

JAMAICA

IN THE COURT OF APPEAL

BAIL APPLICATION NO 3/2018

MERVIN HENRY v R

Dr Garth Lyttle for the applicant

Jeremy Taylor and Ms Syleen O’Gilvie for the Crown

13 September 2018

BROOKS JA

[1] Mr Mervin Henry is a taxi driver. They generally have a bad reputation, in this country, as having utter disregard for the rules of the road. Nonetheless, each person and case must be dealt with on its merits. It seems, on Mr Henry’s account, that the learned Traffic Court Judge, before whom he pleaded guilty for the offence of obstructing traffic, dealt with him other than on the merits of his individual case. The offence normally attracts a fine. The learned Traffic Court Judge sentenced Mr Henry to three months imprisonment at hard labour. That was on 17 August 2018.

[2] Mr Henry had gone to court that day representing himself. After the sentence was imposed, counsel was secured to represent him. Counsel attended that day, while the Traffic Court was still sitting. Counsel pleaded with the learned Traffic Court Judge to alter the sentence. She refused the plea. He gave verbal notice of appeal and asked

for bail pending appeal. She refused the application. Mr Henry was taken into custody pursuant to the sentence.

[3] Mr Henry is dissatisfied. He wants this court to set aside the sentence imposed by the learned Traffic Court Judge. He has filed grounds of appeal and has now applied to be granted bail pending appeal.

[4] Dr Lyttle, appearing on behalf of Mr Henry for the purposes of the application, submitted that bail should be granted to Mr Henry pending the hearing of the appeal.

Learned counsel argued in this regard that:

- a. Mr Henry is not a flight risk.
- b. The usual penalty for the offence is the payment of a fine and not a custodial sentence, yet Mr Henry has been in custody for over three weeks.
- c. Mr Henry's appeal has a real prospect of success.

[5] Ms O'Gilvie informed the court that the Crown did not oppose the grant of bail. Learned counsel recognised the principle that, where the sentence imposed is relatively short, bail would normally be granted in order to avoid the situation where the sentence would have been served before the appeal is heard.

[6] Despite that stance, Ms O'Gilvie submitted that the sentence imposed was not necessarily improper. Learned counsel pointed out that section 108 of the Road Traffic Act authorised the sentencing judge to impose a sentence of imprisonment without the option of a fine. She said that the maximum sentence allowed under that section was

one of three months' imprisonment. She informed this court that Mr Henry has had 414 traffic tickets issued against him over a number of years and has had 34 tickets issued against him since the beginning of this year; 19 of those were for the offence of obstructing traffic.

[7] Dr Lyttle argued that the learned Traffic Court Judge was not entitled to look, if in fact she did, at the tickets previously issued to Mr Henry. Learned counsel argued that section 116 of the Road Traffic Act precluded the consideration of previous tickets, once they had been paid. He argued that, in the circumstances, the Learned Traffic Court Judge was wrong to have imposed a custodial sentence on Mr Henry.

[8] Dr Lyttle submitted that the circumstances did not warrant the imposition of a custodial sentence. He said the Mr Henry's affidavit shows that he had missed the date for paying the ticket and went himself to have the matter brought up in court and to pay the expected fine.

[9] There was not sufficient time for the Crown to provide affidavit evidence in response to Mr Henry's affidavit. This court is, however, grateful to the representatives of the Crown for the willingness to deal with the matter at short notice. The situation required urgent attention. As a result, an order, granting bail, was made at the time of the hearing of this application.

[10] The order was made on three bases.

[11] Firstly, although the question of the validity of the sentence is one for the hearing of the appeal, it must be said that the sentence imposed is unusual for that offence. For that reason, Mr Henry's appeal has a real prospect of success.

[12] Secondly, it must also be said that, despite the fact that Mr Henry is not contesting the conviction, the relatively short sentence constitutes an exceptional circumstance to justify the granting of bail pending appeal. If bail were not to be granted, the time for the sentence is likely to have expired before the record of the proceedings in the Traffic Court is produced. In such an event, the appeal, if successful, would have been rendered nugatory.

[13] Finally, it does seem that Mr Henry is likely to turn up for his appeal. This is demonstrated by the fact that he went, on his own volition, to the Traffic Court with an intention to pay the ticket.

[14] It may be that his driving record, as outlined by Ms O'Gilvie, suggests that Mr Henry may re-offend while on bail. That situation should not prevent the grant of bail in these circumstances. The risk to public safety, bearing in mind the offence involved, would not justify relieving Mr Henry of his right to liberty.

[15] Based on all the above considerations, the following orders were made:

1. Application for bail pending the determination of the appeal is granted.

2. The applicant is granted bail in the sum of \$10,000.00 in his own surety.
3. The applicant must enter into the undertakings required by rule 3.21 of the Court of Appeal Rules.