

VIDEOCONFERENCE

MONTSERRAT
Wednesday, 25th July 2012

APPLICATIONS AND APPEALS

Case Name:

Warren Cassell

v

The Queen

[High Court Criminal Appeal No. 1 of 2012]

Coram:

The Hon. Mde. Janice M. Pereira, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

**Appellant /
Applicant:**

**In person (Mr. Leon Chaku Symister, counsel on record
for the appellant, was unable to be present at the
videoconference hearing in Montserrat)**

Respondent:

**Mr. Oris Sullivan, Senior Crown Counsel, Office of the
Director of Public Prosecutions**

Issues:

**Application for bail pending appeal – Whether special
circumstances existed to justify grant of bail – Whether
conviction was clearly wrong in law – Whether court
lacked jurisdiction to charge appellant – Whether trial
proceeded in such a manner so as to invalidate
indictment – Whether court ought not to have
proceeded with certain counts on indictment – Whether
trial was a nullity**

Result / Order:

[Oral delivery]

The application for bail pending appeal is dismissed.

Reason:

**On the issue of whether an appellate court has a
discretion to grant bail (post-conviction) pending the
hearing of an appeal, the Court was guided by the case**

of *The State v Lynette Scantlebury* (1976) 27 WIR 103. This authority states that since normally bail would not be granted to an appellant or a prospective one after his conviction by a jury, an applicant would have to show that there were special circumstances which would make it the just thing to do to put him on bail pending the hearing of his appeal. One such special circumstance would be if the conviction appears plainly wrong, so that his appeal has every prospect of success.

The Court pointed out that the appellant was merely advancing matters that were in issue and should properly be argued at the hearing of his substantive appeal, and that it was not evident from the record that there were special circumstances.

In response to the appellant's argument that a withdrawal of counts from the indictment would cause it to be invalidated (which, the appellant contended, could be considered a special circumstance), the Court stated that it was not of the opinion that this would have caused any grave injustice to, or would have prejudiced the appellant. If there are multiple counts on an indictment, some of which are bad, this would not render the entire indictment bad.

In response to a further submission by the appellant that the charges brought against him were duplicitous, and thus the court had no jurisdiction to charge him (which would be another special circumstance), the Court stated that such an error could be very easily cured with an amendment of the indictment.

The Court ultimately held that once a jury has convicted a defendant, it is only where it is plain on the record (and not just argumentative) that there are special circumstances, that a Court of Appeal should even consider granting bail before the hearing of the appeal itself. In this case, the Court could see absolutely no basis to accede to the appellant's request for bail. The applicant had failed to show that there were special circumstances which would warrant the grant of the relief sought.