

JAMAICA

IN THE COURT OF APPEAL

BAIL APPLICATION NO 2/2014

ALISTAIR MCDONALD v R

Kent Pantry QC for the applicant

Miss Kerry Ann Kemble for the Crown

30 September 2014

IN CHAMBERS

ORAL JUDGMENT

BROOKS JA

[1] This is an application by Mr Alistair McDonald for bail to be granted to him pending the hearing of his appeal against conviction.

[2] He was convicted on 21 July 2014 on nine counts of falsification of accounts and 11 counts of larceny of a valuable security. This was in the Resident Magistrates' Court for the Corporate Area, before Her Honour Ms Georgianna Fraser. He was sentenced on 8 September 2014 to 18 month's imprisonment at hard labour.

[3] The basis of the convictions is that he falsified the accounts of his employer, Key Insurance Company, and stole cheques from the company which he used for his own purposes.

[4] He filed a notice of appeal on 19 September 2014 asserting that the learned Resident Magistrate erred in failing to properly deal with the law in respect of circumstantial evidence. He also complained that the verdict was not in accordance with and could not be supported by the evidence.

[5] Mr McDonald's application for bail is supported by an affidavit by his counsel, Mr Kent Pantry QC, who deposed that Mr McDonald is in stable circumstances, being a married man, 47 years old, with a dependent daughter and mother.

[6] It is only in exceptional circumstances that bail is granted after a person has been convicted. This is because the individual has gone through the process of a trial. This court has, however, recognised that in appeals from the Resident Magistrates' Courts, there is a real risk that custodial sentences imposed by those courts may well be served before the appeal comes on for hearing. This court does consider that situation as being an exceptional circumstance in considering an application for bail pending appeal from the Resident Magistrates' Courts.

[8] Although the reasons for judgment handed down by the learned Resident Magistrate indicate a strong case against Mr McDonald, the court recognises that it has not seen the record of appeal. Bearing in mind the fact that the trial was held over the

course of two years, the notes are unlikely to be available in short order. There is a real risk, therefore, if he is not granted bail pending appeal, that a substantial portion of Mr McDonald's sentence would have been served before his appeal came on for hearing, thereby rendering any success nugatory. The fact that he:

- (a) observed the conditions of his bail pending trial, and
- (b) is in stable circumstances,

suggests that he will attend for the hearing of the appeal.

[7] In those circumstances, the court, after considering the cases of **Dereek Hamilton** [2013] JMCA App 21 and **Lynette Scantlebury** (1976) 27 WIR 103, will grant the application for bail.

[9] Bail is therefore granted to the applicant, pending appeal, in the sum of \$2,000,000.00 with one, two or three sureties on condition that:

- (a) the applicant surrenders all travel documents to the Registrar of this court;
- (b) he does not leave the island without the permission of the court;
- (c) he reports to the Fraud Squad at 34 Duke Street, Kingston, every Monday and Friday between the hours of 8:00am and 5:00pm.