



14 May 2013

PRESS SUMMARY

Andrew Laing (Appellant) v The Queen (Respondent) [2013] UKPC 14

On appeal from: The Court of Appeal of Bermuda

JUSTICES: Lord Hope, Lord Kerr, Lord Reed.

BACKGROUND TO THE APPLICATION FOR PERMISSION TO APPEAL

Mr Laing was convicted in Bermuda in 2007 on drugs charges and an assault charge. He received concurrent sentences of 17 years imprisonment on the drugs charges and one year on the assault charge. He appealed against his conviction, arguing that the trial judge's directions to the jury in relation to the evidence against him of his co-accused, a Ms Iereria, were inadequate. She had pleaded guilty to drugs charges and obtained a reduction in her sentence on appeal for testifying against Mr Laing. Mr Laing also appealed against his sentence. In March 2009 the Court of Appeal for Bermuda dismissed the appeal against conviction and refused the application for leave to appeal against sentence. The Court did not give any reasons in writing for its decision [1 – 3].

In July 2012, Mr Laing applied for permission to appeal to the Judicial Committee of the Privy Council ("JCPC") against the Court's decision, on the ground that he had been deprived of the protection of the law and of a fair hearing because of the failure of the Court to give reasons for its decision [4].

In March 2013 the JCPC allowed the permission application to be made out of time and directed that there should be an oral hearing on the ground that the Court had failed to give reasons for its decision (the procedural ground). At the oral hearing on 23 April 2013, the JCPC allowed Mr Laing to argue that permission should also be given on the ground that the trial judge's directions in relation to Ms Iereria's evidence were inadequate (the substantive ground). Mr Laing's point was that Ms Iereria's evidence was inherently dangerous and the trial judge failed to give the necessary warning to the jury. The JCPC refused permission to appeal on the substantive ground at the oral hearing [5, 6, 8, 9].

ADVICE

The JCPC unanimously advises Her Majesty that Mr Laing's application for permission to appeal on both the substantive and procedural grounds should be refused.

REASONS FOR THE ADVICE

Substantive ground (directions)

There is no substance in the criticism of the trial judge's directions. She dealt with the two grounds on which Ms Iereria's evidence had to be treated with caution: grudge and motive. She warned the jury that they must treat her evidence with the utmost caution, and told them that, as there was a special need for caution where her evidence was disputed by Mr Laing, they would be wise to look for some

supporting material. It is not arguable that her directions were inadequate or that the conviction is unsafe [9].

Procedural ground (reasons)

Had there been merit in the appeal on the substantive ground, the JCPC would have been inclined to give permission on the procedural ground so that a remedy for the failure to give reasons could be given. But it cannot be the case that, if a conviction is otherwise sound, it would have to be quashed simply because of a failure to give reasons for dismissing a conviction appeal. That is the position in this case. The following points may help to put the point into its proper context:

- a note made by the Deputy Director of Public Prosecutions hints that that brief oral reasons were in fact given for the decision that there was no merit in the appeal which appeared to have been directed to the question of the directions of the trial judge;
- the practice in Bermuda is that if there is no new or novel point of law, the Court will not provide written reasons unless it is asked to do so (if asked it generally only provides a transcript of its oral reasons), and no such request was made in this case; and
- article 6(1) of the European Convention on Human Rights has been interpreted as obliging courts to give reasons for their decisions but not requiring a detailed answer to every argument, and whether a court has failed to fulfil the obligation can only be determined in the light of the circumstances of the case.

The giving of these reasons is enough to make good any inadequacy in the reasons that the Court gave for its decision in this case [11, 13].

The situation revealed by this case cannot, however, be regarded as entirely satisfactory. The JCPC is aware of the pressures endemic to the criminal appeal courts. But the interests of justice must come first. An appellant has a constitutional right to be given the reasons for the court's decision if his appeal is dismissed. The more serious the offence and the more severe the sentence, the more important it is that this right should be given effect. This should be done by giving written reasons for the decision or, where they have been given orally, for them to be recorded so that they can be transcribed as soon as possible. Only then can one be certain that the constitutional right has been satisfied. It will always be a matter at the court's discretion how much need be said, and whether it should deal with every argument. The guiding principle is one of fairness [14, 15].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.gov.uk/decided-cases/index.html.