

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

**CCJ Appeal No. BBCR2014/006
BB No. 10 of 2008**

BETWEEN

ANDREW LEROY LOVELL

APPLICANT

AND

THE QUEEN

RESPONDENT

Before The Honourables

**Mr Justice Saunders
Mr Justice Wit
Mr Justice Anderson**

On Written Submissions

Mr Arthur E Holder and Mr M Tariq Khan for the Appellant

Mr Charles Leacock QC and Mr Anthony L Blackman for the Respondent

JUDGMENT

of

Justices Saunders, Wit and Anderson

**Delivered by Justice Saunders
on the 8th day of December 2014**

The Applications before the Court

[1] Andrew Lovell was convicted of manslaughter by a majority verdict in March, 2008. He was sentenced to a term of imprisonment of 22 years. An appeal of both his sentence and conviction was dismissed on 23rd October, 2013.

- [2] Lovell had no right of appeal to this Court but the relevant provision of the Rules of the Court¹ provides that within forty-two (42) days of the dismissal of his appeal he could have applied for permission to appeal that decision. If he desired to appeal, his application should have been filed about the 4th December, 2013. It was not so filed because Lovell needed legal aid to assist him in filing it and, for reasons beyond his control, he had no real access to a lawyer until March 2014.
- [3] On 15th May, 2014 Lovell's attorney filed applications for special leave to appeal and for leave to appeal as a poor person. These applications were naturally out of time. The attorney should have requested an extension of time to file them. No such request was made. Further, having filed the applications, the Attorney was required by the Rules² to serve them on the State, the Respondent, within seven (7) days after filing, that is, by the 26th May, 2014.³ This requirement too was not observed. Apparently, the attorney was under the misapprehension that when the applications were filed by email they had straight away also been served on the State by email. After the failure to serve was drawn to Lovell's attorney's attention on 5th September 2014, the attorney gave instructions to his staff to remedy the lapse but those instructions were not carried out. On 7th October, 2014 Lovell's attorney was again alerted of the failure to serve the documents on the State and on the following day he made an application to extend the time for such service.
- [4] In light of all the foregoing this Court directed that Lovell should file written submissions to show cause why his application for special leave ought not to be dismissed for want of prosecution. The State was also requested to respond to these submissions. Having read both sets of submissions the Court adjudges that Lovell's applications should be dismissed.

¹ Caribbean Court of Justice (Appellate Jurisdiction) Rules 2008 Part 10.12.

² Caribbean Court of Justice (Appellate Jurisdiction) Rules 2008 Part 10.14(2).

³ The period of 7 days excludes Saturdays and Sundays. See Part 5.2(5)(a) of the Rules.

The reasons for dismissing the Applications

- [5] In instances where an applicant is out of time for filing an application for special leave to appeal, the applicant *must* seek an extension of time. In our recent decision in *June Blackman aka June Gill v Elma Carmen Gittens-Blackman*⁴ this Court held that the failure to seek such an extension impacts the jurisdiction of the Court to treat with the application for special leave. The Court also indicated that while in certain circumstances it may excuse delay, it will only do so in order to avert a clear miscarriage of justice. But even then, the applicant must give cogent explanation for the failure to comply with the Rules of Court. See: *Somrah v The Attorney General*.⁵
- [6] In this case, one must have some sympathy for the fact that time ran out on Lovell before he had obtained a positive response to his application to the Community Legal Services for Legal Aid. But it is also true that neither the Attorney's misapprehension about service on the State nor the attribution of blame to his staff represents a convincing explanation for some of the delay encountered here.
- [7] There is also in this case nothing to satisfy us that there is here the possibility of a miscarriage of justice. A person who seeks special leave in a criminal case bears the onus of demonstrating that the case merits a further appeal. The applicant may do this in a variety of ways. He may, for example, succinctly describe the circumstances that give rise to the possible miscarriage of justice and identify the point(s) of law that are in issue.
- [8] In *Cadogan v. The Queen*⁶ Hayton, J stated that:

“... if there is a realistic possibility of a miscarriage of justice if [special] leave is not given for a full hearing, then [special] leave will be given. Counsel thus needs to raise an arguable case for this,

⁴ [2014] CCJ 17 (AJ).

⁵ [2009] CCJ 5 (AJ).

⁶ [2006] CCJ 4 (AJ), (2006) 69 WIR 249 [2].

highlighting points in his Notice of Application or in his skeleton argument, but not spending time on the lengthy examination of many cases which should be reserved to the substantive hearing, if any....”

And in *Jippy Doyle v. The Queen*⁷ Nelson, J after reiterating the remarks of Hayton, J above noted that:

“Generally, this Court will only intervene in criminal cases in circumstances where a serious miscarriage of justice may have occurred in the court below or where a point of law of public importance is raised and the applicant persuades the Court that if not overturned a questionable precedent might remain on the record. In such a case the grant of leave to appeal is not necessarily an indication that the Court agrees with the point, but only that the point of law is arguable.”

[9] The point is that this Court must be satisfied that the case warrants an appeal before the final court. But if no or little information is provided to enable that court to assess the merit of the appeal or if the information provided is weak then the application must be dismissed as there would be nothing in the material before us that would come close to demonstrating what it is about the particular case that warrants a further appeal. Lovell’s case precisely falls into that category. In all the material filed the sole justification for mounting the proposed appeal is the bald re-statement of the grounds of appeal that were rejected by the Court of Appeal. Each such ground is repeated prefaced with the phrase “The Justices of Appeal erred in Law by failing to accept the Intended Appellant/Applicant’s contention that...” The only means to assess merit in the appeal is for us to access and then wade through the notes of evidence at the trial, the judge’s summation and the Court of Appeal’s judgment and to juxtapose these against the proposed grounds of appeal put forward. That is not our role at a special leave hearing.

[10] It would undermine the value of a procedure that requires permission to appeal and unnecessarily tie up the time of the court if we were compelled to adopt such a course whenever an application for leave to appeal is made in a criminal

⁷ [2011] CCJ 4 (AJ), (2011) 79 WIR 91 [4].

case. If that were the process then one might as well in every case simply dispense with the special leave procedure and hear the full appeal. In all the circumstances we have been left with no choice but to dismiss the applications.

The Order of the Court

[11] The order of the court is that the application for special leave to appeal is dismissed. This renders otiose the applications for leave to serve on the State and leave to appeal as a poor person. No order is made as to costs.

/s/ A Saunders

The Hon Mr Justice A Saunders

/s/ J Wit

The Hon Mr Justice J Wit

/s/ Winston Anderson

The Hon Mr Justice W Anderson