he had indicated the following 1) no such assurance had been made to the defendant nor his counsel 2) if such an assurance had been made then this would have been made in writing 3) if such an assurance had been made the matter would not continue against the defendant and finally 5) the information contained in the statement would have been served as additional evidence. None of the above occurred. What we appear to have in this case is loose conversations which were not

reduced to writing and correspondence to the DPP's chambers which were not answered. The email from the former DPP does not constitute an assurance that the Crown would not proceed against him. The Court finds that that the decision to proceed with the prosecution was based on a thorough review of the evidence, including the defendant's proposed statement, which was found to be inconsistent with other material.

- [19] I am not convinced nor persuaded that these circumstances rise to the level of assurances in the vein of an assurance. Once the factual matrix is appreciated, the claim falls away. As counsel for the Crown has indicated in her submissions that the application does not constitute evidence of any assurance, as it is not an official missive from the Office of the DPP and does not provide specific details of the alleged promise.
- [20] The court also finds that there has been no reliable evidence placed before this court that shows any prosecutorial misconduct or bad faith. It also demonstrates that the decision to proceed with the prosecution was based on a thorough review of the evidence, including the defendant's proposed statement, which was found to be inconsistent with other material.
- [21] The application to halt the proceedings before this court is therefore dismissed.

Ann-Marie Smith

High Court Judge



By the Court

Registrar