

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO 2003 HCV/0741

Judgment Book

Regina vs. The Commissioner
of Police *ex parte* Carvel
Anthony Williams

Mr. Arthur Kitchin for the Applicant

Mrs. Monique Harrison-Beckford & Miss Nicola Brown
instructed by the Director of State Proceedings for Respondent.

Application for leave to apply for Judicial Review

Coram Brooks, J.

Heard: 12th & 25th November, 2003

The Applicant Constable Carvel Williams has applied to this court for permission to be allowed to apply for the Judicial Review of a decision taken by the Commissioner of Police to refuse Constable Williams re-enlistment in the Police Force.

Constable Williams submits that the permission should be granted because the Commissioner:

- (a) acted unjustly, capriciously, unreasonably and arbitrarily in making his decision;
- (b) never gave him a fair hearing or any hearing at all before making his decision, and

- (c) acted without or in excess of his jurisdiction, as either there existed no grounds at all for the decision or the reasons stated for the decision were erroneous or not proven.

Constable Williams asserts that that decision has improperly disappointed his legitimate expectation that he would have been re-enlisted in the police force. Therefore he says, he should be given an opportunity to put his case to the Judicial Review Court. At the hearing by that court Constable Williams would argue that the Commissioner's decision should be set aside and the Commissioner ordered to re-enlist him.

The task at this stage is to decide whether Constable Williams has an arguable case sufficient to justify placing it before a court of Judicial Review.

I shall, in assessing the application, first state the background facts of the case, state the nature of this application and then analyse Constable Williams' complaint.

The background Facts

The facts of the case giving rise to the application are as follows:

1. Constable Williams first reported ill on November 23, 2001. He tendered sick leave certificates to cover the period up to December 5, 2001. The receipt of these certificates is acknowledged by the officer in charge of his division.

2. Constable Williams deposes that his illness continued and that he submitted sick leave certificates to cover the periods:

6 – 15 December 2001

16 –25 December 2001

26 December 2001 – 23 January 2002

23 January 2002 – 19 February 2002

20 February 2002 – 3rd March 2002

The officer in charge has denied receiving these certificates.

In a supplemental affidavit Constable Williams has produced copies of the five medical certificates, which are the subject of this aspect of the contention between these parties. He has not explained how it is that he has these copies. They are not marked as being duplicates of certificates that have been already issued.

3. Another area of dispute as to fact is whether Constable Williams submitted an application for re-enlistment in the police force. Police officers are required by the Police Service Regulations to apply for re-enlistment every five years. Constable Williams' term was to have expired on January 25, 2002. His application for re-enlistment should have been handed in prior to January 25 2002. Constable Williams says that he did submit one from as early as October 2001. His commanding officer Superintendent Gaynor has denied that assertion

saying that he never received any of the applications Constable Williams says that he submitted.

4. On January 31 2002 the Inspector of the Four Paths Police Station where Constable Williams was stationed reported to Superintendent Gaynor that Constable Williams had failed to report for work after December 5 2001 and had failed to apply for re-enlistment.
5. Constable Williams deposes that he reported for duty on February 21 2002 and that Superintendent Gaynor told him to go home and await word. Superintendent Gaynor on this issue said that he was contacted by a Sergeant Payne at the Four Paths Police Station who informed him that Constable Williams had reported for duty. Superintendent Gaynor does not speak to having taken a decision on that information but deposes that he told Sergeant Payne that Constable Williams' tenure with the force was uncertain.
6. By memorandum dated March 18, 2002 the Commissioner was informed of the situation as communicated by the Inspector of the Four Paths Station. The Commissioner wrote to Constable Williams by letter dated April 10, 2002 informing him that he had been dismissed from the force and that the refusal to re-enlist him was because of his failure to resume duties after December 5, 2001 and because of his failure to submit an application for re-enlistment.

7. The Commissioner in the said letter informed Constable Williams of his entitlement to appear before the Commissioner to show cause why his "application should not be refused."

In response to that advice Constable Williams along with his Attorney at Law appeared before the Commissioner on July 2 2002. At that hearing Constable Williams asserted that he had submitted both the medical certificates and the applications for re-enlistment. No documentary proof of his having done so was provided to the Commissioner. The Attorney made submissions on Constable Williams' behalf.

8. The Commissioner took time to deliberate on the matter and by letter dated February 12, 2003 the he informed Constable Williams of the original decision being confirmed. In his Affidavit the Commissioner deposes that this decision was on the same bases as the original.

The nature of this application

This application is made pursuant to rules 56.3 and 56.4 of the Civil Procedure Rules. It first came before Anderson, J. who ordered, pursuant to rule 56.4 (3), that a hearing should take place with both parties present and participating. This is that hearing.

The purpose of a hearing such as this was stated by Lord Diplock in International Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd. [1981] 2 ALL ER 93 when at p 105, j he said:-

“Its purpose is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.”

Does Constable Williams have an arguable case

In assessing this question the court will bear in mind that:

- (a) there is no automatic right to re-enlistment
- (b) the hearing before the Commissioner is akin rather to an appeal process than to a trial process, and,
- (c) the onus was on Constable Williams to show cause to the Commissioner why he should be allowed to re-enlist.

These principles may be gleaned from the instructive judgment of Carey, JA. in the case of Corporal Glenroy Clarke vs. Commissioner of Police and the Attorney General of Jamaica SCCA 84/94 delivered 11th March 1996 (at pp 5 –6 of the judgment).

In Constable William's case he was afforded a hearing by the Commissioner. A clear question of fact was placed before the Commissioner namely, whether Constable Williams had submitted the re-enlistment applications and the sick leave certificates. Constable Williams was also represented by his Attorney at Law.

Constable Williams produced no evidence other than his say-so that he had submitted the documents. I find it very curious that he has submitted copies of the medical certificates to the court but did not produce them to the Commissioner. It is also strange that he has these documents.

The Commissioner made a decision based on what was before him.

In the circumstances it is my view that nothing has been produced by Constable Williams to show:

- (a) that he was not afforded a hearing (in fact the evidence is to the contrary)
- (b) that the Commissioner acted without or in excess of his Jurisdiction, or
- (c) that the Commissioner acted unjustly or unreasonably in making his decision.

In the circumstances I find that no arguable case has been shown to permit Constable Williams leave to proceed to Judicial Review.

Conclusion

Although I have been at pains to set out the facts of the case, I have borne in mind the words of Lord Diplock in the IRC case (*supra*) at p 106 f and when he said:-

“the whole purpose of requiring that leave should first be obtained to make the application for Judicial Review would be defeated if the court were to go into the matter in any depth at that stage.”

I however am of the view that the issue involved here is an uncomplicated one, which is, whether the Commissioner in deciding a straight-forward question of fact, exceeded his authority, committed an error of law or a breach of natural justice, reached a decision which no reasonable tribunal could have or in any way abused his powers.

(See the words of Lord Templeton in Preston vs. Inland Revenue Commissioners [1985] 2 ALL ER 327 at p 337.)

As I have indicated, I find that Constable Williams has not made out an arguable case showing that the Commissioner was guilty of any of those breaches. As a result the Application for Leave is refused.