

IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS

REX

v.

FLOYD BASIL HALL



CORAM: AGYEMANG CJ

FOR THE CROWN: MR. ANDREW MITCHELL KC, WITH HIM, MR. QUINN HAWKINS, MS. KATE DUNCAN, MS. ENJALEEK DICKENSEN

FOR THE FIRST DEFENDANT: MR. EARL WITTER KC, WITH HIM, MR. KAYODE SMITH, AND MS. LEANNA BROOKS-CAMPBELL

DATE OF HEARING: 16 OCTOBER 2023

DATE OF DECISION: 16 OCTOBER 2023

DECISION ON BAIL PENDING APPEAL

1. On 25 September 2023, Floyd Hall (FBH) was convicted of the crime of Bribery. On 12 October 2023 FBH was sentenced to 1 year imprisonment, to take effect forthwith. At the

hearing on 12 October 2023, Mr Witter KC indicated that FBH intended to file an appeal and to make an application for bail pending appeal. The Court adjourned to 16 October 2023 to deal with the application for bail pending appeal. On 15 October 2023 Mr Witter KC filed a written application for bail pending determination of FBH's appeal.

2. Mr Witter KC relies on **Nelson Llewellyn Forbes v The Crown**¹, and **The State v Lynette Scantlebury**², arguing that there are exceptional circumstances in this case warranting the grant of bail pending appeal. Particularly that given the shortness of the sentence there is a real risk that FBH would have served the sentence by the time the appeal is heard. Further that because there is a risk that FBH would have served his sentence imposed or at least a substantial portion of it before the appeal is heard there is a real possibility of a danger of injustice being done to him.
3. Mr Witter KC asks this Court to take into consideration the scheduled sitting times for the Court of Appeal in 2024 (January, May and October 2024). He argues that due to the voluminous nature of the evidentiary material in this case that it is unlikely that the Court of Appeal would have time to review it when it next sits in January 2024. Further that FBH's Legal Aid Certificate has lapsed and that it will take some time before he can obtain new representation, and for the new representation to become acquainted with the evidentiary materials or to file additional grounds of appeal.
4. In response Mr. Mitchell KC argues that due to the use of electronic documents in these proceedings, that the Crown can have the evidentiary material ready for the Court of Appeal, or any new attorney assigned to represent FBH, before the Court of Appeal sits next January, and that there is nothing which prevents the appeal being heard in January 2024. Further that in the case of **Nelson Llewellyn Forbes**, the appellant was granted bail, on a much lesser sentence of 6 month's imprisonment.

¹ [2013] TCASC 6.

² [1976] 27 WIR 103.

5. At the hearing the learned Registrar confirmed that the Court of Appeal next sits in January 2024. The Registrar also clarified that to be afforded Legal Aid Representation, FBH would be required to make an application, and that an attorney-at-law from the Court of Appeal Legal Aid Roster would then be assigned to him.
6. On 16 October 2023, the Court having heard the arguments of both sides gave its ruling *ex tempore* which it now sets out in writing.

The Law

The Power of the Court to Grant Bail Pending Appeal

7. The Chief Justice is empowered to grant bail pending appeal. **Section 14 (1) of the Court of Appeal Ordinance CAP 2.01** provides:
 14. (1) The Court or the Chief Justice of the Supreme Court may, upon the application of an appellant, admit him to bail pending the determination of his appeal.
8. Applications for bail pending appeal can be made before an appeal is filed as Section 2 of the Court of Appeal Ordinance provides: ““appellant” includes a person **who has been convicted and who desires to appeal to the Court**”. In my view, a person **who desires to appeal** (as contemplated by Section 2 of the Court of Appeal Ordinance), cannot be a person who has filed a notice of appeal, and a convicted person can make a bail application to the Chief Justice or to the Court of Appeal, prior to the filing of a notice of appeal, but he must satisfy the Chief Justice or Court of Appeal that there are exceptional circumstances which warrant bail being granted.

Considerations of the Court on an Application of Bail Pending Appeal

9. In **Forbes v The Crown**³ Goldsbrough, CJ noted at paragraphs 6, 12 and 13 that:

6. **After conviction there is no presumption in favour of the grant of bail** as there may be pre-trial. After conviction and awaiting an appeal **there must be circumstances which are exceptional to favour the grant of bail.**

...

12. In deciding whether to grant bail pending appeal "**the true question is, are there exceptional circumstances**, which would drive the Court to the conclusion that justice can only be done by the granting of bail?": R. v. Watton, 68 Cr.App.R. 293, 297, CA. **Such circumstances will exist where it appears prima facie that the appeal is likely to be successful or where there is a risk that the sentence will have been served by the time the appeal is heard:** In R. v. Landy JZ Cr.App.R. 237 (unreported on this point), the court granted an appellant bail pending appeal, having been satisfied that there was "a substantial point" to be argued on misdirection "and that it could result in the conviction being quashed". **A further determining factor was that the hearing of the appeal would be delayed for some months** in order for the transcript to be prepared.

13. In Watton the court consisted of Geoffrey Lane, L.J., Ackner J. and Watkins J. and the judgment was delivered by Geoffrey Lane, L.J. (as he then was). The case may be of limited value because of a different English jurisprudence to some extent but the Court approved the following statement of the law relating to bail pending appeal.

i. **"Bail is granted only where it appears prima facie that the appeal is likely to be successful or where there is a risk that the sentence will have been served by the time the appeal is heard."**

[Emphasis Mine]

³ [2013] TCASC 6.

10. In **Morris v Regina**⁴ Ward CJ said at paragraph 2:

...In any application for bail pending appeal the court must consider the grounds of appeal and the likelihood of success because it is only when a real possibility of success exists that the court will grant bail...

11. Accordingly, from the authorities in determining whether to grant bail pending appeal this Court should consider:

1. There is no presumption in favour of bail;
2. Bail should only be granted in exceptional circumstances;
3. Exceptional circumstances exist where there is a prima facie case that the appeal will be successful or where the sentence will have been served by the time the appeal is heard.

Discussion

12. In considering whether there are exceptional circumstances which warrant granting FBH bail pending appeal this Court recognizes the following matters:

1. FBH's Legal Aid Certificate has lapsed.
2. If FBH pursues an appeal, he will require a new attorney-at-law either funded by Legal Aid or himself.
3. The Record of Appeal in this case is exceptionally voluminous and any new attorney will require some time to review the exceptionally voluminous Record, to take instructions and as indicated by Mr. Witter KC, to perhaps file additional grounds.

⁴ [2010] TCASC 22. See also **Higgs v Regina** [2008] TCASC 9.

13. In the said circumstances it may be unlikely that the appeal will be heard in the January 2024 session of the Court of Appeal. Considering the length of the sentence and the likelihood that it will be served by FBH before the appeal is heard and determined, I find that there are exceptional circumstances to grant him bail pending appeal.

M.M. AGYEMANG CJ