

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA No. 685 of 2004

**IN THE MATTER OF THE CONSTITUTION
OF THE REPUBLIC OF TRINIDAD AND TOBAGO
ACT 1967**

AND

**IN THE MATTER OF AN APPLICATION BY
SHELDON ANTHONY GONZALES FOR REDRESS IN PURSUANCE
OF SECTION 14 OF THE SAID CONSTITUTION OF THE REPUBLIC
OF TRINIDAD AND TOBAGO FOR A CONTRAVENTION OF
SECTIONS 4 AND 5 OF THE SAID CONSTITUTION IN RELATION
TO THE APPLICANT**

BETWEEN

SHELDON ANTHONY GONZALES

Applicant

AND

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

Respondent

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. Durity instructed by Mr. Charles for Applicant

Ms. Seenath instructed by Ms. Sharma for Respondent

JUDGMENT

1. On September 11, 2000 the Applicant was convicted and sentenced to 4 years imprisonment with hard labour by the magistrate presiding in the 2nd Tunapuna Magistrate's Court. This was the result of a trial into a charge of larceny of a motor vehicle.

2. Later that day the applicant was taken to the Golden Grove State Prison, Arouca. Sometime between then and 13th September 2000 he signed a notice of appeal which he returned to a prison officer. That notice was not forwarded to the Tunapuna Magistrate's Court until 27th September 2000 by which date the time for filing it had passed. Indeed the endorsement on the information discloses that the notice of appeal was received by the Clerk of the Peace on 4th October 2000.

3. The applicant was nevertheless treated as having a valid appeal pending. His conviction was effectively stayed. He remained in custody following his conviction and sentence for approximately one month. He was eventually granted bail by a judge in chambers pending appeal. He remained on bail. He was subsequently notified that his appeal was fixed for hearing.

4. On December 5, 2003 the applicant attended the hearing of his appeal. The applicant and his counsel were then advised by the Court, that the appeal had been filed out of time. Consistent with the decision in **Mag. Appeal No. 293 of 2001 Ricky Bernard v Brian Kennedy PC 10187** the Court could have declined jurisdiction. It could have taken the position that the applicant had no appeal before the Court. This would have meant the applicant would have been remanded in custody to begin serving the sentence that had been imposed by the Magistrate on 11th September 2000.

5. But that did not happen. The Court declared the appeal to be out of time yet, as the annexure to the applicant's affidavit, exhibit SAG (3) shows, it was adjourned to a date to be fixed. The reason for this is not apparent. It may be that the Court of Appeal was aware of the impending intervention by Parliament to deal with this very serious situation.

6. It appears that the applicant had remained on bail between the period December 5, 2003 when his "invalid" appeal was adjourned and July 2005 when his "validated" appeal was finally determined. No deprivation of his liberty resulted from the Court's declaration that there was no appeal.

7. The Legislature did move to rectify the matter. Act No. 6 of 2004 hereinafter called the "Amending Act" was passed. In effect S 130 of the Summary Courts Act was amended – the terms are not now so stringent. Provision is made inter alia for applications to extend the time for appealing against conviction and sentence. Of particular relevance to this application is that S. 10 of the amending Act validated the applicant's notice of appeal.

8. "The Amending Act" was assented to on the 13th February 2004 and published in the Gazette on 19th February 2004. The instant application was filed on the 15th March, 2004 almost one month after the amendment had

validated the applicant's appeal. Procedural provisions had been introduced which restored the protection of the law to which the applicant was entitled.

9. There have since been certain developments in relation to the applicant's appeal. Counsel informed me from the bar table, that the validated appeal was listed for hearing on the 7th July 2005. It was allowed and the matter was remitted to the Tunapuna Magistrate's Court to be heard by another Magistrate.

10. At the hearing, the Court of Appeal received fresh evidence from a witness who had been summoned to give evidence in the Magistrate's Court but who had failed to attend to do so. It appears that in the light of the fresh evidence the matter was remitted to the Tunapuna Magistrate's Court to be heard by another Magistrate.

11. There can be no doubt that the applicant would have suffered some distress and trauma during the period 5th December 2003 to 19th February 2004. No doubt the reality of a term of imprisonment loomed large. But it would always have done so in the circumstances where there was an application to lead fresh evidence.

12. On the facts of this case it seems to me that it was upon the success of the application to lead fresh evidence that a favourable result of this

applicant's appeal mainly depended. I noted that in her reasons the Learned Magistrate had indicated that the witness whose fresh evidence was eventually received, attended court on one occasion, was warned to return and did not do so on four occasions that followed.

13. Before I give my ruling and although it is not strictly necessary to do so I wish to state that I find no merit in the preliminary point taken by the Respondent that the Applicant had available to him an alternative remedy founded on a cause of action in negligence.

14. In his judgment in **Ricky Bernard v Brian Kennedy** - above - De Labastide CJ reminded that since October 1999 in giving judgment in the case of Kendall Welch v PC Jordan he had pointed out that –

"The Prison Authorities might well be guilty of infringing the constitutional right of a prisoner to due process if having received from him for transmission to the Clerk of the Peace a signed Notice of Appeal, they failed to transmit it within the prescribed – time limit".

The remarks of the learned Chief Justice as he then was though obiter, are significant. They point to a possibility of a breach of a constitutional right. I do not expect that the learned Chief Justice would have ignored any other cause of action if such had arisen.

15. The complaint in this case arises from a failure to provide a proper system to protect the right of a prisoner to due process and protection of the laws. It is clear from the affidavit of Allister James, the Superintendent of Prisons, that over the years a procedure has been put in place to protect the rights of prisoners to enjoy their access to the Court of Appeal. That that procedure derives from a well established practice as opposed to statute does not make it any less a mechanism for ensuring the applicants' protection of the law.

16. It follows that any breach of this practice which has the effect of subverting the mechanism, which breach results in the deprivation of the applicant of his access to the appeals process, must found in Constitutional law. I therefore hold that the only appropriate course in this case was to file a motion under the Constitution. The ruling in "Jaroo" therefore does not apply.

17. In the particular circumstances of this case however, it is clear that by the time this motion was filed there was no cause for complaint. Access to the appeals process had once more been assured. There was no deprivation of liberty during the period 5th December 2003 and March 2004 nor indeed for as long as the applicant's validated appeal remained pending thereafter.

18. I therefore refuse the reliefs sought. There shall be no order as to costs.

Dated this 20th day of July, 2005

CAROL GOBIN

JUDGE