

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL 7/99

MOTION

**BEFORE: THE HON. MR. JUSTICE RATTRAY, P
THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.**

BETWEEN: NEVILLE LEWIS PLAINTIFF/APPELLANT

**AND THE ATTORNEY - GENERAL FOR 1st. DEFENDANT/
JAMAICA RESPONDENT**

**AND THE SUPERINTENDENT OF ST. CATHERINE DISTRICT PRISON 2nd. DEFENDANT/
RESPONDENT**

**Richard Small and Helga McIntyre for applicant
instructed by Daly, Thwaites and Company**

**Lennox Campbell Senior Assistant Attorney-General
and Mark Harrison for respondents**

1st, 2nd, 3rd, February, and 12th April, 1999

HARRISON, J.A.

By motion filed on 29th January, 1999, the applicant Neville Lewis sought an order to stay his execution on 2nd February, 1999, until the hearing of his appeal from a judgment of the Constitutional Court handed down on 7th January, 1999, dismissing his action claiming breaches of his constitutional rights. On 1st February, 1999 this matter was first before this Court and a stay of execution of the warrant was granted until the determination of this motion. On 3rd February, 1999 we granted the motion

and stayed the execution until the determination of the appeal filed. As promised these are our reasons in writing.

This applicant was convicted on 14th October, 1994 of capital murder. His appeal to the Court of Appeal was dismissed on 31st July, 1995, and his appeal to the Judicial Committee of the Privy Council as to his conviction was dismissed on 2nd May, 1996. He thereby exhausted his domestic remedies. The applicant on 2nd October, 1997, petitioned the Inter-American Commission on Human Rights complaining of breaches of his constitutional rights. He also filed a writ in the Supreme Court complaining of such breaches, including inter alia, a contention that it would be a breach of his rights to execute him whilst his application was pending before the said Commission. The Constitutional Court heard the matter and dismissed his action on 7th January, 1999, and on the application of counsel for the applicant, a " stay of execution (was) granted for ten (10) days." Accordingly the said stay would expire on 17th January, 1999.

Mr. Dennis Daly Q.C., who along with other attorneys-at-law, represented the appellant before the Constitutional Court swore, in his affidavit dated 28th January, 1999, and filed in support of the motion, that on receiving the judgment on 7th January, 1999, he began to study it "with a view to framing grounds of appeal." He had not done so nor conferred with his colleagues due to "other matters in court." Because he was scheduled to be off the Island from 14th January, 1999, to 17th January, 1999, Mr. Daly stated that he, on 13th January, 1999, wrote to His Excellency the Governor-General advising him that:

"... we intended to appeal against the Full Court judgment and requested that he does not issue a warrant for the execution of Neville Lewis while his appeal was being pursued."

A copy of the said letter was sent by facsimile to the Attorney-General on the said date.

Mr. Daly returned to the Island on 19th January, 1999. He discussed with Mr. Lennox Campbell of the Attorney-General's Department on either 20th January, 1999 or 21st January, 1999, the fact of the delay in filing the notice of appeal. On 20th January, 1999, on the advice of the Attorney-General's Department, His Excellency the Governor-General issued a warrant for the execution of the appellant on 2nd February, 1999.

On 26th January, 1999, the formal order was filed and the notice and grounds of appeal were filed on 29th January, 1999. The said motion for stay of execution was also filed on 29th January, 1999.

The stay of execution of ten (10) days granted by the Constitutional Court on 7th January, 1999, was only meant to obviate the issuing of the warrant of execution of the applicant within the said period of the stay.

In so far as the Governor-General's Secretary in his letter dated 26th January, 1999, to the applicant's attorneys-at-law stated that "... the appeal was filed out of time..." referring to a notice concerning the appeal filed by the applicant on 22nd January, 1999, he was in error.

Rule 13 of the Court of Appeal Rules, 1962 provides:

"Every notice of appeal shall be filed, and a copy thereof shall be served under paragraph (4) of rule 12 hereof within the following periods (calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected), that is to say:-

(a) in the case of an appeal from an interlocutory order, fourteen days;

(b) in any other case, six weeks."

For the purpose of an appeal the power to enlarge or abridge time in which to appeal resides in the Court of Appeal only. In the instant case, the appellant had six (6) weeks from the signing of the judgment within which to appeal.

If the notice of appeal had been filed at any time prior to the 20th January, 1999, the warrant of execution would probably not have been issued despite the expiry of the stay of execution on 17th January, 1999. Such filing would have shown a clear manifestation of intention to appeal.

The issuing of the warrant of execution on 20th January, 1999, for the reason that the stay of execution had expired and that the applicant had shown a lack of sincerity in pursuing an appeal, was a consequential step by His Excellency the Governor-General.

This Court had held in a previous judgment, **Neville Lewis vs. the Attorney-General for Jamaica et al**, S.C.C.A. No. 104/98 delivered 18th December, 1998, at page 7:

"... the guidelines contained in the said instructions approved and issued by the Governor-General setting a limit of six months from the date of response by the state to the Commission after which execution would not be postponed, meant that the second response having been submitted by the state on 10th February, 1998 execution was consequently fixed for 27th August 1998. This limiting period of six months for the determination by the international body of the complaint by the appellant seems to be in conflict with the recommended period of eighteen months adverted to by the Board in **Pratt et al vs Attorney-General et al**. (supra)"

We then referred to the findings of the Judicial Committee of the Privy Council in the said **Pratt's** case (per Lord Griffiths) at page 982:

"It therefore appears to their Lordships that, provided that there is in future no unacceptable

delay in the domestic proceedings, complaints to the UNHRC from Jamaica should be infrequent and, when they occur, it should be possible for the committee to dispose of them with reasonable dispatch and (at most) within eighteen months."

We observed in the said **Lewis vs the Attorney-General** that:

"The rationale of **Pratt's** case therefore, on this issue, is that within a period of eighteen months from the date on which the appellant had exhausted his domestic remedies in respect of his conviction, his complaint to the international body would have been made and its report completed.

...

The appellant's petition in respect of his conviction having been dismissed on 2nd May 1996 any complaint to the Commission would have been expected to have been dealt with within the succeeding eighteen months expiring on 2nd November 1997. The appellant filed his petition with the Commission on 2nd October 1997. From this date the Commission, on the reasoning in **Pratt's** case, would have eighteen months to complete its work."

We maintain the same view in the current case.

Although the applicant delayed in filing his petition with the Commission for seventeen (17) months from the date when he had exhausted his domestic remedies, the "eighteen-month rationale" of **Pratt's** case would mean that he would not legitimately expect any execution to be ordered before the period of eighteen months from 20th October, 1997, that is, not prior to 2nd April, 1999. Therein lies an arguable point of appeal.

The approach to be adopted in respect of an application for a stay of execution in death penalty cases, was set out by the Board of the Privy Council in **Reckley v Ministry of Public Safety and Immigration** [1995] 4 All ER 8 (per Lord Browne-Wilkinson), at page 12:

"... their Lordships would emphasise that a refusal of a stay in a death penalty case is only proper where it is plain and obvious that the constitutional motion **must** fail. In cases where the motion raises a fairly arguable point, even if the court hearing the application for a stay considers the motion is ultimately likely to fail, the case is not appropriate to be decided under the pressures of time which always attend applications for a stay of execution."

and at page 14:

"If the first instance judge or the Court of Appeal reach the view that the constitutional motion is so hopeless that no stay should be granted, it does not follow that it is inappropriate to grant a short stay to enable their decision to be challenged on appeal. In the present case, great difficulty was encountered by the petitioner in convening a Court of Appeal in The Bahamas and a Board of the Privy Council was sufficient speed to deal with the appeals in the short time available before the time fixed for execution. In the view of their Lordships, even if a court decides in such a case not to grant a full stay until determination of the constitutional motion itself, the court should grant a short stay (a matter of days) to enable its decision to be tested on appeal. Execution of a death warrant is a uniquely irreversible process."

We adopted the above approach and regarded it as prudent not to allow any progress to execution while an appeal is pending before the Court of Appeal, and accordingly made the said order.