

BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Criminal Appeal No. 31/1998

BETWEEN:

BERND FISCHER

(Applicant)

AND

THE QUEEN

(Respondent)

Before: The Honourable Mr. Justice Errol DaC. Chase, Chief Justice (ag.), The Honourable Mr. Justice Colin A. Williams and The Honourable Mr. Justice Frederick L.A. Waterman, Justices of Appeal

June 24, 1999; March 1, 2002

Mr. Erskine Leroy Hinds for the Applicant

Mr. Delroy Saddler for the Respondent

DECISION

This is an application by Bernd Fischer for leave to appeal to Her Majesty in Council against the decision of the Court of Appeal given on May 18, 1999, dismissing his appeal and affirming his conviction and sentence.

The grounds upon which the applicant seeks to rely are that:

(1) the Court of Appeal erred in law in finding that at all material times:

(a) the Island of Barbados included the Territorial Sea of Barbados;

(b) the Drug Abuse (Prevention and Control) Act, Chapter 131 of the Laws of Barbados extended and or applied to the Territorial Sea of Barbados;

(c) the bringing of a controlled drug into the Territorial Sea of Barbados constituted importation of the said drug into Barbados contrary to section 4(3) of the Drug Abuse **[1]** (Prevention and Control) Act, Chapter 131 of the Laws of Barbados.

The relief applied for is that –

(a) the applicant be granted leave to appeal to Her Majesty in Council against the decision of the Court of Appeal on the grounds proposed, and that

(b) the intended appeal be certified as likely to involve a point of law of public importance and to require the assistance of an attorney-at-law on behalf of the appellant for its proper determination.

THE APPEAL TO HER MAJESTY IN COUNCIL

Section 37 of the Criminal Appeal Act, Cap. 113A provides as follows:-

“Subject to sections 38 and 39, an appeal lies to Her Majesty in Council

(a) as of right

(i) from a final decision of the Court in any Criminal or other proceedings that involves a question as to the interpretation of the Constitution;

(ii) from any decision of the Court on an appeal on a final decision of the High Court involving a criminal cause or matter given in exercise of its Jurisdiction under section 24 of the Constitution;

(iii) from any final decision of the Court on an appeal in any criminal proceedings on a ground that involves a question of law alone;

(b) with leave of the Court

(i) from any decisions of the Court in any criminal or other proceedings, where in the opinion of the Court the question involved in the appeal is one that, by reason of its general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for consideration;

(ii) from any decision of the Court on an appeal in a final decision of the High Court involving a question of mixed law and fact.” [2]

The intended grounds of appeal involve the legal question whether the territory of Barbados includes its territorial waters for the purpose of the charges brought against the Applicant. Accordingly, the Applicant is entitled to leave to appeal to Her Majesty in Council on condition that he provides security in the sum of 500 pounds within 2 months of today’s date.

THE APPLICATION FOR LEGAL AID

The part of the application is supported by an affidavit of Mr. Erskine Hinds, attorney-at-law for the applicant, in which he deposes, among other things, as follows:

“1. I have acted as attorney-at-law for the appellant Bernd Fischer both at the April 1998 Assizes and at the appeal concluded by the Court of Appeal on the 18th May, 1999.

2. The Appellant was granted a legal aid certificate on both occasions of hearing.

3. In my opinion the legal issues raised by the case are complex, and by reason of their general and or public importance ought to be submitted to Her Majesty in Council for consideration.

4. The appellant has instructed me that he is ordinarily a Ship’s Mechanic by (profession) but has no means to finance the proposed appeal.

5. I have discussed the matter of the appellant’s proposed appeal to Her Majesty in Council with the German Consul in Barbados and she has indicated that no financial assistance is available to the appellant from Germany in respect of the said appeal.”

The applicant has produced no other evidence and no cogent argument to persuade the Court to certify that the question arising on the appeal is such as to warrant the consideration of Her Majesty in Council because of its general or public importance and therefore to merit the grant of legal aid.

Provision for legal aid appears at section 18(12) of the Constitution and sections 18 and 21 of the Community Legal Services Act, Cap. 112A. This Court has previously interpreted these two enactments as provisions that [3] do not give a litigant a right to funded legal representation at the public expense but only confer on the relevant Court or on the Director of Community Legal Services a discretion whether to grant any, or if so, what level of financial assistance: (Richard Hinds, No. 20 of 1997; Carlos Anthony Licorish, Nathaniel Nelson and Arleigh Hector James, Nos. 30, 31 and 32 of 1998). In the present case, although the applicant has a right of appeal because his intended grounds of appeal involve a point of law, the point of law is one which we think was correctly disposed of by this Court when it traced the extension of the jurisdiction of the Admiralty in England through the Territorial Waters Jurisdiction Act 1878 and demonstrated the clear similarity to the English Situation of a number of enactments in Barbados that extended the jurisdiction of its Courts to embrace its territorial waters. We therefore refuse the application for a legal aid certificate. [4]

Chief Justice (Ag.)

Justice of Appeal Justice of Appeal