[2021] JMCA App 23

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO COA2021CR00042

BAIL APPLICATION NO COA2021B00013

RAMON SEERIRAM v R

Hugh Wildman for the applicant

Ms Vanessa Campbell for the Crown

3 and 9 August 2021

IN CHAMBERS

BROOKS P

[1] Mr Ramon Seeriram was convicted on 26 May 2021 in the High Court Division of the Gun Court for the offence of illegal possession of ammunition. On 2 July 2021, he was sentenced to two years and nine months' imprisonment at hard labour for the offence.

[2] He has filed an appeal against his conviction and sentence and has now applied for the grant of bail pending the determination of his appeal.

[3] On 3 August 2021, after having heard the application, and the submissions of counsel, for and against the application, the following orders were made:

a. The application for bail pending the determination of the applicant's appeal is refused.

b. The transcript of the trial should be promptly prepared and produced to this court.

At the time of delivering that decision, I promised reasons in writing. This is a fulfilment of that promise.

Introduction

[4] Unusually, for charges of this type of offence, Mr Seeriram does not challenge the prosecution's case that the police found a box with 50 rounds of ammunition at his home, and that he has no licence to have ammunition. He, however, asserts that he did not intend to possess the ammunition. He contends that, some years before, he found the box and its contents in his home. They were among items that he was storing for a friend, who had subsequently died. Mr Seeriram said that, at the time of finding the box, he resolved to hand it over to a police officer. He, however, couldn't make contact with the officer and eventually lost track of the box, as he moved addresses. He basically asserts that he did not know that the box was still in his house.

Submissions for Mr Seeriram

[5] In this application, Mr Wildman, on behalf of Mr Seeriram, accepts the principle that it is only in exceptional circumstances that bail is granted pending the hearing of an appeal. Learned counsel contends, however, that this case satisfies that requirement. He asserts that:

a. it is more probable than not that Mr Seeriram's conviction will be overturned because the learned trial judge failed to:
    i. consider, or properly consider, the issue of *mens rea* (intent to commit the offence);
    ii. recognise the serious gaps in the provenance of the ammunition that was produced to the ballistics expert and to the trial court; and
    iii. consider, or properly consider, Mr Seeriram's good character, considering that credibility was an essential issue in the case;

b. even if the conviction is not overturned, it is more probable than not that Mr Seeriram's sentence will be set aside, in that the learned trial judge failed to consider, or sufficiently consider, the good antecedent reports that were placed before her, and, therefore, erred in imposing a custodial sentence; and

c. the sentence is of such a length that, given the delays in producing transcripts of trials in the Supreme Court, there is a real possibility that Mr Seeriram will have served the bulk of his sentence, if not his entire sentence, before his appeal is heard and, accordingly, the grant of bail will be justified on his very likely success on appeal.

[6] Mr Wildman submitted that the issue of intention was an essential ingredient of cases of this nature and that the learned trial judge's failure to treat with the issue would amount to misdirecting herself. He noted that silence by a trial judge on such an important issue is not acceptable. Mr Wildman pointed out that it was not negligence that was the required test in determining the commission of the offence. The result, he submitted is that the conviction must be overturned. He relied, in part, on the cases of **R v K** [2001] UKHL 41; [2002] 1 AC 462, **R v Keith Badjan** [1966] 50 Cr App Rep 141 and **Andrew Stewart v R** [2015] JMCA Crim 4.

[7] It is also important, Mr Wildman submitted, for the prosecution to have proved that the ammunition taken from Mr Seeriram's house, is the same ammunition that was produced to the ballistics expert and to the trial court. Learned counsel argued that the investigating officer failed to demonstrate that fact to the trial court, as she did not mark the individual cartridges, but only relied on her labelling of a package that she had made of the box and its contents. That, he submitted, was not proof that it was the same ammunition, and the investigator's evidence amounted to hearsay. He relied on

the well-known case of **Myers v DPP** [1964] 2 All ER 881, in support of these submissions.

[8] On the issue of good character, Mr Wildman submitted that the learned trial judge failed to take into account Mr Seeriram's previous good character. The failure, learned counsel submitted, was critical, since credibility was an important part of any consideration of Mr Seeriram's defence. Mr Seeriram, learned counsel submitted, should have been treated as a man of good character for the purposes of the learned trial judge's direction to herself. Mr Wildman relied, in part, on **Thompson v The Queen** [1998] UKPC 6.

[9] That good character, Mr Wildman submitted, was borne out in the antecedent report and the social enquiry report that were prepared subsequent to Mr Seeriram's conviction. Yet, learned counsel submitted, the learned trial judge imposed a custodial sentence, which was unwarranted in the circumstances, especially since Mr Seeriram had no previous relevant conviction.

[10] Learned counsel argued that, given the long delays in getting transcripts from the trial courts, a sentence of two years and nine months is one which may well be served before the appeal is heard. This, learned counsel submitted, will result in injustice to Mr Seeriram.

Submissions on behalf of the Crown

[11] Ms Campbell, appearing for the Crown, argued that there were no exceptional circumstances in this case. She pointed out that the mere possibility of success is not sufficient to constitute exceptional circumstances. Ms Campbell relied on the cases of **Nerece Samuels v R** [2015] JMCA App 51 and **Linval Aird v R** [2017] JMCA App 26 as support for her submissions on these principles.

[12] Learned counsel indicated that she was relying on the notes of evidence that the prosecutor made during the trial. From those notes, Ms Campbell submitted, it is apparent that Mr Seeriram knew that he had the ammunition in his custody, and had

intended to keep it, as he did not turn it over to his police officer friend, or any other lawful authority. She relied on **DPP v Brooks** (1974) 12 JLR 1374, as supporting her submissions on these points.

[13] She argued that there was no gap in the chain of custody in this case. The same officer who took the items from Mr Seeriram's house, learned counsel submitted, had solely handled them throughout, up to the time of their production at trial.

[14] Learned counsel submitted that, in the absence of the transcript, she could not address the complaints about the treatment of the claimed good character evidence or the issue of sentence.

[15] She argued that there should be no delay in producing the transcript of the trial, for, although the case was tried over the course of four days, the evidence taken was short, and some of the documentary evidence was agreed. She submitted that the appeal would come on for hearing in good time.

Analysis

[16] There was no disagreement between counsel as to the overarching principles governing the grant of bail pending appeal from a conviction. As Mr Wildman conceded, bail, at that stage, may only be granted to a person who had been on bail prior to the conviction, and is not normally granted after a conviction, unless exceptional circumstances exist. Numerous cases from this court assert those principles, and among the leading ones are **Seian Forbes and Tamoy Maggie v R** [2012] JMCA App 20 and **Linval Aird v R**. In both those cases, Phillips JA carefully explained the principles that are involved in the consideration of an application for bail pending an appeal.

[17] Despite the able submissions of Mr Wildman in this case, I am not satisfied that, at this time, exceptional circumstances exist in this case.

[18] Firstly, I am, for the reasons set out below, not satisfied that the conviction will, more probably than not, be overturned. My reasons for this stance follow.

a. *Mens rea* is one of the issues to be considered in every case involving the illegal possession of ammunition. It is unlikely that, in the course of summing-up the case, the learned trial judge would not have considered this issue, and made a finding thereon. In the absence of a transcript of the summation, a finding cannot be made to the contrary, at this time. The cases cited by Mr Wildman outlining the need for the prosecution to prove *mens rea* do not break any new ground where illegal possession of ammunition is concerned.

b. The evidence, as suggested by the summary given by both Mr Wildman and Ms Campbell, does not reveal any gaps in the chain of custody of the box with the ammunition. Detective Sergeant Smalling, the investigator, was the sole person who handled the exhibit at all relevant stages of the case. Her failure to individually mark each cartridge could not properly prevent the trial judge from finding that the contents of the package that Detective Sergeant Smalling:

    i. prepared;
    ii. placed into storage;
    iii. retrieved from storage and took to the ballistics expert; and
    iv. retrieved from the ballistics expert and produced to the court;

    remained unchanged during that continuum.

c. With a prior conviction for possession of ganja and one for taking steps to export ganja, Mr Seeriram,

> arguably, would not have an automatic claim to be treated as a person of good character, insofar as the illegal possession of an item is concerned. This is not a case like **Thompson v The Queen**, where a previous conviction for larceny, of a "minor and non-violent nature", was held to be immaterial in a charge for murder. There are real similarities between Mr Seeriram's prior convictions, albeit many years ago, and the present charge. Since the learned trial judge's treatment of the issue is not yet available, the analysis of this issue should be deferred until the hearing of the appeal.

[19] Secondly, although Mr Wildman has submitted that the sentence imposed is out of step with other sentences, for this offence, given Mr Seeriram's antecedents, he has not supported that assertion with any decisions from previous cases. The Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 ('the Sentencing Guidelines') stipulate the same sentences for illegal possession of firearm and those for illegal possession of ammunition. The Sentencing Guidelines, at page A-15, state that the normal range of sentence for the offence of illegal possession of ammunition is seven to 15 years, with a usual starting point of 10 years.

[20] It is true that there have been cases in which non-custodial sentences have been imposed for the offence of illegal possession of ammunition. There have been, however, cases, where the custodial sentences have been imposed for simple illegal possession of ammunition, albeit charged along with charges for illegal possession of firearm. A small sample shows a range from one to eight years.

[21] This sample, however, is of cases where the offences occurred before the Sentencing Guidelines were in force. The sentences mentioned in the sample are below

the now established usual starting point. The incident in the present case occurred after the Sentencing Guidelines were established. Accordingly, a sentence within the range of seven to 15 years would not have been found to be inappropriate (see paragraph [35] of **Denver Bernard v R** [2019] JMCA Crim 13).

Case	Particulars	Sentence (Imprisonment)
Patrick Comrie and others v R [2012] JMCA Crim 16	ammunition in a firearm; robbery also charged	two years
Rohan Herben and Another v R [2012] JMCA Crim 21	11 rounds of 9mm ammunition; robbery also charged	three years
Michael Burnett v R [2017] JMCA Crim 11	Ammunition in a 9mm pistol; robbery also charged	eight years
Alrick Williams v R [2013] JMCA Crim 13	24 cartridges in a submachine gun	one year
Tyrone Headley v R [2019] JMCA Crim 33	10 rounds of 9mm ammunition	five years

Based on that sample, if the conviction is upheld, it is unlikely that the sentence imposed on Mr Seeriram would be disturbed. This court does not disturb sentences unless the sentencing judge has erred in principle (see **Matthew Hull v R** [2013] JMCA Crim 21 at paragraph [9]). At this stage, no such assertion can be made in this case.

[22] Most concerning of the issues raised by counsel, is that of the length of the sentence. It is concerning because of some long delays in the production of transcripts of trials. Exceptional circumstances have been found to exist in respect of cases where

the sentence is likely to have been served before the appeal is heard. Convictions in the Parish Courts are usually the cases that fall into that category. **Nerece Samuels v R** is one such case (see also **Dereek Hamilton v R** [2013] JMCA App 21). Relatively short sentences are, however, not restricted to Parish Courts. The length of the sentence in this case has caused some hesitancy in this analysis. The hesitancy may, however, be overcome by taking steps to eliminate the risk of a delay in the production of the transcript. An order for the prompt preparation and production of the transcript may ensure that the appeal is quickly brought on for hearing.

[23] In the round, based on the material before this court and the absence of the transcript, I am not satisfied that there is a strong probability of success on appeal or any other factor that would amount to exceptional circumstances.

[24] It is for those reasons, that Mr Seeriram's application for bail was dismissed.