COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCrApp. No. 110 of 2019

B E T W E E N

RODRIGUEZ JEAN PIERRE

Applicant

AND

THE ATTORNEY GENERAL

Respondent

BEFORE: **The Honourable Sir Michael Barnett, P**
The Honourable Mr. Justice Isaacs, JA
The Honourable Mr. Justice Evans, JA

APPEARANCES: **Ms. Marianne Cadet with Mrs. Brendalee Rae, Counsel for the Applicant**

Mr. Rodger Thompson, Counsel for the Respondent

DATES: **1 December 2020; 6 January 2021**

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Criminal appeal – Leave to appeal to the Privy Council – Principle of law of public importance

The applicant was convicted of murder on 3 May 2013. He did not file an appeal against his conviction until 30 May 2019. On 24 September 2020 his application for an extension of time within which to appeal was refused by this Court; and his conviction and sentence were affirmed. He now seeks leave to appeal to the Privy Council.

Held: Conditional leave to appeal granted on the usual terms.

The applicant was denied an extension of time within which to appeal his conviction to this Court on the basis that the delay in applying for the extension was in excess of six years and no good or sufficient reason was given for that delay. The applicant argues that his case is one which raises a point of public importance as the approach taken in his case is inconsistent with a previous decision of this Court: Alexander Williams v R. In Williams the Court found that notwithstanding the length of the delay in making an application for an extension of time within which to appeal, and even without good reason for the delay, if the prospects of success are good then the extension of time should be granted, unless so doing would result in prejudice to the other side.

As this Court has taken two different approaches on the issue the Court is of the view that the point is one of public importance and should be resolved by the Privy Council.

Alexander Williams v R SCCrApp. No. 155 of 2016 considered

J U D G M E N T

Judgment delivered by the Honourable Sir Michael Barnett, P:

1. This is an application for conditional leave to appeal to the Privy Council against a decision of this Court refusing an application for an extension of time within which to appeal a conviction of murder.

2. The applicant was convicted of murder and sentenced on 3 May 2013. He did not file any appeal challenging his conviction until 30 May 2019, some six years later. As indicated in the appellant's affidavit filed on 3 March 2020 the reason given for the delay was:

> **"3. That I completed my Notice of Appeal on 30th May, 2019. That the delay in the court receiving my application for Appeal is not my fault and was due to circumstances beyond my control that I did not have counsel nor the means to obtain one."**

3. In its judgment refusing the application for an extension of time, the Court examined the proposed grounds of appeal and said:

> **"22. The only issue raised by this appeal that had any prospect for success was whether the judge was clear in his direction as to whether the applicant intended to kill the deceased when he stabbed him which would cause the murder conviction to be reduced to manslaughter. The problem with the applicant's case is that the transcript contains denials by the applicant that he in fact stabbed the deceased."**

4. The Court refused to grant the extension of time. It said:

> **"26. Where the delay in applying for an extension of time is in excess of six years and no good or sufficient reason is given for that delay, unless the appeal involves a question of jurisdiction or is of high constitutional importance, or there exists exceptional circumstances like perhaps a subsequent decision of the court after the conviction modifying the interpretation of the law then in my judgment an application for an extension of time must be dismissed even if the appeal is not wholly specious. Unless it can be demonstrated that "significant injustice" would occur unless the extension is granted then the court should dismiss the application. It is not sufficient that an appeal may have some prospect of success where the intended appellant simply sat on his right to appeal for more than six years. As I said the evidence does not show that the applicant took any steps whatsoever to exercise his statutory right of appeal for more than six years.**
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> **27. If the reasons given by the applicant in this case for a delay of over six years were accepted by this court then any inmate in prison could wait for an inordinately long period of time before giving any indication of an intention to appeal and have his appeal heard on its merits. In my judgment this would undermine the statutory time limit in section 17 of the Court of Appeal Act and the necessity for certainty and closure. A person has lost his right of appeal after 21 days. To obtain the indulgence of the court to hear an appeal after the time imposed by statute it is necessary that the delay should be of a much shorter duration and good and sufficient reasons given for it."**

5. The applicant seeks to appeal that decision to the Privy Council. He submits that the principle of law set out in paragraphs 26 and 27 of this Court's judgment is inconsistent with an earlier decision of this Court in **Alexander Williams v R** SCCrApp. No. 155 of 2016. In that case an appeal against a sentence of life imprisonment was also filed six years out of time. In **Alexander Williams** the Court said:

> **"15. Inexorably, notwithstanding the length of the delay, and the absence of good or sufficient reasons for the delay, if the prospects of success of the intended appeal are good, then this Court would nevertheless grant an**

extension of time and hear the appeal, provided there is no prejudice to the other side."

6. The applicant argues that since the Court did not find that the delay caused any prejudice to the respondent, the Court was wrong to dismiss an appeal that had some prospect of success, notwithstanding the six-year delay and the absence of a good or sufficient excuse.

7. The principle of law of public importance the applicant argues is the resolution of the apparent different approaches by this Court as demonstrated in the two cases. He submits that the Privy Council should resolve this difference in approach and determine whether the test is as contained in paragraphs 26 and 27 of the judgment in this case, or the test in paragraph 15 of **Alexander Williams.**

8. The respondent argues that the two tests are not inconsistent with each other and that the decision in this case is simply an amplification of the decision in **Alexander Williams**.

9. In our judgment, there is some force in the applicant's argument that the two cases involve two different approaches, and the issue is one of public importance and should be resolved by the Privy Council.

10. In the result we grant conditional leave on the usual terms.

The Honourable Sir Michael Barnett, P

The Honourable Mr. Justice Isaacs, JA

The Honourable Mr. Justice Evans, JA