

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT**

**CICA (Crim) 17 of 2013
Ind 114/2012
C06982/2012**

BEFORE

**The Rt Hon Sir John Chadwick, President
The Hon Elliott Mottley, Justice of Appeal
The Hon Sir George Newman, Justice of Appeal**

BETWEEN

H.M THE QUEEN

Respondent

and

TAREEK RICKETTS

Applicant

**The Applicant, Tareek Ricketts, appeared in person
The Director of Public Prosecutions appeared for the Crown**

**Hearing: 20 April 2015
Judgment: 20 April 2015**

RULING

Revised from transcript and Approved released 17 July 2015

Sir John Chadwick, President:

- 1 On 17 August 2013 the applicant, Tareek Ricketts, was convicted of murder and sentenced to the mandatory life sentence for which the law provides. On 26 of August 2013 the applicant filed an application for leave to appeal against conviction. That notice contained a single ground of appeal:

“The sentence passed is in breach of the appellant’s human rights in light of the recent ECHR case of Vintner and others against the United Kingdom”.

To my mind, it is impossible to see how that ground could be advanced in support of an appeal against conviction; although, of course, I accept that - were it not for the provisions of section 7(c) of the Court of Appeal Law - it could, perhaps, be advanced in support of an appeal against sentence.

- 2 The applicant abandoned his proposed appeal against conviction at some date prior to 29 December 2014. That appears from a letter which he wrote to the Court of that date containing this passage:

“I filed an appeal against my conviction in December 2013 and would have been appealing before the Court of Appeal in April 2014. That appeal was abandoned due to the lack of legal representation for that matter.”

Subject to the discrepancy in date between the date on the notice of intention to appeal (August 2013) and the date (December 2013) mentioned in the letter, it is clear that the applicant abandoned his appeal against conviction before the end of last year. That is accepted on his behalf.

- 3 Following the abandonment of the appeal against conviction for which he had sought leave by notice in August 2013, the applicant has sought to file a further notice of appeal against conviction. That further notice is dated February 2015. That, of course, is well out of time. In the circumstances the applicant needs leave to file the notice of February 2015. He has provided no reasons why, having abandoned his previous appeal against conviction, he should now be permitted to file a new notice of appeal against conviction out of time: it appears that he has simply had a change of mind. In conjunction with his wish to file the notice of appeal dated February 2015, the applicant requests the trial transcripts of both the Crown’s case and the defence case at the trial. It is accepted that he has already received a transcript of the judge’s summing up.

- 4 The Court of Appeal rules provide, at rules 33A(1) and (2), that:

“An appellant shall be entitled to receive free of charge a transcript of any stenographer’s note made at the trial of the arraignment, plea entered to the indictment and the judge’s summing up to the jury.”

“In the case of an appeal against sentence, the appellant is entitled to receive free of charge a transcript of any stenographer’s note made at the trial of the judge’s sentencing remarks.”

Rule 33A (3) provides that:

“A single judge of the Court or a judge of the Grand Court may order on the application of an appellant to the Court against conviction or sentence that the appellant is to be provided free of charge with any part of the trial transcript other than those referred to in sub rules (1) and (2).”

Rule 33A(4) provides that:

“An appellant who seeks to be provided free of charge with any part of the trial transcript other than those referred to in (1) and (2) shall apply in the first instance to the Grand Court.”

Rule 33A(5) provides that:

“The application referred to in (4) should be made in writing stating precisely which part of the trial transcript is sought giving the brief reasons why each part of the trial transcript sought is required.”

And rule 33A(8) provides that:

“An appellant who has been refused further parts of the transcript can renew his application at a sitting of the Court of Appeal.”

- 5 The reason which underlies rule 33A – and, in particular, sub-rules (3), (4) and (5) - is that there is a need to avoid the expense which would be borne by the public purse if the stenographers were required to transcribe the whole of the proceedings below which in the present case it appears covered a trial of some 15 half days - seven days - and would cover some seven or eight hundred pages at a cost of \$3 per page.
- 6 So far as this Court is aware, there has been no application to the Grand Court pursuant to rule 33A(4); and, in particular, no application which complies with sub-rule (5) in stating precisely which parts of the trial transcript are sought and giving brief reasons why each part of the trial transcript sought is required. The applicant has not told the Court why he has not made his application for transcripts to the Grand Court, as the rules require.
- 7 The applicant has told this Court that, having had a transcript of the summing up, he has identified a misdirection. But he has not disclosed to the Court what that misdirection is; nor why, if there is a perceived misdirection in the summing up, he is not able to identify in the transcripts of proceedings what part of the evidence would be relevant to a determination whether or not there had indeed been a misdirection. The Court is in ignorance as to why the applicant wants transcripts of the whole of the proceedings; and in ignorance as to why the applicant the applicant cannot tell the Court what it needs to know in order to exercise its discretionary power under rule 33A(5).

- 8 In those circumstances, I am not persuaded that this is a case in which transcripts at public expense of the whole trial should be ordered: nor am I persuaded that, having abandoned his former notice of appeal, the applicant should have leave to issue a further notice of appeal against conviction at this stage. Accordingly, in relation to the appeal against conviction, I would dismiss the application for the provision of transcripts at public expense and I would refuse permission to issue the further notice of appeal dated February 2015.
- 9 That leaves the appeal against sentence. The position, as it seems to me, is that – for so long as the conviction for murder stands - the appeal against sentence is not competent. The reason for that conclusion is that section 7(c) of the Court of Appeal Law (2011 Revision) provides that this Court has jurisdiction to hear and determine appeals from the Grand Court by a convicted person:
- “with the leave of the Court against the sentence passed on his conviction unless the sentence is one fixed by law”.
- In the present case, the sentence of life imprisonment is a sentence passed on the applicant’s conviction for murder which is fixed by law. It seems to me, therefore, that as matters stand at the moment, an appeal against sentence in this case – unless ancillary to an appeal against conviction - is not permitted under the law.
- 10 The Court was told by the Director of Public Prosecutions, who has assisted the Court by attending this hearing in person, that it is expected that the law relating to sentences following conviction for murder may be changed; and that, if the law is changed as expected, then there will be a tariff system in place which is likely to apply to those already serving life sentences as a result of convictions prior to the enactment of that law. If that is what transpires, then the applicant may be expected to get the benefit of that change in the law; but he cannot, as it seems to me, seek the assistance of this Court if there is no appeal against conviction.
- 11 Accordingly, for the reasons which I have given, the appeal against sentence as the law now stands must fail.
- 12 I can see no purpose in adjourning the appeal against sentence - as the Court was invited to do both by the Crown and by the applicant. If the law is changed, there will be no need for an appeal against sentence; because the law as changed may be expected to provide for what is to happen in the case of a person serving a life

sentence in respect of a past conviction. If the law is not changed, then the appeal against sentence is bound to fail because section 7(c) of the Court of Appeal Law will continue to prevent the Court from entertaining an appeal against sentence. For those reasons I see no purpose in adjourning the application for leave to appeal against sentence. I would dismiss that application also.

Elliott Mottley, Justice of Appeal:

13 I agree.

Sir George Newman, Justice of Appeal:

14 I agree, also.