

IN THE COURT OF APPEAL OF BELIZE AD 2012

CRIMINAL APPEAL NO 19 OF 2012

BETWEEN:

**MELONIE COYE
MICHAEL COYE
MONEY EXCHANGE INTERNATIONAL LIMITED** **Appellants**

AND

THE QUEEN **Respondent**

—
The Hon Mr Justice Morrison - Justice of Appeal

**Arthur Saldivar for the appellants
Mrs Cheryl-Lynn Vidal, Director of Public Prosecutions, for the
respondent**

—
16, 19 October, 29 November 2012

[1] On 8 August 2012, each of the appellants was convicted, after a trial before the Chief Justice in the Supreme Court, of the offence of Money Laundering. They were each sentenced to three years' imprisonment. In addition they were sentenced to fines of \$25,000.00 and \$50,000.00 respectively, to be paid within one year, in default an additional year's imprisonment to run consecutive to the three year term of imprisonment.

[2] By notices of appeal filed on 21 August 2012, the appellants have appealed against their convictions and sentences, on identical grounds, as follows:

- “(i) The Learned Chief Justice erred in Law by failing to order the Prosecution to amend the indictment before the jury deliberated.
- (ii) The Learned Chief Justice erred in Law by permitting private attorneys to prosecute a criminal case without providing proof of authorization at any time during trial.
- (iii) The Learned Chief Justice erred in Law by allowing evidence to be led that were [sic] relevant to fraud which is not an offence in the Laws of Belize.
- (iv) The Learned Chief Justice misdirected the Jury by directing them to consider the issue of identity theft an offence akin to fraud which is not recognized in the Laws of Belize.
- (v) The Learned Chief Justice erred in law by not providing a Lucas direction to the Jury to deal with instances where prosecution witnesses were discovered to have lied about matters germane to trial.
- (vi) The learned Chief Justice erred in law by not directing the jury that a company is its own legal person.”

In both appeals, the grounds end with a statement that these are only preliminary points of law and are subject to change, amendment or addition, presumably when the transcripts become available.

[3] The appellants now apply for bail pending the hearing of their appeals, supporting their applications with affidavits sworn to on 12 October 2012. In the case of Mr Coye, he is a 65 year old Belizean, a retired husband and father of two adult children, one of whom is Miss Coye. A diabetic, Mr Coye pleads ill-health in support of the application for bail, averring that Belize Central Prison is not equipped or staffed to adequately and properly deal with a prisoner in his condition. He also avers that “there is a serious and real risk to the life of your Applicant in normal every

day conditions in the prison environment". He exhibits a medical report from Dr Fernando Cuellar dated 19 September 2012, which states as follows:

"Mr Coye has been under my care for the past five years, he suffers from Diabetes Mellitus with long term complication (Retinopathy Nephropathy and Peripheral vascular Disease.

His condition has slowly deteriorated and Mr Coye (sic) care can best be optimized in an environment other than the one he is currently in."

[4] Miss Coye is a 37 year old unemployed housewife and the mother of a two year old child, who is also diabetic, overweight and, it is said, is "not progressing at a normal developmental rate for his age". Miss Coye also pleads her own ill-health, in that she suffers from Polycystic Ovarian Syndrome, secondary Metabolic Syndrome and Colitis. She too alleges that there is a serious and real risk to life if she is required to remain in the prison environment. She exhibits an undated medical report from Dr Mark Musa, which states as follows:

"I have seen Melonie in my outpatient clinic on 2 occasions. She has Chronic Abdominal pain and bloating with severe constipation. On occasions she passes blood in her stool.

I had recommended a high fiber diet and some medications for her symptoms; but had also recommended that she would need further investigations in the form of an upper endoscopy into her stomach and a colonoscopy examination into her large intestines in view of the severity of her symptoms."

[5] Miss Coye also exhibits a report from Dr Ruth Gough, dated 17 September 2012, which says this:

"Please be informed that I have been treating this patient from 2007. With the following diagnoses:

1. Polycystic Ovarian Syndrome
2. Secondary Metabolic Syndrome
3. Colitis

This is the motive for which the patient need [sic] to have a balance [sic] diet (low in fat and seasonings, high in fiber) also periodic evaluation of her glucose level.”

[6] Learned counsel for the appellants, Mr Saldivar, reminds me of my powers to grant bail pending appeal, pursuant to section 34(1) of the Court of Appeal Act. He relies on the medical reports of the appellants and asserts his fervent belief that there are good and substantial grounds of appeal, on the basis of which these appeals are very likely to be allowed in due course. He also submits that, given the court’s current calendar, the chances of the appeals being heard in the next sitting of the court are slim and that there is therefore a risk that, by the time they do finally come on for hearing, the sentences will have largely been served. And indeed there is an allegation to that effect in each of the affidavits, both appellants stating that “I have been advised by my counsel that the chance of my appeal being heard in the next sitting of the appeal court is slim as the court record officers are swamped with appeal applications.”

[7] The learned Director of Public Prosecutions opposes bail, on the basis that on the authorities bail pending an appeal after conviction is not a matter of right, but of discretion exercised only where exceptional circumstances are shown to exist. In this regard, the Director very helpfully provided me with copies of two previous rulings of this court, in **Ruperto Magaña v R (CA 2 of 1988)** and **Mustaquia Torres v R (CA 3 of 1988)**, both given on 15 March 1988.

[8] Section 34(1) of the Court of Appeal Act provides that “The court may, if it deems fit...admit the appellant to bail pending the determination of the appeal”. However, as the court stated in **Magana**, it is clear on the authorities that the discretion conferred by this section “is not ordinarily exercised in favour of the grant

of bail to a convicted person”. There must therefore be special or exceptional circumstances, one clear such circumstance being the possibility that an ultimately successful appellant may end up having served most of his/her sentence by the time the appeal comes to be heard and disposed of. It is also clear from the rulings in both Magana and Torres that ill-health in itself does not amount to special circumstances justifying the grant of bail.

[9] From the material before me, I am completely unable to make an assessment of the prospects of success of each of these appeals. To do so would, as Mr Saldivar frankly recognises, require a perusal of, at the very least, the learned Chief Justice’s summing up to the jury, as well as, preferably, the transcript of the evidence at trial, neither of which is currently available.

[10] As regards the time that is likely to elapse before these appeals are heard, there is nothing before me to suggest that, despite the appellants’ pessimistic assessment of the state of the court’s list, providing the transcript is ready in time, these appeals could not be heard at the March or, at the very latest, the June 2013 session of the court. Given the length of the sentences imposed on each of the appellants, I do not think that this could possibly be regarded as a disproportionate wait for a hearing in the circumstances.

[11] In the circumstances therefore, despite the fact that the medical evidence proffered by the appellants on these applications has been a considerable improvement over that apparently provided in both Magaña and Torres, I do not consider that the special or exceptional circumstances required for the grant of bail pending appeal have been shown on these applications. The applications are therefore refused.

MORRISON JA