

J A M A I C A

IN THE COURT OF APPEAL

CRIMINAL APPEAL NOS. 32/75, 34/75

B E F O R E: The Hon. Mr. Justice Graham-Perkins, Presiding
The Hon. Mr. Justice Robinson
The Hon. Mr. Justice Zacca

REGINA v. NOEL RILEY and ANTHONY FORBES

Mr. B. Macaulay, Q.C. and Mr. S.C. Morris for the Applicants

Mr. J. Kerr, Q.C., Director of Public Prosecutions for the Crown.

F E B R U A R Y 2 3, 1 9 7 6

GRAHAM-PERKINS, J.A.:

The applicants Anthony Forbes and Noel Riley were, on March 5, 1975, convicted by a jury before the learned Chief Justice in the Home Circuit Court for the murder of one Leo Henry and sentenced to death. Against that conviction they applied for leave to appeal, and the application now comes before this Court.

Mr. Morris who appeared for the applicant Forbes advised us when the case was called up this morning that having read the summing-up of the learned Chief Justice and examined the record he found himself unable to advance any argument on behalf of his client. He was, he said, quite unable to challenge the conviction in any way. Mr. Morris also appeared for Forbes at the trial.

In respect of the applicant Riley, however, a most unfortunate situation has emerged. Mr. Berthan Macaulay and Mr. Earl Witter appeared for the applicant Riley at the trial. They had been assigned to represent the applicant at his trial and at any appeal following thereon. This matter appeared in the Cause List some two weeks ago, and it is clear that Mr. Macaulay and Mr. Witter appreciated that the matter would be placed on the list of cases for hearing this week. This morning, however, Mr. Witter advised us
that...

that some time last week, on Tuesday I think he said, Mr. Macaulay left the Island for Gambia in West Africa in connection with personal business.

We have received no communication from the Registrar of this Court as to any arrangements made by Mr. Macaulay for the conduct of this application in his absence. Mr. Witter tells us, however, that he and Mr. Macaulay represent the applicant on this application but because of Mr. Macaulay's absence from the Island he seeks to have the matter removed from the list for this week. Mr. Witter, we repeat, was assigned in respect of this appeal as junior to Mr. Macaulay. We apprehend that the principal purpose of assigning two counsel in respect of proceedings before this Court is to ensure, as far as possible, that if one of them, for one reason or another, is unable to appear the matter will, nevertheless, be prosecuted to completion. Mr. Witter is unable to tell us any more than that in spite of the fact that he knew some two weeks ago that this matter had been placed on the Cause List he is not in a state of preparedness to argue the application of Riley today. We refrain from saying any more than that we are of the firm view that such conduct as displayed by Mr. Witter in this matter demonstrates an unfortunate lack of concern for the work of this Court and, indeed, for those applicants in respect of whom assignments are made. We cannot, in the circumstances, feel that it would be right to accede to Mr. Witter's application and accordingly refuse it.

We have, with very anxious concern, considered the application for leave to appeal in the case of Riley and we are not in the least doubt that there is no merit whatever in the application. This was a case in which the deceased met his death at the hands of these two applicants on a morning when he arrived at his place of business and had just emerged from his car. These applicants, each armed with a gun, rushed up to the deceased and each discharged a bullet in the deceased's body. One of them took the deceased's brief case and his gun and having done so both of them ran from the scene
but...

but not before they had been observed by certain witnesses. The evidence led by the Crown in support of the indictment for murder disclosed that the applicants had committed a brutal and cold-blooded act of slaughter and it is fair to say that the learned Chief Justice in a very long, thorough and eminently fair summing-up placed before the jury everything that could possibly have been urged in favour of the applicants. At the end of the day the jury, after deliberating for only 13 minutes, returned a verdict of guilty in respect of both applicants.

Upon enquiry made of the learned Director of Public Prosecutions who represented the Crown here today he advised us that he shared the view of this Court that the sole issue involved in this case was that which related to the identity of the applicants as the persons responsible for the death of the deceased. This issue was very fairly and adequately placed before the jury and we think that no possible complaint could be advanced against the directions of the Chief Justice in this connection.

In the result the application in each case for leave to a appeal against conviction is refused. Finally, we wish to commend Mr. Morris on a refreshingly responsible approach to his duty as counsel in this Court.