

**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO 33/2010**

**MOTION NO 9/12**

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

**ANDREW CAMPBELL v R**

**Applicant in person**

**Miss Paula Llewellyn QC, Director of Public Prosecutions and Mrs Sahai  
Whittingham-Maxwell for the Crown**

**4 and 6 December 2012**

**BROOKS JA**

[1] Mr Andrew Campbell has applied, by way of notice of motion, for permission to appeal to Her Majesty in Council against the dismissal by this court of his appeal against a criminal conviction. That conviction was in the Resident Magistrates' Court for the Corporate Area for the offence of assault occasioning actual bodily harm. The conviction occurred on 23 July 2010 and Mr Campbell was fined \$7,000.00 or ordered to serve 30 days imprisonment in default of payment.

[2] When Mr Campbell appealed to this court against the conviction, he filed his notice of appeal on 11 August 2010. He, however, did not file his grounds of appeal until 18 July 2012. When the matter came on for hearing on 19 July 2012, the court brought the provisions of section 296 of the Judicature (Resident Magistrates) Act to Mr Campbell's attention. It informed him that his appeal had been deemed abandoned because his grounds of appeal were filed after the time specified in the section. The court also informed Mr Campbell that no good cause had been shown in the papers filed by him on 18 July 2012 to allow it to exercise the discretion given to it by section 296. The court then dismissed his appeal as having been abandoned.

[3] Mr Campbell is aggrieved by that decision and on 9 August 2012, he filed the present motion for leave to appeal to the Privy Council.

### **The application**

[4] The permission to appeal is sought, the application states, primarily, pursuant to section 110 (1) (c) of the Constitution of Jamaica. In the alternative, however, Mr Campbell seeks leave pursuant to section 110 (2) (a) of the Constitution.

[5] The questions on which he seeks the Privy Council's adjudication are:

- "1. In a case where the prosecution and a trial judge [have] effected, a gross miscarriage and perversion of justice and the [sic] breached the Constitutional rights of an accused, can or ought the Legislation be utilised to endorse such a breach[?]
2. That where the Legislation specifically empowers a Court to exercise a discretion, does it not impliedly

require that the Court in its Judgment show how its discretion was exercised one way or the other[?]"

[6] When he appeared before the court, Mr Campbell argued that the provisions of the legislation, that is section 296, cannot override the Constitution and that his constitutional rights had been breached in that he had been deprived of a fair hearing. He passionately advocated that his case was of general importance and that it had "civil ramifications and criminal permutations". He went on to cast serious aspersions against the way the trial was conducted and the way the record had been prepared in the court below. Those matters, he argued, are of great public importance.

### **The response**

[7] Miss Llewellyn QC, the learned Director of Public Prosecutions, submitted that, contrary to Mr Campbell's assertions, there was nothing involved in this case, which fell within the ambit of section 110 of the Constitution of Jamaica or section 35 of the Judicature (Appellate Jurisdiction) Act. She argued that there was no issue that involved the interpretation of the Constitution and there was no issue of great public importance meriting an appeal to the Privy Council.

[8] Learned Queen's Counsel submitted that there is a certain threshold which must be reached in order for this court to grant permission to appeal to Her Majesty in Council. In that regard Miss Llewellyn said that Mr Campbell "has not even commenced the journey" to achieve the "threshold of great general or public importance which the Constitution requires". The latter words are drawn from paragraph [7] of the judgment

of Morrison JA in **Donovan Phillips v R** [2012] JMCA App 9 and were commended to us by Miss Llewellyn.

### **The analysis**

[9] It would be useful, as the starting point of analysing this application, to state that the issue before the learned Resident Magistrate turned on the credibility of the witnesses before her. At the trial, there was no issue involving the Constitution and no point was taken concerning the jurisdiction of the court to try Mr Campbell for the stated offence.

[10] It is against that background that the relevant provisions of section 110 (1) and (2) of the Constitution are examined. They state:

“ (1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases-

- (a) ...
- (b) ...
- (c) final decisions in any civil, criminal or other proceedings **on questions as to the interpretation of this Constitution**; and
- (d) such other cases as may be prescribed by Parliament.

(2) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases-

- (a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be

- submitted to her Majesty in Council, **decisions in any civil proceedings**; and
- (b) **such other cases as may be prescribed by Parliament.**" (Emphasis supplied)

[11] A reading of section 110 reveals that subsection (1) deals with appeals made as of right to the Privy Council while subsection (2) addresses appeals made with permission. Only paragraph (c) of subsection (1) refers to decisions in criminal cases. That paragraph only allows appeals, as of right, where it is the Constitution itself which is to be interpreted.

[12] Subsection 2 addresses appeals to the Privy Council by way of leave. Paragraph (a) of that subsection, however, only addresses decisions in civil cases. It is paragraph (b) which opens the gateway for appeals with permission in criminal cases. Parliament is allowed by that paragraph to widen the categories of cases in which appeals, by way of permission, are allowed. Parliament did so by the promulgation of section 35 of the Judicature (Appellate Jurisdiction) Act. It states as follows:

"The Director of Public Prosecutions, the prosecutor or the defendant may, with the leave of the Court appeal to Her Majesty in Council from any decision of the Court given by virtue of the provisions of Part IV, V or VI **where in the opinion of the Court, the decision involves a point of law of exceptional public importance and it is desirable in the public interest that a further appeal should be brought.**" (Emphasis supplied)

Part VI of the Judicature (Appellate Jurisdiction) Act applies to criminal appeals and would include the instant case within its scope.

[13] The principles in respect of those provisions were set out in **R v Lancy Simpson** (1977) 15 JLR 190 at page 193F.

[14] Section 35, like the provisions of subsection (2) (a) of section 110, allows permission to be given where, in the opinion of this court, "the decision involves a point of law of exceptional public importance and it is desirable in the public interest that a further appeal should be brought".

[15] The first question raised by Mr Campbell's application is whether any issue involving an interpretation of the Constitution arises. The answer is that no such issue is involved and, therefore, section 110 (1) (c) does not apply here. An appeal does not lie as of right in the instant case. The next question is whether the application "involves a point of law of exceptional public importance and it is desirable in the public interest that a further appeal should be brought". The answer is easily given in the negative.

[16] Mr Campbell's appeal was dismissed because of his failure to comply with the provisions of section 296 of the Judicature (Resident Magistrates) Act. It states:

**"296.-(1) Notwithstanding anything contained in any law regulating appeals from the judgment of a Magistrate in any case tried by him on indictment or on information by virtue of a special statutory summary jurisdiction the appellant shall within twenty-one days after the date of the judgment draw up and file with the Clerk of the Courts for transmission to the Court of Appeal the grounds of appeal, and on his failure to do so he shall be deemed to have abandoned the appeal:**

Provided always that the Court of Appeal may, in any case for good cause shown, hear and determine the appeal

notwithstanding that the grounds of appeal were not filed within the time hereinbefore prescribed.

(2) The grounds of appeal shall set out concisely the facts and points of law (if any) on which the appellant intends to rely in support of his appeal and shall conclude with a statement of the relief prayed for by the appellant.

(3) The Court of Appeal may dismiss without a hearing any appeal in which the grounds of appeal do not comply with the provisions of subsection (2).” (Emphasis supplied)

[17] Mr Campbell’s default was gross, as his documents were filed approximately two years late. There was, therefore, nothing which required any extensive reasoning by this court to demonstrate why his appeal should have been dismissed, neither is there any serious question of general or public importance which arises from that decision. The application does not meet the threshold to which Morrison JA referred in **Phillips v R**. The application is, accordingly, refused.

