



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL COURT**

LACR0216/2022 (IND0050/2022)

**IN THE MATTER OF AN APPEAL UNDER SECTION 4 AND SECTION 38 OF THE LEGAL
AID ACT (2017 REVISION)**

AND IN THE MATTER OF IND0050/2022

BETWEEN:

JAVON DIXON

Applicant

AND:

THE CROWN

Respondent

IN CHAMBERS

Coram: Hon. Mrs. Justice Marlene Carter

Appearance: Mrs Prathna Bodden (Samson Law) for the Applicant

Heard: 17 November 2023

Decision: 23 November 2023

HEADNOTE

*Legal Aid Act (2017 Revision) – Sections 38, 21(3) and 24(1) & (2) – Reconsideration of Legal Aid application –
Issues arising on appeal: legal assistance, complex legal aid case.*

REASONS FOR DECISION

BACKGROUND

1. The Applicant applied for and was granted legal aid on 17 July 2022 for his Grand Court trial where he faced an indictment for murder. The Legal Aid Certificate (hereinafter “LAC”) was extended on 26 January 2023 to cover the assistance of a second junior Counsel.



2. The Applicant's trial resulted in a hung jury. The applicant subsequently requested a transfer of Counsel to his present counsel to represent him on his retrial. This request was granted, and the LAC was transferred on 03 August 2023.

THE APPLICATION

3. On the 6th of September 2023 the Applicant, through his Counsel, sought an extension of the LAC to cover instructions from King's Counsel ("KC") in the matter. Counsel for the Applicant related that:

"Mr Dixon faces a re-trial for the offence of murder, if convicted he will face a mandatory minimum of 30 years with a life sentence. The allegation involves a firearm, this would aggravate the offence."

4. Counsel outlined the grounds for the application as follows:

"1. ... extensive public interest and concern, namely because of the manner in which the offence was committed and the witnesses which immediately were interviewed live by Cayman Marl Road, whilst police were on the scene.

2. This is a re-trial, the usual cross examination will need to be put to the 26 witnesses and then address any inconsistencies from the previous trial, the transcripts will need to be scrutinized and significant additional work will need to be completed whilst the witnesses are giving evidence...

3. The offence attracts the most sever[e] sentence, one of life imprisonment.

4. The offence is of a violent nature.

5. There are some 1500 pages of unused material, in addition to a voluminous trial bundle and exhibit bundle, the defendant is in custody.

6. The Crown have two lawyers, the leader is yet to be confirmed at the previous trial it was the Deputy DPP, one of the most senior lawyers in the department."

5. The Legal Aid Director ("the Director") refused the application on 25 September 2023 and gave her reason for the refusal that:

"...the issue of complexities as outlined is not agreed to justify lead counsel."



6. The Applicant sought a reconsideration of the Director's decision on the 5th of October 2023. This further request was refused.
7. The Applicant now appeals the Director's decision under s.38 of the Legal Aid Act (2017 Revision) ("the Law").

THE LAW

8. In order to make a determination of a complex legal aid case to which KC may be assigned, the Director must have regard to particular criteria.
9. The Director must be satisfied that this was a complex case as is evident from s.24(1) and (2).
10. Section 24 of the Law states:

“24. (1) The Director may procure, by contract, legal aid services on behalf of assisted persons in certain criminal cases which he determines, in accordance with subsection 9(2), to be complex legal aid cases.

(2) In determining whether a matter is a complex legal aid case the Director shall take into account whether the case satisfies at least three of the following criteria -

- (a) the commission of the offence to which the case relates is likely to give rise to national publicity and widespread public concern;*
- (b) a successful defence to the charges requires highly specialist knowledge;*
- (c) the elements of the offence are of a technical nature and a successful defence requires an attorney-at-law with the relevant technical legal knowledge;*
- (d) the elements of the offence involve an international dimension;*
- (e) a successful defence against the charges requires a combination of legal, accountant, investigative and other expert skills;*
- (f) the charges are based on allegations of terrorism;*
- (g) the offence attracts a sentence exceeding ten years;*



(h) the offence is of a violent or sexual nature involving multiple victims; or

(i) the offence involves complex financial or legal transactions or records.”

11. Counsel for the applicant submits that the applicant has satisfied the criteria listed at s.24(2). Counsel submits that the court should find that Subsections 24 (2) (a), (b), (g) and (h) apply in this case.
12. The Director outlined the following as her reasons for refusing the Applicant’s request for reconsideration:

“The issues presented by Counsel in her correspondence, do not meet the threshold of complexity or technicality required to warrant the appointment of a lead counsel.

It is not agreed that this case will satisfy the two limbs of subsection (a) give rise to national publicity AND widespread public concern... counsel’s response to the same was not satisfactory.

It is not agreed that counsel has satisfactorily made submissions in relation to subsection (b). It has not been identified what highly specialized knowledge is required in this retrial... it is accepted that this murder trial is a serious offence but no novel issues have been identified that requires specialized knowledge or knowledge not within Ms Bodden’s capabilities.

It is not agreed that counsel has satisfied subsection (c). Similar to the concerns outlined in subsection (b) the same is repeated here.

...

Subsections 24 (2) (d)(e)(f) and (i) are not present and were not raised by counsel. It is accepted that subsection (g) applies. A guilty verdict for this offence may attract a sentence exceeding ten years.

It is accepted that the offence committed was violent. However, it lacks the complexities or multifaceted nature frequently seen in recent murder trials that include (a) multiple co-defendants (b) multiple victims (c) sexual in nature or (d) national security issue.



The current Listed Counsel who is experienced and is a partner in her firm is on par with Mrs. James-Malcolm (Deputy DPP) and is more than capable of managing the re-trial with the assistance of another experienced Attorney.'

13. The Director rejected the applicant's submissions that subsection (a) was satisfied. It was not accepted by the Director that the case was one that would give rise to national publicity and widespread public concern.
14. The Court notes that in her submissions to the Director counsel for the applicant stated that this offence caused widespread public concern and safety which is somewhat different from the criteria to be satisfied at (a). However not much turns on this discrepancy since "national publicity and widespread public concern" is not anymore made out by the fact that the witnesses were interviewed on live TV at the scene of the murder than for any other murder that occurs in a small jurisdiction like the Cayman Islands where because of the relative rarity of such crimes, the scrutiny attendant on a murder is to be expected.
15. I agree with the Director that the criteria at 24 (2)(a) is not satisfied. The Director accepted that Subsections (g) and (h) are present on this application.
16. The major point of contention for the Director was Counsel's submission regarding the need for a leader with highly specialist knowledge, as stipulated by Section 24 (2)(b). On this point, Counsel expanded that the fact that counsel who appeared for the defendant during the first trial would not appear for him on the retrial was the first issue to be taken into account in assessing the need for King's Counsel since a change of counsel at such a crucial point between trials was at the very least undesirable and would impact the extent and nature of the work now to be undertaken by new counsel. Counsel submitted that that was one area in which the specific experience of a KC would be crucial in preparation for the retrial.
17. Counsel submitted further that the Director seemed to have placed some weight on the fact that a KC was not necessary since counsel for the applicant is the partner of a local firm. As noted above, the Director noted, in her reasons for not allowing KC, that:

"The current Listed Counsel who is experienced and is a partner in her firm is on par with Mrs. James-Malcolm (Deputy DPP) and is more than capable of managing the re-trial with the assistance of another experienced Attorney."



18. Counsel noted, quite candidly, that such an equivalency should not be made between herself and the Deputy DPP, since in this and other jurisdictions the fact of an attorney being a partner in a small firm does not necessarily equate to extensive litigation experience. In fact, Counsel noted that in this jurisdiction there are very small firms with partners who have very little actual courtroom experience, and such is the nature of the jurisdiction.
19. Regarding the assistance that junior counsel could provide if no KC was appointed in terms of mitigating the lack of specialist knowledge and experience complained of, counsel for the applicant noted that the Director's accommodation that "*a second local junior attorney is deemed necessary for the trial period*" does not assist since the stipulation of the second attorney being available only *for the trial period* restricts how much assistance that attorney can provide in preparation for the trial, and in any event the kind of experienced second local attorney that is envisaged would most likely come from the firm that last represented the defendant at his initial trial and with whom he no longer wishes to associate.

COURT'S DETERMINATION

20. The Director noted in her reasons for refusing the extension of the certificate for lead counsel that there was a "mistaken belief ... that all murder trials warrant lead counsel," which is "wholly inaccurate and has been taken for granted in this jurisdiction along with poor budgeting expectations." This is a sentiment with which the Court has every sympathy. However, the Court must be careful to consider the circumstances of each individual case in determining whether the decision to refuse to extend the certificate was proper.
21. The Court is mindful that on this application this Defendant is facing the most serious of offences, that of murder which carries a sentence, if convicted, in excess of thirty years. This does not appear to be a trial which bears obvious issues of complexity "*frequently seen in recent murder trials that include (a) multiple co-defendants (b) multiple victims (c) sexual in nature or (d) national security issues.*" As such, the requirement for highly specialist knowledge; the need for relevant technical legal knowledge or indeed for a combination of legal, accountant, investigative and other expert skills, is not readily apparent.
22. However, in assessing the particular circumstances of this case, this Court finds that the Director gave inordinate weight to two factors. The first of these is the fact that a junior has been deemed necessary to assist Counsel who was granted the certificate. It appears that the Director in taking this factor as



being advantageous to the trial conduct on behalf of the Defendant, did not sufficiently account for the fact that the junior would be restricted to only giving assistance during the trial period.

23. The second factor upon which the Director seemed to place inordinate weight was the fact of Counsel for the Applicant being a partner in a law firm and equating such a position with that of an experienced trial advocate. While it is not clear from the correspondence between the Director and Counsel for the Applicant, that Counsel emphasized this aspect of the application to the Director it is a matter that has been ventilated by Counsel on this application. The relative lack of litigation experience of Counsel for the Applicant should have been considered as a factor tending to lean toward the need for specialist legal knowledge in this case. Such knowledge would encompass not just specialist areas of law but requisite experience in the representation of persons facing the most serious of allegations.
24. The Defendant is entitled to competent and experienced counsel in all the circumstances. These two factors taken together raise concern that if the Defendant is not afforded the extension of the legal aid certificate to encompass specialist counsel, he will be denied counsel with the level of competence and experience consistent with the gravity of the offence that he faces on the retrial.

25. Section 21 (3) states:

“21. (3) The Director shall not approve the engagement of foreign counsel to conduct any legal aid case unless such case is a complex one and it is not possible to assign the services of a generally admitted attorney-at-law because –

- a. Every reasonable effort has been made to obtain the services of a listed attorney-at-law for he assisted person; and*
- b. There is no generally admitted attorney-at-law on the Islands who is willing and able to advise or represent that person.”*

26. The Applicant has argued that efforts had been made to find eligible KC on island however such efforts failed because available King’s Counsel was conflicted and as far as counsel was aware the only other senior lawyers with the relevant experience were part of the firm which had represented the defendant during the first trial and the defendant did not wish for those attorneys to be involved in the retrial. I have also considered the unavailability of a local KC.
27. After consideration of the submissions of Counsel and the reasons advanced by the Director for her refusal to extend the legal aid certificate, I am therefore minded to grant the extension of the legal aid

certificate sought to cover King's Counsel to represent the Defendant on his trial. Counsel for the Applicant will act as his Junior Counsel. It is only with exposure to matters such as these, the scholarship and advocacy skills of King's Counsel that this jurisdiction can hope to have local Counsel with the requisite experience and skill required to assist defendants facing the most serious of criminal allegations.

Dated this day 27th day of November 2023

A handwritten signature in blue ink, appearing to read "Carter J.", written over a horizontal line.

Hon. Mrs. Justice Marlene Carter
Judge of the Grand Court