

NPIS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M144/2002

Regina vs. The Commissioner
of Police Ex Parte Owen
Wright

Miss Dale Porter-Greenwood instructed by Brown Godfrey & Morgan.

Miss Annaliesa Lindsay for the Attorney General instructed by the Director
of State Proceedings.

IN CHAMBERS

Heard: 20th May, and 22nd May, 2003

Ex Parte Application for leave
to apply for Judicial Review

BROOKS, J.

The applicant Owen Wright seeks leave to the Court to apply for
Judicial Review of orders and decisions of the Commissioner of Police. The
relief he seeks is an order of certiorari to quash those orders and decisions.

The decision of the Commissioner of Police was based on the findings
of a Court of Enquiry commenced against the applicant on August 3, 2000
and concluded March 14, 2002. The applicant indicates that the order of the
Commissioner was communicated to the applicant orally by the sub-officer

in charge of the Lionel Town Police Station. The order was that the applicant should be demoted from the rank of Corporal to that of Constable.

The applicant complains that the order of the Commissioner is in breach of:

1. The Constabulary Force Act (but he does not state what provision of that Act).
2. Rule 31 of the Police Service Regulations requiring a reference to the Attorney General or Clerk of Court in certain circumstances.
3. Natural Justice in that he says he was not given a fair hearing as no evidence in support of the charge was tendered.

He also complains that the order was unreasonable and irrational.

The charges arose out of an altercation between the applicant and another policeman (then in civilian clothes) in public. The other policeman complained of the use of indecent language by the applicant, a battery on the person of the other policeman and the damage of that policeman's shirt by the applicant, all occurring during the course of the said altercation.

A written record of the charges laid against the applicant was made. He attended the enquiry, was represented by an Attorney-at-Law and was pleaded to the charges.

Upon his denying the validity of the charges, sworn evidence was given by the complainant policeman and another witness and they were both cross-examined by the applicant's counsel. The applicant gave evidence on his own behalf and was himself cross-examined.

The tribunal reserved its ruling and promised to communicate same to the Commissioner of Police.

The applicant says that since he was informed orally of the decision on August 5, 2002 he has continued to receive his pay as a corporal (up to the date of this action) but was not given any duties as a corporal after the end of August 2002.

In light of the fact that the applicant was represented, this application was treated as a hearing.

I have reviewed the evidence presented and can find no justification for the complaints by the applicant which would warrant a review of the decision of the Commissioner by this Court.

My reasons are as follows:

1. The applicant was afforded a trial in which he cross-examined his accuser and gave his version of the facts which version obviously was rejected by the tribunal, and in my view, not unreasonably so.

2. Rule 31 to which he refers speaks to the need to consult the Attorney General or Clerk of Court where an offence against an enactment appears to have been committed.

This is with a view to determining whether criminal proceedings ought to have been initiated. Since criminal proceedings obviously were not contemplated in the circumstances, there would be no need to so consult. It is also to be noted that Rule 33 of the Police Service Regulations does envisage proceedings being commenced without reference to the Attorney General or the Clerk of Courts.

3. Counsel for the applicant was unable to point to any provision in the Constitution of Jamaica or The Constabulary Force Act which had been breached by the Tribunal or the Commissioner.

I therefore find that the applicant has not made out a proper case for review of that decision.

I am however concerned about the manner in which the decision was communicated to the applicant. For this reason I did not consider the application as being out of time and I also had regard to Rule 56.6 (3) of the Civil Procedure Rules 2002.

Although this is not a ground of complaint by the applicant I am of the view that such a decision by the Commissioner ought to have been communicated in writing directly to the applicant. It seems that Rule 36 of the Police Service Regulations 1961 have been complied with in that the Applicant has been supplied (no doubt at his request) with a copy of the Notes of Evidence. The regulation provides for the supply of the Notes within thirty days of the decision of the Court of Enquiry upon the request for same being made within that time.

It is therefore ordered that the application for leave to apply for judicial review is refused. Since the application was made *ex parte* the Commissioner of Police (despite the presence of Counsel on his behalf), I am unable to include as part of the order a direction to the Commissioner.

If I were so able, it would be to the effect that the Commissioner of Police within fourteen days of the date of the service upon him of this order, inform the applicant in writing of his decision and orders concerning the applicant.

This can therefore only be a strong recommendation, which I trust will be acted upon promptly.