

IN THE COURT OF APPEAL OF BELIZE A.D. 2008
CRIMINAL APPEAL NO. 27 OF 2006

BETWEEN:

JESUS OLIVAREZ

Applicant

AND

THE QUEEN

Respondent

BEFORE:

The Hon. Mr. Justice Mottley	-	President
The Hon. Mr. Justice Sosa	-	Justice of Appeal
The Hon. Mr. Justice Carey	-	Justice of Appeal

Mr. Darrell Bradley for the applicant.
Ms. Merlene Moody for the Crown.

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4 March & 20 June 2008.

CAREY, JA:

1. This is an application for extension of time to appeal against a conviction. The applicant was convicted of murder on 15 November 2006. He was sentenced on 27 November 2006 and gave notice of appeal on that date but he stated therein that he desired to appeal against his sentence only. He also stated that he did not realize his appeal was “mute” (sic) since he had already been given the minimum sentence. He did not realize his error until he was assigned legal-aid in October 2007. Hence the need to make this application.

2. We are able to entertain this application in light of section 28(2) of the Court of Appeal Act which provides as follows:

“Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given or filed may be extended at any time by leave of the Court”.

As we have stated, the sentence imposed on this conviction for murder, did not involve sentence of death; he received a sentence of life imprisonment.

3. We are inclined to think that this provision, affecting as it does, the liberty of the subject should receive a liberal interpretation. The fact that the application may be made at any time reinforces and as we think, supports that approach. We are not to be taken as suggesting the inevitability of success when such applications are made. We agree with the approach taken by the Jamaican Court of Appeal in *R. v. Percival Moore* 19 WIR 72 where the court refused to grant an extension where the appellant had escaped from custody and filed his application after his capture. Such deliberate conduct on the part of an applicant is not likely to incline a court to exercise its discretion favourably. We take the view also that where the non-compliance was not willful and it is in the interest of justice, leave ought to be granted.
4. In the instant case, we are struck by the fact that counsel who appeared for the applicant at trial, took no further action after sentence was imposed. As we understand it, there is no practice or rule requiring counsel appearing on a legal-aid assignment to advise the client of his right to appeal after conviction and to settle grounds of appeal on his behalf. We would strongly recommend as a matter of urgency that the

legislation governing legal-aid assignments be amended to include a provision governing this necessary obligation. The absence of such a rule has the consequence demonstrated in this case; the applicant, an illiterate man, whose first language, as he deposed, is not English, but Spanish, was effectively abandoned. Had he received appropriate advice after the trial, he would scarcely have filed an appeal which was a non-starter and entirely futile.

5. It was for these reasons that in the interest of justice, we granted leave to extend time and proceeded to hear the appeal.

MOTTLEY, P

SOSA, JA

CAREY, JA