

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT BAIL APPEAL NO COA2023BA00001

BETWEEN THE DIRECTOR OF PUBLIC PROSECUTIONS APPELLANT

AND CHRISTOPHER LYN RESPONDENT

Jeremy Taylor KC for the appellant

Ashford Meikle for the respondent

8, 12 and 16 May 2023

Criminal Law – Bail – Prosecution’s appeal against the grant of bail – Prosecutor’s failure to adhere to procedural requirements – Oral notice of appeal given at the conclusion of the proceedings – Written notice of appeal not filed and served within 24 hours after the conclusion of the proceedings – Appeal dismissed - Sections 10(3)(b) and 10(5) of the Bail Act

IN CHAMBERS

ORAL JUDGMENT

FOSTER-PUSEY JA

[1] This is an appeal by the Director of Public Prosecutions (‘the DPP’ or ‘the Crown’) against the grant of bail to Christopher Lyn (‘the respondent’) by Her Honour M Harrison (‘the learned Parish Court Judge’) on 3 May 2023.

[2] The appeal is made pursuant to section 10 of the Bail Act, which provides:

“(1) A defendant to whom section 9 applies may appeal to a Judge in Chambers.

(2) **Where bail is granted to a defendant by a Court pursuant to this Act, the prosecution may, in the manner set out in subsection (3), appeal to a**

Judge of the Court of Appeal in Chambers in respect of the decision.

(3) Where the prosecution intends to appeal a decision to grant bail to a defendant, the prosecution shall-

(a) at the conclusion of the proceedings in which the decision was communicated and before the release from custody of the defendant, give oral notice to the Court of that intention; and

(b) give to the Court and the defendant, within twenty-four hours after the conclusion of the proceedings referred to in paragraph (a), a written notice of the appeal, setting out the reasons therefor.

(4) Subject to subsection (5), upon the receipt of the oral notice, referred to in subsection (3)(a), the Court shall remand the defendant in custody until the appeal is determined.

(5) Where the prosecution fails to file a written notice of appeal in accordance with subsection (3)(b), the order for the grant of bail shall take immediate effect.

(6) The hearing of an appeal under this section shall be commenced within seventy-two hours (excluding Saturdays, Sundays and days declared to be Public General, Holidays under section 2 of the Holidays (Public General) Act), or such longer period, as the Court may in any particular case consider appropriate, after oral notice is given under subsection (3)(a)." (Emphasis supplied)

[3] The respondent is before the Parish Court on a number of informations relating to robbery with aggravation, conspiracy to robbery, possession of prohibited weapon, possession of a firearm with intent to injure and unauthorized possession of ammunition. The charges emanate from two incidents - one on 7 March 2023 and the others over the period 4 - 5 April 2023.

[4] The respondent was brought before the Parish Court on 26 April 2023 and his defence counsel, Mr Meikle, who also appeared for him in this appeal, applied for bail. The prosecution objected to bail on a number of bases.

[5] On 3 May 2023 the learned Parish Court Judge granted bail to the respondent in the sum of \$900,000.00 with one to two sureties on the following conditions:

- i. [The respondent] is to report to Mandeville Police Station, Mondays to Saturdays 6am to 6pm.
- ii. [The respondent] is to reside at Eden Street, New Green with Joanne Hall.
- iii. [The respondent] is not to contact or interfere with the Crown witnesses.
- iv. Curfew order 8pm to 5am daily.
- v. [The respondent] is to surrender his travel documents.
- vi. A stop order is imposed.”

[6] The clerk of the courts immediately gave oral notice of an intention to appeal the grant of bail.

[7] In light of the oral notice that was given, on 4 May 2023, the following day, the learned Parish Court Judge provided her written reasons as to why she granted bail to the respondent. For the purposes of this judgment a short reference to the reasons is sufficient.

[8] The learned Parish Court Judge referred to the respondent’s “constitutional right to bail in the absence of sufficient cause shown to keep [the respondent] in custody” (see para. 7 of her reasons). She noted the prosecution’s argument that the respondent would be likely to abscond if granted bail on the basis that the respondent could not be found for more than one month after the first incident; opined that without more it did not appear to be a sound basis for the refusal of bail in light of the fact that the prosecution did not outline the efforts taken to locate the respondent; noted that the respondent was ultimately found in a public place; and that there was no allegation that he attempted to flee and explanations were given for his “varying addresses”. The learned Parish Court Judge stated that, in view of the constitutional principle that the respondent is to be seen as innocent until proven guilty, the outline of the two sets of allegations did not, without more, show a likelihood that the respondent would commit an offence if granted bail. After indicating that she considered the seriousness of the offences, the learned Parish Court Judge stated that she did not consider that any of the grounds outlined in section 4(1) of the Bail Act had been established so as to cause her to exercise her discretion to refuse bail. In

addition, the learned Parish Court Judge stated that the conditions she imposed were adequate to manage the risks raised by the prosecution in the particular case.

[9] On Friday, 5 May 2023, the DPP filed an appeal against bail in this court. In the document, the DPP contended that the decision of the learned Parish Court Judge should be revoked as there were substantial grounds for believing that the respondent, if released on bail, would commit an offence and the decision was contrary to the “public interest and the policy behind the Firearms Act 2022”. The DPP also indicated in its appeal that the learned Parish Court Judge exercised her discretion improperly in light of the nature and seriousness of the offences and the strength of the prosecution’s case. There was a document outlining the allegations attached to the appeal.

The procedure in the Court of Appeal

[10] Upon receiving the notice of appeal on 5 May 2023, the appeal was placed before me and I made the following orders on the same day:

- i. The appeal against bail is set for hearing inter partes on Monday 8 May 2023 at 2pm by Zoom.
- ii. The Prosecution is to provide proof that the pre-conditions outlined in section 10 of the Bail Act were satisfied and indicate the current status of [the respondent].
- iii. Written submissions by the prosecution and [the respondent] (who was granted bail) are to be filed and served on or before 9:00am on 8 May 2023.”

[11] The court’s registry communicated by email with counsel for the parties.

[12] On 8 May 2023 the DPP filed two bundles included in which were the various documents in the Parish Court file touching and concerning the two sets of allegations against the respondent, as well as skeleton submissions.

[13] When the matter came on for hearing Mr Taylor KC appeared on Zoom. Counsel for the respondent, Mr Meikle, who was contacted by telephone when he did not appear, indicated that he had not seen the email that was sent to him with the various documents relating to the appeal, and had not been formally retained for the appeal

but was willing to represent the respondent. He also indicated that he was not well and was not in a position to participate in the hearing. He, therefore, asked for the matter to be adjourned.

[14] The hearing was adjourned to Friday 12 May 2023 at 10:00 am. Mr Meikle filed written submissions on behalf of the respondent before the hearing.

[15] The hearing proceeded on 12 May 2023. In the course of the proceedings, the court asked counsel to make submissions on **R (on the application of Cardin) v Birmingham, Crown Court and another** [2017] EWHC 2101 (Admin) a decision of the Queen's Bench Division of the Administrative Court, as that case appeared to be useful. The date for the decision of the court was set for Tuesday, 16 May 2023 at 2:00 pm.

The submissions

[16] Mr Meikle took a preliminary point that this court should deny the appeal as the DPP had not complied with the mandatory procedural requirements of section 10(3) of the Bail Act. Counsel noted that the DPP acknowledged that it had "run afoul" of sections 10(3)(b) and 10 (5) of the Act which would extinguish its appeal before this court. Counsel submitted that the prosecution ought to have been prepared in the event that the learned Parish Court Judge granted bail. He stated that at the expiration of the 24-hour "written notice period" the respondent ought to have been released from custody as the written notice of appeal had not been served within time. Counsel highlighted that the Crown served its written notice on the respondent while he was in custody at the Mandeville Police station lock-up, 48 hours after it had given oral notice of appeal. Counsel urged that the respondent's constitutional right to liberty and freedom of movement had come at the expense of the Crown's "impunity of the law" resulting in the respondent being in custody for over a week since the learned Parish Court Judge admitted him to bail. Counsel submitted that it was in the interests of justice that the appeal be dismissed and the order of the learned Parish Court Judge, made on 3 May 2023, restored.

[17] Mr Taylor, in the skeleton submissions filed by the DPP as well as in his oral submissions, acknowledged that the requirement for written notice of appeal to be

given to the Parish Court and the respondent within 24 hours after the conclusion of the proceedings in which the decision granting bail was communicated and oral notice of the intention to appeal given, had not been complied with. King's Counsel stated that the legislative provision was written in mandatory terms and "the failure by the Crown to adhere to the strict and demanding (and ridiculous) time limits imposed by Parliament" meant that this court could "determine the appeal on procedural grounds without even considering the merits". King's Counsel noted that the statute did not make provision for an extension of time to be given if good cause is shown. Referring to the affidavit of service that was filed in this court, counsel stated that, *prima facie*, service of the written notice was effected on 5 May 2023, outside of the 24-hour period required by the statute.

[18] Mr Taylor asked that the court, nevertheless, hear the appeal on its merits in the overriding interests of justice.

Further submissions

[19] In the course of hearing the oral arguments, the court brought to the attention of counsel the case **R (on the application of Cardin) v Birmingham, Crown Court and another** a decision of the Queen's Bench Division of the Administrative Court, in which that court ruled that "it cannot have been Parliament's intention that the Crown should lose the opportunity to reverse a decision that was wrong in principle, with the result that a defendant who might abscond or commit further offences or interfere with prosecution witnesses was released on bail, if the reason why the notice of appeal was not served in time (or indeed at all) was outside the prosecution's control". In light of the fact that counsel would need more time to review and comment on the case, I proceeded to hear the arguments on the merits of the appeal and asked counsel to provide their comments on the case on or before 15 May 2023 at 1:00 pm.

[20] Mr Meikle provided detailed submissions on the case as well as on the UK Bail (Amendment) Act 1993. Counsel also supplied an unofficial copy of the court sheets of 26 April, 3 May and 10 May 2023 of the Mandeville Parish Court. Mr Meikle compared the legislative provisions of the UK Act with that of the Bail Act and highlighted similarities and differences. Counsel noted that in **R (on the application of Cardin)**

v Birmingham, Crown Court and another the court adopted a purposive interpretation regarding one of the timelines outlined in the UK Act, stating that this was necessary to achieve Parliament's intention in a case where a failure to comply with one of the time limits was due to circumstances outside the control of and not due to any fault by the prosecution. Counsel urged that this court should not adopt a similar approach in light of the differences in language in the Bail Act and the Jamaican Parliament's clear intention that there should be mandatory compliance with the time limits.

[21] Counsel urged that, in any event, the "fastidious attempts in **Cardin**" were to be contrasted with the "nonfeasance of the prosecutor in the appeal before this ... Court". Counsel submitted that no explanation was given for the prosecution's failure to serve the written notice within time bearing in mind the respondent's close proximity to the court, as he was being held at the Mandeville Police Station.

[22] Having reviewed the case, Mr Taylor submitted that in **R (on the application of Cardin) v Birmingham, Crown Court and another** section 1(7) of the Bail (Amendment) Act 1993 provided that the failure to serve the defendant with a copy of the prosecutor's written notice of appeal within the required period, mandated his immediate release from custody. The Administrative Court held that the Crown could only "get around" that strict interpretation by showing the existence of exceptional circumstances that prevented the Crown from executing service within the time limits.

[23] Mr Taylor stated that, on the material before this court, the DPP had not established the existence of exceptional circumstances causing the late filing and service of the written notice of appeal. King's Counsel added however, that the respondent had not suffered any prejudice as he was lawfully remanded by the order of the Parish Court until the appeal is determined pursuant to section 10(4) of the Bail Act and the appeal came up for hearing on 8 May 2023. Furthermore, the appeal would have been heard but for the illness of counsel.

Analysis

[24] I agree with the submissions of both counsel that section 10(3) of the Bail Act is written in mandatory terms. If the Crown intends to appeal a decision to grant bail to a defendant it must:

- a. at the conclusion of the proceedings in which the decision is given and before the defendant is released, give oral notice to the court of the intention to appeal; and
- b. within 24 hours after the conclusion of the proceedings in which the decision to grant bail was communicated, give a written notice of appeal with reasons therefor, to the court and the defendant.

[25] Section 10(4) provides that, subject to subsection (5), where the court receives the oral notice of the intention by the Crown to appeal the grant of bail, the court shall remand the defendant in custody until the appeal is determined.

[26] Importantly, however, section 10(5) provides that where the Crown fails to file a written notice of appeal within the 24-hour period and in accordance with the statutory provisions, the order for the grant of bail is to take immediate effect.

[27] There is no dispute that in the instant appeal, the Crown did not give a written notice of appeal to the Parish Court and the respondent within the 24-hour deadline. The question as to whether on an interpretation of the Bail Act, there may be exceptional circumstances permitting the court to proceed to hear the merits of an appeal against bail by the DPP even where a time limit outlined in the statute has not been met, did not specifically arise on the facts of this case, as there was no evidence or allegation that extraordinary circumstances prevented the Crown from giving the written notice to the court and the respondent within the time limits outlined in the statute. It remains to be seen whether the issue will arise for full consideration in another appeal against bail by the prosecution.

[28] In light of the success of the preliminary point, it was not necessary or appropriate for me to consider the merits of the appeal.

[29] The appeal must be dismissed.

The procedure at the Parish Court level

[30] There may well be procedures in place at the Parish Court and to be followed by the prosecution, that facilitate the smooth operation of and interaction between sections 10(4) and 10(5) of the Bail Act. If so, they were not clearly seen in the case at bar.

[31] The excerpts from the court sheets reveal that on 26 April 2023 the respondent was present in court, an application for bail was made, and the learned Parish Court Judge reserved her decision and set the matter for mention on 3 May 2023 when she intended to hand down her ruling on the application for bail. The respondent was remanded in custody.

[32] As indicated before, the learned Parish Court Judge granted bail to the respondent on 3 May 2023. Mr Taylor acknowledged that he had not provided a certified copy of the court sheet in proof of the fact that oral notice was given of the intention to appeal the grant of bail. This point should be addressed in future appeals. It is noted however that the learned Parish Court Judge referred to the oral notice in her reasons, and there is the following notation on 3 May 2023 on the backing of one of the informations "Crown to appeal bail after that was given. Bail offer see info #:".

[33] In the course of the submissions, no mention was made of the nature of the order (if any) made by the learned Parish Court Judge in respect of the respondent when oral notice was given of the intention to appeal the grant of bail. An unofficial copy of the learned Parish Court Judge's court sheet for 3 May 2023 reflects that the defendant was in custody, outlines the terms on which bail was offered, and then reflects the notation "Crown intends to appeal. Mention 10 May 2023". Clearly, the respondent remained in custody after the oral notice was given.

[34] An unofficial copy of an endorsement made on 10 May 2023 on one of the informations from the Mandeville Parish Court reads "Ballistics o/s, M 17/5/23 R/C, Outcome of Crown's appeal re grant of bail R/C". The learned Parish Court Judge, on 10 May 2023, remanded the respondent in custody pending the Crown's appeal of the grant of bail.

[35] It seems to me that the question as to what should occur if the Crown did not serve the written notice within the time stipulated by the Bail Act, would not have been clear to all concerned, including the authorities holding the respondent. They would need to know how to act in light of the oral notice that was given as well as the written notice given, albeit late.

[36] In these circumstances it may be useful for the Parish Court, if there is no procedure yet in place, to consider the procedure followed in **R (on the application of Cardin) v Birmingham, Crown Court and another** (see paras. 9 - 11), in light of the provision in the UK Bail Act that mandates the Magistrates' Courts to remand the defendant in custody until the appeal was determined or otherwise disposed of. Mrs Justice Andrews in delivering the judgment of the court stated:

“9. In accordance with s.1(6) of the Act, the Magistrates' Court was obliged to remand the Claimant in custody until the appeal was determined or otherwise disposed of. The normal procedure would be for the court to issue a warrant authorizing the detention of the defendant for two hours, that being the period within which the prosecution has to serve the written notice of appeal on the defendant. In practice, the individual representing the Crown at the bail hearing will probably not have the authority to make a decision about whether to appeal, and the oral notice would preserve the Crown's position until such time as that decision could be taken by someone who had. In the present case Mr Purser checked with someone of requisite seniority who confirmed that an appeal should be pursued.

10. At 1:56pm Mr Purser gave written notice to the relevant court officer at the Magistrates' Court of the prosecution's intention to appeal the granting of bail to the Claimant and Rene Cardin.

11. In the normal course of events a defendant would either be served with the written notice of appeal in the cells or, as was the plan in the present case, brought back into court for service to be effected...”

[37] I note that in the case at bar the respondent has been kept in custody pending the determination of the Crown's appeal. The records in the possession of this court for the relevant proceedings at the Parish Court on 3 May 2023 do not reflect an

express order by the Parish Court Judge remanding the respondent in custody in light of the oral notice of appeal given by the Crown.

[38] If a Parish Court Judge were to remand a defendant in custody for the period of time within which a written notice of appeal is to be filed by the Crown, this could, in my view, assist in bringing certainty to the procedure. The court could also consider setting the matter for mention at a time when the 24-hour notice period would have only recently expired, for example the day after. The court would then be in a position to ascertain whether the Crown had complied with the statutory time limits, and would be able to make such orders as may be necessary.

[39] I recommend that in the future, when the Crown files an appeal in this court, the Crown should also clearly provide details as to its compliance with the statutory requirements in section 10 of the Bail Act.

Costs

[40] Mr Meikle asked for costs of the appeal. I read the cases of **The Director of Public Prosecutions v Paul Lewis** [2010] JMCA Crim 83 and **The Director of Public Prosecutions v Kevin Adams** [2014] JMCA Crim 38, both appeals against bail by the DPP.

[41] In **The Director of Public Prosecutions v Paul Lewis** Morrison JA (as he then was), dismissed an appeal by the DPP on the basis that the Crown had not given oral notice to the Resident Magistrate while he was sitting in court, and as a consequence, the Resident Magistrate's directive to the clerk of courts countermanding the offer of bail would have been given after he had exhausted his jurisdiction to deal with the question of bail and he was therefore *functus officio*. Morrison JA did not award costs to counsel appearing for the respondent. The issue of costs was not addressed in the judgment.

[42] In **The Director of Public Prosecutions v Kevin Adams**, on the other hand, Mangatal JA (Ag) (as she then was) allowed an appeal against the grant of bail to the respondent. There no mention of the issue of costs in the judgment.

[43] After considering Mr Meikle's submissions, I will not award costs, as in my view, an appeal against bail remains a criminal proceeding in which costs are not usually awarded.

[44] I thank counsel for their very useful, scholarly submissions and cooperation in this case.

[45] Consequent on the determination of the matter, the orders of the court are as follows:

- (1) The appeal is dismissed.
- (2) As ordered by Her Honour Miss M Harrison, Parish Court Judge in the parish of Manchester, the respondent is to be granted bail forthwith in the sum of \$900,000.00 with one to two sureties on the following conditions:
 - i. [The respondent] is to report to Mandeville Police Station, Mondays to Saturdays 6am to 6pm.
 - ii. [The respondent] is to reside at Eden Street, New Green with Joanne Hall.
 - iii. [The respondent] is not to contact or interfere with the Crown witnesses.
 - iv. Curfew order 8pm to 5am daily.
 - v. [The respondent] is to surrender his travel documents.
 - vi. A stop order is imposed."