

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 20/2010

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA**

NICOLA BOWEN v R

**Mrs Jacqueline Samuels-Brown QC and Miss Tamara Malcolm for the
appellant**

Mrs Caroline Hay and Miss Michelle Salmon for the Crown

21 September and 20 December 2010

MORRISON JA

[1] On 7 October 2007, the appellant was convicted by Her Honour Miss Judith Pusey, Resident Magistrate for the Corporate Area, for the offences of possession of ganja, taking steps preparatory to exporting ganja and unlawfully dealing in ganja, all contrary to the provisions of the Dangerous Drugs Act. She was sentenced to a fine of \$15,000.00 or six months imprisonment for possession of ganja, \$86,400.00 or six months imprisonment for dealing in ganja and \$129,600.00 or six months imprisonment and two years imprisonment for taking steps preparatory to exporting ganja.

[2] No notice of appeal was given by or on behalf of the appellant at the time of her conviction and sentence and on 29 December 2009, a single judge of this court (Morrison JA) made an order purporting to enlarge time for the filing of an appeal and granting bail on certain conditions. As a result of this order, the appellant filed notice of appeal on 5 January 2010 challenging her conviction and sentence on various grounds which are no longer relevant.

[3] When the appeal came on for hearing on 21 September 2010, the Crown took the point in limine that the court had no jurisdiction to entertain the appeal, because the single judge had had no power to enlarge time and his order made on 29 December 2009 was accordingly a nullity. In support of this submission, Mrs Caroline Hay, for the Crown referred us to sections 294 and 295 of the Judicature (Resident Magistrate's Court) Act, which provide as follows:

"294.—(1) Any person desiring to appeal from the judgment of a Magistrate in a case tried by him on indictment or on information in virtue of a special statutory summary jurisdiction, shall either during the sitting of the Court at which the judgment is delivered give verbal notice of appeal, or shall within fourteen days from the delivery of such judgment give a written notice of his intention to appeal, to the Clerk of the Court of the parish.

(2) Every written notice of appeal shall be sufficiently signed, if signed by or on behalf of the appellant either with his name or mark, or with the name of his solicitor, but if signed with his mark, such signature shall be attested by a subscribing witness.

295. If the appellant shall fail to give the notice of appeal as herein provided, his right to appeal shall cease and determine."

[4] We were also very helpfully referred by Mrs Hay to the decision of this court in ***R v Byron Lewis*** (RMCA No. 24/1993 judgment delivered 13 December 1993). That was a case in which no notice of appeal was given, either verbally during the sitting of the court at which the judgment was delivered, or by a written notice within 14 days of that date. The appellant applied to this court for an extension of time within which to file an appeal. This application was refused on the grounds that once a prospective appellant failed to give the notice of appeal either orally at the sitting of the court at the time of the conviction or in writing within 14 days of the date of conviction, as required by section 294 (1), section 295 applied, with the inescapable consequence that his right of appeal thereupon ceased and determined. As Wolfe JA (as he then was) put it at page 3, "failure to comply with section 294 is made fatal by section 295".

[5] An attempt to argue in the alternative that this court had a discretion to extend time within which to file notice of appeal also failed, Wolfe JA stating (at page 6) "that no power resides in this court to enlarge time for filing notice of appeal in respect of appeals from the Resident Magistrates Court".

[6] Mrs Hay also referred us to the older cases ***Rex v Savage*** (1941) 4 JLR 24 and ***R v Bingham*** (Clark's Supreme Court Judgments 1917-1932, page 130) which both confirm that the right of appeal given by section 294 is subject to conditions precedent. Failure to comply with those conditions will attract the peremptory consequence in section 295, that the right of appeal "shall cease and determine".

[7] Faced with those obviously powerful submissions, Mrs Samuels-Brown QC submitted that the court did nevertheless have jurisdiction to entertain the appeal, leave having been granted by the single judge to file it out of time, without objection from counsel for the Crown. She submitted further, that despite the seemingly restrictive language of sections 294 and 295, this court did have inherent power to extend time for filing in a deserving case and this was what was done in the instant case.

[8] Mrs Samuels-Brown also referred us to a number of other cases, none of which, if we may say so with respect, can possibly make a difference in the light of the clear provisions of sections 294 and 295, as those sections have been authoritatively interpreted by this court.

[9] In the circumstances, we have no hesitation in determining that the preliminary objection must succeed on the ground that the single judge's grant of an extension of time within which to file notice of appeal in this matter was plainly beyond his jurisdiction. By the time the application to extend time came before him, the appellant's right of appeal had clearly been extinguished by operation of law. It is for these reasons that on 21 September 2010, we ordered that the appeal should be struck out and the appellant's bail be revoked with immediate effect.