

ROYAL COURT
(Samedi Division)

37.

1st March, 1991

Before: The Deputy Bailiff, and
Jurats Le Boutillier and Hamon

The Attorney General

- v -

LM

Application, under Article 35(2) of the Court of Appeal (Jersey) Law, 1961 for admission to bail. Application for leave to appeal filed 26th February, 1991.

Applicant was remanded in custody on the 20th February, 1991, following conviction by the Inferior Number for an offence under Article 9 of the Children (Jersey) Law, 1969, for sentencing before the Superior Number on 20th March, 1991.

Applicant had been refused bail by the Police Court on 12th October, 1990, when he was remanded to the Royal Court for trial.

On the 21st December, 1990, the Royal Court admitted him to bail pending his appearance before the Royal Court.

Grounds of Appeal: (1) verdict of Inferior Number unreasonable - not able to be supported having regard to evidence; (2) indictment was bad for duplicity.

Bail application based on appeal being likely to succeed; application opposed by Crown.

Court finds that though there was case to be argued on appeal, it did not amount, prima facie, to saying that appeal was likely to be successful.

Miss S.C. Nicolle, Crown Advocate.

Advocate A. Hoy for the Applicant.

JUDGMENT

DEPUTY BAILIFF: We have taken the test to be applied from the 43rd edition of Archbold para. 7.86 at p.1006.

In deciding whether to grant bail pending appeal, the true question is: are there exceptional circumstances which would drive the Court to the conclusion that justice can only be done by the granting of bail? Lane LJ in R -v- Walton (1978) 68 Cr. App. R. 293 said this:

"Such circumstances will exist where it appears, prima facie, that the appeal is likely to be successful, or where there is a risk that the sentence would have been served by the time the appeal is heard".

The Court cannot find those exceptional circumstances here. The Court is not satisfied that it appears, prima facie, that the appeal is likely to be successful. We cannot find more than that there is a case to be argued, but to find a likelihood of success the case, prima facie, would have to be much stronger than it appears to us.

On the second point we note that there has been a remand to the Superior Number for sentence, and so the prosecution clearly must have in mind a sentence in excess of two years. Of course the Court may reduce the conclusions, but nevertheless there is, in our view, no risk that the sentence will have been served by the time the appeal is heard. For those purposes we have set September as the latest appeal date.

Therefore, having rejected both those grounds we go on, obviously, to reject the application. The application is dismissed.

Authorities

Court of Appeal (Jersey) Law, 1961: Articles 35(2), 25(1).

Archbold (43rd Ed'n): para 7-86 p 1006.

A.G. -v- Ahier (1981) JJ 29 at p 44.

Nelson (1977) 65 Cr. App. R. 119 at p 122.

R -v- Walton (1978) 68 Cr. App. R. 293.

