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COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCrApp & CAIS No. 153 of 2023

Franklyn Edgecombe

Applicant

v

The Director of Public Prosecutions

Respondent

(Stay)

Before: The Hon Sir Michael Barnett, President, Kt

Ms Marianne Cadet, Counsel for Applicant
Mr Timothy Bailey, with Ms Tamika Roberts,
Counsel for Respondent

25 August 2023

1 The oral judgment of the court was delivered by
2 Sir Michael Barnett, P, Kt:

3 I have considered this matter briefly. The
4 application before me as a single judge is an application to
5 stay proceedings that are presently ongoing in the Supreme
6 Court pending the hearing of a substantive application to the
7 Court of Appeal for constitutional relief.

8 In the substantive application the applicant,
9 Mr. Franklyn Edgecombe, claims that his fundamental right to a
10 fair trial has been breached by certain decisions of the judge
11 made in the criminal proceedings below. Those proceedings
12 have been ongoing since June of this year and will resume on
13 29th August, 2023. The question is whether or not this is an
14 appropriate case in which we should grant a stay of those
15 proceedings pending the hearing of the substantive
16 application.

17 It is important to note that the Amended Notice of
18 Motion does not actually seek to appeal a decision of the
19 trial judge on an application for constitutional relief made
20 in the court below. Indeed, it has not been adduced to us a
21 decision of the judge on the application for constitutional
22 relief which was apparently made before him in July of this
23 year. The judgment that has been produced to the court is a
24 judgment in respect of his decision to refuse to admit certain
25 evidence which forms the basis of the application that he is

1 being denied a fair trial.

2 I am satisfied that this is not an appropriate case
3 to grant a stay of the criminal proceedings. The interests of
4 justice will not be served by staying proceedings that have
5 been ongoing since June of this year. The interests of
6 justice are best served by having the trial below completed;
7 and in the event the applicant perceives that he has not
8 received a fair trial and that his rights and freedoms have
9 been breached, that could be the basis of an appeal in the
10 event the criminal proceedings result in his conviction.

11 If the proceedings do not result in his conviction,
12 the issue is academic. If he is convicted, then he has the
13 ability to seek to set aside that conviction on the basis that
14 he did not have a fair trial; and the reasons which he is
15 advancing now as a breach of his constitutional rights are
16 reasons that he can advance in the event of an appeal.

17 The appellant alleges that to make this decision
18 deprives him of a right to a fair trial. That is not so.
19 Article 28 envisages that there may be other means available
20 to an applicant where his fundamental rights and freedoms have
21 been breached otherwise than an application for constitutional
22 relief under Article 28. In my view, this is one of those
23 circumstances in which that argument may very well be made.
24 But we do not have the decision of the judge in respect of the
25 constitutional motion and I am therefore not treating it as an

1 appeal of the decision of the judge to refuse constitutional
2 relief.

3 In my view, the basis of my refusal for the stay is
4 that it is not in the interests of justice to stay the
5 criminal proceedings at this stage and that the criminal
6 proceedings should continue to completion and that
7 Mr. Edgecombe will be able to exercise all rights available to
8 him at the completion of those criminal proceedings.

9 In the circumstances, the application for a stay of
10 the proceedings is refused.

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13 Dated this 25th day of August, 2023

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SIR MICHAEL BARNETT, P, Kt

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