

(1)



Dated: 18/5/2021


No. 53

Application for Leave to Apply for Judicial Review (0.53, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: **89** OF 2021

BETWEEN: **Mr. DENCLE VIC BARNES JR** PLAINTIFF
AND: **DIRECTOR OF PUBLIC PROSECUTIONS** RESPONDENT

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	Male person, Mr. DENCLE VIC BARNES JR, HMP Northward
Judgment, order, decision or other proceeding in respect of which relief is sought	Grand Court IND No. 17/2021
Relief Sought:	
Application of certiorari: to quash all charges listed below	
<ol style="list-style-type: none"> 1) ILLICIT TRAFFICKING: Contrary to section 19(2) (a) of the Misuse of Drugs Law (2017 Revision) 2) Possession of an unlicensed firearms, contrary to sections 15(1) and 15 (5) of firearms Act (2008 revision). 3) Possession of an unlicensed firearms, contrary to sections 15(1) and 15 (5) of firearms Act (2008 revision). 4) Possession of an unlicensed firearms (Ammunition), contrary to sections 15(1) and 15 (5) of firearms Act (2008 revision). 	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Male person, Mr. DENCLE VIC BARNES JR, HMCIP Northward
Signed: 	Dated: 20/5/21

GROUNDS ON WHICH RELIEF IS SOUGHT

Application for *judicial Review*:

- *Irrationality - Wednesbury unreasonable,*
- *Procedural Impropriety, and*
- *Illegality*

Leave to appeal decision to prosecute;

1. Decision to prosecute is *Wednesbury unreasonable*
2. Decision to prosecute is unlawful as accused has not been interviewed under "caution"
3. Decision to prosecute is a violation of Art 6 ECHR and the Government has breached or threatened my rights and freedoms under the Bill of Rights,
 - The passage of time has passed pursuant to section 7 judiciary law
 - The passage of time has prejudice the applicant
 - The passage of time has is held to be oppressive to the applicant

Authority cited:

- *Buckeridge v. Mason and Attorney General* [2010 (2) CILR 70
- *R v. EBANKS, EX P. HENDERSON* 2009 CILR 48

I remind all party:

The issue as express above and within the queen bench book 2017 addition:

- There are strict time limits that apply to every claim. These will arise, principally, under the Limitation Act 1980 or the Human Rights Act 1996, which lay down time limits within which the proceedings must be brought. There are circumstances in which the court may disapply the time limits, but such disapplication is to be regarded as exceptional and the burden is on the claimant to persuade the court that it is right to do so. In all other cases, once the relevant time limit has expired, it is rarely possible to start a claim.

The dicta as expressed within the *Wednesbury* principle:

- In the seminal United Kingdom Court of Appeal case of *Associated Provincial Picture Houses Ltd v Wednesbury Corp*, where Lord Greene MR termed an irrational decision to be one that is 'so unreasonable that no reasonable authority could ever have come to it'.

BREACH OF SUBORDINATE LEGISLATION

Abuse of Process

s. 23 of the Cayman Islands evidence law

↓

Mala Fides,

s. 5 (3), (5) and (6) Cayman Island Constitution
s. 7 (4) Cayman Islands Constitution

- 1) First, an underline principle of this application is that a man should never be subject to prosecution that is under or made subject of:
 - **Political instruction**
 - *Persuasion, or*
 - *Pressure*
 - *Mala Fides*
- 2) Rather than proper prosecutorial consideration, and:

Second, I humbly submit, it would be appropriate to grant the applicant leave to apply for orders of certiorari quashing the conviction and sentence, even though the case had already been place before the Grand Court. If the issue of the conviction had been unlawful, the fact that the conviction and sentence had been executed would be irrelevant to the availability of other remedies, e.g. such as a declaration of the decision (*ruling/judgment*) being incompatibility with ART 6 ECHR.

Submission: As the applicant has previously made similar application(s) before the court on diverse days to which there had been no answer, it spoke to further injustice being levied against the applicant.

Proposition: the applicant proposes; *the time limit begins to run from the date the decision to be challenged was made (not the date when the claimant was informed about the decision).*¹ Which speaks to the filing of this application challenging the parties above by way of judicial review.

The Cayman Islands law report (2010) volume 2 part 1;

It was held in the case of 'Buckridge' Grand Court Civil Division Smellie, C.J; I point out immediately at the start of this hearing, the complete answer to this complaint is to be found in the following dicta from the Sharma (1) case, in which the Privy Council affirmed, among others, the following principles ([2007] 1 W.L.R. 780, at para. 14(5)):

"It is well established that a decision to prosecute is ordinarily susceptible to Judicial Review, and surrender of what should be an independent prosecutorial discretion to political instruction (or, the Board would add, persuasion or pressure) is a recognized ground of review: Matalulu, [[2003] 4 LRC 712,] 735-736".

Antoine v Sharma [2006] UKPC 57

Issue/Summary: *The Privy Council held that the power to stay criminal proceedings for abuse of process was wide enough to embrace an application challenging a decision to prosecute on the ground that it was arrived at under political pressure or influence or was motivated politically rather than by an objective review of proper prosecutorial considerations.*

Argument succeeds: Yes

Citing case law; R v. EBANKS, EX P. HENDERSON [2009 CILR 48]

Its was held granting leave to apply; para (3)

It was appropriate to grant the applicant leave to apply for orders of certiorari quashing the search warrants, even though the warrants had already been executed. If the issue of the warrants had been unlawful, the fact that they had been executed would be irrelevant to the availability of other remedies, e.g. the delivery of items seized and an award of damages (paras. 16—17).

16) *My concern took a different turn, it was this: the applicant was seeking certiorari to quash warrants that had already been executed. If the warrants were spent, what would there be to quash or set aside? I am aware that the court is reluctant to grant pointless relief. Similar concerns arose in the case of Beecham Group Plc v. Gist-brocades NV (2). The court there had to consider whether the defendants were correct in declining to grant the applications licence, the term not having expired. They found that the defendant had erred in not granting the licence and made a declaratory order to that effect. However, by the time the matter was heard the licence had expired. The court held "... certiorari would have been brutum fulmen... the passage of time has by now made any prerogative remedy of no practical use..." ([1986] 1 W.L.R. at 66, per Lord Diplock). (See also R. v. Aston Univ. senate, ex p. Roffey (5).)*