



**GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**G 224 OF 2021**

**IN A MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW (O.53, R.3)**

**BETWEEN**

**WAYNE CARLOS MYLES**

**Plaintiff**

**AND**

**MAGISTRATE KIRSTY-ANN GUNN**

**1<sup>st</sup> Defendant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION**

**2<sup>nd</sup> Defendant**

**ON THE PAPERS**

**Before: HON. MRS JUSTICE MARGARET RAMSAY-HALE**

**Date of Decision: 29 AUGUST 2022**

**Headnote**

**Judicial review - Application for leave - Discretionary Remedy - Alternative remedy available and pursued by Applicant**

**JUDGMENT**

**Introductory**

1. By Notice of Application dated 11 June 2021, the Applicant, Wayne Carlos Myles, applied for leave to move for judicial review decisions made by H.H. Mrs. Kirsty-Ann Gunn (“the Magistrate”), sitting as Magistrate in Grand Cayman, and by the Director of Public Prosecutions.



## **The Decisions Challenged**

2. The decisions which are the subject of the application are the decisions of the Magistrate on 12 June 2019 to convict the Applicant of four offences in connection with controlled drugs as set out below:
  - (1) Possession with intent to supply of 1.88 g of cocaine on 15 June 2016 at the Lone Star parking lot;
  - (2) Being concerned in the supply of cocaine between 10 October 2014 and 15 June 2016;
  - (3) Being concerned in the supply of ganja between 10 October 2014 and 15 June 2016.
  - (4) Possession with intent to supply of 3.89 g and 0.765 g of cocaine on 2 February 2017 at North Church Street.

## **Chronology**

3. The Applicant appealed against conviction and sentence to the Grand Court on 30 January 2020. The Applicant's appeal was heard over two days on 4 December 2020 and 6 January 2021.
4. While awaiting the decision of the Grand Court on that appeal, the Applicant filed this application for leave to move for judicial review on 11 June 2021 in which he expressed concern about the delay in deciding his appeals. The Applicant's appeals were dismissed by Chapple J on 29 July 2021.
5. The Applicant then appealed to the Court of Appeal on 4 August 2021. Despite this extant appeal to the Court of Appeal, the Applicant wrote to the Listing Officer of the Grand Court on 4 November 2021 to chase this matter and ask that it be listed as soon as possible, appearing to have adopted a belt and braces approach of leaving no avenue of review open. The Applicant's appeal from the decision of Chapple J was dismissed by the Court of Appeal on 18 July 2022.

## **Grounds of Review and Relief Sought**

6. The Applicant settled a lengthy application for leave, without the benefit of legal counsel, seeking an order quashing his conviction and sentence in connection with the four offences set out above and setting out the grounds on which the relief was sought. It is supported by an affidavit some 50 pages long in which the Applicant makes a number of assertions of fact and law. He cites a number of authorities and legal principles but their applicability to the issues he raises is not



readily understood. As a result, it was somewhat challenging to discern the grounds on which he seeks leave to review the decision of the Magistrate.

7. Having carefully considered the papers, it appears to me that the grounds on which the Applicant seeks to review his conviction and sentence for the offences are the same as the grounds of his appeal to the Grand Court which are set out in the judgment of Chapple J at paragraphs 7 and 17 and, as to three of them, the same grounds which were argued in the Court of Appeal, as set out in paragraph 35 of the decision of that Court. For that reason, I do not propose to rehearse the grounds here. It is enough to say that the Applicant asserts that the Magistrate made divers errors of law in arriving at her decision to convict him.

### **The Law**

8. Decisions of the Summary Court made in error are amenable to review. The principle was articulated by Smellie J, as he then was, in *Miller v. Summary Court, Ex Parte Attorney General* [1994 - 95 CILR 417] and is conveniently summarized in the headnote, as follows:

*"..decisions of inferior courts made in error of law were in excess of jurisdiction and amenable to review regardless of whether the error was on the face of the record, was committed within the jurisdiction or was an error going to the court's jurisdiction. The presumption was that the court had no jurisdiction to make an error of law on which its decision depended."*

9. However, as noted by the author of the **Judicial Review Handbook (Sixth Edition)** at p 411, *"judicial review is a last resort and generally inappropriate where suitable alternative safeguards exist."* In criminal proceedings where the substance of a decision is being challenged, leave will usually be refused as the appeals process provides an adequate alternative remedy which is more convenient for the disposal of the issues in question.
10. The principle was enunciated by Sir John Donaldson MR in *R v Secretary of State for the Home Department ex p Swati* [1986] 1 All ER 717 at 724 where he said this:

*"...it is well established that, in giving or refusing leave to apply for judicial review, account must be taken of alternative remedies available to the applicant. This aspect was*



*considered by this court very recently in R v Chief Constable of Merseyside Police, ex p Calveley [1986] 1 All ER 257, [1986] 2 WLR 144 and it was held that the jurisdiction would not be exercised where there was an alternative remedy by way of appeal, save in exceptional circumstances. By definition, exceptional circumstances defy definition, but, where Parliament provides an appeal procedure, judicial review will have no place unless the applicant can distinguish his case from the type of case for which the appeal procedure was provided.”*

## **Discussion and Decision**

11. This is plainly a case for which the appeal procedure was provided by the Legislature. The **Summary Court Jurisdiction Act** provides:

### **“Criminal appeals**

*37. In any criminal cause or matter, appeals from judgments or orders of the court shall lie and shall be conducted in accordance with and subject to the [Criminal Procedure] Code...”*

12. The **Criminal Procedure Code (2017 Revision)** provides for two avenues of appeal for a person convicted of criminal offences: an appeal by way of case stated pursuant to section 172, or an appeal by motion seeking a determination of the appeal, with reference to matters of both fact and law, pursuant to section 179.
13. As noted above, the Applicant had already exercised his right of appeal by motion to the Grand Court when this application was filed. He has since had the full benefit of the appeals process provided for by the legislature to argue against his conviction and sentence including an appeal to the Court of Appeal. It is worthy of note that even after his appeal had been dismissed, the Court of Appeal, quite exceptionally, received further submissions from the Applicant then acting in person.
14. The appeal procedure plainly provided an appropriate remedy. As there are no issues which sound in judicial review that remain to be considered, the application for leave is refused.



**The Director of Public Prosecution**

15. Although the Applicant made the Director of Public Prosecutions (the “Director”) a Defendant to the application for leave and made certain allegations against the Director, no decision made by the Director is identified in respect of which any relief is sought and the application is dismissed.

**DATED THE 29TH AUGUST 2022**

**Hon. Justice Margaret Ramsay-Hale**  
**Judge of the Grand Court**