

JAMAICA

IN THE COURT OF APPEAL

BAIL APPEAL NO COA2025BA00004

MARLANDO ROWE v R

Hugh Wildman for the appellant

Malike Kellier and Ms Jameila Simpson for the Crown

1, 22 and 29 July 2025

Criminal law – Appeal concerning bail – Jurisdiction of this court in bail appeals – Whether this court has the jurisdiction to consider a second appeal concerning bail where an appeal was already determined by a judge of the Supreme Court – Bail Act 2023, sections 5, 10, 11, 12

ORAL JUDGMENT

IN CHAMBERS

STRAW JA

Background

[1] The appellant, Marlando Rowe, a police officer, was initially charged with the offence of unauthorised possession of ammunition and brought before the Clarendon Parish Court. He was granted bail in respect of that charge. Subsequently, he along with five others, were charged with four unrelated offences. Namely, receiving stolen property, engaging in a transaction that involves criminal property, facilitating the use of criminal property and possession of criminal property. The appellant was brought before the Kingston and Saint Andrew Parish Court (Criminal Division) in respect of those offences and was refused bail. The appellant's bail in the Clarendon Parish Court was also revoked, arising from the additional charges.

[2] The appellant appealed to the Supreme Court for a review of both decisions concerning bail, that is, the refusal and the revocation. Mott Tulloch-Reid J ('the learned judge') heard the appeals and concluded that the decisions of the two Judges of the Parish Courts should not be disturbed. She, accordingly, refused the application to review bail. The appellant now seeks to appeal the decision of the learned judge.

[3] The preliminary issue for this court's consideration is whether this court has the jurisdiction to consider a further appeal from a ruling of a Judge of the Supreme Court who considered an appeal concerning bail. The parties were invited to make submissions on this preliminary issue.

Submissions

[4] For the appellant, counsel Mr Wildman contended that this court is empowered to consider a further appeal. He relied on section 10(3)(d) of the Bail Act, which he asserted was applicable with respect to the revocation of the appellant's bail and, that arising from that revocation, section 12(1)(b)(i) of the Bail Act was triggered, thereby giving this court jurisdiction. With respect to the refusal to grant bail, counsel contended that section 11 of the Bail Act was applicable, as the appellant was in custody and the court before which he first appeared had the jurisdiction to review that custody. Bail having been denied on that first appearance, the appellant was permitted to appeal to a judge in chambers in the Supreme Court, which he did. The appeal having been refused, the appellant was permitted to appeal to a judge of this court under section 12(1)(b)(ii) of the Bail Act.

[5] By contrast, Ms Simpson, on behalf of the Crown, contended that the appellant has no further right of appeal to this court, in the circumstances. Reference was made to the previous Bail Act (the Bail Act 2000) and it was asserted that, under that Act, both a defendant and the prosecution had the right to appeal a decision concerning bail, once. This position remained unaltered by the new Bail Act. As such, section 12 of the new Bail Act gives a defendant a right to appeal from a decision of a Judge of the Parish Court to a Judge in Chambers of the Supreme Court only. The appellant, having exercised this right, cannot now seek a further review. In making these submissions reliance was also

placed on extraneous documents, namely: (1) a statement made, on 5 October 2022, by the Minister of Legal and Constitutional Affairs, Mrs Marlene Malahoo Forte KC, MP, in the tabling of the Bail Bill, 2022; (2) the relevant report of the Joint Select Committee of Parliament dated 18 July 2023; and (3) the Hansard for a sitting of the Senate on 6 October 2023. Counsel for the Crown also referred to the case of **Huey Gowdie v R** [2012] JMCA Crim 56 in which the appellant was refused bail in both the Parish Court and the Supreme Court but was granted bail in the Court of Appeal. It was submitted that the case was an anomaly and that the Crown did not object to bail being granted.

Discussion

[6] In determining this issue, the appropriate starting point is the Bail Act, 2023 (hereinafter referred to as 'the Act') and, in particular, sections 12(1) and (2), which provide as follows:

“12.—(1) The defendant concerned may, in accordance with any applicable rules of court, appeal to—

(a) a Judge of the Supreme Court in Chambers, **in respect of a decision made by a Judge of the Parish Court—**

(i) and referred to in section 7(4)(a) or 10(3); or
(ii) upon a review conducted under section 11;

(b) a Judge of the Court of Appeal in Chambers, **in respect of a decision made by a Judge of the Supreme Court—**

(i) and referred to in section 10(3); or
(ii) upon a review conducted under section 11.

(2) Where bail is granted to a defendant by a Judge of the Parish Court or a Judge of the Supreme Court pursuant to this Act, the prosecution may, in the manner set out in subsection (3), appeal to a Judge of the Court of Appeal in Chambers, in respect of the decision.” (Emphasis supplied)

[7] Sections 7(4)(a), 10(3), and 11 are. Therefore. relevant to a determination of the nature of the appeals that were brought in this case.

[8] Section 7(4)(a) concerns the extension of a defendant's release on bail in the case of a defendant who was arrested or detained but not charged for an offence. It would, therefore, be inapplicable to the present case, as the appellant has been charged for offences in both instances.

[9] Section 10(3) provides:

“(3) Where **a deciding official**—

- (a) grants or refuses bail;
- (b) imposes conditions in granting bail;
- (c) varies any conditions of bail; or
- (d) revokes bail,

the reasons for the decision shall be given in accordance with subsection (4).” (Emphasis supplied)

[10] Sections 11(1), (2) and (4) provide as follows:

“11.—(1) **A decision by a constable or a Justice of the Peace** on the matter of bail to a defendant shall be reviewed by a Judge of the court having jurisdiction to try the offence concerned or before which the defendant first appears (as the case may be)

- (a) on the defendant's first appearance in court in relation to the offence;
- (b) in the case of a refusal to grant bail or a decision to impose any condition in granting bail, on an application by the defendant on any ground specified in subsection (2);
- (c) in the case of a decision to grant bail or the failure to impose a particular condition in granting bail, on an application by the prosecution on any ground specified in subsection (2).

(2) The grounds referred to in subsection (1) are—

(a) there has been a change in circumstances affecting the matter since the previous decision in respect of bail; or

(b) there are facts applicable to the matter which were not available to the deciding official at the time when the decision was made.

(3) ...

(4) On a review under this section, the Judge—

(a) may affirm the decision reviewed, grant or refuse bail to the defendant, impose conditions on bail granted to the defendant, or remove or vary any condition of bail imposed on the defendant;

(b) in the case of a review under subsection (1), may revoke bail granted to the defendant; or

(c) in any case where section 7(1) applies, (unconditional release of defendant arrested or detained but not yet charged), shall make such order as the court considers appropriate.” (Emphasis supplied)

[11] Based on the foregoing, and so far as relevant to this case, it is apparent that a defendant has a right of appeal to the Supreme Court in respect of: (1) a decision by a Judge of the Parish Court refusing bail, imposing conditions on the grant of bail, varying bail conditions or revoking bail (section 10(3)); and (2) a review conducted by a Judge of the Parish Court where a decision was previously made concerning bail by a constable or a Justice of the Peace (‘JP’) and where the Judge of the Parish Court either affirms the decision of the constable or JP, refuses bail, imposes conditions on the grant of bail, varies any condition of bail or revokes bail (review under section 11). Likewise, a defendant has a right to appeal to the Court of Appeal in respect of a decision made by a Judge of the Supreme Court in those same circumstances. However, an appeal by the prosecution challenging the grant of bail or seeking the imposition of conditions may only be considered by a Judge in Chambers in the Court of Appeal, whether the appeal arises from a decision of a Judge of the Parish Court or a Judge of the Supreme Court and the prosecution’s right of appeal may only be exercised once.

[12] Based on the facts of the present case, decisions having been made by Judges of the Parish Court refusing bail and revoking bail (which was initially granted by the Parish Court), section 10(3) would be applicable.

[13] Mr Wildman contends that section 11 was also engaged in respect of the decision of the Judge of the Parish Court refusing bail. It is to be noted that the distinct jurisdiction given for review under section 11 arises upon the fulfilment of two conditions: (1) the deciding official at first instance was either a constable at or above the rank of a Superintendent or a JP; and (2) the court reviewing the decision either has the jurisdiction to try the offence, or is the court before which the defendant first appears. So, if the jurisdiction is in the Parish Court, or the defendant first appears in the Parish Court, then the review as set out in section 11 takes place. Under section 12, the appeal in relation to a review conducted by a Judge of the Parish Court is to a Judge of the Supreme Court. However, if the Supreme Court has jurisdiction to try the offence or it is the court before which the defendant first appears, a Judge of the Supreme Court may review the decision of the constable or the JP. In that case, the appeal in relation to that review is to a Judge of the Court of Appeal.

[14] The Act provides for three categories of defendants. It defines a defendant as an individual who is:

“(a) charged with or convicted of an offence; or

(b) detained or arrested for an offence, or for whose arrest a warrant (endorsed for bail) has been issued, and who has not yet been charged with the offence, ...”

[15] A defendant may, therefore, be an individual that has been: (1) arrested or detained for an offence but not charged; (2) charged with an offence; or (3) convicted of an offence. Section 5 of the Act stipulates who may be the deciding official for consideration of the question of bail depending on the category within which a defendant falls, as well as, the offence for which a defendant is arrested, charged or convicted. A constable at or above the rank of Superintendent, or a JP is empowered to make a

decision on bail in respect of a wide range of offences for a defendant who has been arrested or detained but not charged. This includes serious offences such as murder and offences under the Treason Felony Act, and Sexual Offences Act, to name a few. A constable at or above the rank of Superintendent or a JP may also consider bail in the case of an individual who has been charged with an offence, but in respect of a smaller number of offences. It is in such circumstances that, upon a decision being made by a constable or JP, a Judge of the Parish Court or a Judge of the Supreme Court will conduct a review pursuant to section 11 of the Act. In the present case, the deciding official upon the refusal of bail was a Judge of the Parish Court and no review was conducted of a decision made by a constable or JP, pursuant to section 11 of the Act. Section 11 is, therefore, inapplicable to this case.

[16] As the appellant contends that he has a further right to appeal to this court, having already exercised his right to appeal to the Supreme Court, it is necessary to consider whether the word “decision” in section 12(1)(b) of the Act encompasses a decision made by a Judge of the Supreme Court on an appeal. It is my considered view that the word “decision” does not encompass a decision made on appeal, as the word decision in both sections 12(1)(a) and (b) is qualified by the statement “and referred to in section 10(3); or upon a review conducted under section 11”. Therefore, the decision must be one that was made by a deciding official refusing bail, imposing conditions in granting bail, varying conditions, revoking bail or conducting a review of a decision by a constable or JP under section 11. Furthermore, the Act defines a deciding official as:

“the court, Judge, Justice of the Peace, or constable (as the case may require), **who—**

(a) is the competent legal authority on the matter of the grant of bail, or any question relating thereto, pursuant to this Act or any other law; and

(b) in the case of a constable, shall not be the arresting officer or an officer involved in the investigation of the offence concerned;” (Emphasis supplied)

[17] Although the Act defines Judge to mean “a Judge of the Parish Court, a Judge of the Supreme Court, or a Judge of the Court of Appeal”, it is evident that who will be “the competent legal authority” and, thus, who will be the “deciding official” will depend on the circumstances of the case. In particular, it will depend on the category of detainees in which a defendant falls, the offence in respect of which a defendant is detained or charged and/or the court before which a defendant is placed. As such, a Judge of the Supreme Court would not be the competent legal authority on the matter of bail or any question relating thereto where the defendant is not placed before the Supreme Court. This is also apparent from a full reading of section 5 of the Act and in particular section 5(2) where the deciding official is further specified based on the offences listed in the schedules to the Act.

[18] I am fortified in my view on the basis of the submissions by the Crown that if the Act were to be interpreted otherwise, it would mean that a defendant before the Parish Court would have two opportunities to appeal a decision concerning bail, whereas a defendant before the Supreme Court would be at a disadvantage, having only one opportunity to appeal. It is notable that this was the regime under the previous Bail Act, particularly that an appeal from the Parish Court was considered by a Judge of the Supreme Court in Chambers only.

[19] In my view, had Parliament intended that a defendant who has exercised his right of appeal against a decision of a Judge of the Parish Court to a Judge of the Supreme Court, should have a second right of appeal to a Judge of the Court of Appeal, this would have been stated in the Act. The statement of the Minister of Legal and Constitutional Affairs also proves useful in demonstrating that there is only one right of appeal. At paras. [219] and [220] of **The Attorney General of Jamaica v Phillip Paulwell and others** [2024] JMCA Civ 47 this court considered the circumstances under which extrinsic aids to interpretation may be used when construing a statute. It was stated:

"[219] ... In **Pepper (Inspector of Taxes) v Hart** [1993] AC 593 ('**Pepper v Hart**'), at page 617E - F, Lord Griffiths opined:

'The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. ... The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.'

[220] And further at page 639A:

'Hansard has frequently been referred to with a view to ascertaining whether a statutory power has been improperly exercised for an alien purpose or in a wholly unreasonable manner. In *Reg v Secretary of State for the Home Department, Ex parte Brind* [1991] 1 A.C. 696 ... the Crown ... invited the court to look at Hansard to show that the Minister in that case had acted correctly. The House attached importance to what the Minister had said. ...'"

[20] Given it is arguable that section 12 of the Act may be ambiguous on the issue being considered, the statement of the Minister can be considered. In her review of the Bail Bill, relating to what was clause 12 (now section 12), the Minister stated:

"Appeal from decision of judge (clause 12)

Appeal by defendant **lies** to:

Judge of Supreme Court in Chambers from decision of Parish Judge;

Judge of Court of Appeal in Chambers from decision of Judge of Supreme Court;

Appeal by prosecution **lies** to the Court of Appeal."
(Emphasis supplied to the word 'lies')

[21] The use of the word “lies” in the statement from the Minister, together with section 12(1) of the Act, indicate that an appeal by a defendant from a decision of a Judge of the Parish Court must be made to the Supreme Court, whereas an appeal by a defendant from a decision of a Judge of the Supreme Court must be made to a Judge of the Court of Appeal. Appeals by the prosecution must be made to a Judge of the Court of Appeal. It could be contended that any understanding to be gained from this record is limited as it merely repeats what has been set out under section 12. However, it is also notably absent of any stated intention to allow a defendant appealing from a decision of a Judge of the Parish Court to have two avenues open for an appeal, that is, to the Supreme Court as well as the Court of Appeal.

[22] Concerning the case of **Huey Gowdie v R**, I agree with the submissions of the Crown that this case was an anomaly. It is apparent also from the judgment of Brooks JA (as he then was), that he was not entirely satisfied that the court was seized of the jurisdiction to consider a further appeal. He stated at para. [4]:

“[4] When the bail appeal came on for hearing before me on 9 October 2012, no concern was expressed about the jurisdiction of a single judge to hear the appeal. Miss Kemble, for the Crown, informed me that the Crown knew of no basis on which bail should be denied Mr Gowdie. It was, therefore, not objecting to the grant of bail. ...”

And further, at the last paragraph of the judgment:

“[33] The issue of whether a single judge of this court may properly consider an appeal from a decision of a judge of the Supreme Court to refuse bail, should be considered where the court has had the benefit of submissions by counsel.”

[23] In the circumstances, therefore, the decision of **Huey Gowdie v R** does not assist the appellant.

[24] The circumstances of this case demonstrate, therefore, that when the appellant appealed to the Supreme Court in respect of both decisions of the Judges of the Parish

Court (to refuse bail on the one hand and to revoke bail on the other), he exercised his right to appeal under section 12(1)(a)(i) of the Act in both instances. No right was exercised under section 12(1)(a)(ii) as neither of the Judges of the Parish Courts engaged in a review of a decision made by a constable or JP pursuant to section 11 of the Act. This is also apparent from the reasons provided by Her Honour S Burrell in respect of her decision refusing bail. In the result, the appellant has exhausted his right to appeal and the decision of the learned judge is final.

[25] In the final analysis, I decline to determine a further appeal on the issue of bail as the appellant has already exercised his right to appeal to the Supreme Court and the Act does not grant a further right of appeal to this court. This court does not have any jurisdiction to embark upon a further consideration.

[26] In any event, even if I am mistaken on the issue of jurisdiction, I would not have been minded to allow the appeal. Having considered the written submissions of the parties, the affidavits filed by the appellant, the affidavit of Chief Special Agent Errol Greenland and the reasons for the decision by the learned judge and both Judges of the Parish Courts, I would have been unable to identify any basis to interfere with the determination of the learned judge of the Supreme Court regarding her refusal of the application to review the bail of the appellant.

Order

Appeal refused as the court has no jurisdiction to determine the matter.