

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION**

**Criminal Appeal No. 13 of 2019  
Appeal from Indictment No. 9 of 2016**

**BETWEEN**

**Vonda Minerva Pile**

**APPLICANT**

**AND**

**The Commissioner of Police &**

**FIRST RESPONDENT**

**The Director of Public Prosecutions**

**SECOND RESPONDENT**

**Before: The Hon. Sir Marston C.D. Gibson KA, Chief Justice**

**2019: October 2;  
November 26**

**Mr. Andrew Pilgrim QC for the Applicant  
Ms. Krystal Delaney for the Respondents**

**REASONS FOR DECISION**

**GIBSON CJ**

**Introduction**

This is an application of Ms. Vonda Minerva Pile (“Ms. Pile”) seeking bail pending appeal. At the hearing on October 2, 2019, I refused the application

and promised to give written reasons. The following are those reasons. I should also add that, at the date of hearing, my oral decision had simply relied on the well-known decisions of *The State v Lynette Scantlebury*, (1976) 27 WIR 103, and *Krishendath Sinanan et al v The State* (No. 1) (1992) 44 WIR 359, without the benefit of the trial record. The trial record has since been prepared and has been made available to me.

### **Factual and Procedural Background**

- [1] Although the trial transcript has been prepared and been made available, as I noted above, I desire, for obvious reasons, to say as little as I can about the circumstances of the offence. Accordingly, the facts are taken from the brief remarks of **Beckles J** at the sentencing rather than from the trial transcript.
- [2] Ms. Pile, an attorney of some 27 years' call, was arraigned on 21 May 2019 on charges of theft, contrary to **section 3(1)** of the **Theft Act**, Chapter 155 and money laundering, contrary to **section 3(1)(b)** of the **Money Laundering and Financing of Terrorism (Prevention and Control) Act**, Chapter 129. She pleaded not guilty.
- [3] The particulars of the two offences are that sometime between 29 April 2009 and the 26 October 2010, in the parish of St. Michael, in this Island, she stole USD \$96,008.22, equivalent to BDS \$192,416.39 belonging to Anstey King ("Mr. King"); and that sometime between those same dates, she engaged in

money laundering, that is, she disposed of the money. Following the trial before **Beckles J** and a jury, she was found guilty on 4 June 2019 of the offence of theft and not guilty of the offence of money laundering.

[4] **Beckles J** referred to the testimony of the complainant, Mr. King, who had testified at trial that he was a Barbadian who had resided in Brooklyn, New York, USA for many years and had intended to retire and relocate to Barbados. Sometime in 2009, he retained Ms. Pile to assist him with the purchase of a piece of land. Ms. Pile had shown him a piece of land located at Maxwell, Christ Church, and he decided to purchase the parcel of land. Documents were sent to him in the United States of America, which he signed and sent back to Ms. Pile in Barbados. Mr. King also sent money to Barbados in order to have the transaction completed, and the money was received into Ms. Pile's accounts. The total was approximately USD \$145,000.00 or about BDS \$290,000.00.

[5] In March 2010, on a visit to Barbados, Mr. King was shown a piece of land by a land surveyor. Mr. King immediately recognised that it was not the same piece of land which Ms. Pile had shown to him and which he had agreed to buy. Dissatisfied, Mr. King asked for a refund of the money which he had sent to Ms. Pile. Ms. Pile refunded him only USD \$48,000.00 or about BDS

\$96,000.00 of the approximately USD \$145,000.00 which he had originally paid over to her.

[6] Mr. King desired to recover the balance of his money and made several efforts to do so. He retained another attorney-at-law to assist him in recovering the balance of his money and made a complaint to the Disciplinary Committee of the Bar Association but to no avail. When these efforts failed, he reported the matter to the police and Ms. Pile was questioned, arrested and interviewed. She was later charged with theft and money laundering and convicted with the offence of theft as noted above.

[7] On 4 June, **Beckles J** sentenced Ms. Pile to a term of imprisonment of three years imprisonment (1095 days), less the 94 days she had spent on remand as required by the decision of the **Caribbean Court of Justice** in *Romeo DaCosta Hall v R* [2011] CCJ 6 (AJ), for a total of two years and 271 days, or 1001 days.

### **The Application**

[8] In her Affidavit sworn to on 17 September 2019 in support of the Application, Ms. Pile stated that she was 55 years old and “currently *on remand* at Her Majesty’s Prison, Dodds” (my emphasis; she is in fact incarcerated as a result of a sentence imposed on her and *not* on remand awaiting trial). She further deposes that she was convicted on 4 June 2019 and remanded in custody

pending sentence. On 5 September 2019, she was sentenced to three years imprisonment, less the 94 days she spent on remand while awaiting sentence. She noted that she was a citizen of Barbados and had been domiciled in Barbados during her entire life. She further stated that she employed four people and had over 1,000 clients with ongoing matters.

[9] Ms. Pile noted that she had no previous convictions and stated that she had been on bail for eight years pending her trial and, with the permission of the court, she had travelled off island numerous times always adhering to any and all bail conditions. She had always attended court when required to do so, and she stated that she had strong ties to Barbados, family, business and property.

[10] Ms. Pile maintained her innocence of the charge, and indicated that she had been informed by her attorney that her appeal is likely to succeed but that the entire matter is unlikely to be resolved in less than three years.

### **Applicant's Submissions**

[11] Before me, Ms. Pile's counsel, Mr. Andrew Pilgrim QC, submitted that, in the circumstances of this case, there was a real danger that the appeal could very likely take as long as two years or more resulting in her being required to stay in prison for a little more than two years, thus resulting in irreparable injustice being meted out to Ms. Pile. He said that in the 15 years in which he has been

conducting criminal appeals, he had not had one which was completed, from the filing of the notice to the delivery of the decision, within two years.

[12] In what appeared to be a reference to the likelihood of success on the substantive appeal, he contended, citing *The State v Lynette Scantlebury*, *supra*, that the intention to permanently deprive was extremely difficult to prove and was not proved in this case. In relying on the case, the Applicant purports that there would be a chance of success in the pending appeal.

### **Bail Pending Appeal**

#### **The Jurisdiction of the Court of Appeal**

[13] In *Krishendath Sinanan et al v The State* (No. 1) (1992) 44 WIR 359, 366, Bernard CJ had this to say about the inherent jurisdiction of the Court of Appeal to grant bail pending appeal:

In my opinion, the law in [Trinidad & Tobago] at any rate is that the court has no inherent jurisdiction to grant bail to a person convicted on indictment. In this regard, since early times it has been said that the jurisdiction to grant bail to a convicted person only exists if there is in support of it some statutory provision which defines not only the persons empowered to exercise it but also the manner in which it is to be exercised. In *Re Lyttleton* [1944] WN 24 Hallett J said:

'In the case of a convicted person no justice or bench of justices and no judge or bench of judges had any inherent jurisdiction to grant bail. The jurisdiction, if it existed, must be found within some statutory provision which defined the persons on whom the jurisdiction was conferred, the extent of the jurisdiction, the manner in which it was to be exercised and the consequences of exercising it.'

[14] This is equally true of Barbados. Hence, there is no inherent jurisdiction to grant bail pending appeal. The statutory conferral of jurisdiction is located in

*section 53* of the *Supreme Court of Judicature Act Barbados* Cap 117A of the Laws of Barbados which empowers the Court of Appeal to grant bail to a convicted person pending appeal. *Section 53 (1)(a)(v)* of the Act provides:

‘Subject to subsection (4) of section 60, a single judge of the Court of Appeal may exercise any of the following powers of the Court of Appeal under the *Criminal Appeal Act*, namely:

(a) under Part I, the power

....

(v) to admit an appellant to bail.’

[15] Moreover, *section 53(3)* of *Cap 117A* provides that “[a]n appellant who is aggrieved by the decision of a single judge made under subsection (1) is entitled to have the matter re-heard and determined by the Court of Appeal as constituted under *section 60*; . . .” *Section 60* provides that “[s]ubject to this section and *section 53*, every appeal or reference to the Court of Appeal, and every matter preliminary or incidental to such an appeal or reference may only be heard before 3 (*sic*) judges of that court, and, if necessary, be determined according to the opinion of the majority.” Hence, the jurisdiction to hear such an application resides in a single Justice of Appeal with the entitlement, if an applicant is dissatisfied, to have the matter reheard by a panel of three Justices of Appeal.

[16] While that settles the issue of jurisdiction, the more fundamental question is what principles should a Court of Appeal apply, whether sitting as a single

Justice or a three-Justice panel when making such a determination? I turn now to consider those principles.

[17] In her seminal work *Commonwealth Caribbean Criminal Practice and Procedure* (3<sup>rd</sup> Ed., 2011, Routledge-Cavendish), the late Dana S. Seetahal, SC, observed, at 99. 62-63, that

“[b]ail granted on appeal does not strictly conform to the usual definition of bail, which relates to pre-trial release. The defendant in such circumstances would have been convicted of the offence and would now be applying for bail pending the hearing of his appeal. The fact that he has been found guilty by a competent tribunal means that the defendant has lost his constitutional right, so to speak, to bail that attaches to a person arrested and ‘charged’ with an offence. . . A convicted person who applies for bail in such circumstances is no longer presumed innocent and has no right to bail.”

[18] Those common law principles were first elucidated in the Caribbean by the Court of Appeal of Guyana in what is considered the regional *locus classicus*, *The State v Scantlebury* (*supra*). There, the appellant had been convicted of death by dangerous driving and had been sentenced to six months imprisonment. In seeking bail pending the hearing of her appeal, she had cited in support (a) her own ill health; (b) her husband’s ill-health; the great hardship imposed on her family, including her young daughters; and (d) the real likelihood that her appeal will come on for hearing after she had served her sentence.

[19] At pp. 105–106, Haynes C in *Scantlebury* (*supra*), observed:

‘Undoubtedly, this court has the jurisdiction to admit an appellant to bail pending the determination of an appeal. It is accepted law that it is a matter of discretion. An appellant has no common law or statutory or constitutional *right to bail*. But like all other discretionary powers it must be exercised judicially. If appellants are admitted to bail freely on appeals from the verdict of juries, a dangerous situation could arise inimical to the public interest.’

[20] After conducting an exhaustive examination of the English cases decided under the statutory authority of the UK Court of Criminal Appeal Act 1907, Haynes C noted that “[a] study of the many judgments of the Court of Criminal Appeal there would indicate the considerations by which that court did so and its successor is guiding itself in the exercise of this discretion. These authorities are clear that the circumstances must be ‘exceptional’ to justify the grant of bail to persons convicted by juries.”

[21] Elucidating his understanding of the word “exceptional”, Haynes C stated:

But I venture to suggest with respect that the English judges meant nothing really different in their use of the words ‘exceptional’ or ‘very exceptional.’ What was being emphasised was that normally bail would not be granted to an appellant or a prospective one after his conviction by a jury; that it was not to be lightly allowed; and so an applicant had to show that, in his case, there were special circumstances which made it the just thing to do to put him on bail pending the hearing of his appeal. For example, if on the face of the papers before the court, the conviction appears plainly wrong so that his appeal has every prospect of success . . . this would be a factor which could make the case exceptional. But an instance of more frequent occurrence is where the sentence is a short one and it is administratively impossible to hear the appeal or there is not much hope of doing so before his sentence terminates. For, if the appeal succeeds after this, justice might not appear to have been done. And this might be so even where, although the appeal may or will be heard before the sentence ends, he will by then have served most or a very substantial part of it.”

[22] I should note that in all the cases cited by Haynes C, the longest sentence imposed was in *R v Kallia and others*, (1975) 60 Cr App Rep 113, where the trial lasted 69 days, the proceedings took up 2,000 pages of transcript, the appellants were sentenced to 18 months imprisonment, and the appeal was heard nearly a year later. Haynes C also notes, at p. 107, that the DPP himself appeared in *Scantlebury* and did not oppose bail on the latter ground.

[23] The same thought process undergirded the judgment of Bernard CJ in *Sinanan*, *supra*, where all the applicants had been convicted of murder and sentenced to death, and where the key contention was the likelihood of success on appeal, rather than the length of sentence. At p. 367, his Lordship drew a distinction between an applicant for bail charged with, but not convicted of, an offence, and an appellant seeking bail after conviction.

“A clear distinction has to be drawn between the granting of bail before conviction of an offence and the granting of bail after conviction of an indictable offence. In the case of the former, the party is presumed to be innocent whereas in the latter case this presumption is, on the happening of this event, ie (sic) his conviction, no longer of any application until and unless the conviction is later quashed. Until and unless that event occurs, the individual’s right to his liberty or life is by due process of law curtailed or for that matter terminated in due course, if execution of the process of the court has to be carried out. Consequently, different principles apply to each.”

[24] Bernard CJ expanded on the distinction. At 367, he continued:

A person charged with a criminal offence is presumed to be innocent. It follows that, as far as possible, his liberty should not be unduly curtailed and, all things being equal, he is entitled to bail. It is not a vehicle for punishment. It is simply the means to secure the attendance of the accused at his trial; see *R v Rose* (1897) 67 LJQB 289.

[25] However, at p. 371, after a close examination of the statutory jurisdiction for granting bail pending appeal, (see, pp. 367-371), Bernard CJ made some “pertinent [and necessary] observations about the granting of bail in this kind of case”:

“Application for bail by a person after he has been convicted by a jury is a serious matter. It is not to be treated lightly. Anything but a stringent approach to the matter undermines the system of trial by jury and as such is inimical to the public interest. The granting of bail to such persons is a facility that is sparingly resorted to and the discretion of the court is exercised only in very exceptional circumstances. That has been the approach in most if not all Commonwealth countries and was certainly so in England under the Act of 1907.”

His Lordship cited with approval the remarks of Haynes C in *Scantlebury*, already cited in this judgment at paras. 19 and 21, *supra*.

[26] At pp. 372-373, Bernard CJ, after referring to the language of Haynes C, then stated what he perceived as the basic principles underlying the exercise of this discretion:

“The principle to be applied when the question of granting bail in such circumstances is to be considered is clear and is now well settled. As stated earlier, a person who has already been convicted of a criminal offence, unlike one who has only been charged with one, is no longer presumed to be innocent. So he has no right to bail but in certain circumstances may, in the discretion of the court, be granted bail. The principle to be extracted from all the cases is that the circumstances must, however, be exceptional. The mere fact that there will be a delay in securing a hearing of the appeal is by itself not such an exceptional circumstance as to warrant the grant being made. . . The delay, if any, could be due to a host of unavoidable or exceptionable circumstances. Further, the mere possibility of success on the appeal is not sufficient in itself to constitute an exceptional or special circumstance to justify the granting of bail. In the absence of any other special circumstance, bail should not be granted *unless the court is convinced on the merits that the appeal will probably succeed.*”

[Emphasis added]

[27] The question then is, are there exceptional circumstances in this case which justify a grant of bail pending appeal. In my judgment, there are none. Mr. Pilgrim QC, as his main contention, argues that there is a real possibility that the sentence will have been served before the appeal is completed. To this, I will make a few comments. The first is that, in the case of *R v Joseph Watton*, (1979) 68 Cr App Rep 293, 294, Geoffrey Lane LJ, as he then was, (later Lord Lane CJ) observed that the single judge of the Court of Criminal Appeal had ordered that the appeal should be expedited. That will be done in this case, particularly where, as noted above, the trial transcript is readily available and it takes very little effort now to prepare a Record of Appeal. Indeed, it is not a misstatement to observe that it now rests in the hands of counsel to pursue the preparation of the Record.

[28] Secondly, unlike *Scantlebury*, on which Mr. Pilgrim QC placed great reliance, the sentence imposed was not a short sentence. In this case, the sentence is three years, less the 94 days spent on remand, with Ms. Pile being required to serve 1001 days. Indeed, even with remission period for good behaviour, her earliest possible release date is 25 September 2021. This, combined with the readiness of the trial and sentencing transcripts, renders it unlikely that the appeal will not be completed before the sentence expires.

[29] Thirdly, I wish to add some comments emanating from the language of Haynes C in *Scantlebury*, and Bernard CJ in *Sinanan* about the grant of bail to an appellant being potentially inimical to the public interest, particularly as it relates to this case. I note that Ms. Pile in her affidavit outlining the ‘special circumstances’ underlying her application for bail pending appeal, deposed that she employs four people and has 1,000 clients with ongoing matters. This raises two concerns. One is that this Court has not received, pursuant to **section 21 of the Legal Profession Act, Cap 370 of the Laws of Barbados** any reference to a disciplinary proceeding being commenced and concluded against Ms. Pile. Notwithstanding this Court’s very recent decision in *Nurse v Nurse*, Civil Appeal No. 20 of 2018 currently on appeal to the CCJ, there appears no impediment to Ms. Pile resuming her practice of law, if released on bail.

[30] Finally, I note, with not a little dismay, that the recent disbarments of attorneys by this Court have, in every case, been the result of defalcations perpetrated against the funds of clients who had transferred those funds to the attorneys for assistance in purchasing property (see, for example, *Re Therold Fields*, *Re Joyce Griffith*, and *Re Alexander*). In every case, the client has had to abandon plans which, in some cases, like this current case and *Fields*, involved a desire on the part of the client to relocate to “the Rock” from

foreign soil. When that fact is juxtaposed against Ms. Pile's clear assertions of having an existing clientele of 1,000 persons, and being an employer of four persons in her law office, it seems, in my judgment, to be inimical to the public interest to exercise my discretion to grant this application for bail pending appeal with the potential of her continuing her practice, as she did while on bail but while only charged at that time. She has now been convicted.

[31] For these reasons, in my discretion, this application is **DENIED**.



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Marston C. D. Gibson  
Chief Justice