

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE COURT OF APPEAL**  
**SCCrApp. No. 56 of 2024**

**B E T W E E N**

**DENARD DAVIS**

**Appellant**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**BEFORE:**           **The Honourable Sir. Michael Barnett, P**  
                          **The Honourable Sir Ian Winder, CJ**  
                          **The Honourable Mr. Justice Jon Isaacs, JA**

**APPEARANCES:**   **Mr. Stanley Rolle, with Ms. Danielle Kemp, Counsel for the Appellant**  
                          **Mr. Kenny Thompson with Ms. Shaneka Carey, Counsel for the Respondents**

**DATE:**             **4 June 2024; 27 June 2024**

\*\*\*\*\*

*Extension of time to appeal- Constitutional relief- Fair trial- Incompetent representation- --  
Reopening appeal- Admissibility of statement*

In September 2016, Davis was tried and convicted of murder and attempted murder, receiving sentences of 35 and 18 years respectively. He appealed the conviction and sentence, which was dismissed in August 2018. His subsequent application for leave to appeal to the Privy Council was refused in November 2022. In February 2024, Davis applied for constitutional relief, claiming his right to a fair trial was breached due to incompetent representation by his privately retained counsel. His application for constitutional redress was made over five years after his initial appeal was dismissed. The Court, after hearing the parties, reserved its decision.

**Held:** The appeal is dismissed.

The appeal is dismissed due to the absence of exceptional circumstances warranting the reopening of an already decided appeal. Denard Davis claimed that he did not receive a fair trial under Article 20 due to the incompetence of his privately retained counsel. However, the court found that Davis could have raised the issue of incompetence of counsel during his initial appeal in 2018. The Court emphasized the importance of finality in criminal litigation and the principle that appellants must bring their entire case when they initially appeal. Additionally, the Court found no evidence of a miscarriage of justice, as the admissibility of Davis's statement was challenged at trial, though not on the grounds he now claimed, and Davis never suggested oppressive conduct by the police during the trial and chose to remain silent when given the opportunity to testify. There is nothing to suggest that his lawyer was not acting in accordance with Davis' instruction.

*Joel Bullard v R* SCCrApp No. 123 of 2021 applied

*Ormand Leon v R* SCCrApp. No. 51 of 2016 applied

---

## JUDGEMENT

---

1. This is an application by Denard Davis (“Davis”) for an extension of time within which to appeal a decision by Hilton J refusing his application for constitutional relief.
2. The application for constitutional redress was made by a letter dated 5<sup>th</sup> February, 2024 from Davis to the Supreme Court. It claimed that his Article 20 right to a fair trial was infringed by the incompetent representation of his attorney at his trial and at his appeal to the Court of Appeal. Davis also claimed redress for breach of his Article 17 right but that claim was abandoned at the hearing before Hilton J. After a hearing before Hilton J on 21<sup>st</sup> February, 2024, at which Davis appeared on his own behalf, Hilton J dismissed the application with reasons to follow. Reasons were given in a written ruling delivered on 27<sup>th</sup> March 2024.
3. Davis wishes to appeal that decision refusing constitutional relief. His appeal was filed by letter dated 1<sup>st</sup> March, 2024 and received by this Court on 15<sup>th</sup> March, 2024. Although the appeal was not in Form 1, it set out in detail the basis of the appeal and this was so notwithstanding that the written reasons had not yet been published.
4. Whether this is to be criminal or civil appeal, the letter of the 1<sup>st</sup> March, 2024 received on the 15<sup>th</sup> March, 2024 is within the time period prescribed for filing appeals.
5. Davis, out of abundant caution, filed an application for an extension of time within which to appeal. It was in a Criminal Form 2 dated 8<sup>th</sup> May, 2024 and received on the 14<sup>th</sup> May, 2024.

6. In the circumstances we considered the matter on its merits.
7. At this hearing Davis was ably assisted by counsel from the Office of the Public Defender.
8. For the reasons set out in this judgment we dismiss the appeal.

### **Background Facts**

9. On 6<sup>th</sup> September, 2016 in the Supreme Court, Davis stood trial, with two co accused with whom it was alleged that they were concerned together, on the charges of murder and attempted murder. He was charged with the murder of Sheria Curry and the attempted murder of Shanko Smith. The incident occurred on the 3<sup>rd</sup>, November, 2010. To those charges he pled not guilty. At the trial he was represented by a senior counsel.
10. After a trial, he was found guilty of both charges and sentenced to 35 years on the murder and 18 years on the attempted murder. The sentences were to run concurrently.
11. Davis appealed that conviction and sentence to the Court of Appeal. At the hearing of the appeal he was represented by the same senior counsel who represented him at trial in the Supreme Court.
12. His grounds of appeal were:
  - The judge erred in law when he ruled that the appellant had a case to answer.**
  - The trial judge erred in law when he failed to consider that murder in The Bahamas is an offence which requires specific intent.**
  - The verdict was unreasonable having regard to the evidence and unsafe in all the circumstances of the case.**
13. His appeal was dismissed on the 7<sup>th</sup> August, 2018 and the conviction and sentence were affirmed. Davis then sought leave to appeal to the Privy Council. On 9<sup>th</sup> November, 2022, the Privy Council refused leave on the on the basis that there was no risk that a miscarriage of justice had occurred in his case.
14. As I said, by letter dated 8<sup>th</sup> February, 2024 (more than 5 years after the dismissal of his appeal) Davis applied to the Supreme Court under Article 28 seeking relief for alleged breaches of his constitutional rights under Article 17 and Article 20 of the Constitution. As

the claim for relief based on a breach of Article 17 was abandoned, the court was only required to deal with the alleged breach under Article 20.

15. Article 20 provides that

**“If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law”**

16. It also provides that:

**(2) Every person who is charged with a criminal offence —**

**(d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or by a legal representative at the public expense where so provided by or under a law in force in The Bahamas;**

17. Davis’ claim is that he did not receive a fair trial under Article 20. He said that the incompetence of his counsel (whom he and his family privately retained and not one provided by the Crown) produced an unfair trial and that this issue raises a constitutional point on the fairness of the trial. The act and omission of counsel he claimed had an impact on the fairness of the trial. In particular, Davis said that his counsel was instructed to challenge the statement and record of interview because he was beaten by the police to give the statement and the record of the interview. The doctor’s report spoke to bruises and pain and medication was prescribed. Davis’ attorney it is alleged did not carry out his instruction and challenge the admissibility of the statement and record of interview on those grounds. That omission, it is alleged, constituted a miscarriage of justice. It is asserted that the failure deprived of Davis of an acquittal as there was no other evidence establishing that Davis was the driver of the vehicle from which the shots killing Curry and injuring Smith were made.

18. Article 28 of the Constitution provides:

**28. (1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.**

**(2) The Supreme Court shall have original jurisdiction —**

**(a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and**

**(b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article,**

**and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:**

**Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.**

19. Counsel for Davis readily concedes that Davis could have raised the issue of incompetence of counsel when he appealed his conviction and sentence to the court in 2018. The fact that he chose the same ‘incompetent’ counsel to represent him at the appeal as he retained at the trial, is not a basis for not pursuing that ground if it had merit. If Davis was satisfied that the representation was inadequate as to deprive him of a fair trial and make his conviction unsafe, he could have retained other counsel to represent him in the appeal. Indeed, he has done in relation to this appeal with respect to his application for constitutional relief.
20. Davis did not raise this issue of inadequate representation when he made his appeal in 2018. He could have done so. That was a means available to him. In the circumstances the proviso to Article 28 applies and Hilton J was entitled to refuse the application on that ground.
21. Even if we were to treat this application as an application to reopen the already decided appeal, that application must fail as well. There are no exceptional circumstances which warrant the reopening of the appeal. I repeat what this court said in **Ormand Leon v R** SCCrApp. No. 51 of 2016 on an application to reopen an already decided appeal. In a judgment dated 25<sup>th</sup> May, 2022 at paragraph 17 this court said:

**“There must be finality in criminal litigation. Appellants must bring their entire case when they appeal. They cannot advance some grounds available to them and after their appeal on those grounds is rejected, years later, come back to the court saying I want to reopen my appeal because I have further grounds which I could have raised at the appeal but did not do so. Once an appeal is heard and determined, there must be closure.”**
22. This was reaffirmed in **Joel Bullard v R** SCCrApp No. 123 of 2021 where this court cited with approval the views of the English Court of Appeal in **R v Hughes** on an application

to reopen an appeal. That court said: **‘Leave is likely to be refused in any case in which what he now seeks to argue could and should have been argued then’.**

23. In dismissing this appeal, we have no doubt that no miscarriage of justice has occurred. At the trial the admissibility of the statement and record of interview were challenged, but they were not challenged on the ground that they were obtained by oppression.

24. The argument of Davis was put succinctly by his counsel. He said:

**“May it please you, my Lord. My submission is based on Section 20 of the Evidence Act; in that, my Lord, when one examines the statement allegedly given by my client-- and this would be, my Lord, on the 8th of November-- the import of the statement, my Lord, in my submission, is wholly exculpatory, and it does not amount to a confession as defined by Section 20(5) of the Act.**

**The statement implicates the other two co-accused. And based on cases such as Rhodes, Goonewardene (phonetic), so on my Lord, this would not be evidence against the co-accused. So my Lord, looking at the statement itself, it is the submission that it ought not to be admitted. And separate and apart from Section 20, my Lord, I would pray Section 178(1) of the Evidence Act also, where your Lordship could exclude this evidence on the basis that it would be unfair evidence. The prejudicial effect in relation to the two co-accused is extremely devastating, my Lord, when one balances it against any probative value. And in the circumstances, my Lord-- because my submission is very brief-- it ought not to be admitted, in that it is not even the sort of statement that you could even edit. It could not be sanitized in any way, and it only prejudices the other two co-accused, my Lord.**

**In short, my Lord, those are my submissions.”**

25. There was nothing to suggest that Davis had any complaint about the admissibility on the basis that it was obtained by oppression.

26. Moreover, after the statement and record of interview were admitted and the prosecution closed its case, Davis elected to remain silent and did not give any evidence about any oppressive conduct by the police. He never suggested that the content of the statement and record of interview were false and obtained by oppression. He never asserted that he was not the driver of the vehicle from which the shots were fired. Indeed, that would have been inconsistent with his submission that the statement was exculpatory and that his mere presence in the vehicle was insufficient to prove that he was guilty of the offence. There is nothing to suggest that his lawyer was not acting in accordance with Davis’ instruction.

27. Inadequate representation was never suggested at any time before the application by letter earlier this year, more than 5 years after his appeal was dismissed by this court.
28. For these reasons, we dismiss this appeal against the refusal of redress under Article 28 of the Constitution.

---

**The Honourable Sir Michael Barnett, P**

---

**The Honourable Sir Ian Winder, CJ**

---

**The Honourable Mr. Justice Isaacs, JA**