Kaylahoef

IN THE SUPREME COURT OF BELIZE

Action No. 235 of 2004

IN THE MATTER OF TIMOTEO DOUGLAS JIMENEZ, a prisoner awaiting Trial

and

IN THE MATTER of Section 62 of the Indictable Procedure Act, Chapter 96 of the Laws of Belize, Revised Edition 2000

Appearances:
Mr. Marcel Cardona for the Petitioner
Mr. Kevin Arthurs for the Respondent

2004: June 10th and 18th

RULING

1. **Barrow J (Ag.)** The petitioner is detained at the Hattieville Prison awaiting trial on a charge of kidnapping for which he was arrested on April 29, 2004. The petitioner had previously been arrested on charges, including robbery, arising out of a mid-day armed robbery of a bank in Orange Walk on March 2, 2004. There had been a shoot out between the gang of robbers and the police in which persons had been injured and one of the robbers killed. The crime shocked the nation.

2. Section 16 of the **Crime Control and Criminal Justice Act**, Chapter 102 of the Laws of Belize, as amended, provides that no magistrate shall admit to bail any person charged with specified offences, including robbery with a firearm and kidnapping. For such offences bail has to be sought in the Supreme Court, hence the present petition.

3. The relevant provisions of the Act are subsections (1) and (3) which are in the following terms:

> "(1) Notwithstanding any other law or rule of practice to the contrary, no magistrate, justice of the peace or police officer shall admit to bail any person charged with any of the offences set out in subsection (2) below.

(3) Where bail is refused by the magistrate or justice of the peace under the foregoing provisions of this section, the person charged may apply to the Supreme Court for bail and the Supreme Court may, for special reasons to be recorded in writing, but subject to subsection (4) below, grant bail to such a person for an offence other than murder ...

4. It makes for clarity to state the obvious: the intention of the legislature was to restrict the power of the Supreme Court to grant bail.

5. If that intention were not evident from the terms of the section the history of this provision puts the matter beyond denial. The precurso to the present provision was found in the **Criminal Justice Act** (26 o 1992) in which the restriction on the power to grant bail was place only upon the subordinate judiciary. The provision then read, i relation to subsection (1) essentially the same as it does now but wit the proviso:

"Provided that a magistrate may, for special reasons to be recorde in writing, grant bail to an accused person, but in every such ca where the magistrate grants bail, the prosecution may appeal to judge of the Supreme Court in chambers against the grant of bail against the terms of bail."

The original subsection (3) was in these terms:

"Where bail is refused in pursuance of subsection (1) the pers charged may apply to a judge in chambers and in consideri any such application the judge shall have regard *inter alia* to t prevalence of the crime with which the accused is charged, possibility of the accused person repeating the offence interfering with witnesses while on bail, the need for assist the security services in their drive against crime, and all ot relevant factors or circumstances."

6. As originally enacted, therefore, the magistrate was prohibited from granting bail. However, for special reasons to be recorded in writing, the magistrate could grant bail. And against that decision to grant bail the prosecution was given a right to appeal to the Supreme Court.

7. By the original subsection (3) the accused was given (or recognized to have) the right to make a fresh application to the Supreme Court (to a judge in chambers). There was no restriction on the power of the Supreme Court to grant bail although certain factors were stated to which the judge was obliged to have regard in considering the application.

8. The law as it now stands was introduced by the **Crime Control and Criminal Justice (Amendment) Act**, No 25 of 2003, which was gazetted on 10th January 2004. I find the conclusion irresistible that this amendment was intended to put the Supreme Court, today, in the place where the magistrate stood in 1992. That was the intention of the legislature. The Supreme Court may now only grant bail for special reasons, to be recorded in writing.

9. Crown counsel very helpfully cited a number of cases to show what is meant by "special reasons" as that phrase is used in other legislation. In **Whittall v Kirby** [1946] 2 All ER 552 the provision was that the court could refrain from imposing a mandatory disqualification from driving a motor vehicle for special reasons; in **Thomas George Wickins** (1958) Cr. App. Rep 286 the relevant provision was that a person convicted of driving when under the influence of drink was to be disqualified from driving unless the court found that there were special reasons for not imposing the disqualification; and in **Knights v de Cruz** (1996) 54 WIR 252 the legislation provided mandatory punishment for a firearm offence of a fine and imprisonment unless for special reasons to be recorded in writing the court imposed any other sentence.

10. In these cases a common proposition was applied: a special reason was one which was special to the facts which constituted the offence, and not one which was special to the offender as distinguished from the offence. "A circumstance peculiar to the offender as distinguished from the offence is not a special reason within the ... [Act]"; see **Whittall** at 555. It was made clear that the fact that the offender had no previous conviction or that the application of the law would cause hardship did not constitute special reason.

11. Counsel relied heavily on the affidavit of an alibi witness which, on paper and untested by cross-examination, seemed strong, to say that here was a special reason to grant bail. It was exceptional, I understood counsel to be submitting, for an accused person to be able to put forward such a strong indication of a likely acquittal and that made this petition special. The difficulty in the way of this argument is that crown counsel was able to point to a confession signed by the petitioner to urge that the Crown had a strong case against the petitioner which especially justified the withholding of bail.

12. I can conceive of a case in which the evidence against an accused is so weak or virtually non-existent that when the case goes before a magistrate for the preliminary inquiry he would feel bound to discharge the accused. It may be argued that such weakness in a case which comes before the Supreme Court on a bail application provides special reason for granting bail. If it be assumed, and I emphasize that I am not purporting to decide or even to be offering an opinion on the issue, that the weakness of a case may provide special reason for granting bail, I must say clearly that the present case is not such a case. There is nothing that allows me to prefer the alibi on which the petitioner relies to the confession on which the Crown relies. The alibi defence does not provide a special reason for granting bail.

13. The family circumstances and obligations of the petitioner and his good standing in his community, which counsel for the petitioner has initially proposed to urge as matters for the court to consider on this application, have been shown by the authorities as incapable

constituting special reasons. The length of time that the petitioner will have to wait before he is tried, to which counsel also referred, is undoubtedly a factor that must concern the court as an aspect of its concern with the administration of justice but that is not a special reason either. It is a very general reason that is of concern in every case. It is a matter for which the Act makes provision by allowing for the accused person to be admitted to bail if he is not tried at the next practicable sitting of the Supreme Court.

14. If in this case, or in cases of bail applications generally, the response of the court seems unsympathetic let it be remembered that it is the duty of the courts to recognize the intention of the legislature as expressed in the language of the Act. The words of Lord Goddard CJ in **Whittall**, at page 555, although spoken in a different context, seem apt:

> "That in many cases serious hardship will result ... is, no doubt, true, but Parliament has chosen to impose this penalty and it is not for courts to disregard the plain provisions of an Act of Parliament merely because they think that the action that Parliament has required them to take in some cases causes some or it may be considerable hardship."

It would be wrong for the court to try to stretch the meaning of special reasons to grant bail in a case where, but for the restriction imposed by the Act, it would have granted bail. The Act exists and it is the law and it is not open to the court to ignore its clear intent.

15. Counsel for the petitioner in making his application urged the court to have regard to the constitutional right of the petitioner to bail. So too, he urged, should the court have regard to the constitutional presumption of innocence. I have heard similar submissions in other bail applications. It does not seem to me that these references diminish the operation of the Act and the restriction it imposes. There is more than a hint in these references to a contention that the Act derogates from the constitutional right to bail. It seems to me that if a person detained while awaiting trial considers that the Act contravenes his constitutional right to bail he has a clear recourse. But absent the

bringing of a challenge to the constitutionality of the Act I do not see that it takes petitioners any further to hint at the view that the Act may be open to such a challenge.

16. I therefore refuse bail.

Denys Barrow, S. C.
Supreme Court Judge (Ag.)