

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 308

AN APPLICATION FOR EXTENSION OF TIME TO FILE
NOTICE OF APPEAL

APPLICANT - DOMINGA CATMELA RAX FERNANDEZ AKA
YANITA ESCOBAR

Hearings

2009

23rd April

28th April

7th May

21st May

22nd May

Mr. Cecil Ramirez for the Crown
Mr. Leo Bradley for the Applicant

LEGALL J.

JUDGMENT

The applicant was indicted for murder. She was convicted of manslaughter. The learned judge gave her 15 years imprisonment. She now applies for an extension of time to appeal. There are three affidavits by the applicant in support of her application. Two of the affidavits give the date of

conviction as 6th August 2008; and the other one gives the conviction date as 22nd August 2008.

From reading the affidavits, it appears that a notice of appeal was previously filed, but it was out of time. Hence the present application for an extension of time to file another notice of appeal. Mr. Ramirez for the Crown had no objection to the application.

Where a person is convicted on indictment in the Supreme Court and he desires to appeal, he shall give notice of appeal within 21 days of the date of conviction: section 27(1) of the Court of Appeal Act Chapter 90 (The Act). This application, dated 26th March 2009, is therefore about seven months late. The purpose of section 27(1) is to provide a time table for the conduct of litigation in court. Lord Guest in the celebrated case of *Ratnam v. Cumarasamy 1964 3 A.E.R. 933 said:*

‘The rules of court must, prima facie be obeyed, and in order to justify a court in extending the time during which some step requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.’

Ratnam was followed by the Court of Appeal in *Martin v. Chow 1985 34 W.I.R. 379*. The court held:

“Courts are today loath to drive litigants from the judgment seat without affording them, within reason, an opportunity to fully ventilate their cause; but, at the same time, the courts must, of necessity, seek to balance this against their paramount duty to insist upon the observance of the rules, or otherwise there would be “no time table for the conduct of litigation”.

In *Moses v. Kumar 1969 14 W.I.R. 328* the court emphasized the need for exceptional circumstances before it may grant an extension of time. The Court held:

‘This court has on more than one occasion pointed out that under this rule there is not an unfettered discretion to grant extension of time. It is necessary for an applicant who seeks the indulgence of the court to show such circumstances as will satisfy the court that his is an exceptional case and when those circumstances are shown then the court may, and no doubt in the normal course will, grant an extension of time.’

Section 28(2) of the Act states:

(2) Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given or filed may be extended at any time by leave of the Supreme Court, or if such extension is refused by leave of the Court.

The applicant has a duty to prove to the court that there are valid reasons for granting the application for an extension of time to appeal. The circumstances that caused the delay are important. But a requirement of major significance is that the affidavits must show that the appeal has some merit or prospect of success.

A perusal of the affidavits of the applicant shows that the reasons for not complying with section 27(1) of the Act, were ignorance of the applicant of the time within which to appeal; and mistakes made by the prison officials who had prepared the previous notice of appeal, because, according to the applicant, she could not read nor write, and therefore could not correct the mistakes.

Ignorance of the legal rules relating to the time limit to appeal does not, in my view, constitute an exceptional circumstance for granting an extension under section 28 (2) of the Act. The intention of this section is that applications for extension of time for filing notices of appeal are not granted as a matter of course. To allow ignorance of the section to be a proper ground for granting an extension of time to appeal, would be contrary

to achieving the due dispatch of litigation – a major objective of the court system.

The other reason for the delay, according to the applicant, was her inability to read and write which resulted in her not correcting mistakes allegedly made by prison officials in preparing the previous notice of appeal. This excuse cannot be accepted for the same reasons mentioned above.

But on perusal of the trial record in this matter, it appears that the jury had returned verdicts of not guilty of murder and not guilty of manslaughter. According to the record of the trial, the following is what occurred –

“Jury returned at 4:23 p.m.

VERDICT

Q. Mr. Foreman, Members of the Jury, have you agreed upon a verdict to the charge of murder?

A. Yes.

Q. Is the verdict unanimous?

A. Yes.

Q. Is the verdict all twelve of you?

A. Yes.

Q. How say you, is the prisoner guilty or not guilty?

A. Not Guilty.

Q. Mr. Foreman, Members of the Jury, you said that the prisoner is guilty, so say you all?

A. Yes.

On the alternative manslaughter.

Q. Mr. Foreman, Members of the Jury, have you agreed upon a verdict of manslaughter?

A. Yes.

Q. Is your verdict unanimous?

A. Yes.

Q. Is the verdict all 12 of you?

A. Yes.

Q. How say you, is the prisoner guilty or not guilty?

A. Not Guilty.

Q. So say all of you, not guilty?

A. Yes.”

THE COURT: All 12 of you are saying not guilty of murder, not guilty of manslaughter?

A. Yes.

MS. BRANKER-TAITT: My Lord, they are saying no.

MR. FOREMAN: They are saying not guilty of murder, not guilty of manslaughter, but guilty of manslaughter by provocation.

THE COURT: You’re saying not guilty of manslaughter, now you’re saying guilty of manslaughter due to provocation.

MR. FOREMAN: They were saying the fourth option.

MS. BRANKER-TAITT: My Lord, when Your Lordship addressed at the end of the summation, Your Lordship told the jury manslaughter because of, manslaughter because of severe, they chosen manslaughter that they wish to convict of apparently.

THE COURT: I am aware of that. So you're saying that you've found her not guilty of murder, and not guilty of manslaughter in the alternative, but you've found her guilty of manslaughter by provocation?

MR. FOREMAN: Yes

THE COURT: Unanimously?

MR. FOREMAN: 9 to 3.

THE COURT: Then we cannot accept that verdict. It has to be 10 to 2 or 11 to 1.”

The learned judge then proceeded to give the jury further directions and the jury retired again to reconsider manslaughter. According to the record of the trial, this is what occurred –

“Jury returned at 5:15 p.m. from reconsideration of verdict of manslaughter.

Q. Mr. Foreman, Members of the Jury, have you agreed upon a verdict to the charge of manslaughter?

A. Yes.

Q. Is the verdict unanimous?

A. No.

Q. Do you agree to a verdict of 11 to 1?

A. Yes.

Q. How say you, is the prisoner guilty or not guilty?

A. Guilty.”

The accused was later sentenced to 15 years imprisonment.

When the jury gave the verdicts of not guilty of murder and manslaughter, as we saw above, that perhaps should have been the end of the case. It is, however, clear that a judge may, in his discretion, refuse to accept a verdict of the jury, if the verdict is meaningless, inconsistent or ambiguous: *R v. Crisp 1912 JP 304*. But if the verdict is plain and unambiguous, the jury should not be asked further questions about it: *R v Larkin 1943 KB 174*. But there does not seem to me to be any ambiguity, inconsistency or meaninglessness about the not guilty verdicts.

The views of *Mottley P in Burton Caliz v. the Queen CA No. 5 of 2007* are relevant:

It is the responsibility of the judge to ensure therefore that the correct procedure is adopted when the verdict of the jury is being taken. This is an important part of the criminal process and no uncertainty should exist as to the true verdict of the jury.”

There are, on the other hand, old authorities which suggest that if a verdict is entered not in accordance with the intention of the jurors, the mistake may be corrected and a verdict entered in accordance with their intention: R v. Parkin 1824, 1Mood CC 45, R v. Vodden 1853 Dears CC 229. But what was the intention of the jurors? Did they intend a verdict of not guilty of manslaughter?

I think the applicant may have an arguable case, with some prospect of success, that the verdicts of not guilty were plain and unambiguous and therefore her conviction and sentence ought to be quashed. I therefore grant to the applicant an extension of time up to and including the 31st May 2009 to file notice of appeal and grounds of appeal.

OSWELL LEGALL
JUDGE
22nd May, 2009

