

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No. BBCR2015/006
BB Criminal Appeal No. 9 & 10 of 2013

BETWEEN

VINCENT LEROY EDWARDS
RICHARD ORLANDO HAYNES

APPLICANTS

AND

THE QUEEN

RESPONDENT

Before the Honourables

Mr Justice Saunders
Mr Justice Anderson
Mme Justice Rajnauth-Lee

Appearances

Mr Andrew Pilgrim QC, Ms Angella Mitchell-Gittens and Ms Alexandria Thomas
for the Applicants

Mrs Donna C B Babb-Agard QC and Mr Alliston G Seale for the Respondent

JUDGMENT

of

Justices Saunders, Anderson and Rajnauth-Lee

Delivered by

The Honourable Mr Justice Adrian Saunders
on the 27th day of November 2015

- [1] In June 2013, Vincent Edwards and Richard Haynes (“the Applicants”) were convicted of murder. Each was sentenced to death. The Court of Appeal of Barbados affirmed the convictions and sentences. The men now wish to appeal the Court of Appeal’s decision. They have also applied for permission to pursue their appeals as poor persons.

- [2] As this is a criminal case the Applicants do not have *a right* of appeal. Before they can mount their appeals they must first seek and obtain the permission of this Court. Such permission is given if, for example, they can convince us that the grounds of appeal raise ‘a point of law of great public importance’;¹ or if they demonstrate that ‘there is a realistic possibility of a miscarriage of justice’;² or if we are satisfied that ‘the case warrants an appeal before the final court’.³ There is therefore a mix of objective criteria to be met coupled with an extensive discretion on the part of this Court.
- [3] In determining whether or not to grant permission – or Special Leave – to appeal, the Court looks principally at the proposed grounds of Appeal against the background of the judgment of the Court of Appeal, the trial judge’s summation (if available),⁴ and counsel’s filed submissions which ordinarily will indicate the respective assessments of the parties as to the nature and merit of the proposed appeal.
- [4] The Applicants propose to argue two main grounds of appeal. One ground relates to their convictions; the other, to the death sentences imposed. As to the former, if granted leave, they intend to argue that the Court of Appeal erred in law when it allowed their convictions to stand solely on the basis of alleged oral confessions. When reduced to writing in a police officer’s notebook, the respective confessions were never initialled or signed by either of the men.
- [5] An appeal based on an un-initialled confession recorded in a policeman’s notebook actually came before the Court previously, in *Francis v R*.⁵ On that occasion Francis was given special leave to appeal, but the precise point being advanced in this case was not fully determined in the majority opinion that ultimately was rendered in that appeal. The issue is again to be argued in the case of *Sealy v R*⁶ which is very

¹ See *Rambarran v The Queen* [2015] CCJ 11 (AJ).

² See *Cadogan v The Queen* [2006] CCJ 4 (AJ).

³ See *Lovell v The Queen* [2014] CCJ 19 (AJ).

⁴ Caribbean Court of Justice (Appellate Jurisdiction) Rules, 2015, r 10.14(1)(c).

⁵ [2009] CCJ 9 (AJ).

⁶ CCJ Criminal Appeal No. BBCR2015/005.

soon set for hearing before this Court. There can be little doubt that the point in question satisfies all the criteria listed at [2] above and, in this case, the Court had little hesitation in granting special leave to argue this ground.

- [6] Other considerations attach to the intended appeal against sentence. The Applicants propose to argue that, despite section 15(3)(a) of the Constitution of Barbados, the imposition of mandatory death sentences is unconstitutional. Section 15(3)(a) was, in 2002, added to the originally conceived Constitution as a deliberate response of the Parliament of Barbados to judgments delivered both by Courts of Appeal in the region⁷ and by the Judicial Committee of the Privy Council⁸. Those judgments held that the mandatory, or automatic, death sentence for murder was an inhuman punishment. The 2002 amendment, however, specifically legitimises the mandatory character of that penalty notwithstanding the Constitution's repudiation of inhuman treatment contained in section 15(1).
- [7] In the normal course of things, this second ground of appeal would not have required special leave in order for it to be argued on appeal to this Court. The Agreement establishing this Court,⁹ and Chapter 117 of the Laws of Barbados¹⁰ enacted to give effect to the Agreement, make it clear that appeals lie to the Court as of right in instances where the Court of Appeal has given a final decision in "proceedings which involve a question as to the interpretation of the *Constitution*".¹¹ There can be little doubt that the point proposed to be argued here concerns interpretation of the Constitution. Nor can it be doubted that the point in question is also of the greatest public importance.
- [8] The problem here, however, is that there has not been a decision of the Barbados Court of Appeal on the point. The Applicants could have argued the alleged unconstitutionality of the mandatory death sentence after their conviction and before they were sentenced. They neglected to do so. Nor did they make

⁷ See for example *Hughes v R*; *Spence v R* [2002] 2 LRC 531.

⁸ *Reyes v R* [2002] UKPC 11, [2002] 2 AC 235 and *R v Hughes* [2002] UKPC 12, [2002] 2 AC 259.

⁹ See Art. XXV(2)(c) of the Agreement Establishing the Caribbean Court of Justice.

¹⁰ Caribbean Court of Justice Act 2005 (CCJ Act).

¹¹ CCJ Act (n 6), s. 6 (original emphasis).

submissions on the issue in the course of their appeals to the Court of Appeal. They wish to argue this point for the first time before this Court.

- [9] Having considered the matter, we do not think it is right to permit such a course of conduct especially when there is no compelling reason for it. We should be slow to encourage litigants to leapfrog the local courts and treat this Court as a court of original jurisdiction in cases where it is not. Ideally, the views of the local judges should first be heard on questions of such magnitude. But equally, it would not be right to foreclose altogether the possibility of the Applicants arguing this ground of appeal against sentence. If (and, of course, we do not for a moment suggest that this is the case) an unlawful penalty has been pronounced by the court and the prisoner appeals against its pronouncement and infliction, it is the duty of the courts to entertain submissions on its unlawfulness and to set it aside.
- [10] In all the circumstances, we think that the proper course is to stay the application for special leave to appeal the death sentence imposed and remit to the Court of Appeal for its consideration the question involving the constitutionality of the mandatory death penalty in Barbados. The Court of Appeal may, in its own discretion, choose itself to hear and deliver a judgment on that matter. Alternatively, that court may decide to have the matter first tried before a trial judge. It is entirely for the Court of Appeal to choose which option it considers preferable. In either event, this is a constitutional point of great significance and we would expect that, whatever decision is taken by the Court of Appeal, the hearing on this matter must commence with expedition and be completely concluded in the local courts within months rather than years.
- [11] In light of all the above, and in the absence of any objection to the poor persons' applications, the Court gave permission to the Applicants to appeal, as poor persons, their convictions of murder. This aspect of their proposed appeals can comfortably proceed ahead and independently of the other intended ground of appeal.

[12] The Court stays the application for special leave to appeal against the sentence of death imposed on the men. The Court remits the question of the constitutionality of the mandatory death penalty to the Court of Appeal for that court to determine, with appropriate expedition, what steps it will take to have that question judicially resolved. Naturally, should the appeal against conviction be heard and determined in the men's favour, that circumstance would render otiose all pending proceedings relating to their complaint about the sentence imposed.

/s/ A. Saunders

The Hon Mr Justice A Saunders

/s/ W. Anderson

The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee