THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Criminal Appeal Application No. 012/2023
Criminal H.C.A No. 03/19

B E T W E E N

VINCENT LEONARD NELSON KC

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

PANEL:
N. BEREAUX, J.A.
J. ABOUD, J.A.
G. HENDERSON, J.A.

APPEARANCES:

Mr. Edward Fitzgerald KC and Mr. Naveen Maraj instructed by Mr. Varun A. Debideen on behalf of the Applicant

Mr. Ian Benjamin SC and Ms. Tekiyah Jorsling instructed by Ms. Tonya Rowley on behalf of the Respondent

DATE DELIVERED: 29 July 2025

I have read the judgment of Henderson JA. I agree with it and have nothing to add.

Nolan Bereaux
Justice of Appeal

I have also read the judgment of Henderson JA. I agree with it and I have nothing to add.

James Aboud
Justice of Appeal

JUDGMENT

Delivered by Henderson JA

Introduction

1. This application to the Full Court of Appeal seeks to set aside the decision of Mohammed JA delivered on 18 July 2024 dismissing the application of Vincent Leonard Nelson KC ("the Applicant") for leave to appeal his conviction and sentence out of time. On 4 June, 2019, the Applicant was convicted before Holdip J. (as he then was) after entering a plea of guilty on two separate counts for the following offences:
   (1) Conspiracy to commit an act of corruption contrary to common law with the particulars alleging that he conspired with Anand Ramlogan and Gerald Ramdeen to corruptly give rewards to Anand Ramlogan in breach of **section 3** of the **Prevention of Corruption Act Chap. 11:11**, and
   (2) Conspiracy to commit money laundering contrary to common law with the particulars alleging that he conspired with Anand Ramlogan and Gerald Ramdeen to receive, conceal and transfer the rewards given by the Applicant

to Anand Ramlogan, contravening **section 45** of the **Proceeds of Crime Act Chap. 11:27**.

On 2 March 2020 the Applicant was sentenced to pay a fine of two million, two hundred and fifty thousand dollars ($2.25 million) or, in default, three years hard labour and on 31 October, 2023, the Applicant filed this application for leave to appeal against his conviction and sentence, out of time. The application was dismissed by Mark Mohammed JA, sitting as a single judge and the Applicant now appeals against his decision.

Background

2. Given the issues raised and the fact specific nature on which the outcome of this application turns, it is necessary to review the chronology of events in some detail.

3. During the period 2010 to 2015, the Applicant was contracted by the Government of The Republic of Trinidad and Tobago ('GOVTT') to provided legal services[1]. Mr Anand Ramlogan S.C. was the Attorney General of the Republic of Trinidad and Tobago between 2010 and 2015 . Sometime in 2014, the Applicant was retained by the GOVTT to act on behalf of the Board of Inland Revenue ('BIR') to represent the BIR in matters involving tax appeals brought by BP Trinidad and Tobago LLC ('BPTT'). Before the commencement of the appeal hearing in 2015, the dispute was settled with BPTT agreeing to pay TT$2B to the BIR [2].

4. Following the 2015 general election, there was a change of government and Mr. Faris Al-Rawi, S.C. was appointed as the Attorney General. Despite having made numerous demands for outstanding payment for legal work done, the Applicant did not receive payment[3]. On 6 December 2016, the Applicant brought a claim CV2016-04386 against the GOVTT for outstanding money owed to him for work

[1] Affidavit of VLN; Record of Appeal (ROA) Vol. 1, p.67, para. 19
[2] Affidavit of VLN; ROA Vol. 1, p. 68, paras. 20-21
[3] *Ibid*

completed pursuant his retainer[4]. The Applicant was represented in this claim by, Mr. Roger Kawalsingh, attorney-at-law.[5] On 6 October, 2016 Rahim J dismissed the application of the GOVTT to set aside the Applicant's claim for monies owed to him under the retainer. The GOVTT subsequently appealed the decision of Rahim J[6].

5. The Applicant avers that sometime in September 2017, in a private conversation, he confided to Mr. Kawalsingh that former Attorney General Ramlogan S.C. ("AG Ramlogan") and, attorney-at-law, Mr. Gerald Ramdeen, demanded 'kickbacks' from the Applicant for work done by him pursuant to the retainer. On 5 October, 2017, Mr Kawalsingh divulged those matters to the then Attorney General, Mr. Faris Al-Rawi ("AG Al-Rawi"). The Applicant maintains that he did not give Mr. Kawalsingh permission to divulge that information to a third party.[7]

6. During a phone conversation on 5 October, 2017, Mr. Kawalsingh informed the Applicant that AG Al-Rawi stated that if the Applicant prepared a Notarised Statement disclosing that he made payments (or "kickbacks") to the previous AG Ramlogan, and Mr. Gerald Ramdeen, AG Al-Rawi would ensure that the Applicant was paid for the work he had undertaken on behalf of GOVTT[8].

7. The Applicant stated in his affidavit, that, having agreed to prepare and sign the Notarised Statement, he insisted upon a contractual indemnity by the GOVTT[9]. Mr. Kawalsingh provided little to no assistance to the Applicant in this regard and the Applicant did not seek advice from any other attorney-at-law. AG Al-Rawi gave an undertaking that the Applicant would be paid for the work he had done under the retainer[10]. The Applicant, by this time, had been diagnosed with cancer and was in need of money to fund his medical treatment.

[4] Affidavit of VLN; ROA Vol 1, p.68, para. 23
[5] *Ibid*
[6] Applicant's updated Chronology with References to Record of Appeal; ROA Vol 4, p.1020
[7] Affidavit of VLN; ROA Vol 1, p.70, para. 26
[8] Affidavit of VLN; ROA Vol 1, p.70, para. 27
[9] Affidavit of VLN; ROA Vol 1, p.80, para. 32
[10] Affidavit of VLN, supra, n.8

8. On 2 November, 2017, Mr. Kawalsingh sent an email to the Applicant stating that he was meeting with AG Al-Rawi on 5 November, 2017 to discuss the indemnity[11]. The Applicant replied to Kawalsingh's email and set out certain assurances that the GOVTT would need to make before he would provide the Notarised Statement. The Applicant set out the following undertakings in his email dated 3 November, 2017[12]:

   i. The documents will not be released into the public domain by the Attorney General, his servants or agents, nor will they be disclosed in any Parliamentary debate.

   ii. The Applicant's name must not be disclosed by the GOVTT, the Attorney General or their servants or agents as the person who provided any information contained in the documents.

   iii. The documents will not be disclosed to any revenue, regulatory or disciplinary body outside of Trinidad and Tobago.

   iv. The GOVTT, its servants or agents will hold the Applicant harmless and will not investigate or commence any criminal proceedings against him for any matter arising out of the documents disclosed by him and will not commence nor investigate any civil action against him for repayment of any fees paid to the Applicant in the period 2010-2018 and for damages in relation to any matter arising out of documents disclosed.

   v. The GOVTT will hold the Applicant harmless and indemnify the Applicant against any action commenced against the Applicant by any regulatory authorities, disciplinary bodies, tax authorities or for damages, defamation or any other civil action commenced against the Applicant resulting from the disclosure of the documents.

9. The Applicant prepared an initial draft of the Indemnity Agreement on 5 November, 2017 and an amended draft was delivered to him by Counsel for AG

[11] Affidavit of VLN; ROA Vol 1, p.72, para. 33(a)
[12] Exhibit VLN 13; ROA Vol 1, p.271

Al-Rawi on 15 November, 2017. The amended draft omitted the undertaking that there should be no criminal proceedings instituted against the Applicant[13]. The Applicant insisted that this be a term of the indemnity agreement and Mr. Kawalsingh informed Mr. Al-Rawi of this[14].

10. Sometime in November 2017, AG Al-Rawi and the Applicant signed the Indemnity Agreement. In it, the recital stated that in exchange for the Notarised Statement, AG Al-Rawi agreed various terms with the Applicant "*in [his] capacity as Attorney General … on behalf of the government of Trinidad and Tobago, its servants and agents*". The Indemnity Agreement included 10 clauses of which a summary of the following noteworthy clauses are material to these proceedings: Clause 2 stated that the Indemnity Agreement would be disclosed to the DPP and the Anti-Corruption Investigation Bureau, but subject to any legal obligations, it would not be disclosed to any other person or body; Clause 3 stated that no civil proceedings would be brought against the Applicant; Clause 4 provided that AG Al-Rawi would "*recommend to the DPP . . . that no criminal proceedings be commenced against you . . .* "; and Clause 5 agreed to indemnify the Applicant against inter alia "*all actions, suits, proceedings, claims, demands, costs, expenses and liabilities whatsoever which may be taken or made against you or be incurred or become payable or sustained by you by reason of the breach of the Undertakings contained herein*".

11. The Applicant deposed that Kawalsingh had a telephone conversation with AG Al-Rawi in which AG Al-Rawi suggested that he would recommend to the Director of Public Prosecutions ('DPP') that the Applicant not be prosecuted. Kawalsingh informed the Applicant that AG Al-Rawi's recommendation would be accepted by the DPP because of the important nature of the evidence and assured the Applicant that he could rely on AG Al-Rawi's representations[15].

[13] Affidavit of VLN; ROA Vol 1, p.72, para.33 (b) –(c)
[14] Affidavit of VLN; ROA Vol 1, p.73, para. 33 (e)
[15] Affidavit of VLN; ROA Vol 1, p.73, para. 33 (e)

12. In support of his assertion that he would not have provided the Notarised Statement and executed the Indemnity if the representation had not been made by AG Al-Rawi, the Applicant exhibited to his affidavit, an unsigned draft statement prepared by him with a "track changes" document feature. Referring to this unsigned draft statement as "Kawalsingh's draft statement", the Applicant deposed that it was prepared by him for a proposed civil claim in respect of the breach of the Indemnity Agreement. The process by which the Applicant prepared this unsigned draft statement was that in early December 2020, during a series of telephone conversations, Kawalsingh provided him with details of what he said were the contents of Kawalsingh's notes of meetings with AG Al-Rawi. The Applicant deposed that on 19 December 2020, he emailed Kawalsingh attaching the draft statement for his approval. Kawalsingh returned the draft statement to the Applicant with track changes by email on 21 December 2020. The Applicant explained that he intended to provide Kawalsingh with a final copy of the draft statement for his signature but didn't as shortly thereafter, the Applicant's mental health deteriorated to the extent that he took no further steps regarding that statement.

The Notarised Statement

13. The Applicant signed the Notarised Statement on 26 October 2017[16] in which he set out AG Ramlogan's demand for 10 percent of the gross fees received by the Applicant for any work done by him for GOVTT. In summary, the Applicant stated that in late 2010, he was invited to meet AG Ramlogan, the then AG whom he did not know nor had ever met before, to discuss undertaking legal work on behalf of the government. This invitation was made via the Applicant's Chambers. This work was in respect of "forensic probes", one of which the Applicant was to lead, which was the "Petrotrin Probe". He accepted, subject to an agreement on fees by his Chamber's Director.

[16] Notarized Statement signed by VLN; ROA Vol 1, pp. 419-426

14. On a visit to Trinidad on 5 November 2011 and before his scheduled departure on 13 November 2011, Gerald Ramdeen informed the Applicant that AG Ramlogan wished to meet with him concerning the "probes". That meeting which was attended by the Applicant, Gerald Ramdeen and AG Ramlogan, took place at the Attorney General's Office. The only subject of conversation at the meeting which was raised for the first time, was the demand by AG Ramlogan for payment by the Applicant of 10 percent of the fees that he was to receive for his engagement on the probes. In that meeting, it was made clear that it was a requirement and not a request[17].

15. To disguise the payments, AG Ramlogan wanted the funds paid to Gerald Ramdeen who would then make the money available to AG Ramlogan. The Applicant raised that if this was discovered, it would cause problems for all involved whereupon AG Ramlogan said to disguise the fact that funds were being paid to him, the Applicant and Gerald Ramdeen should agree to the fiction that the payments were being made to Ramdeen as part of an agreement where the Applicant was part of Ramdeen's Chambers, even though this was not so. The Applicant detailed that payments totalling GBP 200,367.00 were paid by him from his accounts at NatWest Bank UK and Sagicor Jamaica. The Applicant was informed by Ramdeen that the funds were withdrawn in cash from Ramdeen's recipient bank account and that the cash was handed over to AG Ramlogan. The Applicant stated that, to his knowledge, A.B, C.D and E.F, also paid money or commissions to AG Ramlogan.

16. It is noteworthy that the Applicant's admission to participating in the criminal conspiracies preceded the Indemnity Agreement.

[17] Notarized Statement signed by VLN; ROA Vol 1, pp. 419-426

The Indemnity Agreement and the subsequent Plea Agreement

17. In November, 2017, AG Al-Rawi and the Applicant executed the Indemnity Agreement in which the GOVTT agreed to indemnify the Applicant against, inter alia, any actions, suits, proceedings, claims and liabilities, among other terms. It was further agreed that AG Al-Rawi would recommend to the DPP that no criminal proceedings would be pursued against the Applicant and that the Applicant's evidence would not be disclosed[18]. On 20 November, 2017 AG Al-Rawi authorised the outstanding payment of GBP 1,088,062.00 to the Applicant[19].

18. In breach of the Indemnity Agreement, the Notarised Statement was disclosed to the National Crime Agency of the United Kingdom ('NCA') by the GOVTT. On 5 October, 2018 the NCA informed the Applicant that the Agency was in possession of the Notarised Statement which was disclosed to the NCA by the GOVTT[20]. The NCA further informed the Applicant that a criminal investigation had been launched against him in the United Kingdom. The NCA subsequently ceded jurisdiction for the criminal investigation to the GOVTT.

19. The Applicant deposed that prior to his signing the Plea Agreement and before the conviction hearing, that representation was made by AG Al-Rawi that also amounted to an abuse. Around 23 November, 2018, AG Al-Rawi indicated to Mr. Kawalsingh that the Applicant would be prosecuted in Trinidad and Tobago but would receive a Presidential Pardon within one (1) month of the sentence[21].

20. On 2 May 2019, the State and the Applicant executed a plea agreement in which the Applicant agreed to plead guilty to the offences and would face a non-custodial sentence[22]. The Applicant was convicted before Holdip J. (as he then was) after entering a plea of guilty for the offences on 4 June 2019 and was sentenced on 2

[18] Affidavit of VLN; ROA Vol 1, p.73, para. 34
[19] Statement of Faris Al-Rawi dd. 27 February, 2020; ROA Vol 1, p.415. para.17
[20] Affidavit of VLN; ROA Vol 1, p.77 para. 45
[21] Affidavit of VLN; ROA Vol 1, p.83, para. 60
[22] Plea Agreement; ROA Vol 1, p.400

March, 2020. Pursuant to the Plea Agreement, the Applicant pleaded not guilty to and the DPP discontinued proceedings against the Applicant on the remaining charge of Conspiracy contrary to Common Law, to Commit Misbehaviour in Public Office.

21. On 15 March 2023 the Applicant wrote to the DPP requesting that the Applicant's conviction be referred to the Court of Appeal. The Applicant was formally informed of the DPP's refusal by letter dated 4 May, 2023[23] following which on 31 October 2023, the Applicant filed this application for leave to appeal both his conviction and sentence. The Applicant's appeal is premised on the submission that the events culminating in the Plea Agreement constitute an abuse of process, an abuse of executive power and a breach of promise not to prosecute.

Decision of Mohammed JA

22. On 18 July 2024, after an inter-partes hearing, Mohammed JA refused to extend time for the Applicant to file leave to appeal his conviction and sentence and dismissed the Applicant's Application. In addressing the issue of delay, Mohammed JA directed his mind to the considerations set out by Soo-Hon JA in **Anderson Bonaparte v The State Cr. App. No. P002/2023.** In this case, there was a lengthy delay of just under four (4) years and five (5) months and the Court found that the reasons proffered for the delay were neither convincing nor weighty. Mohammed JA also noted that the Applicant had initiated "complex" civil proceedings in the intervening period yet made no efforts to appeal his sentence and conviction.

23. Mohammed JA considered whether the appeal had a good prospect of success. The Applicant's sole ground of appeal is abuse of process within the second limb of the test in **Ex p Bennett [1994] 1 AC 42**. He considered whether the conduct of the DPP amounted to an abuse of process and concluded that there was no

[23] Affidavit of VLN; ROA Vol 1, p.63, para. 6

prospect of success on appeal against the DPP for such abuse. Mohammed JA considered that the appropriate office holder empowered with the lawful authority to engage in plea discussions and to finalize a plea agreement was the DPP and concluded that there was no identifiable act on his part that amounted to an abuse of process. The office of the DPP is a constitutionally independent office and, as such, the Plea Agreement would not have been invalidated by the AG's actions and promises.

24. By terms of the Plea Agreement, the Applicant asserted that he had signed the agreement voluntarily and that he was offered no inducements or promises to enter into the Plea Agreement. The Court also noted the statement of Mr. Allen, KC, the Applicant's attorney at law at trial who told Holdip J. that the Applicant had freely made the 2017 statement and that the Applicant had entered into the plea agreement "with open eyes".

25. Mohammed JA concluded that, by the time he was engaging in plea discussions, the Applicant would have become aware, that the DPP was not honouring promises by AG Al-Rawi not to prosecute him and in the face of this, still voluntarily accepted the terms of the Plea Agreement. Further, despite the representations made by AG Al-Rawi, the Applicant did not reveal the inducements or promises to the trial judge.

The Applicant's Submissions

26. The nub of the Applicant's submission before the Full Court is the contention that Mohammed JA erred in finding that there was no executive action which rose to the level of an abuse of process. The Applicant argued that AG Al-Rawi obtained the Notarised Statement by way of improper inducements[24], particularly, with promises that:

[24] See Exhibit VLN 2; ROA Vol 1, p.135: A comprehensive summary of the alleged specific promises said to have been made by AG Al Rawi that formed the basis of the abuse of process submissions is set out in correspondence dated 4 May 2023 from Ms. Elaine Green, Attorney at Law, at paragraph 6 under the rubric "the Promises".

(i) the Applicant would not be prosecuted,

(ii) that the Notarised Statement would not be disclosed otherwise than to the DPP and the Anti-Corruption Investigative Bureau (ACIB),

(iii) the Applicant would be paid all outstanding money owed to him by the State and

(iv) that the Applicant would be indemnified for any breach of the Indemnity agreement. There were threats by the AG/State made to the Applicant to withhold the money owed to him in the form of unpaid fees under the 2010-2015 retainer if he failed to prepare the Notarised Statement.

27. The Applicant claimed that there was a breach of the inducements/promises made by AG Al-Rawi and breach of the Indemnity Agreement which amounted to an abuse of process. The Applicant submitted that breach of a promise not to prosecute is a well-recognised category of abuse of process and that this is sufficient to found a claim for abuse of process and that he was induced to prepare the Notarised Statement by the AG Al-Rawi's promises not to prosecute and, as a result, was deprived of the right to be cautioned and interviewed by police before making any admissions. The Applicant was promised that he would be given a pardon which created the impression in the minds of his lawyers that a pardon was being drafted[25].

28. The Applicant further argued that the DPP did not bring all the relevant facts to the attention of the trial Judge, specifically, the circumstances preceding the signing of the Notarised Agreement and Indemnity Agreement.

29. The Applicant asserted that the misconduct of the "executive" encapsulates the actions of the AG in this case. The Applicant contended that the question is

[25] Applicant's Skeletal Submissions, p.18, para. 3.21

"whether that Executive misconduct was causal in obtaining the Notarised Statement and causal in leading to the plea of guilty[26]".

30. It was submitted that Mohammed JA placed undue reliance on the plea of guilty. The DPP was aware that the trial Judge would not have accepted the guilty plea if all the circumstances of the case had been disclosed. Neither the Indemnity Agreement, the Notarised Statement nor the promise of compensation was put before the trial Judge.

31. It is the Applicant's case that his guilty plea has been invalidated by this abuse of process and he relies on the cases of **R v Tredget [2022] EWCA Crim 108 and R v Blackledge [1996] 1 Cr.App.R.326** to suggest that this does not depend on the nature of the plea or whether the accused is innocent or guilty[27].

32. Alternatively, the Applicant contends that he is covered by informer confidentiality/privilege enshrined under **section 12** of the **Supreme Court of Judicature Act Chap 4:01** so that it is irrelevant whether the DPP had the power to enforce the promises as it is only relevant that the promises were offered by a state agency and the State cannot now, renege on those promises.

33. On the issue of delay, the Applicant submitted that Mohammed JA failed to consider the Applicant's illness and that the Applicant was promised a non-custodial sentence. The Applicant put forward the following reasons for the delay which he submitted are cogent reasons:
    i. Time ran from the date of sentence;
    ii. The Applicant was promised and had been expecting a pardon;
    iii. The Applicant was diagnosed with depression and had undergone oncology treatment;

[26] Applicant's Skeletal Submissions, p.18, para. 3.20
[27] Applicant's Skeletal Submissions, p.15, para. 3.17

iv. The DPP discontinued the proceedings against Ramdeen and AG Ramlogan on 10 October, 2022, thereby strengthening the case of the appeal; and

v. The Applicant was impecunious and unable to afford representation.

34. The Applicant suggested that the delay was three (3) years between his sentence in March 2020 and his attempt to have the DPP refer the case to the Court of Appeal by letter dated 15 March, 2023[28].

The Respondent's Submissions

35. The Respondent submitted that the Applicant had no arguable case with any real prospect of success and that the Applicant failed to provide convincing and weighty reasons for the delay in appealing against his conviction and sentence.

36. The Respondent argued that the Applicant voluntarily offered to make the Notarised Statement without any inducement. The Respondent noted that the evidence relied upon by the Applicant amounted to hearsay in the form of a telephone conversation between his attorney, Mr. Kawalsingh, and AG Al-Rawi. Relying upon the Applicant's affidavit evidence, the Respondent alleged that the inducements were all terms which the Applicant formulated. At paragraphs 32 and 33 of his first affidavit, the Applicant stated that he wanted an indemnity and that he prepared an agreement and instructed his Attorney to send it to AG Ramlogan. The Respondent submitted that this evidence contradicts the Applicant's assertion that he was offered inducements and that this case was distinguishable from cases replied upon by the Applicant such as **Lam Chi-Ming v The Queen [1991] 2 A.C. 212** and **Timothy and Others v The State [2000] 1 WLR 485** as in neither of those cases did the defendants give a confession without feeling compelled to do so.

37. The Respondent submitted that the cases of **R v Maxwell [2011] 1 WLR 1837, Ex parte Bennett [1994] 1 AC 42** and **R v Mullen [2000] QB 52** are also distinguishable as those cases dealt specifically with misconduct on the part of the police. In this

[28] Applicant's Skeletal Submissions, p.24, para. 3.21

case the alleged abuse of process was at the hands of the AG who the Respondent maintained has no such discretion, authority or power. Further, it was submitted that before the Applicant entered the plea discussions he was informed by the Attorney for AG Al-Rawi that only the DPP was empowered to grant immunity from prosecution. The DPP exercises his discretion free from all other authorities including the Attorney General.

38. The Respondent contended that the conduct of the Applicant and his attorneys during the plea discussions and the criminal hearings directly contradict the Applicant's bare assertions that he was induced. Further, an appeal against a guilty plea is not usually allowed unless there are special facts and circumstances which vitiate the plea. The Respondent is of the view that there are no such special facts and circumstances in the case at bar.

39. The Respondent submitted that pursuant to Order III of the Court of Appeal Rules in the Supreme Court of Judicature Act Chap 4:01, time for an appeal against a conviction begins to run from the date of conviction irrespective of whether sentence has been passed and that the time for an appeal against sentence runs from the date of sentence. It was argued that there is no merit in the Applicant's contention that delay was three (3) years. The delay in this case was four (4) years and four (4) months in the case of the Applicant's conviction on 4 June 2019 and three (3) years and seven (7) months in the case of the Applicant's sentence on 2 March 2020.

40. For such a significant delay, more convincing and weighty reasons are required to justify the delay: **Hamilton v The Queen [2012] UKPC 31**. The Applicant submitted evidence of text messages between himself and Mr. Kawalsingh which suggested that a pardon was mentioned but there were no specific details about who promised the pardon, when it was promised or the necessary context. The Respondent submitted that, in any event, the pardon was promised one (1) month

after sentence so that there remains three (3) years and six (6) months of delay before appealing sentence which are unaccounted for.

41. The Respondent argued that the Applicant's mental and financial hardship did not prevent him from engaging in litigation in the civil proceedings against the State and cannot be a compelling reason for delay. Further, the DPP discontinuing proceedings against Mr Ramdeen and Mr. Ramlogan in October 2022 due to the Applicant's refusal to testify, does not provide a cogent excuse for the Applicant's delay in appealing his conviction and sentence.

Law and Reasoning

42. It is settled law that when considering an application for an extension of time for filing a notice of appeal, the relevant factors are as outlined in **Anderson Bonaparte**:

    i. Length of the delay;

    ii. Reason for the delay;

    iii. Prospects of success of the appeal;

    iv. Prejudice, if any, to the respondent;

    v. Gravity of the offence;

    vi. Severity of sentence imposed;

    vii. Legal certainty; and

    viii. Public interest:

        a. The finality of legal proceedings;
        b. Efficient use of judicial resources;
        c. Good administration
        d. The interests of other litigants;
        e. The interests of victims of crime and their families, and of witnesses.

It was also noted in **Anderson Bonaparte** that it must be borne in mind that all of the foregoing factors will not apply in every case. Each case will depend upon its own particular circumstances.

43. In the instant case, the main ground of the application before the Court is the prospect of success of the appeal and the basis of the Applicant's intended appeal is that there has been such an abuse of process by the conduct of AG Al-Rawi that the Applicant's guilty pleas and the resulting convictions and sentences should be set aside.

44. The burden of establishing that the pursuit of particular proceedings amount to an abuse of process is on the Applicant and the standard of proof is on a balance of probabilities: **R v Telford Justices, Ex p. Badhan [1991] 2 QB 78.** How the Applicant is to discharge the onus upon him must depend on all the circumstances of the case. A Court must determine an application to stay proceedings for abuse of process and in this case, the likelihood of successfully establishing such an abuse of process, on the material provided by the prosecution and the defence.

45. The Plea Agreement between the Applicant and the DPP was concluded under the **Criminal Procedure (Plea Discussion and Plea Agreement) Act No.12 of 2017**.[29] This important Act established the legal framework for plea discussions and plea agreements in Trinidad and Tobago. The legislation contains necessary safeguards intended to ensure the protection of the rights of accused persons who contemplate pleading guilty to an offence. Insofar as is material, the safeguards include:

    (i) The act expressly prohibits the use of any improper inducement to encourage an accused person or suspect to participate in a plea discussion or to conclude a plea agreement.[30] An improper

[29]Criminal Procedure (Plea Discussion and Plea Agreement) Act, Act No 12 of 2017
[30] Section 7

inducement includes an offer or promise, the fulfilment of which is not the function of the DPP.[31]

(ii) A prosecutor is prohibited from initiating or engaging in plea discussions with an accused person or suspect in the absence of his attorney.

(iii) The Plea Agreement concluded between the prosecutor and the attorney-at-law for the accused person or suspect, must be in the form set out in Form 3 of the Schedule which requires the signatures of the accused as well as the attorney at law representing him and that of the prosecutor.

(iv) Where the accused is before the High Court, the Plea Agreement shall be filed together with

(a) A statement by the accused as set out in Form 4 of the Schedule, in which the accused person certifies that he has read the plea agreement and carefully discussed each paragraph with his attorney, that he understands its terms and agrees to it without reservation, that he acknowledges that he is pleading guilty to the charges and significantly, certifies that no promises, agreements, understanding or inducements have been made to him other than those contained in this agreement, and

(b) A statement by his attorney as set out in Form 5 to the Schedule in which he certifies that he has read the agreement and carefully discussed each paragraph of the agreement with his client. Further, that he has fully advised the client of his rights, of possible defences (if applicable), of the penalties and of the consequences of entering into the agreement and that to the best of his knowledge and belief, his client's decision to enter into the agreement is an informed and voluntary one.[32]

[31] Section 2

[32] Act No 12 of 2017, section 19(3)

(v) A requirement to hold a Plea Agreement Hearing where, inter alia, before accepting or rejecting a plea agreement, the Court is obligated to make enquiries of the accused person in order to determine, among other things, whether he was offered an improper inducement to enter into plea discussions or to conclude a plea agreement.[33]

46. It follows from the foregoing provisions and safeguards, that a plea agreement made with an accused person must be voluntary and free from any improper inducements. To minimise the risk of any such impermissible inducements, the Act not only requires that both the accused and his legal representative certify in writing that the agreement is voluntary, it goes further in requiring the trial judge to conduct a Plea Agreement Hearing where he conducts an enquiry in order to determine such before he decides whether or not to accept the plea agreement.

47. The case of **R v Tredget [2022] EWCA Crim 108** identified three categories of cases where an appellate Court may consider an appeal against a conviction where there was an unequivocal plea of guilty, one of which is, where there was an abuse of process. There are two categories of cases of abuse of process, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the Court's sense of justice and propriety to be asked to try the accused in the circumstances of the case: **R v Maxwell [2011] 4 ALL ER 941.**

48. It is accepted that cases which involve the second category of abuse of process usually involve an identifiable act of an abuse of Executive power. The Respondent has submitted that the representations made by the AG cannot amount to abuse of an executive power, particularly, as the AG had no “power” to promise that the Applicant would not be prosecuted. One of the main issues before this Court is

[33] Act No 12 of 2017, section 24(3)

whether representations made by the AG can found a claim of abuse of process against the DPP.

49. The DPP derives his or her authority from section 90 of the Constitution which provides:

(1) The provisions of this section shall, subject to section 76(2) have effect with respect to the conduct of prosecutions.

(2) There shall be a Director of Public Prosecutions for Trinidad and Tobago whose office shall be a public office.

(3) The Director of Public Prosecutions shall have power in any case in which he considers it proper to do so—

(a) to institute and undertake criminal proceedings against any person before any Court in respect of any offence against the law of Trinidad and Tobago;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority;

c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers conferred upon the Director of Public Prosecutions by subsection (3) (b) and (c) shall be vested in him to the exclusion of the person or authority who instituted or undertook the criminal proceedings, except that a person or authority that has instituted criminal proceedings may withdraw them at any stage before the person against whom the proceedings have been instituted has been charged before the Court.

50. There is no dispute that the DPP's authority to institute, continue or discontinue criminal proceedings may not be limited by any external authority. The decision to prosecute is the Director's and is his and his alone to exercise. While the Attorney General may exercise administrative oversight where it relates to the

DPP's office, the Attorney General has no power to direct or limit the exercise of the prosecutorial authority of the DPP nor does he have any authority to indicate to any person who may be charged with a criminal offence, that no charges will be proffered.

51. The relationship between the DPP and Attorney General was considered in the appeal of **The State v Maraj-Naraynsingh and Ramasir (a/c Pat) Crim App No. 5 of 2006**. The following passage is apposite.

> "32. We have derived considerable assistance in this matter from the very lucid judgment of Bereaux, J at first instance in the case of **Dhanraj Singh v. The Attorney General HCA No. S-395 of 2001**. In that case the constitutional relationship between the Attorney General and the DPP arose in the context of the power to grant immunities from prosecution. Bereaux, J. observed that the whole scheme and structure of our constitution is consistent with the creation of an independent office of DPP even in the absence of express words such as are found in section 85(7) of the Fijian constitution. Section 90(3) gives the DPP a power that is exercisable "in any case in which he considers it proper to do so-" [my emphasis]. The DPP's appointment and removal from office, unlike that of the Attorney General, can only be effected by the Judicial and Legal Service Commission, which is the same body that appoints judges and some senior legal officers whose function is to provide independent legal advice and service to the state. The purpose of the various Service Commissions created under the constitution is to insulate holders of public office from undue political pressure.
>
> 33. The proper approach to this issue is best summarised by a quotation that was adopted by Bereaux, J. and by the Supreme Court of Namibia. It comes from an address by Ayoola, J. at the first Conference of Commonwealth Directors of Public Prosecutions in respect of the exercise of the prosecutorial discretion:

> "The manner in which such discretion is exercised and the process of prosecutorial decision-making are central to the criminal justice system. If the prosecutorial decisions are to lead to public confidence in the system and are to be consistent with human rights norms they must also not only be just but also seen to be so. The mechanism for arriving at such decisions must itself be seen to be such as can be conducive to fairness (1991) Commonwealth Law Bulletin 1032 at 1034"

34. The responsibility of the Attorney General for the administration of legal affairs, so far as it affects the office of the Director of Public Prosecutions would ordinarily include the following:

1. Financial matters including the approval and submission of budgets to Parliament;
2. The provision of adequate accommodation and facilities and other administrative matters necessary for the efficient running of the office of the DPP;
3. Accounting to Parliament for the affairs of the DPP's office, for which purpose the DPP would have a duty to keep the Attorney General informed of major and important matters of public interest or which affect the public interest.

However, so far as the exercise of any of his prosecutorial powers under section 90 of the constitution is concerned, the DPP is under no obligation to obey any instruction or direction from the Attorney General whether arising out of such discussions or otherwise".

52. While there can be no dispute that the Attorney General has no constitutional authority in making decisions on whether or not to prosecute, at issue is whether such representations made by him to a suspect or accused person, can found a claim of abuse of process from misconduct by the executive. Such conduct may amount to an abuse of process. This issue came up for consideration in **R v Croydon**

Justices, Ex p. Dean [1993] QB 769. In that case, the applicant then aged 17, was subjected to a series of interviews in a murder investigation and on the conclusion of one of those interviews, an investigator represented to him that he was a prosecution witness and had the protection of the police. Subsequent to this and at the invitation of the police, the applicant together with his solicitor went to the crime scene where a video was made where he was introduced by a police officer as a prosecution witness. While the undisputed evidence showed that the applicant was made to understand over a considerable period, that he was to be a prosecution witness, it did not show that he received any express promise, undertaking or offer of immunity. He was subsequently charged.

53. In judicial review proceedings seeking an order of certiorari quashing the decision committing the applicant for trial, it was submitted on behalf of the Crown Prosecution Service, that they alone are entitled to decide who shall be prosecuted. While he acknowledged that to be the position and also accepted that it was a point of constitutional importance, Staughton L.J. did not agree that in consequence, no such conduct by the police, could ever give rise to an abuse of process. The effect on the applicant of an undertaking or promise or representation by the police was likely to have been the same whether it was or was not authorised by the Crown Prosecution Service. Staughton L.J. in quashing the committal of the applicant said

> "In my judgement, particularly having regard to the fact the Applicant was only 17 at the time…it was clearly an abuse of process for him to be prosecuted subsequently. The impression created was not dispelled for over 5 weeks, during which period he gave repeated assistance to the police. This case can, I think, be regarded as quite exceptional. The justices were bound to treat it as one of abuse of process[34]."

[34] R v Croydon Justices, Ex p Dean [1993] QB 769 at 779

54. From this it follows that if evidentially supported, any improper inducement from the Attorney General would give rise to an abuse of process. This is so whether it relates to a representation not to prosecute (a decision that only the DPP is authorised to make) or it relates to a representation to grant a pardon (granted by the President, following the advice of the Minister of National Security who may consult with the Advisory Committee on the Power of Pardon).[35]

55. Relevant to considering this issue is the definition of what constitutes an "improper inducement" under the **Criminal Procedure (Plea Discussion and Plea Agreement) Act**. Under the Act, an improper inducement includes an offer or promise, the fulfilment of which is not the function of the DPP[36]. This is also relevant to any suggestion of a pardon.

56. In principle, as representations of an Attorney General may amount to an abuse of process, a close examination of the material is necessary in order to determine whether the Applicant has discharged his burden to the requisite standard.

57. The Applicant submitted that AG Al-Rawi represented that he would recommend to the DPP that the Applicant not be prosecuted and that the recommendation would be accepted. In his first affidavit dated 28 October 2023, the Applicant directs the Court to the evidence of representations by AG Al-Rawi that his recommendation to the DPP not to prosecute the Applicant would be accepted and points to what may be considered an *ex post facto* letter from Kawalsingh to AG Al-Rawi dated 1 April, 2020 in which Mr. Kawalsingh makes reference to assurances by AG Al-Rawi that his recommendation to the DPP would be followed. There was no response by AG Al-Rawi acknowledging the contents of the letter.

[35] The Constitution of The Republic of Trinidad and Tobago Act No 4 of 1976, section 87
[36] Act No 12 of 2017, section 2

58. The Applicant further points to correspondence from attorney at law Mr. Punwasee as evidence in support of his contention that he was coerced.[37] The contents of the exhibited letter dated 05 November, 2018 does not support this claim. The letter expressly acknowledged the importance of the voluntary statement provided by the Applicant, the obligations arising under the Indemnity Agreement and among other things, it restated that immunity from prosecution could only be granted by the DPP and only if he was satisfied that it is in the public interest to do so.

59. In direct conflict with what the Applicant asserts were prior representations, by letter dated 5 November, 2018 from Attorney at Law for AG Al-Rawi to Mr. Kawalsingh, the then AG relevantly acknowledged that the power to grant immunity from prosecution rests solely with the DPP. At paragraph 2, Counsel for AG Al-Rawi states

> "My client is mindful of the importance of the voluntary statement given by Mr. Nelson Q.C. and of its obligations under the indemnity. However, in Trinidad and Tobago **immunity from prosecution can only be granted by the Director of Public Prosecution (DPP) and only if he is satisfied that to do so is in the public interest**. Accordingly, the DPP will require Mr. Nelson Q.C. to provide him with a statement. Thereafter, the DPP will want to ensure that the contents of the statement are true to the best of Mr. Nelson Q.C.'s knowledge and belief and that he is willing to give evidence in accordance with the statement if and when required to do so. My instructions are that a similar approach is followed in the United Kingdom."[38] (emphasis mine)

60. Based on the contents of that letter, it is reasonable to find that, as early as 2018 - and well before the Plea Hearing - notice was given to the Applicant, through his Attorney at Law, that the decision to grant an immunity or the decision protecting

[37] First Affidavit of VLN, para 60 and exhibit "VLN 24"
[38] Exhibit VLN 24; Letter to Mr Kawalsingh; ROA Vol 1, p.330

him from prosecution, was solely within the remit of the DPP. On the evidence of the Applicant himself, on 15 April 2019, he was informed by Mr. Kawalsingh that in the week commencing 1 May, 2019 he would be charged with criminal offences arising from his Notarised Statement.[39]

61. Also in support of his assertion that there was a prior representation to not prosecute him, the Applicant points to the DPP's First Affidavit where the Director states that "I can confirm that the former Attorney General orally made the recommendation under clause 4" that the Applicant not be prosecuted.[40] However, the DPP in that affidavit also deposed that with the exception of the disclosure of the Indemnity and Notarised Statement, he did not meet with and/or discuss with AG Al-Rawi, the investigations into the Applicant, nor any matters or information as it related to the decision to prosecute the Applicant or the other persons named in the conspiracies.[41] Following AG Al-Rawi's recommendation under Clause 4 of the Indemnity and having taken independent legal advice, the DPP decided that the Applicant had to be prosecuted and that he be invited to plead guilty to such prosecution, which in the event is what occurred. In doing this, AG Al-Rawi acted consistent with clause 4 of the Indemnity Agreement which provided that:

> "4) The Attorney General undertakes to recommend to the DPP, who has the power to determine whether any criminal proceedings can or will be commenced against you in respect of any of the matters arising out of the Notarised Statement, that no criminal proceedings be commenced against you."

62. The evidence does not support the Applicant's contention that improper representations were made to him by AG Al-Rawi that he would not be prosecuted. What the evidence does show is that by the Applicant being a signatory to the

[39] First Affidavit of VLN, para 73
[40] First Affidavit of DPP, para 38
[41] First Affidavit of DPP, para 37

Indemnity Agreement, he must be taken to have accepted that in the exercise of his prosecutorial discretion under the Constitution, the DPP acted independently. It lacks credulity that the Applicant, then a Queen's Counsel, did not understand the plain meaning of Clause 4. On the face of it, both he and AG Al-Rawi as signatories to the Indemnity Agreement, acknowledged that the DPP could not be bound by any such recommendation that AG Al-Rawi might make.

63. What must be highlighted here is the fact that unlike the factual background in **Ex p. Deane** where the Applicant was a teenager and the evidence of inducement was made directly to the applicant who provided the credible evidence of the abuse and was supported in his claim by a police video recording of himself with the investigating police at the crime scene in which he was introduced as a prosecution witness, this case involves a Queen's Counsel, who from the transcripts of the Plea Hearing was advised and represented by another Queen's Counsel with experience in the practice of criminal law. Mr Kawalsingh was also on record as part of the Applicant's defence team on the day that the Plea Agreement was accepted, yet nothing was indicated to the trial judge when he conducted his Plea Agreement Hearing.

The Plea Agreement Hearing

64. As set out earlier, there are several safeguards under the **Criminal Procedure (Plea Agreement and Plea Discussion) Act** which aim to protect the accused person by satisfying the Court at every stage that any decision made by an accused has been made freely and voluntarily when he pleads guilty to the offence under the agreement. The Plea Agreement hearing conducted pursuant to **section 24(3)** of the Act provides the trial judge with the opportunity to satisfy himself through his enquiries whether or not the agreement is voluntary and can be accepted or whether he ought to reject the agreement. These enquiries must be made by the trial judge prior to accepting or rejecting the plea. The Court may reject the plea

agreement entered if the Court considers that it is in the interest of justice to do so pursuant to **section 25** of the Act.

65. At the hearing dated 4 June, 2019, Mr. Allen KC informed the Court that the plea discussions under consideration in this matter were "to some extent, lengthy, but the parties have gone into it both well-advised and with open eyes"[42]. At these proceedings, the trial judge made the specific enquiries required under **section 24(3)** of the Act and satisfied himself that the Applicant's plea of guilty was informed, voluntary and based on legal advice. The following Transcript of the proceedings are apposite[43]:

> **COURT:** Mr. Nelson, I would require you to stand, to find out certain things about you. Now, Mr. Nelson, I have not, in any way, accepted or rejected the plea agreement which has been placed before me. However, as you can see, it has been, strenuously, sought to be agreed upon by both the Prosecutor and your Defence Counsel. I could, only, imagine that it would not have been reached without you having some very necessary input into the format of the document that you would have signed to, previously. However, for the purposes of the Court's record, I think I should follow the statutory requirement and make these enquiries of you, which I'm quite sure, by your profession, you ought to be able to understand and respond clearly to. Mr. Nelson, this plea agreement, do you understand the nature and substance of what is being asked of you?
>
> **VINCENT NELSON QC**: I do.
>
> **THE COURT**: All right. You recognise that you are being asked to plead guilty to these two offences. The State will agree to drop one of the charges by way of not pursuing it, but you will be pleading guilty before

[42] Transcript of Proceedings before Holdip J dd 4 June 2019; ROA Vol.4, p.1222, lines 47-49
[43] *Ibid.*, pp.1224-1225,

the Court, and I can presume that you have noted what are the consequences, in law, of pleading guilty?

VINCENT NELSON QC: I have.

THE COURT: Right. But you also recognise that the scope of the plea agreement is that the -- a non-custodial sentence is being recommended to the Court?

VINCENT NELSON QC: I understand that. Yes.

THE COURT: Good. And it says, and speaks to Mr. Nelson about the fact, that you still recognise that -- you have given statements, I have been told, which are inculpatory and, to some degree, incriminate you in the offences to which you are going to plead guilty and, possibly, maybe other investigations. Is that correct?

VINCENT NELSON QC: That is correct.

THE COURT: All right. And you recognise that -- you understand that you still have the right to plead not guilty if and when that those charges could be put to you, in terms of an arraignment?

VINCENT NELSON QC: Yes, I do understand.

THE COURT: You still have the right to continue to be presumed innocent, in spite of what has been placed upon the public records of the Court, and those Court documents, to a large extent, remain sealed from public disclosure. You recognise that?

VINCENT NELSON QC: I do.

THE COURT: Strange. Strange.

THE COURT: You were not offered any improper inducement to enter this -- enter into this plea agreement, were you?

VINCENT NELSON QC: No.

> **THE COURT**: Right. I think that is a very important point that has to be made here, especially in the context of the heightened sensitivity of the matter. Good. And I think that is it, then. Throughout -- throughout the entire discussions in relation to the plea agreement, would I be correct to assume that you would have always had the advice of your Counsel, Mr. Allen, or other Counsel of such substance, in terms of seniority at the bar
>
> **VINCENT NELSON QC**: Yes.
>
> **THE COURT**: -- and specialisation in criminal law?
>
> **VINCENT NELSON QC**: Yes[44].

66. It was disclosed to the trial Judge that the Applicant agreed to give evidence in any proceedings that would be instituted against Ramlogan and Ramdeen[45]. The trial Judge, however, was not informed of the existence of the Indemnity Agreement that there had been any promises made to the Applicant that he would not be prosecuted.

67. While it would have been preferable had the trial judge made his enquiry ad seriatim in accordance with section 24(3) of the Act, from the foregoing responses given by the Applicant at his Plea Hearing - which were consistent with his Form 4 Statement filed with his Plea Agreement – it can be concluded that his position before the trial judge directly contradicts his claim that he was improperly induced to enter into the Plea Agreement. The utterances of his Attorney at the Plea Hearing, also contradict the case of the Applicant in his Application. This direct evidence on record is to be contrasted with the Applicant's largely hearsay claim of improper inducements allegedly made by AG Al-Rawi to him.

68. At the Plea Hearing, it was always open to the Applicant, through his counsel, to disclose to the trial judge whatever inducements he claimed were made to him.

[44] Transcript of Proceedings before Holdip J dd 4 June 2019; ROA Vol.4, pp.1224-1225
[45] *Ibid.*, p. 1219, lines 25-37

He did not do so, even in the face of direct questions by the trial judge on whether he had been offered any improper inducements. Had the trial judge been informed about the exchanges the Applicant claims to have taken place between Mr Kawalsingh and AG Al-Rawi, he no doubt would have conducted further and more detailed enquiries in order to determine whether he should still exercise his discretion to accept the plea or whether he should reject it. Had the trial judge been informed of the alleged inducements , it would still have been open to him to accept the guilty pleas, if after further enquiry, the accused maintained his position that the Plea Agreement was voluntary and the trial judge was satisfied that this was the position.

69. In considering whether or not on these facts, the Applicant has good prospects of success in an appeal based on abuse of process grounds, the issue for resolution is whether or not there was an improper inducement and what is the quality of the evidence that supports this contention. According to the Applicant's own affidavit, he insisted upon the Indemnity Agreement and emailed certain undertakings which he was seeking from the AG to Mr Kawalsingh. The Applicant went as far as to prepare the initial draft of the Indemnity Agreement insisting upon immunity from prosecution. At paragraph 33 of his affidavit, the Applicant stated:

> "Notwithstanding the difficult options I faced, I was insistent that I should have an immunity against prosecution. I informed Kawalsingh of this and he discussed by telephone on 16th November, 2017, with Al Rawi (who was at the time in Guyana): see Kawalsingh's statement at **"VLN 11".** What Kawalsingh reported to me after the telephone conversation was that Al Rawi suggested a compromise clause, whereby he would recommend to the DPP that I should not be prosecuted. Al Rawi stated that he wanted to conclude the agreement quickly so that he could take action on the evidence set out in the Notarised Statement. Despite my reluctance to proceed, Kawalsingh told me that Al Rawi had asked him to inform me that that the "recommendation" would be accepted by the DPP because of the important

nature of the evidence. Kawalsingh's advice to me was that I could rely on Al Rawi's undertaking regarding the "recommendation"; he knew Al Rawi well and that he could be trusted to abide by his representation in this regard. This is confirmed at paragraphs 16 and 17 of Kawalsingh's draft statement exhibited at **"VLN 11**[46]."

70. In my judgment, the Applicant does not have a good prospect of success if his application is granted and he is permitted to pursue an appeal. Neither has he frontally or meaningfully addressed his Form 4 Statement nor has he properly confronted his own responses to the Trial Judge at the Plea Hearing. Contrary to the Applicant's position taken in this Application before us, in both the Form 4 Statement and at the Plea Hearing before the trial judge, the record reflects that his participation in the plea agreement was voluntary. His Form 4 Statement certified that

> "I have read this agreement and carefully discussed each paragraph with my Attorney-at-law. I understand the terms of this agreement and agree to it without reservation. I voluntarily and of my free will agree to those terms. I am pleading guilty to the charge(s). My Attorney-at-law has advised me of my rights, of possible defences, of the penalties and of the consequences of entering into this agreement. No promises, agreements, understanding or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I have had sufficient time to confer with my Attorney-at-law concerning the plea agreement. I am satisfied with the representation of my Attorney-at-law in this matter[47]."

[46] Affidavit of VLN; ROA Vol.1, p.73, para. 33 (e)
[47] Plea Agreement Form 4; ROA Vol 2, p. 558

71. The Applicant, then a Queen's Counsel, was a voluntary party to the Plea Agreement. At the Plea Hearing on 4 June 2019 the trial judge conducted an enquiry in order to determine, among other things, whether the Applicant was offered any improper inducements to enter into the plea agreement. The Applicant was represented by Queen's Counsel and a junior Attorney at law. From the exchanges at that hearing, the Applicant, had ample opportunity to bring to the attention of the trial judge, the background material that he has placed before us in support of his application. He did not do so. The trial judge then adjourned the matter to 6 June 2019.

72. On the adjourned date, the Applicant was again represented by Queen's Counsel and his legal representation on the record of proceedings, now included Mr. Kawalsingh.[48] Before indicating that he would accept the Plea Agreement as filed, the trial judge made enquiries concerning the Form 4 and Form 5 Statements in satisfying himself that they were filed in accordance with the Act.[49] Before the trial judge accepted the plea agreement, it was again open to the Applicant as well as, now, Mr. Kawalsingh, to raise with the trial judge, the issue of any improper inducements in the form of a representation not to prosecute the Applicant and a promise to grant him a pardon. Neither raised the issue of improper inducement.

73. Following the acceptance of the Plea Agreement by the trial judge, the Applicant was arraigned and in accordance with the Plea Agreement, pleaded guilty to the First Count for the offence of conspiracy to commit an act of corruption contrary to common law and the Third Count for the offence of conspiracy to commit money laundering contrary to common law. Also, in accordance with the Plea Agreement, the Applicant pleaded not guilty to the Second Count for the offence of conspiracy to commit misbehaviour in public office contrary to common law.

[48] Transcript of Proceedings for 6 June 2019, p. 3 line 8
[49] Transcript of Proceedings for 6 June 2019, p. 3 lines 12-35

74. So as to avoid adverse pre-trial publicity, a "STATEMENT OF AGREED FACTS" was filed in the trial proceedings on 3 June 2019 and the matter was heard in camera.[50] This Statement of Agreed Facts repeated the criminal conduct set out in the Applicant's Notarised Statement. It included further information about a September 2012 meeting in Kingston, Jamaica that AG Ramlogan had with the Applicant in which AG Ramlogan apologised for asking for a 'kickback' indicating that his salary as Attorney General was very small compared to what he was previously earning in private practice and that he needed the additional money to supplement his salary in order to survive financially.[51]

75. Mr Benjamin SC for the Respondent in his submissions stated as a proposition of law that an appeal against a guilty plea is not usually allowed unless there are facts which bring the case within that category of special facts and circumstances which vitiate the plea or make it an abuse of process. In support of that legal proposition, he relied on **R v Tredget [2022] EWCA Crim 108**. It is the Respondent's position that the Applicant and his attorneys' conduct during the plea discussions and criminal proceedings, contradict any allegation of inducement, such that the Applicant's case falls within the ordinary circumstances in which this Court should not permit or allow leave to appeal.

76. In **Tredget**, the appellant pleaded guilty to 11 counts of arson with intent to endanger life or being reckless as to whether life was endangered and 26 counts of manslaughter. His guilty pleas to manslaughter were entered on the basis of diminished responsibility and in consequence, the Crown did not proceed against him on the 26 counts of murder with which he was originally charged. While **Tredget** was decided under the very different test under section 2(1) (a) of the Criminal Appeal Act, whereby the Court is required to quash a conviction if "under all the circumstances of the case it is unsafe or unsatisfactory", the approach to

[50] Transcript of Proceedings for 4 June 2019, p. 4
[51] Statement of Agreed facts ROA, Appendix B, p. 1544

review in matters such as this where setting aside a guilty plea is raised, it is still appropriate.[52] Fulford LJ giving the decision of the Court said[53] :

> "Where there has been a plea of guilty, that is plainly a major, and normally a dominant, part of the facts and circumstances of the case. As we have set out above at [10], in the course of the judgment in this appellant's previous appeal, Ackner LJ observed,
>
> > "Thus, the fact that (an appellant) was fit to plead; knew what he was doing; intended to make the pleas he did; pleaded without equivocation after receiving expert advice although highly relevant considerations to whether a conviction was unsafe or unsatisfactory, cannot of themselves deprive the Court of the jurisdiction to hear the applications." (R v Bruce George Peter Lee [1984] 1 WLR 578, 583; (1984) 79 Cr App R 108, 113)
>
> The significance of the guilty plea in this context was reiterated in *R v Asiedu* [2015] EWCA Crim 714; [2015] 2 Cr App R 8, *per* Lord Hughes:
>
> > "19. A defendant who pleads guilty is making a formal admission in open Court that he is guilty of the offence. He may of course by a written basis of plea limit his admissions to only some of the facts alleged by the Crown, so long as he is admitting facts which constitute the offence […]. <u>But ordinarily, once he has admitted such facts by an unambiguous and deliberately intended plea of guilty, there cannot then be an appeal against his conviction</u>, for the simple reason that there is nothing unsafe about a conviction based on the defendant's own voluntary confession in open Court. <u>A defendant will not normally be permitted in this Court to say that he has changed his mind and now wishes to deny what he</u>

[52] R v Tredget [2022] EWCA Crim 108, para 150
[53] *Ibid*., 151-152

has previously thus admitted in the Crown Court." (My emphasis)

And finally:

> … These convictions depend on the public pleas of guilty, tendered in open Court by the defendant who did not lack capacity, who knew what he had and had not done, and when he was in receipt of the best legal advice".[54]

77. The basis of the Applicant's allegation of improper inducement emanating from AG Al-Rawi has essentially been provided through the hearsay representation he claims to have received through Mr. Kawalsingh. Most importantly, he has not placed Mr Kawalsingh on affidavit in support of his application. It is worth repeating that Mr Kawalsingh was in Court on the very day that the trial judge accepted the Applicant's Plea Agreement and when the Applicant pleaded guilty in accordance with that Plea Agreement. Standing against the Applicant's claim of inducement is a body of material that demonstrates that the Applicant voluntarily pleaded guilty. This comes from the previously referred to correspondence, the transcripts of the hearings, the Applicant's Form 4 Statement and the Affidavit of the DPP. On the totality of the credible and admissible evidence, the Applicant has not discharged his burden establishing that the Courts' process has been abused or that he is likely to succeed on this ground should leave to appeal be granted.

78. While it is not a necessary consideration in arriving at the aforementioned conclusion, it may be observed that to set aside a Plea Agreement on the basis of the facts in this case where the safeguards placed in the **Criminal Procedure (Plea Discussion and Plea Agreement) Act** were adhered to, would in such circumstances render this legislation unworkable. It would effectively render agreements unenforceable whenever a person convicted under the Act changes

[54]R v Tredget [2022] EWCA Crim 108, para 222

his mind, notwithstanding compliance with the safeguards inserted in the Act by Parliament.

Delay

79. On the issue of delay, **section 50(1)** of the **Supreme Court of Judicature Act Chap 4:01** provides that an application for leave to appeal against a conviction should be filed within fourteen (14) days of the date of conviction. Similarly, Order III of the Court of Appeal Rules states that

> "15. The time within which a person convicted shall give notice of appeal or notice of his application for leave to appeal to the Court against his conviction shall commence to run from the day on which the verdict of the jury was returned, whether the Judge of the Court of trial has passed sentence or pronounced final judgment upon him on that day or not.
> 16. The time within which a person convicted and sentenced, shall give notice of appeal or notice of application for leave to appeal against such sentence under the Act to the Court, shall commence to run from the day on which such sentence has been passed upon him by the Judge of the Court of trial".

80. The Applicant was convicted on on 4 June, 2019 and sentenced on 2 March, 2020. His application was filed on 31 October, 2023. The delay in this case was four (4) years and four (4) months in the case of the Applicant's conviction and three (3) years and seven (7) months in the case of his sentence.

81. In the case of **Hamilton v. The Queen [2012] UKPC 31** the Court found that in cases of lengthy delay, there must be more convincing and weighty reasons to justify the delay. The Applicant submitted that his cancer diagnosis and impecuniosity were the main reasons for his delay. The Applicant was diagnosed with cancer sometime in 2016 and had a further diagnosis of another medical condition in 2019.

82. Firstly, the Court seeks to in no way trivialise the severity of the Applicant's medical condition. However, it is noteworthy that the Applicant was first diagnosed in 2016 prior to any of the events discussed having unfolded. More specifically, the Applicant's diagnosis preceded his commencing a civil claim against the GOVTT, his negotiations for and preparation of the Notarised Statement and Indemnity Agreement, charges being laid against him, plea discussions and plea agreement, conviction and sentence. The foregoing all engaged the attention of the Applicant in the immediacy following his diagnosis and thereafter. It is difficult to conclude, therefore, that the ability to instruct counsel to file an appeal in 2020 was inhibited by his illness in 2016 or 2019 to such an extent that resulted in a delay of three (3) to four (4) years.

83. Similarly, the expectation that the Applicant would receive a pardon one (1) month after sentence does not account for a delay of three (3) years after it had become apparent that a pardon was not forthcoming. Further, this Court is of the view that a discontinuation of proceedings against Mr. Ramdeen and Mr. Ramlogan does not bolster the Applicant's explanation for the delay in making his application. The discontinuance was sought because the Applicant refused to testify[55]. The Court is of the opinion, therefore, that no satisfactory or convincing reasons have been proffered which justify the lengthy delay in this case.

Conclusion

84. For the forgoing reasons, the Applicant's application for leave to extend time to appeal against his conviction and sentence is dismissed.

Geoffrey A. Henderson
Justice of Appeal

[55]See ROA Vol 2, p.571- Letter from the DPP to the Attorney General Reginald Armour S.C. dated 8 May 2023 in which the DPP indicated that the decision to discontinue proceedings against Ramlogan and Ramdeen was as a result of refusal of the Applicant to give evidence in the criminal proceedings against Ramlogan and Ramdeen