

**COMMONWEALTH OF THE BAHAMAS**

**IN THE COURT OF APPEAL**

**MCCrApp. No. 173 of 2023**

**B E T W E E N**

**GODFREY DEON MINNIS**

**Intended Appellant**

**AND**

**THE COMMISSIONER OF POLICE**

**Intended Respondent**

**BEFORE:**           **The Honourable Madam Justice Crane-Scott, JA**  
**The Honourable Mr. Justice Smith, JA**  
**The Honourable Mr. Justice Turner, JA**

**APPEARANCES:**   **Intended Appellant *pro se***  
**Ms. Darnelle Dorsett for the Intended Respondent**

**DATES:**           **6 December 2023; 1 February 2024; 26 March 2024; 17 May 2024**

\*\*\*\*\*

*Criminal Appeal – Intended appeal against conviction and sentence – Extension of time application – exercise of discretion – length of delay – reasons for delay – Prospects of success of the intended appeal – Whether conviction and sentence unsafe or unsatisfactory – Whether it is in the interests of justice that the time limit should be extended – Section 56 Magistrate’s Act, Ch. 54 – Section 234(1)(a) and 235 Criminal Procedure Code Act, Ch. 91; Rules 9, 36 & 38 Court of Appeal Rules, 2005*

The Intended Appellant was convicted and sentenced in the Magistrate’s court on 16 June 2023, following a trial. He was then remanded to the Department of Corrections to serve his sentence in respect of two offences under the Firearms Act. Approximately 87 days after the expiry of the statutory deadline for appeals, the Intended Appellant approached the Court of Appeal by letter seeking an extension of time to appeal his conviction and sentence.

The matter came on before the Court on a number of occasions during which the Intended Appellant (who appeared *pro se*) was informed of the relevant procedures and directed to obtain and file the necessary forms seeking an extension of time to appeal.

Thereafter, the Intended Appellant filed his Criminal Appeal Form 2 and the extension of time application was then scheduled for substantive hearing before the Court.

After hearing submissions from the Intended Appellant and on behalf of the Intended Respondent, the Court dismissed the application and affirmed his convictions together with the sentences imposed by the Magistrate. The Court undertook to provide detailed written reasons for its decision. These are set out below.

**Held:** Extension of time application refused. Convictions and sentences affirmed.

After balancing the relevant factors and satisfying ourselves that there were no additional matters to be taken into account, we dismissed the application to extend time and affirmed the Intended Appellant's convictions and sentences. Although the delay in this case was inordinately lengthy and the 231-day delay could be excused (given the explanation proffered by the Intended Appellant) it was nonetheless our considered view that the intended appeal had no prospects of success. Furthermore, no prejudice would arise if the application was dismissed.

In the end, we were satisfied that in this case it was not in the interests of justice to extend the time-limit for appeal as the Intended Appellant was, quite simply, pursuing a hopeless appeal.

*Alexander Williams v. The Queen SCCrApp No. 155 of 2016*; mentioned  
*Attorney-General v. Omar Chisholm MCCrApp. No. 303 of 2014*; mentioned  
*Rodriguez Jean Pierre v. The King [2023] UKPC 15*; applied.

---

## REASONS FOR DECISION

---

**Delivered by The Honourable Madam Justice Crane-Scott, JA:**

### **Introduction**

1. On or about 16 June 2023, following a trial before Acting Stipendiary and Circuit Magistrate, Mr. Lennox Coleby Snr, the Applicant (“the Intended Appellant”) was convicted of possession of: (i) a .9 mm pistol contrary to section 5(B) of the Firearms Act (*Count 1*); and (ii) four live rounds of .9mm ammunition contrary to section 9(2)(A) of the Firearms Act (*Count 2*) for which he did not hold the necessary licence or certificate required by the Firearms Act, Ch. 213. Following his conviction, he was sentenced on 16 June 2023 to imprisonment for 3 years on Count 1 and 2 years on Count 2, both sentences running concurrently.
2. Despite being advised by the Magistrate of his right of appeal, the Intended Appellant missed the 7-day statutory deadline for appeals. He initially approached the Court of Appeal by letter filed on 18 September 2023 signaling his wish to appeal against his convictions and sentences. Thereafter the matter came on before the Court on a number of occasions during which the Intended Appellant (who appeared *pro se*) was informed of the relevant procedures and forms; and directed to file the necessary application seeking an extension of time to appeal.
3. On or about 9 February 2024, the Intended Appellant filed his Criminal Appeal Form 2 and the extension of time (EOT) application was scheduled for substantive hearing before us on 26 March 2024.
4. After hearing submissions from the Intended Appellant and on behalf of the Intended Respondent, we dismissed the EOT application and affirmed his convictions together with the sentences imposed by the Magistrate.
5. We had promised then to provide written reasons for our decision. This we now do.

### **Right of appeal to Court of Appeal/Application to extend time to appeal Magistrate’s decision**

6. Where (as here) a case has been heard by a stipendiary and circuit magistrate and the case relates, *inter alia*, to an offence for which the offender is liable to imprisonment for a period of not less than one year, the appeal lies to the Court of Appeal.<sup>1</sup>

---

<sup>1</sup> Section 234(1)(a) Criminal Procedure Code Act, Ch. 91.

7. The time-limit for appealing the magistrate’s decision is located in section 56 of the Magistrate’s Act, Ch. 54 which provides:

**"56. The appeal shall have the effect of suspending the execution of the decision appealed from until the case shall have been determined, and shall be on motion, or, where the case has been heard in New Providence, by special case as hereinafter provided.**

**The appellant, within seven days after the day on which the magistrate has given his decision, shall serve a notice in writing, signed by the appellant or his counsel or attorney, on the other party and on the magistrate of his intention to appeal and of the general grounds of his appeal:**

**Provided that any person aggrieved by the decision of a magistrate may, upon notice to the other party, apply to the court to which an appeal from such decision lies, for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the court upon the hearing of such application may extend the time prescribed by this section as it deems fit."**<sup>2</sup> [Emphasis added]

8. The procedure (including the prescribed forms) for commencing an appeal in the Court of Appeal or for seeking an extension of time within which to appeal against conviction or sentence in a Magistrate’s Court are set out in rules 36 through 60<sup>3</sup> of Part III of the Court of Appeal Rules, 2005 (“the CoA Rules”).

9. The relevant portions of rule 36 of the CoA Rules provide as follows:

**“Institution of criminal appeals**

**36. (1) A person desiring to appeal to the court against conviction or sentence shall commence his appeal by submitting to the Registrar –**

- (a) A notice of appeal;**
- (b) A notice of application for leave to appeal; or**
- (c) A notice of application for extension of time within which such notice shall be given,**

**as the case may be, in the form of such notices set forth in Forms 1 or 2 in Appendix B, and in the notice or notices so sent, shall**

---

<sup>2</sup> The 7-day time-limit for magisterial appeals is also found in section 235(2) of the Criminal Procedure Code Act.

<sup>3</sup> In practice as no form is prescribed under rule 60 for applying for an extension of time for an appeal from a Magistrate’s Court, the Criminal Form 2 prescribed in rule 36 is utilized.

**answer the question and comply with the requirement set forth thereon, subject to the provisions of rule 38...** [Emphasis added]

10. By virtue of rule 38(1), non-compliance on the part of the appellant in any criminal cause or matter with the CoA Rules or with any rule of practice for the time being in force may be waived and shall not prevent the further prosecution of the appeal if the Court considers that such non-compliance was not willful, and that it is in the interest of justice that non-compliance be waived.
11. In addition to the power to extend time for service of the notice of intention to appeal specified in the proviso to section 56 of the Magistrate Court Act, the Court of Appeal also has power, *inter alia*, to grant an extension of time by virtue of rule 9 of the CoA Rules. The relevant portions of rule 9 provide:

**“Extension of time**

**9. (1) The Court may, on such terms as it thinks just, by order –**

**(a) extend the period prescribed by these Rules for the doing of anything to which these Rules apply;**

**(b) ....; or**

**(c) direct a departure from these Rules in any other way where this is required in the interests of justice.**

**(2) The power of the court, under the provisions of paragraph (1), to extend any period so prescribed or specified, is exercisable notwithstanding the expiration of the period so prescribed or specified.”** [Emphasis added]

12. Recent guidance handed down<sup>4</sup> by the Privy Council in **Rodriguez Jean Pierre v. The King** [2023] UKPC 15 cautions that the power to extend time must be exercised flexibly and that the critical question to be addressed when exercising our wide and unfettered discretion is “*whether it is in the interests of justice that the time limit should be extended.*”<sup>5</sup>

---

<sup>4</sup> The Privy Council’s decision was pronounced on 11 May 2023.

<sup>5</sup> See paragraph [26] of the Board’s decision in Rodriguez Jean Pierre.

13. In **Jean Pierre** their Lordships further advised that while the four (4) criteria traditionally considered by this Court<sup>6</sup> on such applications provide, “*a sensible and principled approach to the issue of extending time to appeal in criminal cases*”,<sup>7</sup> they are not the only relevant criteria when considering an extension of time.<sup>8</sup>
14. In keeping with the Board’ guidance in **Jean Pierre**, and in the exercise of our wide discretion to extend time, we considered the Intended Appellant’s EOT application to determine whether the interests of justice required the statutory time limit to be extended to permit the Intended Appellant to prosecute his intended appeal.
15. We approached the application by considering the following factors:
  16. *The length of the delay and the reasons for the delay*: We noted firstly that the delay which transpired in this case was approximately 231 days beyond the expiry of the 7-day statutory deadline which lapsed on 24 June 2023. We agreed with counsel for the Intended Respondent, Ms. Dorsette, that this was an inordinate lapse of time.
  17. Turning next to the reasons for the applicant’s delay in approaching the Court, we observed that like countless other unrepresented convicts who are remanded to the Department of Corrections following conviction and sentence, the Intended Appellant had to depend on the relevant forms to be given to him by the prison authorities. Having not obtained the forms, he approached the Court of Appeal by letter on or about 18 September 2023 signaling his intention to appeal his convictions and sentences.
  18. According to the appellate transcripts, it was only after he appeared before the Court on 6 December 2023 and again on 1 February 2024 that he was able to obtain the relevant Criminal Appeal form. He eventually filed the required Criminal Appeal Form No. 2 on 9 February 2024 which was approximately 231 days after the expiry of the 7-day deadline. In the end, while the delay was clearly inordinate, it was excusable given the fact that the Intended Appellant was on remand at the Department of Corrections. We therefore turned to examine the prospects of success of his intended appeal.
  19. *Prospects of success of the intended appeal*: Based on his Criminal Appeal Form 2, the Intended Appellant identified 4 grounds of appeal – 3 against conviction and 1 against sentence.
20. The thrust of ground 1 was that there was “*no evidence*” capable of linking him to the firearm and in view of this, the magistrate ought to have upheld his no-case submission at the close of

---

<sup>6</sup> The four criteria traditionally considered are: (i) the length of the delay; (ii) the reasons for the delay; (iii) the prospects of success; and (iv) prejudice. See *Alexander Williams v. The Queen*, SCCrApp No. 155 of 2016; and *Omar Chisholm v. CoP*, MCCrApp No. 303 of 2014 at para 12.

<sup>7</sup> See paragraph [28] of the Board’s decision in *Rodriguez Jean Pierre*.

<sup>8</sup> See paragraph [27] *Rodriguez Jean Pierre*.

the prosecution's case. We had no difficulty agreeing with counsel for the Intended Respondent, Ms. Dorsette, that this ground of appeal had absolutely no chance of success on appeal.

21. According to the Magistrate's Notes, Sgt. Percentie testified that he and other officers (including Cpl. Cooper) were dispatched to a shooting incident in the area of Rupert Dean Lane. On their arrival he observed a male suspect who looked in their direction and began running. Police pursued the man and eventually caught up with him. Following his arrest and after being cautioned, the man gave his name as Godfrey Minnis and initially led officers to a vacant lot where a damaged ankle monitoring device belonging to him was discovered.
22. After further questioning, the Intended Appellant subsequently led officers to the area of a house on Rupert Dean Lane where they discovered a .9mm firearm with a magazine containing 9 rounds inside a white Styrofoam covered container found under the front passenger tire of a Pathfinder Jeep parked across the street from a house. Cpl. Cooper also testified at the trial and generally corroborated the evidence given by Sgt. Percentie.
23. In his Ruling on the No-Case Submission the learned Magistrate found as a fact that the police officers had been unaware of the location of the firearm until the Intended Appellant (after being duly cautioned) agreed to show them where he had "*ditched*" the firearm.
24. In all the circumstances, given the testimony of the two police witnesses, Percentie and Cooper, it could not be said that there was "*no evidence*" capable of linking the defendant to the firearm and to the ammunition found within it. In the result, we were satisfied that ground 1 had no prospects of success as following the no-case submission, the learned Magistrate was clearly entitled to find that the prosecution case against the Intended Appellant had been sufficiently made out on the evidence to require him to mount a defense.
25. On intended ground 2, the Intended Appellant suggested that the quality of the alleged oral confession or admission was "*unreliable*" and "*unsupported by other evidence*". Based on the Magistrate's notes, the evidence of the two police witnesses was that after being cautioned and questioned in relation to firearm possession, the Intended Appellant informed them that the firearm was through Rupert Dean Lane. He then directed police to Rupert Dean Lane and told the officers to stop in front of a house where the firearm was recovered in a covered Styrofoam container under a vehicle parked close to his residence.
26. While the Intended Appellant may not have specifically admitted or confessed that he was in possession of a loaded unlicensed firearm, the evidence of the two police witnesses was that it was the Intended Appellant *alone* who (after caution) had led police to the specific location on Rupert Dean Lane where the firearm and ammunition were retrieved.

27. Based on his written Ruling, the Magistrate found as a fact that the firearm had been concealed in a covered disposable plate found beneath a Pathfinder jeep parked in close proximity to the defendant's residence on Rupert Dean Lane where he had lived since 2008.
28. In our view, based on the evidence and the facts as the Magistrate found them, the Magistrate was entitled to reasonably conclude (as he did) that there was no way that police could have had prior knowledge of the location of the firearm; and that it was the Intended Appellant *alone* who had voluntarily led police to the exact location on Rupert Dean Lane where the firearm was retrieved.
29. As we saw it, the recovery of the firearm in these circumstances was sufficient to support the Magistrate's final conclusion that at all material times the Intended Appellant had the requisite knowledge, custody, care and control of the firearm which he had led the police officers to.
30. Based on the evidence before him, the Magistrate's decision to convict the Intended Appellant of possession of an unlicensed firearm and ammunition was not only reasonable but would not likely be impugned on appeal. In short, we were completely satisfied that ground 2 of the intended appeal had absolutely no prospects of success.
31. On intended ground 3, the Intended Appellant suggested that in all the circumstances of the case, his conviction was unsafe and unsatisfactory. This ground was based on the premise that grounds 1 and 2 would succeed and that in all the circumstances, the Court should have lurking doubts about the safety of his conviction. Having examined the evidence in the Magistrate's notes along with the Magistrate's written Reasons, we were completely satisfied that ground 3 would have no prospects of success on appeal.
32. Finally, on ground 4 the Intended Appellant suggested that if time were extended, he had good prospects of overturning the Magistrate's decision to impose a 3-year and 2-year sentence respectively, for possession of an unlicensed firearm and ammunition on the basis that the decision was unsafe and unsatisfactory.
33. Having considered the Magistrate's written Ruling, we had no difficulty accepting Ms. Dorsette's submission that ground 4 had no prospects of success as the learned Magistrate's decision to impose custodial sentences on the Intended Appellant would not likely be impugned. Not only did the Magistrate weigh the relevant mitigating and aggravating factors as he was required to do, but the sentences he imposed were well within the range of sentences generally imposed in The Bahamas for firearm possession offences and could not be said to have been unduly severe.
34. Prejudice: Based on the Magistrate's notes, were also satisfied that there was no evidence of any prejudice to either party (or to anyone else) which required our consideration on the application to extend time.



35. After balancing the relevant factors and satisfying ourselves that there were no additional matters to be taken into account, we dismissed the application to extend time and affirmed the Intended Appellant's convictions and sentences.
36. Although the delay in this case was inordinately lengthy and the 231-day delay could be excused (given the explanation proffered by the Intended Appellant) it was nevertheless our considered view that the intended appeal had no prospects of success. Furthermore, no prejudice would arise if the application was dismissed. In the end, we were satisfied that in this case it was not in the interests of justice to extend the time-limit for appeal as the Intended Appellant was, quite simply, pursuing a hopeless appeal.

### **Disposition and Order**

37. It was for all the foregoing reasons that we dismissed the EOT application and affirmed the Intended Appellants' convictions and the sentences which the learned Magistrate had imposed.

---

**The Honourable Madam Justice Crane-Scott, JA**

---

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

---

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