



25 October 2012

PRESS SUMMARY

Carlos Hamilton and Jason Lewis (Appellants) v The Queen (Respondent) [2012] UKPC 37

On appeal from: The Court of Appeal of Jamaica

JUSTICES: Lord Hope, Lord Kerr, Lord Dyson, Lord Reed and Sir Anthony Hooper

BACKGROUND TO THE APPEAL

On 2 April 2001, Carlos Hamilton and Jason Lewis (the “Appellants”) were found guilty of the murder of Saleem Hines. They were sentenced to life imprisonment and ordered to serve 25 years in prison before being eligible for parole. On 24 March 2003, the Court of Appeal of Jamaica refused the Appellants’ application for permission to appeal against their convictions and sentences.

The Appellants ultimately sought permission to appeal to the Judicial Committee of the Privy Council (the “JCPC”). Rule 11(2) of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 provides that an application for permission to appeal must be filed within 56 days from the date of the order or decision of the court below or the date of the court below refusing permission to appeal (if later) (the “56 day rule”). The Appellants had written to an English solicitor in July 2003 to ask for her help with their appeals to the JCPC. It was not until April 2010 that she instructed another firm of solicitors who would represent the Appellants in the JCPC proceedings. The Respondent’s solicitors were not aware of the Appellants’ wish to appeal until the Appellants’ solicitors notified them on 19 July 2011. The Appellants’ applications for permission to appeal were filed on 29 July 2011, eight years and four months after the order of the Court of Appeal of Jamaica.

Before the JCPC, the Appellants advanced various grounds of appeal. Amongst other things, they criticised the trial judge’s direction to the jury on provocation in relation to Carlos Hamilton and the trial judge’s failure to admit into evidence certain statements made by Carlos Hamilton to the police. The Appellants’ counsel’s failure at the trial to introduce good character evidence was also founded upon.

JUDGMENT

On 16 August 2012, the JCPC granted the Appellants’ applications for permission to appeal ([2012] UKPC 31). The judgment was given by Lord Hope, who also gave guidance on the JCPC’s approach to late permission applications in criminal appeals from Caribbean jurisdictions and on minimising delay in filing such applications. The JCPC now unanimously dismisses the Appellants’ appeals. The judgment is given by Sir Anthony Hooper.

REASONS FOR THE JUDGMENT

[Permission to Appeal \(\[2012\] UKPC 31\)](#)

Decision in this case

It was in the interests of justice that the appeals should be heard. Much of the period of delay is unexplained. However, the case had been handled throughout pro bono, the Appellants were sentenced to very long periods of imprisonment, and there was sufficient merit in the grounds of appeal to justify referring the case for a full hearing. Although the Appellants' first English solicitor is not to be blamed for what happened, there is every possibility that if she had informed the Respondent's solicitors of the Appellants' intention to apply for permission to appeal at the outset the delay would have been less extreme. [19 and 20]

Guidance on late permission applications and on minimising delay

The JCPC has no intention of departing from the 56 day rule. It has not been suggested that it fails to meet the standard under the European Convention. In cases where the Respondent objects to the lateness of an application for permission, as a general rule, the longer the delay, the more convincing and weighty the Appellant's explanation for the delay will need to be. The circumstances that contribute to the problem of delay in criminal appeals from the Caribbean are exceptional. These include limited or a complete lack of legal aid, the need for Appellants to rely on pro bono representation, and, in Jamaica, the difficulties of prisoners in communicating with the outside world, and the lack of a procedure for prisoners to be informed of their rights of appeal. But the question for the JCPC, as when dealing with other late applications for permission, is whether, having regard to all the circumstances, it is in the interests of justice that the time limit for filing should be extended. [5 – 9 and 15 – 17]

Weight will always be given to the merits of the appeal and to the severity of the sentence. The stronger the case appears to be that the Appellant may have suffered a serious miscarriage of justice, the less likely it will be that the application for permission will be rejected because it is late. Pro bono practitioners will be expected to progress their cases as quickly as possible but it would be unreasonable, given the other demands on their time, to expect them to adhere to the same exacting standards as are expected of remunerated practitioners. [17]

The best way of reducing the opportunity for delay lies in the early exchange of information. The following steps can and should be taken to minimise the risk of unreasonable delay.

- The prosecuting authorities should be notified as soon as a prisoner has indicated an intention to apply for permission to appeal. The JCPC will expect the prosecuting authorities to provide help in obtaining as soon as possible the relevant documents.
- A copy of the notification should be given to the JCPC Registrar when the application for permission is filed.
- Those who normally act as JCPC agents for the State concerned should be informed at the outset. They can be expected to offer to help to obtain as soon as possible the relevant documents if problems are encountered with the prosecuting authorities. [18 and 19]

Grounds of Appeal ([2012] UKPC 37)

The JCPC identified three errors at the Appellants' trial: 1) the trial judge had misdirected the jury on the issue of provocation; 2) counsel for the Appellants had failed to introduce evidence of the Appellants' good characters; and 3) the trial judge had failed to admit into evidence the statements made by Carlos Hamilton to the police at the time of his arrest. [20 – 21, 38 – 40, 43 – 62, and 63] The JCPC rejected the Appellants' remaining grounds of appeal. [22 – 24, 25 – 30, 31 – 37, and 41 – 42] However, the JCPC dismissed the Appellants' appeals because they were satisfied that, if the errors had not been made, the verdicts would necessarily have been the same. [64 – 69]

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.gov.uk/decided-cases/index.html.