

10.4.85

IN THE GRAND COURT OF THE CAYMAN ISLANDS *(Criminal)*
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
IN CHAMBERS, BEFORE THE HON. MR. JUSTICE HULL

CAUSE NO:

BETWEEN: RAUL GONZALEZ AND FREDDIE SUAREZ

AND: REGINA

Mr. Voadin for the applicant.

Mr. Ground for the Crown.

REASONS FOR DECISION

Yesterday in chambers I granted bail to the applicant Raul Gonzalez.

At the time, I said that I would give my reasons for doing so in open court today.

The background to the application is this. Gonzalez was arrested on 22nd March, 1983, and charged, as were other persons, with various offences involving cocaine. He was granted bail pending his trial. This began in the Summary Court on 20th April, 1983. During this trial, the then Commissioner of Police made certain public statements. On 6th May, 1983, the then Stipendiary Magistrate stopped the trial and ordered a re-trial before a different Magistrate, for the reason that he found the statements prejudicial. The re-trial began on 11th July, 1983. At the close of the prosecution's case, the presiding Magistrate withdrew Gonzalez' bail to which he had previously answered. This was on 28th July, 1983. He has been in custody since then.

He was subsequently convicted on all the charges against him, but in a judgment given on 6th March, 1984 the Chief Justice on appeal set aside all but one of the convictions. That was a charge of possession of 31 kilogrammes of cocaine, for which he had been sentenced to 12 years imprisonment and a fine of \$30,000 (or 6 months additional imprisonment in default of payment).

On 26th June, 1984 the Court of Appeal set aside this remaining conviction on the ground that the second trial had been a nullity. That court ordered a retrial of that charge before a different Magistrate and remanded Gonzalez in custody. It referred back to the Summary Court the question of bail. In doing so, the President intimated that the prospect

of a speedy trial was a consideration to be taken into account on any bail application.

A retired Senior Puisne Judge in Jamaica, Mr. Justice Parnell, came to the Cayman Islands to sit as a Magistrate to re-try the case. He was ready to do so on 23rd July, 1983, but Gonzalez then applied for an adjournment in order to be able to appeal further to the Privy Council against the decision of the Court of Appeal.

I should say here that by this stage Gonzalez had already sought leave from the Court of Appeal itself to the Privy Council. The Court of Appeal held that it lacked jurisdiction to grant leave but indicated that if it had been of the view that it had power to do so, it would have been inclined to give leave.

When the case came before Mr. Justice Parnell, Gonzalez had not filed his petition to the Privy Council for leave to appeal. The reason for that was that he was awaiting the written reasons of the Court of Appeal for its original decision to set aside the conviction and order a re-trial. Sitting as a Magistrate, Mr. Justice Parnell therefore on Gonzalez' application adjourned the trial, in effect for five weeks after the receipt by the defendant of the Court of Appeal's reasons for judgement. He also heard and refused an application for bail.

On 3rd September, 1984, the Chief Justice refused a further application for bail. On 7th February, 1985 the Privy Council granted leave to appeal. This present application for bail was filed on 21st March, 1985.

For the Crown, Mr. Ground raised preliminary objections as to my jurisdiction to entertain this further application. I am however of the view that I do have jurisdiction to hear the application if satisfied that since the application to the Chief Justice in September, there has been a material change of circumstances. In so holding, I rely (inter alia) on sections 27(5) and 106 of the Criminal Procedure Code and section 13 of the Grand Court Law.

I also consider that the granting by the Privy Council on 7th February of leave to appeal constitutes a material change of circumstances. It was submitted for the Crown that at the time when the Chief Justice heard the last bail application, it was clear that Gonzalez proposed to appeal to the Privy Council and that the Chief Justice's decision, and for that matter the earlier refusal of bail by Mr. Justice Parnell, were to be construed as having been taken in the knowledge that the case would be delayed further by this development.

But it is one thing to determine an application where a defendant has done no more than to indicate that he intends to seek leave to appeal further, and another to do so where he has actually obtained such leave. In the first case, the court could not know whether the application would be successful or even whether the defendant would in any case diligently prosecute the application. It could have been in that situation that within weeks, the application had failed and the case was ready for re-trial. Nothing in the Chief Justice's decision indicates to me that he in fact looked beyond the actual circumstances as they then existed. In fact he may well have thought it undesirable to do so then.

On the merits of the application, the Crown, as it has done from the beginning, strongly opposed the granting of bail. The basis of the objection is that it considers that there is a very strong likelihood that Gonzalez will abscond if given bail. In relation to the present application, Mr. Ground argued that even if the granting of leave to appeal constitutes a material charge of circumstances, the Court ought not to exercise its discretion to grant bail.

I consider that there is in fact a real risk that the defendant may abscond, although beyond saying that I think this for reasons which are not in all respects the same as those advanced by Mr. Ground, I do not intend to go into them in further detail.

It is true that the charge against Gonzalez is a serious one. Thirty-one kilogrammes of cocaine is a very substantial quantity. The public concern about the misuse of drugs is well known. The Summary Court has been given a statutory jurisdiction in respect of the misuse of drugs that greatly exceeds its usual jurisdiction (though I should interpolate here that whether or not the Summary Court has jurisdiction in this case without the consent of the defendant or, put another way, whether or not he is entitled if he so wishes to be tried by a jury, is one of the issues in the appeal). The legislature has also laid down minimum penalties in certain cases, and has not made defendants in drug cases eligible to apply for legal aid. These distinctive features reflect the concern that is felt about drugs.

As the learned Chief Justice said at the previous hearing, this court's discretion to grant or withhold bail is unfettered. The seriousness of the charge and the risk of the defendant's absconding are weighty considerations.

In this case, at this state, however, I think that there is^a/competing consideration that must be weighed. The defendant has now been deprived of his liberty for some twenty months. He is, in law, no nearer to being convicted than he was at the outset. In fact only one charge remains against him. Mr. Ground made the point, which I accept, that the delay in

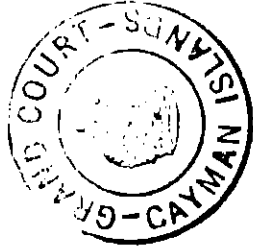
disposing of the case is not the fault of the Crown. He made the further point that the cause of the present pause in the proceedings was the decision by Gonzalez to appeal to the Privy Council. That is so, but I am not thereby persuaded that Gonzalez is prevented by this action from seeking bail by reason of the passage of time. He has not only done no more than to pursue from time to time legal avenues that are undoubtedly open to him; he has done this so far with a marked degree of success and I think it is evident that the arguments that have been put forward on his behalf and determined to date cannot be dismissed merely as technical. They have sometimes related to procedure, as opposed to the evidence, but they have been substantive arguments.

Twenty months is itself, in this jurisdiction, a long time for any person to await his trial in custody, but there is a further factor. It is not disputed that the disposal of the appeal by the Privy Council is likely to take several months. My decision on this present application will, one way or the other, determine the issue so far as the change in circumstances now under consideration is concerned. If I refuse the application, Gonzalez will not be able to apply again unless some new circumstance arises. To that extent I am, in respect of the fact of the grant of leave to appeal by the Privy Council, making a decision that will affect his liberty not merely for the time being but for several more months.

In all the circumstances of this case, I have come to the view that the confinement of this man in custody before the disposal of his case for what now seems likely to be at least two and half years is too long. Mr. Ground has emphasised the public interest in bringing to trial persons who face charges. In fact, Mr. Justice Kerr, in giving his judgment in the Court of Appeal, referred to this. But he was saying why there ought to be a retrial; he was not considering the question of bail. Drug offences may be serious but they are not, except insofar as the law may provide otherwise, exceptional. This charge, in my view, is to be approached in the same way as any other charge carrying a similar penalty. The public interest and the interests of the individual must be balanced sometimes. Overall, I have come to the view that the more important factor now in this case is that a man who is after all entitled to the presumption of innocence until it is proven otherwise should not be held so long before his trial.

I have therefore granted bail. Because of the seriousness of the charge I have fixed this in the sum of \$200,000 to be deposited in cash by the defendant as security for his attendance (in lieu of one surety), and I have also in any case stipulated that he is to provide an approved second surety to be bonded in the same amount. The defendant has liberty to apply further to propose an acceptable alternative method of security.

He is required as conditions of bail to live in George Town at a nominated address, to notify the Police before changing his address, to surrender his passport and other travel documents, and to report daily at 7 p.m. to the Police. He will be in breach of his conditions of bail if he approaches any airfield, dock, wharf or other landing place, or if he leaves the environs of George Town without first informing the Police.



D. Hull.

David Hull
Puisne Judge
10th April, 1985