

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS COURT

CRIMINAL APPEALS 11/2021, 13/2021 & 14/2021
(SCA#0004/2020, 0005/2020 & 0006/2020
SC#00728/2017, SC#03675/2016 & SC#02851/2017 (1) & (2))

BETWEEN



WAYNE CARLOS MYLES

APPLICANT

-AND-

HIS MAJESTY THE KING

RESPONDENT

Before: **The Rt. Hon Sir John Goldring, President**
 The Hon Sir Richard Field, Justice of Appeal
 The Hon Sir Michael Birt, Justice of Appeal

Date of Judgment: **17 May 2023**

JUDGMENT ON APPLICATON FOR LEAVE TO APPEAL TO JCPC

CONSIDERED ON THE PAPERS

Birt, JA

1. For the reasons set out in a judgment dated 18 July 2022, this Court dismissed the Applicant's appeal against the decision of the Grand Court (Chapple J) on 29 July 2021 dismissing his appeal against his conviction before the Summary Court on 12 June 2019. This Court also dismissed his appeal against sentence.
2. By Notice of Motion dated 31 March 2023, the Applicant now applies to this Court for leave to appeal to the Judicial Committee of the Privy Council ("the Privy Council") against his conviction.

3. This raises the issue of whether this Court has jurisdiction to consider an application for leave to appeal to the Privy Council in criminal cases.
4. In *Gonzalez and Suarez v R* [1984-85 CILR 256] the Court of Appeal for Jamaica, sitting as the Court of Appeal for the Cayman Islands, considered the terms of the Cayman Islands (Appeal to Privy Council) Order 1965 (“the 1965 Order”) and in particular, the terms of section 3 which provided as follows:

“Subject to the provisions of this Order, an appeal shall lie:

(a) as of right from any final judgment, where the matter in dispute on the appeal amounts to or is of the value of three hundred pounds sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and

(b) at the discretion of the Court, from any other judgment, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great or general importance or otherwise, ought to be submitted to Her Majesty in Council for decision.”

5. Having reviewed the jurisprudence of the Privy Council in some detail, the Court concluded that section 3 applied only to civil cases and the Court did not have any jurisdiction to grant leave to appeal in criminal cases. The reference to ‘*any other judgment*’ in section 3(b) was a reference only to any other civil judgment. This conclusion is reflected in the headnote which reads:

“The court, sitting as the Court of Appeal for the Cayman Islands, did not have jurisdiction to grant leave to appeal to the Privy Council in criminal cases. Appeals to the Privy Council from the Cayman Islands were regulated only by the terms of the Cayman Islands (Appeal to Privy Council) Order 1965 and s.3(6) of that Order closely resembled earlier provisions consistent construed by the Privy Council itself as applying only to civil cases. According to the established construction of the words “any other judgment” in such provisions, the word “other” referred back to the same sort of judgments as those referred in s.3(a), i.e. judgments in civil cases only, and this construction was clearly appropriate

since the next phrase in s.3(b) was “whether final or interlocutory” which would not normally be used with reference to criminal cases. The definition of “judgment” had to be read in the context of the Order as a whole and in the absence of any express provision for appeals with the leave of the Court of Appeal in criminal cases, the mere inclusion of the word “sentence” in that definition could not properly be taken to indicate that criminal cases were intended to be included within the terms of s.3(6).”

The two references to s.3(6) in the headnote would appear to be typographical errors and the references should be to s.3(b).

6. Since then this Court has replaced the Court of Appeal of Jamaica as the Court of Appeal for the Cayman Islands and the 1965 Order has been replaced by the Cayman Islands (Appeals to Privy Council) Order 1984 (“the 1984 Order”). Although the wording of section 3 of the 1984 Order is not identical to section 3 of the 1965 Order, there is no difference in meaning. Thus, section 3 of the 1984 Order is in the following terms:

“3(1) Subject to the provisions of this Order, an appeal shall lie as of right from decisions of the Court to Her Majesty in Council in the following cases:

- (a) final decisions in any civil proceedings, where the matter in dispute on the appeal to Her Majesty in Council is of the value of £300 sterling or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of £300 sterling or upwards;*
- (b) final decisions in proceedings for dissolution or nullity or marriage; and*
- (c) such other cases as may be prescribed by any law for the time being in force in the Cayman Islands;*

(2) Subject to the provisions of this Order, an appeal shall lie from decisions of the Court to Her Majesty in Council with the leave of the Court in the following cases:

- (a) decisions in any civil proceedings, where in the opinion of the Court the question involved in the appeal is one that, by reason*

***of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council; and
(b) such other uses (sic) as may be prescribed by any law for the time being in force in the Cayman Islands.”***

7. Apart from the addition of appeals as of right in cases for the dissolution or nullity of marriage, the wording is to similar effect as in the 1965 Order save that it is specifically stated in section 3(1)(a) and 3(2)(a) that it only relates to civil proceedings.
8. In our judgment, the reasoning of the Court of Appeal in *Gonzalez* is equally applicable to the 1984 Order and we note in passing that this was also the view of Williams, Ag. J in *McLaughlin v R* [2019 (2) CILR 819]. It has not been suggested to us that there is any enactment in accordance with section 3(2)(b) which extends the provisions of section 3(2) to criminal cases. Accordingly, we hold that the decision in *Gonzalez* remains good law and that, notwithstanding the replacement of the Court of Appeal for Jamaica by this Court and of the 1965 Order by the 1984 Order, it remains the position that this Court has no jurisdiction to grant leave to appeal to the Privy Council in criminal cases.
9. It follows that the Applicant must pursue any application for leave to appeal directly with the Privy Council.