

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
THE COMMONWEALTH OF DOMINICA
9th – 10th November 2020

APPLICATIONS AND APPEALS

Case Name:

Akim Monah

v

The Queen

[GDAHCRAP2014/0002]
(Grenada)

Date:

Monday, 9th November 2020

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Applicant/Appellant: Mr. Ruggles Ferguson

Respondent: Mr. Howard Pinnock on behalf of the Director of Public Prosecutions

Issues:

Application for bail pending appeal – Appeal against conviction – Whether the circumstances relied on by appellant are exceptional circumstances which justify grant of bail pending appeal – Unavailability of transcript – Inordinate delay

Type of Order

Directions

**Result /
Order:**

**[Oral Delivery]
IT IS HEREBY ORDERED THAT:**

- 1. The Registrar of the High Court is hereby directed to diligently, by use of her best endeavours, seek to secure the notes of the proceedings below, by locating the notes of the trial judge, if the record, that is the audio proceedings, cannot be located and report on the status of her efforts to do so by 11th January 2021.**
- 2. The Director of Public Prosecutions having indicated they are in possession of copious notes taken at the proceedings, shall at the same time, make all efforts to transcribe their notes of the proceedings taken by counsel for the prosecution and exchange the same with counsel by the appellant and that they seek to agree on said notes of the proceedings, by no later than the 15th of February 2021.**
- 3. In the event of agreement, the Director of Public Prosecutions shall file the set of agreed notes with the court office, no later than 26th February 2021.**
- 4. Thereafter this bail application and the appeal shall be listed for further hearing or hearing respectively, at the next sitting of the Court of Appeal for the State of Grenada scheduled to commence on 12th April 2021.**

Reason:

Counsel for the applicant/appellant, relying on his submissions filed on 30th October 2020, highlighted the relevant timelines in relation to the application for bail pending appeal, namely, that the appellant had been in custody since June 2012, sentenced on 24th January 2014 to 18 years in prison after pleading guilty to offence of non-capital murder and that his appeal against sentence was filed on 7th March 2014.

Counsel for the applicant/appellant argued that between filing of the notice of appeal and notice of

application for bail pending appeal on 13th August 2020, this matter has come up several times for status hearing, with the transcript of proceedings remaining outstanding. The applicant/appellant has now spent a total of 96 months out of 114 months in prison, now more than two-thirds of his sentence. Counsel for the applicant/appellant argued that with the possible benefit of full remission, his sentence would translate to 12 ½ years.

Counsel for the appellant submitted that there was no dispute on the law relating to bail pending appeal, as authorities such as The State v Lynette Scantlebury (1976) 27 WIR 103, had settled the position. The critical question for the Court to consider was whether the circumstances relied by the applicant/appellant were exceptional circumstances which justified the grant of bail pending appeal.

Counsel for the applicant/appellant relied on the authority of Careem Bedminister v The Queen [ANUHCRAp 2008/022] (delivered 20th January 2009, unreported) where Edwards JA, stated that a factor in favour of bail pending appeal is that the unavailability of the transcript of the evidence is likely to result in the sentence being served before the appeal is heard if bail is not granted. He also relied on Rashid A. Pigott v The Queen [ANUHCRAp2009/0009] (delivered April 13th 2015, unreported) where Thom JA stated that: “In determining whether there has been an inordinate delay in affording a person charged with or convicted of a criminal offence a fair hearing (such as would constitute an infringement of section 15(1) of the Constitution), the factors to be considered are: (i) the complexity of the case; (ii) the conduct of the accused/appellant; and (iii) the conduct of the administrative and judicial authorities. The present case was not unduly complex, and the delay in the hearing of the appeal was due solely to the record of appeal not being prepared in a timely manner, which had nothing to do with the appellant. The administrative and judicial authorities were solely responsible for the preparation of the record of appeal, and no explanation was provided for the delay in its preparation. In the circumstances, the delay of

over 4 years to prepare the record of appeal was inordinate and was sufficient to constitute an infringement of the appellant's rights under section 15(1) of the Constitution."

Counsel for the appellant submitted, that section 8(1) of the Constitution of Grenada was identical to section 15(1) of the Constitution of Antigua and Barbuda, therefore the findings in Rashid A. Pigott were applicable to the instant matter. He further submitted that in the instant matter, the infringement on the appellant's rights were even more serious, than that in Rashid A. Pigott, as in this matter the delay was over six (6) years. Counsel for the appellant asked that the Court, in considering the appeal, took into account the breach of the appellant's constitutional rights. Counsel for the appellant/applicant also argued that the appellant/applicant posed no threat to society and that if granted bail it was his intention to secure a job to assist his family.

The Court upon hearing the submissions of the applicant/appellant sought to address the counsel for the applicant/appellant on the issue of delay, articulating that the issue of delay, would have to be considered on a case by case basis and that counsel for the appellant should be cautious with respect to his approach in applying the Rashid A. Pigott case to the instant matter.

Further, the Court expressed its reservations in granting bail pending appeal against sentence where the appellant plead guilty to the offence of non-capital murder. The Court stated that as it related to a person appealing his sentence against conviction, it is the appellant's liberty that is being contested, and as such, this would be a factor weighed to determine 'exceptional circumstances'. However, in the case where there is no challenge of proper conviction but merely the length, or that a conviction may warrant being quashed, the Court would insist on the production of the transcript in order to exercise its discretion.

Given the circumstances the Court was not minded to grant bail at this stage without the transcript of proceedings and sought to defer the matter, giving the

Registrar of the High Court an opportunity to make every conceivable effort to complete the transcript of proceedings.

Case Name:

**Anselm Drigo
v
The State
[DOMHCRAP2014/0004]**

(The Commonwealth of Dominica)

Date:

Monday, 9th November 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Darius Jones

Respondent:

**Ms. Evelina Baptiste, the Director of Public
Prosecutions and Ms. Daina Matthew**

Issues:

**Criminal Appeal – Appeal against sentence - Unlawful
sexual intercourse with a minor – Non-appearance by
appellant – No merit in appeal against sentence**

Type of Order

Oral Judgment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

**The appeal is dismissed and the conviction and
sentence are affirmed.**

Reason:

**Counsel for the appellant indicated to the Court that
the appellant has been discharged from prison, having
already served his sentence. Since his discharge from
prison, counsel for the appellant has found it difficult
to engage with the appellant to determine whether he**

is still interested in prosecuting his appeal. As a result of this, counsel for the appellant has not been able to obtain further instructions so as to determine whether the filing of a notice of discontinuance in this matter, is the most appropriate course of action.

The Court having read the transcript of proceedings indicated that it was minded to dismiss the appeal in any event. The Court upon considering that appellant's non-appearance after having had notice of the hearing of the appeal and that there is no merit to the appeal, unanimously agreed to dismiss the appeal and affirm the appellant's conviction and sentence.

Case Name:

**Frampton Ettienne
v
The Police
[DOMMCRAP2019/0005]**

(The Commonwealth of Dominica)

Date:

Monday, 9th November 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

Ms. Evelina Baptiste, the Director of Public Prosecutions and Ms. Daina Matthew

Issues:

Criminal Appeal – Appeal against sentence – Driving without insurance – Non- appearance by appellant – No merit in appeal against sentence

Type of Order

Oral Judgment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The appeal is dismissed and the conviction and sentence imposed by learned Magistrate is affirmed.

Reason:

Notwithstanding the appellant's non-appearance in the appeal, the Court was minded to proceed having read the record of appeal and the reasons for decision given by the learned Magistrate. The Court saw no merit in the appeal and as such dismissed it unanimously.

Case Name:

**Kalvin Francis
v
The Police
[DOMMCRAP2017/0020]**

(The Commonwealth of Dominica)

Date:

Monday, 9th November 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Wayne Norde

Respondent:

Ms. Evelina Baptiste, the Director of Public Prosecutions and Ms. Daina Matthew

Issues:

Criminal Appeal – Appeal against sentence – Theft

Type of Order

Oral Judgment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The appeal is dismissed, bail is revoked and the conviction and sentence affirmed.

Reason:

Counsel for the appellant submitted that a sentence of three (3) years was imposed upon the appellant. In the Commonwealth of Dominica, the maximum sentence that can be imposed for theft is seven (7) years. As such, when taking into consideration the Sentencing Guidelines, the starting point when imposing a sentence for theft would be four (4) years.

Counsel for the appellant further submitted that having removed one-third of the appellant's sentence on account of his guilty plea, the sentence would be two (2) years and seven (7) months. Further, when considering that the appellant had four (4) previous convictions, this sentence could be increased. Counsel for the appellant indicated that in light of these circumstances, he found the sentence of 3 years imposed to be reasonable. Counsel for the appellant intimated to the Court, that he tried contacting the appellant to advise him of the same, however, his efforts thus far have proven futile.

The Court upon noting that the appellant has shown no interest in prosecuting his appeal and having looked at all of the circumstances, including the way the learned Magistrate approached the sentencing exercise, could not find any basis for interfering with the appellant's sentence. The Court therefore dismissed the appeal and affirmed the conviction and sentence. The Court also noting that the appellant was on bail, revoked the appellant's bail.

Case Name:

**Tevin Richards
v
The Police
[DOMMCRAP2019/0013]**

(The Commonwealth of Dominica)

Date: Monday, 9th November 2020

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: No appearance

Respondent: Ms. Evelina Baptiste, the Director of Public Prosecutions and Ms. Daina Matthew

Issues: Criminal Appeal – Appeal against sentence – Theft - Possession of a controlled drug: Cannabis and Cocaine

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed, save that the Court records, that the appellant's conviction in respect of the cannabis offence has now been overtaken by the law decriminalising the possession of cannabis below 28 grams. For completeness, the conviction and sentencing in respect of the theft and possession of cocaine are affirmed.

Reason: The appellant was charged with the offences of theft, the Possession of a Cannabis and the possession of Cocaine. In the appellant's notice of appeal, the appellant sought only to appeal the sentence for the offence of possession of cannabis.

The Court noted that the appellant had already served his time in relation to the theft charge, having been released early due to being granted one-third remission on his sentence, as a result of good behaviour.

Given the circumstances, the Court was minded to dismiss appeal, while noting the position in relation to decriminalisation of cannabis in the Commonwealth of Dominica. For the avoidance of doubt, the Court held that the conviction in respect of the cannabis offence should be quashed but otherwise affirmed the conviction and sentence in relation to the theft and cocaine offences.

Case Name:

**Nickel Riviere
v
The Police
[DOMMCRAP2019/0006]**

(The Commonwealth of Dominica)

Date:

Monday, 9th November 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

No counsel on record, appellant appears in person

Respondent:

Ms. Evelina Baptiste, the Director of Public Prosecutions and Ms. Daina Matthew

Issues:

**Criminal Appeal – Appeal against sentence – Theft –
Previous convictions of appellant for same offence –
Whether sentence imposed by Magistrate excessive**

Type of Order

Oral Judgment

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The appeal is dismissed and conviction and sentence affirmed.

Reason:

The appellant argued that the sentence of one (1) year imposed upon him for the offence of theft by the Magistrate was excessive as he was a first-time offender. However, counsel for the respondent in her submissions contended that the appellant had been previously convicted of the offence of theft. Counsel for the respondent indicated that the appellant was on probation at the time of the commission of this offence and as such violated his probation order.

Counsel for the respondent further submitted, that in the Commonwealth of Dominica the maximum sentence for theft is seven (7) years and in the circumstances the Magistrate did not commit an error in imposing a sentence of one (1) year, especially when considering that had the Sentencing Guidelines been followed strictly, the sentence imposed should have been two (2) years.

The Court upon hearing the submissions of the appellant and counsel for the respondent, determined that the sentence imposed upon the appellant was not excessive in the circumstances. The Court therefore dismissed the appeal and affirmed the conviction and sentence of the appellant.

Case Name:

**Ian Liverpool
v
The Police
[DOMMCRAP2013/0025 – 0029]**

(The Commonwealth of Dominica)

Date:

Monday, 9th November 2020

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mrs. Zena Moore-Dyer

Respondent: Ms. Evelina Baptiste, the Director of Public Prosecutions

Issues: Criminal Appeal – Appeal against conviction – Possession of cannabis – Possession of cannabis with intent to supply, aiding (drugs) – Obstruction (drugs) & inciting to commit an offence under the Drugs Act

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is allowed and the conviction and sentence quashed.

Reason: On 6th November 2020, the counsel for the respondent filed a notice to indicate the respondent's consent that the appeal be allowed, due to the fact that the appeal has been filed for some time and that the respondent's inquiries show that the record would not be completed any time soon.

In view of the submissions of learned Director of Public Prosecutions, the Court was minded to allow the appeal. Given all the circumstances of this case, the problems experienced in relation to production of records, the Court stated that justice could not be done where there were inefficiencies in that regard, and that the Court could not make decisions where it was constrained by the absence of the record. Therefore, the Court allowed the appeal and quashed the conviction and sentence.

Case Name:

**Joseph Morvan
v
The Police
[DOMMCRAP2019/0017]**

(The Commonwealth of Dominica)

Date: Monday, 9th November 2020

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mrs. Kathy Buffong-Royer

Respondent: Ms. Evelina Baptiste, the Director of Public Prosecutions and Ms. Daina Matthew

Issues: Criminal Appeal – Appeal against conviction – Driving without due care and attention – Appeal against findings of fact

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed.

Reason: The appellant was charged with charge driving without due care and attention following a collision between his vehicle and a passenger bus driven by one Stanley Jean-Baptiste. The prosecution in the court below called two witness, Mr. Stanley Jean-Baptiste and one Constable Bruno. The appellant also had an eyewitness. The appellant was found guilty by Magistrate Bernard Paquette pursuant to section 53 of the Vehicles and Road Traffic Act Cap 46:50 and fined \$500.00.

Counsel for the appellant relying on her submissions filed 20th October 2020, argued that Magistrate Paquette’s decision was unreasonable and not supported by evidence and that the Magistrate reached a decision that no tribunal would have properly reached.

Counsel for the appellant sought to present to the Court an alternative set of facts in the case, which she argued the Magistrate did not consider. She submitted that the Court should consider Mr. Jean-Baptiste's explanation that it was his vehicle that dragged and hit the appellant's vehicle that was stationary at the time. She submitted that the evidence of Mr. Jean-Baptiste also indicated that he saw that appellant's right indicator was in use, indicating that the vehicle was about to swing right.

This counsel for the appellant argued that this showed that the appellant was a competent road user, taking due care and attention, coming to a complete stop, before deciding to proceed into the intersection.

Counsel for the respondent, relying on submissions filed 2nd November 2020, stated that the appellant wanting to enter a secondary street would have had to wait to ensure that could do so without obstructing any oncoming traffic in keeping with the Motor Vehicles and Road Traffic Regulations, Cap. 200. and the common law. She also stated that the road measured twenty (20) feet allowing each driver ten (10) feet, which was ample space without obstructing the other. Further, it was accepted by the appellant that he did cross the central line.

The Court upon hearing the submissions of both parties, articulated that the sole issue it had to determine was whether the Magistrate could have come to the conclusions which he did on evidence which he accepted. It was not the Court's role to determine whether the Magistrate should have accepted an alternative set of facts that were put forward. The Magistrate is the trier of facts and unless an appellant could demonstrate that there was no evidence on which the Magistrate could have arrived at his conclusions, it was not for the Court to decide what set of facts he should have accepted. The Court therefore found no basis for disturbing the decision of the Magistrate, that the appellant was driving without due care and attention and as such dismissed the appeal.

Case Name:

**[1]Gregory Gilpin-Payne
[2]International Investments & Consulting
Limited**

v

**[1] Stephen First
[2] Corporate Capital (Asia) Ltd**

**[SKBHCVAP2019/0041]
(Saint Christopher and Nevis)**

Date:

Tuesday, 10th November 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Applicants:

Mr. Victor Elliott-Hamilton

Issues:

**Application for Leave to Appeal – Order made on the
court’s own initiative – Court’s failure to provide
notice in accordance with Part 26.2 Civil Procedure
Rules 2000**

Type of Order

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The application for leave to appeal the decision
of Eddy Ventose J dated 17th October 2019 is
granted.**
- 2. The applicants shall file and serve a notice of
appeal within 21 days of the date of this order.**

3. The appeal shall proceed thereafter in accordance with the Civil Procedure Rules 2000.

Reason:

Counsel for the applicants submitted that the Court should grant the applicants leave to appeal the order of Ventose J dated 17th October 2019 because it was an order made on the court's own initiative, and the court failed to provide the applicants with notice that it was minded to make such an order. This was in conflict with the provisions in Part 26.2 of the Civil Procedure Rules 2000 and was the basis for the applicants' belief that they had a 'real prospect of succeeding with their case' if leave to appeal was granted by the Court.

The Court having read the papers and heard the submissions of the counsel for the applicants, was satisfied that the applicants had met the threshold for leave to appeal against the order of Ventose J dated 17th October 2020 and therefore granted the applicants leave to appeal the said order.

Case Name:

**C & R Enterprises Limited
v
Bank of Saint Vincent & the Grenadines
Ltd**

**[SVGHCVAP2016/0034]
(Saint Vincent and The Grenadines)**

Date:

Tuesday, 10th November 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Roderick Jones

Respondent: Mr. Richard Williams and Ms. Danielle France

Issues: Civil Appeal – Non- compliance with prior order of Court – Appeal to stand dismissed due to non-compliance of prior order

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal filed by the appellant stands dismissed as of the 30th of October 2020.
2. No order as to costs of the appeal.

Reason: On the application of counsel for the appellant , this Court granted an adjournment of the hearing of this appeal. The adjournment was granted on very strict terms. The first of those two terms was that payments were to be made in accordance with the schedule for payment as set out in the order. The first payment of \$40,000.00 was due by 21st September 2020 and a further payment of \$60,000.00 by 30th October 2020. The Court was advised that the second payment of \$60,000.00 was not made by the deadline of 30th October 2020.

The effect of that non-compliance is set out in paragraph 2 of the order - the appeal stood dismissed without any further order of this Court, as of 30th October 2020. The Court confirmed that the appeal stood dismissed as of 30th of October 2020 for failure to comply with the strict terms of paragraph 1 of the order. The Court also took note of the fact that paragraph 3 of the order in September required the appellant to file and serve its skeleton arguments by no later than 9th October 2020. The Court was advised that the skeleton arguments of the appellant was not served on the respondent until 10th November 2020.

Having confirmed that the appeal stood dismissed as of 30th October 2020, the Court was minded to make an order as to costs of the appeal in favour of the respondent in accordance with paragraph 2 of the order. However, counsel for the respondent informed the Court that the Respondent was not asking for the costs of the appeal.

Case Name:

**[1] Jhawnie Gage
[2] Arah Paula Cecil Davis
[3] Edgar Augustus Peltier**

v

**The Attorney General of the Commonwealth
of Dominica**

**[DOMHCVAP2020/0005]
(The Commonwealth of Dominica)**

Date:

Tuesday, 10th November 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellants:

Mrs. Gina Dyer-Munro and Mrs. Zena Moore-Dyer

Respondent:

**Mrs. Tameka Hyacinth-Burton and Mrs. Jo-Ann Xavier-
Cuffy**

Issues:

**Civil Appeal – Interlocutory Appeal – Appeal against
continuation of a property seizing order under
Proceeds of Crime Act Chap 12:29 - Whether learned
judge erred in law and failed to consider that the 2nd
defendant held an indefeasible certificate of title
issued under Title by Registration Act Cap 56.50 of -
Whether proceedings can be brought against owner
with indefeasibility of title**

Type of Order

N/A

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

The Court reserves its judgment in this matter.