

George Pollard

Appellant

v.

The Queen

Respondent

FROM

THE COURT OF APPEAL OF ST. VINCENT AND THE GRENADINES

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL OF THE 4TH OCTOBER 1995
Delivered the 30th October 1995

Present at the hearing:-

Lord Jauncey of Tullichettle
Lord Browne-Wilkinson
Lord Mustill
Lord Slynn of Hadley
Mr. Justice Hardie Boys

[Delivered by Lord Jauncey of Tullichettle]

This appeal raises a question relating to the jurisdiction of the Eastern Caribbean Court of Appeal and arises in this way. On 29th November 1993 in the Eastern Caribbean Supreme Court in St. Vincent the appellant and one Nathaniel John were convicted of the murder of a man named Leconthus Simmons. John appealed and the Court of Appeal on 22nd March 1994 allowed his appeal on the ground that the verdict was unsafe and unsatisfactory having regard in particular to the poor quality of the evidence of the only witness who identified the two accused as having any connection with the deceased at the material time. The appellant also attempted to appeal. A notice of application for leave to appeal signed by counsel was taken to the registry for filing within the prescribed time but was rejected because the appellant had not signed it as required by the rules of court. When John's appeal came on for hearing counsel for the appellant, who had by this time obtained the appellant's signature to a further notice, moved the Court to extend the time for lodging this notice. However the Court of Appeal, holding that

it had no jurisdiction to extend time, refused to hear the appeal. Against that refusal the appellant now appeals with special leave to the Board.

At the conclusion of the hearing their Lordships indicated, for reasons to be given later, that they would humbly advise Her Majesty that the appeal should be allowed, that the failure of the appellant to sign the notice of application for leave to appeal should be waived under the relevant rule of court and that the case ought to be remitted to the Court of Appeal for disposal on the merits. Their reasons now follow.

Section 48(1) and (2) of the Eastern Caribbean Supreme Court (St. Vincent and the Grenadines) Act ("the Act") provides that:-

"(1) Where a person convicted desires to appeal under this Act to the Court of Appeal or to obtain the leave of the court, he shall give notice of appeal or notice of his application for leave to appeal, in such manner as may be directed by rules of court, within fourteen days of the date of conviction."

"(2) Except in the case of a conviction involving sentence of death, the time within which notice of an application for leave to appeal may be given, may be extended at any time by the court."

The form of notice is provided for in rule 44(1) of the West Indies Associated States Court of Appeal Rules 1968:-

"Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given shall be signed by the appellant himself, except under the provisions of paragraphs (4) and (5) of this rule."

The only two exceptions to this rule relate to cases where insanity is in issue and where the appellant is a body corporate. There is a general dispensing power conferred on the Court of Appeal by rule 11 of the 1968 Rules which is in the following terms:-

"Non-compliance on the part of an appellant in any criminal cause or matter with these Rules or with any rule of practice for the time being in force shall not prevent the further prosecution of his appeal if the Court considers that such non-compliance was not wilful, and that it is in the interests of justice that non-compliance be waived. The Court may, in such manner as it thinks right, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed."

Given the unequivocal terms of section 48(2) of the Act their Lordships do not see that the Court of Appeal had any alternative but to refuse the appellant's application to extend the time for lodging a notice. Indeed there are very good reasons for imposing a rigid time limit on appeals in cases involving sentence of death (see *R. v. Twynham* (1920) 15 Cr. App. R. 38, per Lord Reading C.J. at p. 39). Mr. Emmerson did not seek to challenge their decision. What he did do was to present an argument which was not before the Court of Appeal to the effect that although rule 11 could not be applied to override specific statutory provisions such as the time limit in section 48(1), it could be applied to waive non-compliance with requirements which derive solely from the rules. The adhibition of the appellant's signature was such a requirement. Mr. Knox for the Crown advanced with, it is fair to say, no very great enthusiasm the counter-argument that section 48(1) required not only that a notice be lodged within fourteen days but that it must, when lodged, conform with all the requirements of the rules with the result that the appellant's notice was void. Mr. Knox readily accepted that if his submission were well-founded there could arise cases of manifest injustice. To take one example, if an accused, after being sentenced to death, were stricken with illness which prevented his signing the notice within 14 days he would be denied the right of appeal because the Court of Appeal would be powerless to act.

Their Lordships consider that Mr. Emmerson's submissions are correct. A notice which does not comply with a particular rule but in respect of which that non-compliance has been subsequently waived under another rule is nonetheless a notice "in such manner as may be directed by rules of court" within the meaning of section 48(1) of the Act. The waiver validates the notice from the date of its lodging and does not merely bring into existence for the first time a valid notice when rule 11 is applied. The lack of the appellant's signature on the notice amounted to no more than a technical non-compliance with the rules. It clearly was not wilful on the part of the appellant, and given that the appeal of the co-accused John on similar if not identical grounds was to proceed it would have been in the interests of justice that the appellant's non-compliance should be waived so that his appeal could be heard at the same time. Their Lordships think it very probable that if the Court of Appeal had been asked to waive the irregularity in the notice and had had the benefit of the argument advanced by Mr. Emmerson they would have acceded to such an application. However further events have occurred since the Court of Appeal refused the appellant's application inasmuch as the conviction of John has been quashed and Mr. Knox before the Board has accepted on behalf of the Crown that the appellant's conviction is vitiated by

the same factors as was John's. In these circumstances there are compelling reasons in the interests of justice why rule 11 should be applied to relieve the appellant of his technical non-compliance with rule 44(1). Their Lordships, therefore, apply the rule with the result that the appeal was validly constituted and the Court of Appeal have the jurisdiction to hear and determine it.

The appellant's case contained a further argument, which was supported by the Crown, to the effect that the Board could dispose of the matter under section 1 of the Judicial Committee Act 1844 as an appeal direct from the Eastern Caribbean Supreme Court against the conviction. However, in view of the decision which their Lordships have reached as to the application of rule 11, they consider it neither necessary nor appropriate to deal with this argument. They would only remark that if they had been required to adjudicate upon the merits of the appeal they would, having regard to the decision of the Court of Appeal in John's appeal and to the concession of the Crown that the appellant's conviction must similarly be vitiated, have quashed the conviction. Their Lordships further order costs to the appellant on a "pauper" basis.

