

Application for leave to appeal against Conviction in accordance with section 7(1) of the Magistrate's Court (Criminal Appeals) Law, 1988.

[2022]GCA011

IN THE COURT OF APPEAL OF GUERNSEY

CRIMINAL DIVISION

Case No. 507

Between: **LAURENCE GRAHAM** **Applicant**

-v-

THE LAW OFFICERS OF THE CROWN **Respondent**

APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION

Decision on the Papers

Decision of Richard James McMahon, Esq., Bailiff

Date of Decision: 17 March 2022

Counsel for the Applicant: **Advocate S J Maindonald**

1. The Applicant, Laurence Graham, was convicted in the Magistrate's Court on 12 October 2021 of a charge of burglary. His appeal against that conviction was dismissed by the Royal Court on 8 March 2022.
2. Whereas the appeal to the Royal Court was as of right, the further appeal to the Court of Appeal requires leave to be granted. This is clear from section 7(1) of the Magistrate's Court (Criminal Appeals) Law, 1988, which provides:

"A person whose appeal is dismissed by the Royal Court ... may appeal to the Court of Appeal against that conviction ...

PROVIDED that no such appeal may be brought without the leave of the Court of Appeal."

3. Although section 7(2)(b) of the 1988 Law would enable me to grant a certificate that sufficient grounds of appeal exist in the case, I am proceeding on the basis that I am considering the question of leave to appeal as a single judge of this Court in accordance with subsection (3):

"The power of the Court of Appeal to grant leave to appeal under this section may be exercised by any single judge of the Court of Appeal in the same manner as it may be

exercised by the Court of Appeal; but if the single judge refuses leave to appeal, the appellant shall be entitled to renew his application to the Court of Appeal as duly constituted for the hearing and determining of appeals under the Court of Appeal (Guernsey) Law, 1961 ...”.

By subsection (2)(a), the appeal may be on any ground which involves a question of law alone.

4. The Notice of Appeal settled on behalf of the Applicant by Advocate Maindonald dated 15 March 2022 pursues this further appeal “*on the basis that the conviction cannot be supported by the evidence and/or the judgment of the Judge at trial*”. It is further suggested that the Applicant “*could not have carried out the offence within the time available to him (the four minute window*”.
5. This Court has previously explained how section 7 of the 1988 Law works. In *Law Officers of the Crown v Diment* (1993) 16.GLJ.86, the Court stated (at para. 10):

“The language of the statutes shows that the legislature’s intention was to confer by s. 7 of the Law of 1988 a second appeal against the decision of the Magistrate. This is not to say that the decision of the Royal Court is always irrelevant for the purposes of this Court’s decision. This Court may have to consider the Bailiff’s reasons for dismissing the appeal against the Magistrate’s decision ..., when considering what its own conclusion about the Magistrate’s decision should be. In the end, however, the result must depend upon whether this Court considers the Magistrate’s decision is open to attack on any of the grounds sets out in s. 25(1) of the Court of Appeal Law, not upon whether it considers any criticism can be made of the proceedings in the Royal Court.”

6. Section 25(1) of the 1961 Law provides that an appeal against conviction shall be allowed by this Court “*if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice*”.
7. As indicated in *Law Officers of the Crown v Carter* (1998) 25.GLJ.58, in the absence of a certificate from the Bailiff, the only basis on which an application for leave to appeal can be granted is if the applicant “*can show that the basis of his appeal is on a ground which involves a question of law alone*”. In that case, the Court concluded that the “*matters which [the applicant] wishes to raise by appeal are matters of fact rather than matters of law*”, which is why the Court refused to grant leave.
8. The approach taken to an appeal advanced on the basis that the conviction cannot be supported having regard to the evidence recognises that the verdict can only be set aside if it is “*obviously and palpably wrong*” (see, eg, para. 3 in the judgment of the Royal Court). This is a high hurdle to surmount on appeal and, in my judgment, needs to be borne in mind when considering whether the further appeal the Applicant wishes to pursue is an arguable one for the purposes of granting leave. I am satisfied that the approach to be taken to this application is to consider whether there are arguable grounds justifying the hearing of the appeal before this Court.
9. In my judgment, there are not. I have borne in mind the requirement for leave before a further appeal can be pursued, distinguishing an appeal to this Court from an appeal as of right to the Royal Court. The arguments that have already been advanced on behalf of the Applicant would, I suspect, be repeated. Anything that could have been said on behalf of the Applicant in support of his appeal would already have been said in the Royal Court. Although I recognise that the appeal lies from the decision in the Magistrate’s Court and not from the Royal Court (as explained in *Diment*), the Court of Appeal will be no better placed to review what happened in

the Magistrate's Court than the Royal Court was. In the course of dismissing the appeal, it was noted (in para. 7) that the trial judge saw and assessed the witnesses and so was entitled to reach the decision he did. The same principle that was expressed that "*It is not for this Court to interfere with such a decision unless perverse or one that no reasonable tribunal could have made*" will be equally applicable in relation to this attempt to appeal on the same basis again. The conclusion reached in the Royal Court was that "*This was a matter of fact and based on the Judge's evaluation of the evidence.*" Accordingly, the Applicant's position is coming close to that described in Carter.

10. In these circumstances, having regard to the "*obviously and palpably wrong*" test, I am not persuaded that the Applicant has an arguable case justifying the granting of leave. Section 7(3) of the 1988 Law entitles the Applicant to renew his application for leave before the plenary Court should he so wish.
11. Although the material has not been placed before me with a view to seeking a certificate that sufficient grounds of appeal exist in this case, even if I were to be invited to reach such a conclusion, it necessarily follows from what I have said that I would decline to grant such a certificate. The Applicant has had his opportunity to test whether his conviction can stand by reference to the weight of the evidence adduced at his trial and, apart from his wish to present the same arguments again, I cannot identify any other basis for him to pursue his appeal.
12. Having refused to grant leave to appeal, I will similarly refuse to grant the Applicant legal aid.

Richard McMahon
Bailiff