

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA CIRCUIT
(CIVIL)
AD 2019

CLAIM NO. AXAHCV 2019/0018

BETWEEN:

GAVIN SCOTT HAPGOOD

Applicant

-and-

REGINA

Respondent

Appearances:

Mr. Courtenay Griffiths, Q.C. for the Applicant

Mr. Dwight Horsford, Attorney General with him Mr. Ivor Greene, Senior Crown Counsel, Attorney General's Chambers for the Respondent

2019: August 16; 17;
October 2.

Application for variation of conditions of bail – Citizen of the United States of America – Applicant permitted to leave Anguilla while on bail – Condition on the grant of bail that applicant surrender to custody on divers days to attend preliminary inquiry – applicant seeking to attend preliminary inquiry by video-link while present in the United States of America obviating the need to return to Anguilla in accordance with the conditions of bail requiring his surrender – Jurisdiction of court to make variation sought – Power of the court to make order requiring a defendant in a preliminary inquiry to attend via video-link – Threshold test for the grant of variation of bail – Whether substantial change of circumstances triggering the court's discretion to grant variation of bail

RULING

[1] **INNOCENT, J.:** The applicant filed an application on 16th August 2019 seeking a variation of the terms and conditions upon which bail was granted to him. Particularly, he sought to vary the conditions of bail requiring him to attend the preliminary inquiry in person and to attend instead by video-link from a place outside of Anguilla.

The prayer to the application read as follows:

“The conditions of bail granted by the High Court (sic) on 17th April, 2019, be:

a) varied from:-

The Condition of the above Recognizance is such that if the above bounded Principal shall appear before the Magistrate in the Magistrate’s Court sitting at The Valley, Anguilla on Thursday, 22nd August 2019 at 9:00 am and on any further day to which the charge may be postponed to answer the charge/s made against him and to be dealt with according to law, and not depart the Court without leave, then this Recognizance shall be void, but otherwise shall remain in force.”

b) varied to:-

:

“The Condition of the above Recognizance is such that if the above bounded Principal shall appear by video-link before the Magistrate in the Magistrate’s Court sitting at The Valley, Anguilla on Thursday, 22nd August 2019 at 9:00 am and on any further day to which the charge may be postponed to answer the charge/s made against him and to be dealt with according to law, and not depart the Court without leave, then this Recognizance shall be void, but otherwise shall remain in force.”

- [2] The matter came on for hearing on 16th August 2019 and was vehemently opposed by the respondent. The court sought assistance from both counsel appearing for the parties on the question of whether there was in existence any statute, rule and practice decided by case law that empowered the court to make such an order. Counsel indicated that they both required time to respond. Accordingly, the hearing of the application was adjourned to 17th August 2019.
- [3] At the hearing of 17th August 2019 both parties indicated that they would be relying on the written submissions filed. The court dismissed the application and gave an oral ruling with a promise to give written reasons for the same at a subsequent date.
- [4] Having heard and considered the extensive arguments from both sides, and having whittled down the issue to that of whether or not this Court has the jurisdiction or rather the power to vary the condition of the grant of bail to the

applicant which required him to be present within the jurisdiction of Anguilla on 19th August 2019 for the purpose of his attendance at the Magistrate's Court on 22nd August 2019.

- [5] The variation sought is essentially that the applicant be present at the proceedings, not by way of physically attending court in Anguilla but to have him appear by video-link from a place outside of Anguilla, ostensibly in the United States, as opposed to a location within the jurisdiction. I will deal first with the question of whether or not the court has the power to do so.
- [6] The court accepts that in large measure it does have an inherent power to conduct proceedings and to regulate proceedings by adopting various procedures where they are necessary or where it is in the interest of justice to do so. The difficulty arises, however, within the context of bail.
- [7] When the applicant was granted bail on 17th April 2019, there were certain conditions attached for the purpose of alleviating or lessening the likelihood of the risk of the applicant absconding. The bail was granted on the fulfillment of these conditions. The condition that he return to the jurisdiction on a particular date, notably 19th August 2019, was a condition that was imposed for the purpose of alleviating the likelihood of the risk of the applicant absconding. The court, has recognized the exceptional circumstances in relation to the applicant, notably his place of residence being in the United States, his occupation, his familial relations; the court also took note on that occasion that he had no ties to Anguilla whatsoever and the absence of anyone to stand as surety for him. As a matter of fact, the applicant has put up a cash security and there is no surety within Anguilla.
- [8] Therefore, if the court were to grant the present application this would obviously defeat the purpose for which those conditions were imposed on the grant of bail to the applicant. The conditions on the grant of bail to the applicant were designed to make the bail order work.

- [9] The applicant, having been granted bail, has an obligation to perform and that is to surrender to custody. However, if it were that there existed some personal circumstances that affected the applicant, that could have been seen as amounting to exceptional circumstances or a change of circumstances warranting some variation of the bail condition, for example, physical impairment, illness and things of that kind, whereby the court would be inclined to say that he need not be present at the proceedings that would be an entirely different matter. But that is not the substantive basis upon which the present application is made. The substantive basis appears to be firstly, that there is an administrative cost involved in having the applicant appear in person; and secondly, according to the applicant, there is the likelihood of the risk of physical danger to him.
- [10] Now one would expect that in proceedings of this nature, where public sentiment may have been inflamed, that this does not necessarily equate to the likelihood or the risk of harm to the applicant. This should not operate to bridle the criminal justice process. The object of the grant of bail was to secure his attendance at court in Anguilla and to limit the risk of his absconding or failing to submit to the custody of the court, and that, to my mind, is the overriding objective.
- [11] The court had the benefit of reading the material submitted by Mr. Griffiths Q.C. on behalf of the applicant by way of the United Kingdom Practice Directions made pursuant to the United Kingdom Criminal Procedure Rules.
- [12] It is a well-known fact that Anguilla is a British Overseas Territory, and laws essentially become enforceable in Anguilla by extension and that emanates from the nature of the Constitution which grants to the Queen as Head of State by way of Orders in Council to extend particular statutes and laws to this jurisdiction. Bearing in mind, that the Practice Directions under the Criminal Procedure Rules do in fact provide some guidance, however, the court must be mindful of the fact that they were created by Legislative Acts of Parliament in the United Kingdom which, for all intents and purposes, have not been extended to Anguilla.

- [13] However, as it stands presently, quite separate and apart from providing guidance to the court, the United Kingdom Criminal Procedure Rules does not empower the court to make the order which the applicant seeks. Therefore, the provisions of the United Kingdom Criminal Procedure Rules is of no assistance to the applicant.
- [14] In any event, had it been the case that the English statutory provisions applied to Anguilla, the court would still be obliged to regard the present application with a great deal of skepticism for the reason that the Criminal Procedure Rules in force in the United Kingdom contemplates the appearance of a defendant in criminal proceedings being present within the United Kingdom.
- [15] On the contrary, the present application is premised on the applicant appearing by video-link in a place outside of Anguilla. Clearly, to my mind, this defeats the purpose for which bail was granted. In contradistinction, the United Kingdom Criminal Procedure Rules and the Practice Directions made thereunder contemplate the appearance of a defendant by video-link in a place within the United Kingdom.
- [16] Having taken into account the United Kingdom position and the Rules made in two other Eastern Caribbean jurisdictions, notably Saint Lucia and St. Vincent¹ in relation to video live link, again the regime in both of these jurisdictions require that the individual is within the jurisdiction of the court. Whether he gives evidence or attends the court sitting by live link from a police station or any other place of detention, the point is that wherever he is located he submits to the jurisdiction of the court. In other words, he gives evidence or attends the hearing from a place within the country where the proceedings are being held.

¹ Eastern Caribbean Supreme Court Criminal Procedure Rules Practice Direction No. 2 of 2014 (Prison Video Link) made pursuant to Rule 1.1 of the Criminal Procedure Rules 2008; Eastern Caribbean Supreme Court Criminal Procedure Rules Practice Direction No. 2 of 2014 (Prison Video Link) made pursuant to the Criminal Procedure Code, CAP. 172 Laws of Saint Vincent and the Grenadines, Revised Edition 2009

[17] The applicant in the present case is clearly outside of the jurisdiction of this court, and clearly, having him attend by live link from a place outside Anguilla would inevitably have the effect of defeating the conditions upon which he was granted bail in the first place. If he remains outside of Anguilla, clearly he can be deemed to have absconded and breached the conditions of his bail by not surrendering to custody. If he is outside of Anguilla, the Anguillian court can exercise no jurisdiction over him.

[18] I am fortified in the views that I have expressed by a decision of the Supreme Court of Queensland in **Re an Application for Variation of Bail by Scott Andrew Price**². I think this case illustrates clearly the point that I wish to make. In that case the applicant was granted bail and apart from the usual conditions regarding appearance, there was a residence order, a condition that he reports to the police at a nominated place and time daily and that he provides a surety to the extent of \$60,000.00. He sought an order varying his bail to the extent that the condition of a surety of \$60,000.00 or two sureties of \$30,000.00 be deleted. The ground for the application for variation was that he was unable to provide a surety in such a large amount or indeed at all. The court held inter alia that:

“The jurisdiction to vary bail is exercised as a fresh jurisdiction. That is to say it is a fresh application made to this Court, not an appeal from the order of the Magistrate. It is, however, not an application for a fresh bail order. The bail that was granted by the Magistrate remains in place. It is contrary to the Act in considering a variation application to take into account any considerations, which although relevant to the original bail application, are not relevant to the issues which arise on the variation application.....I should take into account only those matters relevant to the particular variation which is sought. A surety is required to ensure that the applicant turns up for his trial. The surety becomes liable in the event that the defendant fails to appear in accordance with his undertaking and surrender into custody.....There is no chance of a surety and such a condition renders the bail an empty gesture. The issue is really whether the applicant should have bail without a surety or

² QSC [2004] 84

whether the risk of his failing to appear is such that he should be kept in custody. This involves an examination of the circumstances.”

- [19] During the course of the proceedings, the issue of whether the court had the power to vary the adjourned date set in the Magistrate’s Court, Mr. Griffiths, Q.C. quite rightly pointed out that it was the High Court that had granted bail and not the Magistrate’s Court. According to Mr. Griffiths, Q.C. that application could not be canvassed before the Magistrate at the Preliminary Inquiry.
- [20] I agree that applications for the variation of conditions of bail should be made to the court which granted the bail. However, I do not agree with the argument that the High Court has the power to vary the date set by the Magistrate for the commencement of the Preliminary Inquiry. In fact, when this Court granted the applicant bail, the order was made in such a way that it reflected the date set by the Magistrate for the commencement of the Preliminary Inquiry. I am of the considered view that this Court does not have the power to vary the date previously set by the Magistrate.
- [21] Indeed the Magistrate is empowered by statute with the conduct of the Preliminary Inquiry which includes the power to grant adjournments and to adjourn the proceedings generally. Therefore, this Court cannot interfere with the exercise of the Magistrate’s statutory powers unless such powers are applied in an improper manner.
- [22] There is one final observation that I wish to make regarding the present application. It appears to me that if it were that the condition was varied to the extent sought by the applicant, then the variation would have ambulatory effect. Therefore, this would mean that the condition of bail requiring the applicant to surrender to the custody of the court in Anguilla would be rendered nugatory. This would necessitate the respondent having to apply to the court to restore the condition requiring surrender. To my mind, to grant the application would make nonsense of the bail order made by this Court.

[23] In the circumstances the application is dismissed and the terms and conditions upon which the applicant was admitted to bail shall remain.

Shawn Innocent
High Court Judge

By the Court

Registrar