



**Le Huray v Law Officers of the Crown**  
Court of Appeal  
14th October, 2014

**JUDGMENT**  
**40/2014**

**Proposed appeal from the Royal Court decision of 16 June 2014. Application for an extension of time within which to serve a Notice of Appeal and application for waiver of court fees.**

**Approved Text**  
**14.10.2014**

**IN THE COURT OF APPEAL OF GUERNSEY**  
**CIVIL DIVISION – APPEAL NO 477**

**Before:**

**James McNeill Q.C.,**  
**John Martin Q.C.,**  
**Robert Logan Martin Q.C.**

**Wednesday 15<sup>th</sup> October 2014**

**Between:**

**STEPHEN MARK LE HURAY**

**(Appellant)**

**V**

**LAW OFFICERS OF THE CROWN**

**(Respondent)**

**The Appellant in person**  
**Crown Advocate R Gist represented the Respondent**

**THIS IS THE JUDGMENT OF THE COURT**

**McNeill, JA**

**Introduction**

1. Mr. Le Huray makes two applications to this court as part of a proposed appeal from a judgment of the Royal Court (Her Honour Hazel Marshall QC, Lieutenant Bailiff, sitting with Jurats) dated 16 June 2014. The first application is for an extension of time within which to serve the Notice of Appeal. The second is for waiver of court fees.
2. The general history of the litigation which gives rise to this proposed appeal is set out in the judgment handed down by the Royal Court on 16 June.

## Extension of Time

3. In the Royal Court Mr. Le Huray was represented by counsel. He has decided since then to represent himself. It appears that, in deciding to present his Notice of Appeal, Mr. Le Huray handed it to HM Sergeant on or about 15 July 2014. The notice of appeal itself is dated 15 July 2014 and was lodged with the Greffe on that date. It appears, however, that there was a dispute between Mr. Le Huray and HM Sergeant as to payment to the latter of the fee usually required by HM Sergeant for carrying out service. Service was not effected until 22 July 2014. The Law Officers pointed out the delay and, no application having been made for an extension of time for service at that stage, gave notice that they did not accept that the Notice had been served in accordance with Rules 2(4) and 3 of the Court of Appeal (Civil Division) (Guernsey) Rules, 1964. That notification gave rise to the present application.
4. Rule 2(4) provides:

"A notice of appeal shall be served upon all parties to the proceedings in the court below who are directly affected by the appeal; and subject to the provisions of Rule 11 of these Rules it shall not be necessary to serve the notice on parties not so affected."
5. Rule 3 provides:

"Every notice of appeal shall be served under paragraph (4) of the last preceding Rule within one month from the date on which the judgment or order of the court below was pronounced."

It therefore follows, as the Law Officers observed, that, the judgment below having been handed down on 16 June 2014, the service of the Notice of Appeal was out of time.
6. Rule 17(1) provides:

"The Court or a judge thereof may, on such terms as the Court or judge thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any order or direction, to do any act and may extend any such period although the application for extension is not made until after the expiration of that period."
7. The Law Officers accordingly submit that the Notice of Appeal had to be served on or before 16 July 2014 and that it was insufficient for the notice to be handed to the Sergeant for service or lodged at the Greffe by that date.
8. In *Gaudion v Weardale Limited* (1997) 24 GLJ 83, Gloster, JA, in giving the judgment of this court, indicated (at page 93) that, in deciding whether to exercise its discretion to extend time for lodging a notice of appeal the court had to consider (a) whether there was a sufficiently arguable appeal, (b) the explanation given for the failure to lodge the notice in due time and any subsequent delay, (c) any prejudice as a result of late service and consequent delay in hearing the appeal and (d) any other relevant factors. The ultimate decision is, of course, a matter within the discretion of the court.
9. Dealing with the second and third heads, we do not consider that Mr. Le Huray is to be faulted for seeking to commence his appeal just at the end of the time limit. That is often the case when parties are fully represented and, here, it would have been possible for arrangements to have been made for expedited service upon the proposed respondent within the time limit. The dispute as to payment of the fee is unfortunate but, as the notice was duly served within the following seven days, we are of the opinion that the explanation falls into the category of unintentional failure to adhere to the rules rather than a wilful disregard of them.

10. The Law Officers did not suggest that there would be any significant prejudice to them as a result of the late service and, had that been suggested, we would have required strong argument to persuade us otherwise. The principal issue, therefore, is whether there is a sufficiently arguable appeal, or as it might otherwise be put, whether there are material prospects of success in a potential appeal.
11. The proposed grounds of appeal are as follows:
  1. The decision of the Jurats was not justified by the evidence and was against the weight of the evidence.
  2. Because of the time which had elapsed in bringing the cause to trial, two key witnesses had died.
  3. The normal procedure for analysing cannabis had not been followed.
  4. No appropriate weight had been placed on the removal of money from Ivan Blondel.
  5. Mr. Le Huray had been subject to pressure to plead guilty when in custody.
  6. Mr. Le Huray had been under pressure to plead guilty by reference to the possible difference in sentence between a guilty plea and a not guilty plea.
  7. Mr. Le Huray wished to bring to the attention of this court certain circumstances surrounding his incarceration.
  8. Reference is made to Articles 5 and 6 of the European Convention on Human Rights, but without specification as to the relevance of those provisions to his own circumstances.
12. Mr Le Huray's case was one for damages for malicious prosecution and it seems to us that the only proposed grounds of appeal likely to be relevant to the issues dealt with at trial are the first, fifth and sixth. It is, of course, a rare occurrence for this court to interfere with findings of fact in the Royal Court; but it is always accepted that an exception may occur where, for example, there was no evidence before the court of first instance which could have justified a particular finding in fact. We therefore turn to look at the manner in which the Royal Court dealt with the issues before them bearing in mind, however, that there is no challenge as to the directions in law given by the Lieutenant Bailiff either to the Jurats or to herself.
13. The questions for decision by the Jurats had been agreed by the parties. The first was whether Mr. Le Huray had ridden a yellow motorcycle down particular streets on the morning of 25 September 2000 and, if he had not, whether all or any of the customs officers who said that they observed him doing so were mistaken or lying and, if the latter, whether they were doing so in order to procure his prosecution?
14. On this matter the judgment indicates the particular parts of the evidence which the Jurats had taken into account. It was then indicated, at paragraph 68, that, weighing all the evidence, the Jurats were not satisfied, on the balance of probability, that the customs officers had been lying in regard to their stated sighting of Mr. Le Huray, albeit each Jurat reached this view by a different route. The fact that each Jurat reached their view by a different route does not offer a ground for an appeal. The remainder of the reasoning is sound and does not offer an opportunity for this court to interfere.
15. The second question is whether the customs officers planted cannabis on the plaintiff and, if they did so, whether they did so maliciously in order to make the case worse for him?
16. On this matter, as indicated in paragraph 72 of the judgment, the Jurats were unanimous in agreeing that they were not satisfied on the evidence and arguments before them, that the cannabis had been planted in the tool box in the lock up garage by the customs officers. In their

view there were too many other possibilities about when and how it might have found its way there to justify the drawing of any such conclusion as a matter of probability. There could be no basis upon which this court could interfere with that finding.

17. The third query was as to what were the facts operating on the minds of the customs officers in making the charge against Mr. Le Huray. Again these were set out in considerable detail at paragraph 73 of the judgment and provide a wealth of consideration of the evidence with which this court could not interfere.
18. The fourth question was as to whether the customs officers genuinely believed that they had reasonable and probable cause for pursuing a prosecution of Mr. Le Huray. As the judgment indicates at paragraph 74, the Lieutenant Bailiff did not ask the Jurats to consider whether, in their view, there were reasonable grounds for such belief, as it was for the Jurats to decide the fact of belief but, if found, it was for the Lieutenant Bailiff to decide upon the reasonableness. The deliberation of the Jurats is set out in paragraphs 75 to 78. In paragraph 79 it is noted that the Jurats found that the customs officers did genuinely believe, at the relevant time, that the combination of facts of which they had obtained evidence sufficiently supported the likelihood of Mr. Le Huray's guilt and justified charging him with the offence stated. That is not a finding with which this court could interfere.
19. Question 5 was whether the customs officers had reasonable and probable cause for pursuing a prosecution of Mr. Le Huray. The Lieutenant Bailiff sets out her reasoning in considerable detail in paragraphs 80 to 91. The Lieutenant Bailiff's views are closely reasoned. As she indicated in paragraph 86, having found that the evidence contained in two witness statements was sufficient, if proved, to justify bringing the charge, the issue of reasonable and probable cause depended upon whether further facts also known to the customs officers, which might have been considered to weaken that case, were so strong as to mean that the customs officers could not reasonably rely on the witness statement evidence at its face value.
20. The Lieutenant Bailiff could see no sufficient circumstance, either in the nature of the questioning of the witnesses, or any other matter, to justify the proposition that the customs officers were not entitled to rely on the statements. Nor, in her view, was the evidence under consideration so inherently implausible as to begin to raise doubts as to whether the statements could be relied upon. We do not consider that there is any realistic prospect of these conclusions being overturned on appeal.
21. The court then went on to consider whether evidence at remand hearings, where inaccurate information was given to prosecuting counsel with regard to Mr. Le Huray, might indicate malice on the part of the customs officers. At paragraphs 101 and 102 of the judgment, the Jurats strongly deprecated the misleading tenor of information given about Mr. Le Huray but were satisfied that the misstatements were the product of carelessness or sloppiness rather than the produce of malevolence or of a malicious or spiteful motive not only in seeking to have Mr. Le Huray remanded in custody but in preferring the relevant charge against him at all. The Jurats could see no other matter which might amount to evidence of malice on the part of the customs officers. Once again, these are not findings with which this court could interfere.

## **Conclusion**

22. For all these reasons it is our opinion that the grounds of appeal, and a consideration of the judgment below, do not indicate that there are points to be taken on appeal which have any prospect of entitling this court to interfere with the decision below. It therefore follows that we will not grant an extension of time.

### **Waiver of Court Fees**

23. Mr. Le Huray seeks waiver of court fees. He indicates that he is not in receipt of any benefits from the States but that his total earnings in the past year have been no more than £350. In this respect he refers to Article 6 of the European Convention on Human Rights and, in particular, paragraph 3(c) which provides, in respect to persons charged with a criminal offence, that they should have the right to defend themselves in person or through legal assistance of their own choosing or, if without sufficient means to pay for legal assistance, to be given legal assistance free when the interests of justice so require.
24. Paragraph 3(c) of Article 6 applies only to criminal proceedings and it is therefore of no relevance to the present application.
25. The Royal Court (Costs and Fees) Rules 2012 set out the court fees payable in respect of civil proceedings in these courts. By Rule 1(6), the court may, if it thinks fit, remit, in whole or in part, any fees specified in column 2 of the schedule.
26. In order to carry out the task of determining whether or not court fees should be waived, it would be necessary for us to have a detailed and vouched indication of the applicant's income from all sources over a twelve month period, together with an indication of his expenditure, in order to be able to identify whether the figures being put forward provide a comprehensive indication of the financial situation of the litigant in person. In the present case not only are we not provided with that information but the applicant gives no indication as to why he has not applied for legal aid. We therefore refuse the application.