

In the Eastern Caribbean Supreme Court

Saint Lucia

In the High Court

Claim No. SLUHCV 2005/0093

IN THE MATTER of the Saint Lucia Constitution Order
S. I. No. 1901 of 1978

And

IN THE MATTER of an application by LORNE D. C.
THEOPHILUS (person alleging that certain provisions
of the said Constitution to wit Sections 1(a); 3(1)(e)
3(3)(b); 3(5); 8(2)(a) and 120 of the said Constitution
have been, is being or is likely to be contravened in
relation to him) for redress in accordance with
Section 18 of the said Constitution

And

IN THE MATTER of Section 13(2) of the Crown
Proceedings Ordinance Chapter 13 of the Revised
Laws of Saint Lucia

And

IN THE MATTER of Sections 123(1)(a) and 593(4) of
the Criminal Code of Saint Lucia No. 9 of 2004

Between

LORNE D. C. THEOPHILUS

Applicant

And

ATTORNEY GENERAL OF SAINT LUCIA

Respondent

Appearances:

Mr. Marcus Foster for the Claimant

Mrs. Georgis Talyor – Alexander for the Defendant

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2005: February 24, 28
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RULING

1. This is a constitutional motion brought to challenge subsection 593(4) of the Criminal Code of St. Lucia, 2004.

2. That provision reads:
Subject to subsection (5), a person –
 - (a) who is charged with murder, treason, rape or any offence under the Firearms Act, No. 9 of 2003 or the Drugs (Prevention of Misuse) Act, No. 22 of 1988 punishable on indictment by imprisonment of not less than five years.
 - (b) who has been convicted and sentenced to death or imprisonment in respect of any offences referred to in paragraph (a) and who has given notice of intention to appeal against his or her conviction;shall not be granted bail.

3. At the first hearing of the motion a preliminary issue was raised as to the correct interpretation of the subsection. The Attorney General maintains that paragraphs (a) and (b) should be read together so that the prohibition on bail only applies in relation to a person who has been both charged and convicted and started an appeal. The applicant maintains that on its proper interpretation the subsection prevents the court from granting bail to those who have been charged with the relevant offences and to those who have been convicted and are appealing.

4. There is no doubt that the drafting of the subsection would have been improved if the word "or" had appeared between paragraphs (a) and (b). Mrs. Taylor-Alexander submitted that this had given rise to an ambiguity and that where there were two possible constructions of a statutory provision the court was entitled to take into account such factors as hardship in making a choice between them and that, taking account of such factors, the court should favour the Attorney General's construction.
5. I fully accept that the Applicant's construction of the subsection gives rise to a result which at the very least involves hardship (anyone accused of rape or various other offences will be denied bail automatically regardless of their individual circumstances). However, I do not accept that the question of choosing between the two constructions put forward by the parties arises at all. In order for the court to make such a choice the language of the statute must be "reasonably capable of two constructions". (See page 33 "Construction of Statutes" Elmer A. Driedger).
6. In my view the sub section is only reasonably capable of bearing the construction contended for by the Applicant. This is quite simply because there is no other sensible reason for the draftsman to have set out two separate paragraphs (a) and (b) both governed by the word "who". If the Attorney General's construction was correct it would have been sufficient just to say that a person appealing against a conviction for a relevant offence should not be granted bail and subsection (5)

would have referred not to sub section (4) (b) but simply to sub section (4). It is also highly relevant that paragraph (a) is in the present tense and paragraph (b) is in the past.

7. In those circumstances I have no hesitation at all in ruling on the preliminary issue that sub section 593(4) has the meaning submitted by the Applicant and that it prohibits the grant of bail to a person charged with rape as well as to a person who is appealing against a conviction for rape.
8. There remains the substantive issue of whether the sub section, construed in this way, is constitutional. I have already given directions for the resolution of that issue.

Murray Shanks
High Court Judge (Acting)