

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

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

**CCJ Application No BBCR2015/002
BB Crim. Appeal No 6 of 2009**

BETWEEN

ROHAN SHASTRI RAMBARRAN

APPLICANT

AND

**THE QUEEN
RESPONDENT**

Before the Honourables:-

**Mr Justice Nelson
Mr Justice Wit
Mr Justice Hayton**

Appearances

Sir Richard L Cheltenham, KA, QC, PhD and Ms Shelly-Ann Seecharan for the Applicant

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

JUDGMENT

of

The Honourable Justices Nelson, Wit and Hayton

Delivered by

The Honourable Mr Justice Nelson

on the 29th day of July, 2015

- [1] On July 16, 2015 this Court heard applications from the Applicant Rambarran and three others, Greene, Campbell and Persaud for special leave to appeal to this Court from two decisions of the Court of Appeal,

one dated February 5, 2015 and the other dated March 13, 2015. These applications were heard together.

[2] The applications arose out of the Applicants' convictions on charges of the importation, possession and trafficking of cannabis and cocaine contrary to the Drug Abuse (Prevention and Control) Act, Cap. 131 of the Laws of Barbados.

[3] When the appeals came on for hearing before the Court of Appeal on September 23, 2014, the Director of Public Prosecutions ("the Director") took the point that the time for appealing had expired on June 25, 2009, 21 days after conviction, contrary to section 19 (1) of the Criminal Appeal Act, Cap. 113A ("the Act"). Section 19(1) and (2) provide:

“19.(1) Subject to subsection (2), a person who wishes to appeal to the Court, or to obtain the Court's leave to appeal, must give notice of appeal or his application for leave to appeal, in the manner provided by rules of court within 21 days of the date of conviction, verdict or finding appealed against, or,

- (a) in the case of an appeal or application for leave to appeal against sentence, other than a sentence of death, within 21 days of the date on which sentence was passed; or
- (b) in the case of an appeal or application for leave to appeal where the sentence is death, within 14 days of the date on which sentence was passed; or
- (c) in the case of an order made or treated as made on conviction, within 21 days from the date of the making of the order.”

(2) Subject to section 20, the time for giving notice of appeal or of application for leave to appeal may be extended at any time by the Court.”

[4] The Applicants in response contended that the appeals were filed within 21 days of the sentences passed on December 11, 2009, as required by section 19(1) of the Act, and in the case of Persaud originally that the appeal, signed in prison within 21 days of sentence, was to be treated as filed within the prescribed time. The Applicant Rambarran had filed his

appeal against conviction on July 9, 2009. In any event, so it was argued, the practice in Barbados was that the time limits for appeals against conviction ran from the date of sentence and not the date of conviction. The Director vigorously disputed the existence of such a practice in Barbados. The Court of Appeal heard the submissions of counsel for the Applicants on December 2, 2014 and the Director's response on January 16, 2015, when the judges reserved their ruling on the point. The Court of Appeal ruled on February 5, 2015 that the notices of appeal had been filed more than 21 days after conviction with the result that no valid appeals were before the Court. The effect of the Court of Appeal's ruling was that the appeals against conviction were dismissed.

[5] Meanwhile on February 4, 2015 the Applicant Rambarran filed an application in the same proceedings pursuant to section 19(2) of the Act seeking an extension of time to appeal against his conviction. Similar applications in the same proceedings were filed by the Applicant Persaud on February 9, 2015 and by the Applicant Greene on February 10, 2015. The Court of Appeal on March 13, 2015 considered the applications for an extension of time and concluded without hearing oral argument that it was *functus officio* and had no jurisdiction to hear these applications. The applications were in any event an abuse of the process of the court. The court's reasons were reduced to writing in a judgment dated March 24, 2015.

[6] The Applicants now seek special leave of the Caribbean Court of Justice to appeal against the Court of Appeal's decisions of February 5, 2015 and March 13, 2015. The Applicant Campbell sought special leave as of right but his counsel has conceded that his application is to be treated as a special leave application pursuant to section 8 of the Caribbean Court of Justice Act, Cap. 117.

[7] The arguments before this Court were identical to those before the Court of Appeal. The Applicants alleged the existence of a practice whereby

the time limit for appeals against conviction was regarded as 21 days after sentence. They relied on *Bailey v R*¹ and *Clarence Sealy v The Queen*². The diligence of the Director has revealed since the hearing of the applications before us that in fact the time for appealing in Sealy was extended because more than 21 days had expired after conviction. The Applicants indicated that there were cases in which the Court of Appeal heard appeals against conviction on the basis that the time limit for appealing was 21 days after sentence and not after conviction. We anxiously await submission of such cases.

[8] We think that the issue whether the time for appealing against a conviction pursuant to section 19(1) of the Act runs from the date of conviction or the date of sentence is crucial for the proper functioning of the administration of criminal justice in Barbados and therefore a point of law of great public importance, which needs to be settled in Barbados by the authoritative ruling of a fuller Bench of this Court. Further, if the time for appealing against conviction does not run from the date of sentence as asserted by the Applicants, so that the time for such appeals has expired as held by the Court of Appeal, there is a further point of law that needs to be finally decided by an expanded panel of this Court. The Applicants' appeals against conviction having been dismissed as being out of time, was the Court of Appeal correct to hold that it could not hear applications from the Applicants pursuant to section 19(2) of the Act for an extension of time to appeal against conviction because it had no jurisdiction to hear such applications which, in any event, were an abuse of process?

[9] We grant special leave to cover these points only. We also grant leave to the Applicants (other than Rambarran) to appeal as poor persons.

¹ (unreported, Criminal Appeal No. 2 of 2013).

² (unreported, Criminal Appeal No. 16 of 2012).

Order

[10] Special leave is granted to the Applicant to appeal against the orders of the Court of Appeal dated February 5, 2015 and March 13, 2015 limited to the following points:

- (1) Whether the time for appealing pursuant to section 19(1) of the Act against a conviction begins to run from the date of conviction or from the date of sentence.

- (2) Whether on the facts of this case the Court of Appeal properly refused to enlarge the time for appealing against conviction pursuant to section 19(2) of the Act in favour of an applicant who had filed a notice of appeal against conviction which had been dismissed by the court as being out of time.

/s/ R. Nelson
The Hon Mr Justice R Nelson

/s/ J. Wit
The Hon Mr Justice J Wit

/s/ D. Hayton
The Hon Mr Justice D Hayton