[2022] JMSC Civ. 210

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2021 CV 04698

BETWEEN	**DWIGHT EDWARDS**	**APPLICANT**
AND	**FIREARM LICENSING AUTHORITY**	**1ST RESPONDANT**
AND	**THE REVIEW BOARD**	**2ND RESPONDANT**
AND	**MINISTER OF NATIONAL SECURITY**	**3RD RESPONDENT**

Mr. Lemar Neale and Mr. Isat Buchanan instructed by NeaLex for the Applicant

Ms. Courtney Foster instructed by Courtney N. Foster and Associates for the 1st Respondent

Ms. Lisa White and Mrs. Tanisha Rowe-Coke instructed by the Director of State Proceedings for the 2nd and 3rd Respondent

Heard: July 21, 2022 and December 2, 2022

Judicial Review – Renewed application for leave to extend time to apply for judicial review – Whether there is a good reason to extend time – Whether the application discloses an arguable ground for judicial review

CARR, J

Background

[1] The applicant's firearm licence was revoked on the 13th of August 2019. He appealed to the Review Board and his appeal was denied, this was communicated

to him by letter dated March 22, 2021. This matter arises as a result of a decision by Daye, J to refuse the applicant's application for leave to apply for an extension of time to make an application to apply for judicial review. The applicant now seeks to have his application renewed.

The Application

[2] By way of a notice of application filed on November 12, 2021 the applicant sought the following orders.

> 1. The Applicant be granted an extension of time within which to apply for leave for a judicial review of:
>
> > (a) the decision of the 1st Respondent contained in a Revocation Order dated August 12, 2019 revoking the Applicant's Firearm User's Licence;
> >
> > (b) the recommendation of the 2nd Respondent to the 3rd Respondent to uphold the decision of the 1st Respondent to revoke the Applicant's Firearm User's Licence; and
> >
> > (c) the decision of the 3rd Respondent communicated by the 1st Respondent in a letter dated March 22, 2021 denying the Applicant's appeal.
>
> 2. Leave be granted to the Applicant to apply for a judicial review of:
>
> > (i) the decision of the 1st Respondent contained in a Revocation Order dated August 12, 2019 revoking the Applicant's Firearm User's Licence; and
> >
> > (ii) the recommendation of the 2nd Respondent to the 3rd Respondent to uphold the decision of the 1st Respondent to revoke the Applicant's Firearm User's Licence; and

(iii) the decision of the 3rd Respondent communicated by the 1st Respondent in a letter dated March 22, 2021 denying the Applicant's appeal,

by way of:

(a) An order for Certiorari to quash the above decisions and recommendation of the Respondents.

(b) A declaration that the Applicant's Firearm User's Licence has not been revoked.

(c) An order of Mandamus compelling the 1st Respondent to restore the Applicant's Firearm User's Licence; and

(d) Costs

Issue

[3] The sole issue for determination is whether the Applicant has demonstrated that there are good reasons for the court to grant an extension of time to file an application for judicial review.

The Proposed Amended Application

[4] At the commencement of the hearing Counsel, Mr. Lemar Neale, asked the court to hear an oral application to amend the notice of application for court orders. The proposed amendment sought an additional *"declaration that the 2nd Respondent breached the Applicant's right to a fair hearing within a reasonable time by an Independent and impartial tribunal established by law as guaranteed by section 16(2) of the Charter of Fundamental Rights and Freedoms".* I heard the application and reserved my decision to this date.

[5] Counsel Ms. White, on behalf of the 2nd and 3rd Respondents, argued that the hearing of the application should not proceed on the amended notice of application

for two reasons. Firstly, the applicant had not been given permission to amend the original notice of application which was not in writing, and secondly, even if the court was minded to hear an oral application, the application should be refused as it was essentially a fresh application which raised constitutional issues and was being made approximately a year and a half after the decision of the Minister.

[6] The Civil Procedure Rules (**CPR**) permits the court to allow an amendment of the application at Rule 56.4 (6) which states, "*the Judge may allow the application to be amended*." The rules also permit an amended application at the time of the renewed hearing for leave at Rule 56.5 (6). It is therefore within the discretion of the Judge to determine whether such an application ought to be permitted.

[7] Rule 56.5 sets out the course to be adopted where leave has been refused by a Judge as follows:

> *(1) Where the application for leave is refused by the judge …, the applicant may renew it by applying –*
>
> *(a) in any matter involving the liberty of the subject or in any criminal cause or matter, to a full court; or*
>
> *(b) in any other case to a single judge sitting in open court.*
>
> *(4) An applicant may renew his application by lodging in the registry notice of his intention.*
>
> *(5) The notice under paragraph (4) must be lodged within 10 days of service of the judge's refusal or conditional leave on the applicant.*
>
> *(6) The court hearing an application for leave may permit the application under rule 56.3 to be amended.*

[8] In determining whether to exercise my discretion to amend the notice of application I must take into account the nature of the proceedings, the scope of the amendment, the effect it will have on the date for hearing and any prejudice that may occur to either party if the amendment is granted.

[9] It is accepted that an application for judicial review is to be made promptly. The notice to renew the application was filed on December 29, 2021. The notice of an intention to amend the application was filed on June 20, 2022. The date for hearing given on the notice was the same date of the hearing of the substantive application. There was therefore no formal application made for an amendment to the notice of application seeking an extension of time. Hence the need for counsel, Mr. Neale, to make an oral application.

[10] The proposed amendment contemplates a breach of the constitutional right to a fair hearing and seeks an additional declaration to that effect. This would necessitate in my view the filing of affidavits both on the part of the applicant and the respondents.

[11] Given that no such affidavits were filed the date for hearing would be affected by any such amendment. The court would be obliged to give the respondents an opportunity to file affidavits in opposition to the application thereby delaying the matter even further. Such a delay would be detrimental to both the applicant and the respondent and would not be in keeping with the overriding objective of dealing with cases expeditiously and justly.

[12] Additionally, I find that the amended application raises new grounds for judicial review and is therefore a fresh application which would in effect be subjected to the discretionary bar of delay given the date of the oral application.

[13] It is for these reasons that the oral application to amend the notice of application for court orders is refused.

The Application for an extension of time to apply for Judicial Review

Submissions on behalf of Counsel for the Applicant and the Respondents

[14] Mr. Neale has acknowledged that the applicant is outside of the prescribed time. It is his submission that the application for an extension of time ought to be granted as the applicant has shown good reason for his delay in acting, and he has also

shown that he has an arguable case with a realistic prospect of success. He relied on the judgment of Dunbar -Green J, as she then was, in the case of **Constable Pedro Burton v The Commissioner of Police[1].**

[15] He commenced his submissions by pointing to the fact that his client was seeking to exhaust all legal remedies open to him. The applicant explained that after he received a letter from the CEO of the Authority dated March 22, 2019, he engaged the services of an Attorney-at- Law who wrote on July 12, 2021 to the Minister of National Security seeking a review of the matter. The Minister responded in writing by letter dated October 21, 2021 outlining the procedure under Section 36 and 37A of the Firearm's Act and indicating that he did not personally hear the matter.

[16] Ms. Foster on behalf of the Authority submitted that the applicant did not have an arguable case with a realistic prospect of success. It was argued that the Authority followed the procedure outlined by statute, as it received information and conducted its investigations. Subsequently the applicant was given an opportunity to be heard and even though there was no statutory requirement for reasons to be given, the applicant was served with a revocation order outlining the reasons for the decision.

[17] Ms. White submitted that there was no basis to extend the time for making the application as there was no explanation for the delay. She reminded the court that the date of the decision was not the date of the letter received from the Minister, but the date of the revocation order which was August 2019. There was therefore no further need to seek clarification from the Minister.

Findings

[18] The Full Court in the case of **Smith, Louis v Wong-Small, Her Honour Sandra (Senior Parish Judge for the parish of St. James) v The Director of Public**

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[1] [2014] JMSC Civ. 187

Prosecution[2] discussed the role of the court on a renewed application for leave to apply for judicial review. The court stated, "*This is not an appeal and therefore it is not part of our duty to consider that judgment or decision and whether the learned judge fell into error. Our duty here is to consider the application for leave. We are sitting as a court of original jurisdiction and not a court of appeal or review. The issue for us is … whether the application discloses an arguable ground for judicial review having a realistic prospect of success, and which is not subject to a discretionary bar such as delay or an alternative remedy. Importantly also we are not to determine the merits of the matter.*"

[19] Rule 56.3 of the CPR stipulates that in order for a person to apply for judicial review leave must first be obtained. *"An application for leave to apply must be made promptly and in any event within three months from the date when grounds for the application first arose.*[3]*"* It is settled law that the relevant date when the grounds for the application first arose is the date of the decision and not the date the Claimant first became aware of the decision.[4]

[20] The CPR outlines at Rule 56 (6) (2) that the court may extend the time to make an application for judicial review if good reason for doing so is shown. The court is therefore required to determine whether there is a good reason to extend time. The authorities suggest that in making such a decision consideration must be given to these issues (a) whether or not there is a good reason for the delay, (b) whether the applicant has an arguable case and, (c) as per CPR rule 56.6 (5):

> *a) whether the granting of leave would be likely to cause substantial hardship to or substantially prejudice the rights of any person; or*
>
> *b) be detrimental to good administration.*

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[2] [2022] JSMC FULL 05 para. 5

[3] Civil Procedure Rules 2006 %6.6 (1)

[4] City of Kingston Co-operative Credit Union Limited v. Registrar of Co-Operatives Societies and Friendly Societies and anor. Claim 2010 HCV 0204 delivered October 8, 2020.

Has the applicant demonstrated that there was a good reason for the delay?

[21] **Section 37(1) (a)** of the **Firearms Act (1967)** sets out the process to be adopted when a firearm user's licence is revoked and a person seeks to have the decision reviewed. The section is set out below:

> "*An aggrieved party may within the prescribed time and in the prescribed manner apply to the Review Board for the review of a decision of the authority."*

Section **37A** goes on to state:

> *(1) For the purpose of review under section 37, there is hereby established a Review Board consisting of persons appointed by the Minister in accordance with the Fourth Schedule*
>
> *(2) The Review Board appointed under subsection 91 shall within ninety days of reviewing an application for review-*
>
> *(a) hear, receive and examine the evidence in the matter under review; and*
>
> *(b) submit to the Minister for his determination, a written report of its findings*
>
> *(3) The Minister upon receipt and consideration of the reports of the Review Board shall give the Authority such directions as the Minister may think fit*
>
> *(4) Where the review Board fails to comply with subsection (2), the Minister may hear and determine the matter under review*

[22] In summary an aggrieved person must make an application for review to the Review Board, the Review Board will then communicate its findings to the Minister. The impugned decision is therefore that of the Firearm Licensing Authority

(**Authority**). The Minister, upon receipt of the report makes a decision which is communicated to the Authority who then communicates same to the Applicant. The Minister would then be the second decision maker in the process.

[23] Counsel has focused on the applicant's decision to pursue all other remedies open to him as the reason for the delay in filing the application. That however will only explain what occurred between the date the applicant was advised of the Authority's decision and the date of the conclusion of the proceedings before the Review Board. It does not explain the delay thereafter. In fact, there is no explanation proffered by the applicant which accounts for the seven months between the decision of the Minister and the date of the filing of the application before this court. I do not find that the need to verify the Minister's decision by way of a letter is sufficient. The Review Board is the final point of redress before making an application to the court. Having exhausted that remedy, it was incumbent on the applicant to move quickly to make his application for judicial review.

Has the applicant demonstrated that he has an arguable case with a realistic prospect of success?

[24] Mr. Neale submitted that the application was grounded in the breach of the principles of natural justice or procedural fairness and, that the decision to revoke the licence was unreasonable and irrational.

[25] Ms. Foster on behalf of the 1st Respondent submitted that the primary consideration of the Authority was the applicant's failure to disclose that he had prior convictions and arrests. It was argued that it is within the mandate of the Authority to determine that an applicant is **"no longer considered fit and proper to retain a firearm licence",** after it was confirmed that he failed to disclose such pertinent information. This brought into question the issue of whether he is a competent firearm holder.

[26] She further submitted that there is no statutory requirement for the Authority to disclose their reasons for revoking a licence. Despite this it is clear that with a

conviction in another jurisdiction the applicant's firearm licence can be revoked under **Section 36** of the **Firearms Act**[5]. Seized of that information, it cannot be said that the decision was unreasonable or irrational.

[27] It is not for this court to go into the merits of the matter. The requirement is to see whether the applicant has arguable grounds for judicial review with a realistic prospect of success. The grounds as set out by Mr. Neale are mired in the principles of natural justice.

[28] In this case, the applicant, had his matter heard before the Review Board as per the statute. The evidence contained in the Affidavit of Seymour Panton indicates that he was given the opportunity to make written submissions to the Board and those submissions were exhibited. Counsel argued that because the applicant was not aware of the reason that he was found to be unfit to hold a licence, that this deprived him of an opportunity to make fulsome submissions to the Board.

[29] The Court of Appeal in the case of **Robert Ivey v. Firearm Licensing Authority**[6] set out the present statutory framework under the Firearms Act. The President, Brooks, JA in delivering the judgment also confirmed that the Authority is not obliged to give reasons for its decision to the licence holder. Nevertheless, in this case, a reason was given. The applicant was told that he was no longer a fit and proper person to hold a firearm licence.

[30] I do not accept that the applicant was at a disadvantage as a result of the failure to set out exactly why he was considered no longer fit and proper. The evidence contained in paragraphs 15 – 19 of his Affidavit suggests that he was aware of the various complaints made to the Authority and he responded to them in his submissions to the Board. He was also aware that he had failed to include in his

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[5] Section 36 (1) (b) (c) and (d) of the Firearms Act
[6] [2021] JMCA App. 26 at para. 41

application his prior convictions. The Authority having given a reason cannot be faulted in this instance.

[31] I agree with Ms. White that the Review Board was not the decision maker in this case. The decision having been made by the Authority. The role of the Review Board is specifically set out in the Firearms Act and makes it clear that they are to provide the Minister with their findings. The decision of the Minister is final and cannot be appealed. The sole recourse open to the applicant was by way of judicial review of the decision of the Authority and the Minister.

[32] Given the information which was before the Authority I find that there was ample basis upon which they could find that the applicant was not fit and proper. I do not find that the applicant has demonstrated that they acted unreasonably or irrationally.

Prejudice/Hardhsip or Detrimental to good administration

[33] Mr. Neale has argued that the respondents have not demonstrated that they will suffer any prejudice or hardship if the application is granted. Whereas, his client, has suffered hardship due to the absence of his firearm.

[34] In response to that argument Ms. White submitted that the test to be applied is whether the grant of the application to extend time would be detrimental to good administration. It is her contention that it is.

[35] The determination as to the question of what is detrimental to good administration is contextualized in the judgment of Lord Goff in the case of **R v. Dairy Produce Quota Tribunal ex. p. Caswell**[7]. It was described as the interest in good administration, and the necessity for citizens to know where they stand. Lord Goff made the following comment: "*Matters of particular importance, apart from the*

[7] [1990] 2 AC 738

length of time itself, will be the extent of the effect of the relevant decision, and the impact which would be felt if it were to be re-opened."

[36] The Authority pointed out that there is no constitutional right to the possession of a licensed firearm. The process of granting or refusing a licence is dependent on a consideration of all the facts. There is no automatic permit and as such it is discretionary. In the circumstances I do not accept that the deprivation of a licence constitutes a hardship to the applicant.

[37] While there is no hardship to the respondents, it can be said that a failure to rely on a decision making body is detrimental to good administration. The Authority, based on the information presented, revoked the licence of the applicant. The persons who made complaints in relation to him are expecting that the decision is final. They are relying on that decision and disturbing it would affect them, as well as, the public's perception of the soundness of the decision maker. An order by a court to reopen the matter will negatively affect the ability of the Authority to properly govern and make decisions.

Disposition

[38] In summary the applicant has not demonstrated good reasons to extend the time to apply for leave for judicial review and his application is refused. By extension therefore his application for leave to apply for judicial review is also refused.

Order:

1. The application for an extension of time within which to apply for leave for judicial review is refused.

2. The application for leave to apply for judicial review is refused.

3. Each party is to bear their own costs.