Press Summary

18 July 2024

Director of Public Prosecutions (Appellant) *v* Chris Durham also called Bouye (deceased) and 2 others (Respondent)

[2024] UKPC 21

On appeal from the Court of Appeal of the Republic of Trinidad and Tobago

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Briggs, Lady Carr

Background to the Appeal

This appeal concerns the circumstances in which it is appropriate for the civil courts to intervene by way of judicial review of a prosecutorial decision to bring (or to continue) criminal proceedings. Judicial review is a civil procedure whereby a court can review an action by a public body and grant a remedy, for example a declaration about the lawfulness of the action. Prosecutions for breaches of the criminal law are brought in criminal courts, whereas judicial review proceedings are brought in civil courts.

The Appellant is the Director of Public Prosecutions for the Republic of Trinidad and Tobago (the "**DPP**"). The DPP has powers to bring, continue or discontinue criminal proceedings in respect of any offence against the law of Trinidad and Tobago.

On 21 April 2009, three men were shot and killed in Diego Martin, a town in Trinidad and Tobago. In response, the DPP brought criminal charges against the Respondents for the murder of the three men. A conviction for murder in Trinidad and Tobago carries the death penalty.

Central to the DPP's case was evidence given by a man named Mr O'Neil Benjamin ("**Mr Benjamin**"). In sworn depositions and oral evidence in 2009, including cross-examination, Mr Benjamin claimed to be an eyewitness to the shootings; he claimed to have heard the gunshots and to have seen the Respondents, whom he knew, with firearms near to where the shootings took place at the relevant time. However, shortly before the start of the trial in 2019, Mr Benjamin was said to have told the prosecuting attorneys in a pre-trial witness briefing that his earlier evidence had in fact not been true, albeit that he was said to have indicated that he intended to repeat it at trial.

In response, the prosecuting attorneys made the trial judge and the defence attorneys aware that they had serious concerns about the continuation of the trial. The DPP also disclosed notes recording Mr Benjamin's discussion with the prosecuting attorneys to the defence attorneys. The DPP did not discontinue the prosecution.

Days before the criminal trial was due to resume, and a jury having already been empanelled, the Respondents brought a claim in the civil courts for judicial review of the DPP's failure to discontinue the prosecution. The High Court granted a declaration that the failure was "unreasonable, improper and unfair" and quashed the indictment setting out the charges against the Respondents. A majority of the Court of Appeal (Archie CJ and Rajkumar JA) upheld the High Court's decision, with Bereaux JA dissenting.

Judgment

The Board unanimously allows the DPP's appeal. The Board holds that: (i) leave to seek judicial review should not have been granted; and (ii) even if it had been appropriate to bring a judicial review of the DPP's decision, the majority in the Court of Appeal was wrong to find that there were exceptional circumstances that justified quashing the DPP's decision. Lady Carr gives the judgment, with which the other members of the Board agree.

Reasons for the Judgment

Judicial review is a remedy of last resort - it is not generally appropriate to pursue such a challenge where there is a suitable alternative remedy **[53]**. The court needs to consider whether any of the complaints raised could not be resolved adequately within the criminal process itself. Whilst judicial review of a prosecutorial decision is available in principle, it is a "highly exceptional remedy" **[54]**. There are limited circumstances where this high threshold may be met, for example where there has been bad faith or dishonesty **[56]**. There are good reasons for why a very restrictive approach is taken to allowing judicial review challenges of such decisions, including the fact that the DPP's powers are conferred in very broad and unprescriptive terms and the DPP will have had regard to a very wide range of considerations when making decisions on prosecutions **[60]**.

Applying these principles, leave to seek judicial review should not have been granted in this case. The criminal process provided the Respondents with an alternative remedy that was not only adequate but far more appropriate to address the issues arising out of any conflict in Mr Benjamin's evidence **[62]-[63]**. The criminal proceedings were already up and running; the Respondents could have made applications, for example, to stay the criminal proceedings **[63]**. The judge in the criminal proceedings would also have been much better placed to address issues relating to potential abuse and unfairness **[64]**. Furthermore, there were multiple safeguards within the criminal proceedings that would have served to ensure justice for the Respondents, including the duties imposed on the prosecutor, defence and the judge and the Respondents' ability both to call the prosecuting attorneys to give evidence and to

attack Mr Benjamin's credibility by reference to what he said in the pre-trial briefing **[65]**. The Respondents' further argument alleging that the statutory nature of the right to seek judicial review in Trinidad & Tobago does not change this conclusion **[70]-[71]**.

In any event, even if a judicial review challenge had been appropriate, the majority of the Court of Appeal were wrong to uphold the quashing of the DPP's decision on the grounds of irrationality and abuse of process. **[74]**.

As to irrationality, the DPP was under no obligation to provide reasons for his decision to continue with the prosecutions, meaning the Respondents could not rely on his failure to do so as a basis for their challenge **[75]-[76]**. It was also important to bear in mind that Mr Benjamin had put forward two conflicting versions of events **[78]-[80]**. It was not for the courts on judicial review to assess or determine which version of events was true. The High Court and the majority of the Court of Appeal erred when they appeared to accept that the version of events put forward by Mr Benjamin in 2019 (as opposed to 2009) was true **[81]-[82]**.

It is questionable whether the issue around Mr Benjamin's conflicting testimony fell neatly within considerations of abuse of process **[83]**. However, even if it did, there are two categories of abuse of process, neither of which were made out **[87]**. Category 1 abuse arises in cases where it will be impossible to give the accused a fair trial **[84]**. For the reasons given, this type of abuse was not made out and a fair trial was possible **[87(i)]**. Category 2 abuse arises where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case **[84]**. This assessment involves considering whether there has been prosecutorial misconduct and, if so, whether the misconduct justifies staying the proceedings **[85]**. Again, this type of abuse was not made out. There was no prosecutorial misconduct; rather the prosecuting attorneys acted commendably when faced with Mr Benjamin's comments in 2019 and the DPP subsequently disclosed the notes of the discussion with Mr Benjamin to the defence attorneys **[87(ii)]**. In summary, there were no circumstances meeting the high threshold of exceptionality such as to justify the quashing of the indictment **[87(iii)]**.

References in square brackets are to paragraphs in the judgment.