

The Evidence

- [3] On April 15, 2025, Mr Marlando Rowe filed an affidavit in which he averred that he has served as a member of the JCF for 16 years. He has had no prior legal issues or disciplinary actions during his career. At the time of his arrest, he was assigned to the May Pen Police Station.
- [4] In August of 2024, he was at home in the Parish of Clarendon when Major Organised Crime and Anti-Corruption Agency (“MOCA”) personnel arrived at his residence with a search warrant seeking scamming paraphernalia and lead sheets. The search yielded no scamming material; however, he was asked to open his safe, and he did so.
- [5] From the safe, the officers retrieved a box of .38 cartridges that Mr Wilfred Lopez, a licensed firearm holder, had handed over to the appellant for safekeeping. These cartridges had been found among the belongings of the late Ms Dunn, a Justice of the Peace and licensed firearm holder. Upon her death, Mr Lopez, a close friend, took custody of Ms Dunn's firearm and ammunition in order to turn them in to the Firearm Licensing Authority (“FLA”). The appellant contacted the FLA on Mr Lopez's behalf to collect Ms Dunn's firearm.
- [6] Mr Terrence Grant from the FLA visited Mr Lopez's premises and collected the firearm. Subsequently, Mr Lopez contacted the appellant to notify him that he still possessed the ammunition for Ms Dunn’s firearm. Mr Lopez then handed the ammunition box to the appellant, who took it to deliver to the FLA. Mr Lopez approached the appellant as a policeman to ensure the proper handover of the ammunition to the FLA, just as the appellant had arranged for the handing in of the firearm.
- [7] The appellant promptly contacted the FLA and spoke with a representative, Mr Terrence Grant, to report the situation. Mr Grant advised the appellant to retain the ammunition until he could collect it. Mr Grant has undertaken to provide all relevant information to the Court upon being subpoenaed.
- [8] When the MOCA officers arrived, they found the ammunition in the box, well protected, in the safe, awaiting Mr Grant's arrival. The appellant was acting as an agent of the FLA to secure the ammunition until Mr Grant's arrival.

- [9]** After seizing the ammunition, the officers escorted the appellant to the May Pen Police Station, where he was expected to speak with a Superintendent. Instead, he was detained following a question-and-answer session (“Q & A”) about the ammunition. During this Q&A, the appellant was also asked about money that had been transferred into his bank account.
- [10]** The appellant said that the questioned \$840,000.00 in his account came from gambling on football. One Mr Blacks had told him that the money was from gambling, and so he started spending it once it was deposited. The appellant said he frequently gambles at Any Bet, Just Bet, Bet 365, Terra Nova, 100, and Ribbiz.
- [11]** It was during that Q&A that the appellant realised that the money represented “scamming” money from an account unknown to him. The appellant said he had no reason to believe that he had “scamming” money in his account, as he had never participated in any form of scamming activity before.
- [12]** He was charged with possession of ammunition in August 2024 and was brought before the May Pen Parish Court, where he was granted bail. At that time, he was represented by Mr Ferguson. The appellant has been reporting on the conditions ordered by the Court and was not in breach.
- [13]** On 3 December 2024, MOCA returned to the appellant’s residence with a warrant for his arrest dated February 2024, even though no such warrant had been shown to him in August. He was taken to Kingston and, three days later, charged with receiving stolen property, unlawful possession of property and engaging in criminal transactions.
- [14]** In December, he appeared before the Half Way Tree Parish Court and was remanded until January 20, 2025. He was charged alongside five civilians and was the only policeman involved. On January 20, 2025, a bail application was made on behalf of all defendants, and they were remanded until March 6, 2025, pending Her Honour Ms Burrell's ruling. At that time, the appellant was represented by Mr John Jacobs.
- [15]** On 6 March 2025, another defendant was charged. All six defendants were granted bail, but the learned judge ruled that the appellant's bail application was refused. The appellant said that in refusing the appellant bail, the learned judge

said that the appellant is a policeman and that, as such, she was not minded to grant him bail. His case was set down for mention on 24 June 2025.

- [16]** On January 16, 2025, the appellant again appeared at May Pen Court in relation to the ammunition case. This time, the learned judge revoked his bail on the grounds that he had been detained in another matter and was wasting the Court's time.
- [17]** Mr Wildman appeared in both matters and sought an earlier date for a renewed bail application on behalf of the appellant in the Half Way Tree Court. The judge scheduled a date for MOCA to be notified, so that a renewed bail application could be made on April 16, 2025, with those officers present.
- [18]** On 16 April 2025, Her Honour Ms Burrell was not present, and Her Honour Ms Wilcott heard the bail application. On 22 April 2025, she refused the application on the basis that she could not review the learned Parish judge's decision, and nothing new had come to light.
- [19]** The appellant now argues that Her Honour Ms Burrell's refusal of bail was an improper exercise of discretion, as it was based on discrimination against him because he is a policeman, as all others charged jointly with him were granted bail; he was denied bail solely because of his status as a policeman, as Her Honour herself said.
- [20]** Further, when the attorney representing MOCA, acting on behalf of the Office of the DPP via a FIAT, was asked about the grounds for opposing bail, their only reply was that the offence was serious. When Mr Wildman renewed the application for bail on April 16, 2025, the sole reason given for opposing the application remained the seriousness of the offence. At no point did anyone from the Crown argue that the appellant posed a flight risk or a threat to a crown witness. He was denied bail, in breach of his constitutional right to fair and equitable treatment as any other Jamaican citizen.
- [21]** The appellant believes he is innocent, as he clearly had no knowledge that the money deposited into his account was the proceeds of any unlawful activity, given that he has been in the gaming industry for some time and had previously received funds in that account. He intends to challenge and object to the allegations vigorously.

- [22]** Further, in relation to the May Pen charge regarding the ammunition, he is amazed that he could have been charged, given the circumstances in which he acted as a lawful custodian of the ammunition, which Mr Lopez had given him to keep in safe custody in his capacity as a policeman.
- [23]** The appellant exhibited a copy of the receipt from the FLA, which was given to Mr Lopez when the firearm was retrieved¹ and the FLA licenses for Mr Lopez and Ms Dunn.² He provided all the information to MOCA, which they could have used to check with the FLA, in particular Mr Grant, regarding the circumstances surrounding the retrieval of Ms Dunn's firearm and the ammunition that was kept safely in the appellant's possession.
- [24]** The May Pen case was scheduled for trial on April 11, 2025. Mr Wildman was en route to represent him when he received a call from the May Pen Court's Office informing him that he was not to attend because the judge was unavailable and the case could not proceed on that date. The trial was adjourned to June 11, 2025. Mr Wildman had sent junior counsel, Mr Shemar Bryan, to handle the adjournment. Therefore, the appellant was not responsible for the case in May Pen not proceeding on April 11, 2025.
- [25]** The trial commenced in the May Pen Parish Court before Her Honour Ms Roper. Multiple witnesses testified, and evidence was presented against the appellant. The hearing continued over several dates, and the Crown's case progressed significantly when his attorney learned that the judge had made certain statements about the appellant before the trial, suggesting potential bias.
- [26]** Submissions were made to the learned judge by counsel, seeking recusal on the ground of apparent bias. The prosecution made submissions in response. The judge took time to consider the authorities cited by both sides and, weeks later, ruled that she would recuse herself, upholding the defence's submissions. On that date, counsel for the appellant was not in court. No nolle prosequi was formally entered.

¹ Exhibit MR1

² Exhibit MR2

- [27]** When the matter returned for mention before Her Honour Ms Findley, the appellant's attorney submitted that it was not properly before Her Honour Ms Findley, as no formal entry of a nolle prosequi had been entered to formally discontinue the case before Her Honour Ms Roper. Her Honour Ms Findley concurred, and the matter was transferred to Her Honour Ms Roper. The prosecution undertook to obtain a nolle prosequi from the Office of the Director of Public Prosecutions to formally discontinue the matter.
- [28]** The nolle prosequi was entered on another court date before Her Honour Ms Roper, who transferred it to Her Honour Ms Findley. The defence made a bail application before Her Honour Ms Findley, who refused it on the grounds that she was unwilling to disturb the status quo.
- [29]** The appellant has been waiting a long time for the continuation of the matter against him in the Kingston and St. Andrew Parish Court Criminal Division. It is unknown when the transcript from Her Honour Ms Roper will be ready; accordingly, the appellant is unsure when the new trial will commence in May Pen.
- [30]** There has been a dramatic change in circumstances, and the case was aborted without fault on his part. As a result, he has now been in custody for over a year. His trial in both courts has been unnecessarily delayed, and, because of these circumstances, he wishes to revisit the question of bail.
- [31]** The appellant is the father of an 11-year-old girl who is visually impaired and depends solely on him. She attends the Salvation Army school for the visually impaired and blind. He is of good character and will honour all conditions imposed by this Honourable Court. Up to the time of his arrest, his reputation had never been tarnished in any way while serving in the JCF. He makes this application for the review of the revocation of his bail in May Pen and the refusal of bail in Kingston, on the basis that, in both instances, the decisions were arbitrary and not in keeping with the principles of law, in particular the Constitution of Jamaica.
- [32]** He is being held in custody without any legal basis, as he is presumed innocent until proven guilty, and both the Constitution and the Bail Act are designed to protect that presumption. He is not a flight risk, as he honoured all his bail

conditions when on bail before. If granted bail, he will reside in May Pen with his surety, Mr Dennis Roy Wright.

- [33]** Ms Simpson, on behalf of the prosecution, contended that there are no new circumstances and that the entire application is *res judicata*. The *nolle prosequi* was entered on January 27, 2026. The notes of evidence were served in April 2026. The trial date in the Half Way Tree court has been fixed for September 10, 2026, and at a trial readiness hearing, it was indicated that of 20 witnesses, 8 have been agreed. Additionally, contrary to the appellant's assertion, he is not the only defendant in custody, as another of his co-accused has had his bail refused.
- [34]** Under caution on the ammunition charge, the appellant gave conflicting accounts of how he came into possession of the ammunition. Mr Grant of the FLA contradicted the appellant's account, and the deceased's daughter said she handed over only 5 cartridges of ammunition to Mr Lopez, who, in turn, said he handed over 5 cartridges to the appellant. Yet the appellant could not account for the additional cartridges in his possession. These witnesses are well known to the defendant.
- [35]** Regarding the Half Way Tree charges, a senior citizen reported receiving a call from a bank. A text message containing a link was used to access the complainant's bank account. Over US\$38,000 was transferred from his account to third parties, including the appellant. On March 14, the appellant's account received a deposit of US\$5,500 (approximately \$840,000), after which he made multiple ATM withdrawals, which were recorded on the bank's video camera. He withdrew \$620,000 from a Clarendon ATM, with the entire amount emptied over two days. An analysis of the appellant's phone revealed a transfer confirmation receipt, deleted text messages, FaceTime messages, and a voice note recovered from WhatsApp.
- [36]** The appellant has appealed to the Supreme Court, which refused his application; then to the Court of Appeal, which held it had no jurisdiction; and finally to the Privy Council, which said there was no miscarriage of justice and refused to hear the matter. The appellant is now attempting to relitigate the refusals which three courts have already determined. Delay is not an issue in

this matter, and in any event, the effluxion of time is not a change in circumstances.

The Constitution

- [37] The principles of the liberty of the subject and the presumption of innocence are common law principles. Still, they underpin civil rights in our Constitution and legal system and affect the right to bail. These principles, in turn, were first set out in Chapter III of the Constitution of Jamaica in 1962 and have been retained and enhanced in the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011 (“the Charter.”) (see **Huey Gowdie v R.**³)
- [38] Section 13 of the Charter guarantees the right to liberty, freedom of the person and due process, along with other rights and freedoms expected in a “free and democratic society”.
- [39] Section 14(1) prescribes the right to liberty and freedom of the person. It states, in part: “No person shall be deprived of his liberty except on reasonable grounds and in accordance with fair procedures established by law in the following circumstances- ...”
- [40] Section 14(3) of the Charter provides that even before a person accused is brought before a Court, he is entitled to be: “...released either unconditionally or upon reasonable conditions to secure his attendance at the trial or at any other stage of the proceedings”
- [41] Section 16(5) speaks to the presumption of innocence. It prescribes that: “Every person charged with a criminal offence shall be presumed innocent until he is proven guilty or has pleaded guilty.”
- [42] The Charter expressly provides for the right to bail. It also places an onus on the party seeking to deprive a citizen of his right to liberty to show sufficient cause for keeping him in custody.
- [43] Section 14(4) of the Charter prescribes: “Any person awaiting trial and detained in custody shall be entitled to bail on reasonable conditions unless sufficient cause is shown for keeping him in custody.”

³ [2012] JMCA Crim 56

[44] The Court recognises that a defendant out on bail has freedom of movement; however, this liberty may be curtailed by conditions. This means that a limitation may be placed on this freedom, and a Court of law may order a derogation from his right to freedom of movement.

[45] Having set out the constitutional provisions, I now turn to the question of jurisdiction, as this appeal turns solely on the law.

Jurisdiction of the Supreme Court

[46] Sections 12(1) and (7) of the Bail Act set out the statutory position on appeal to this Court:

“(1) The defendant concerned may, in accordance with any applicable rules of Court, appeal to—

(a) a Judge of the Supreme Court in Chambers, in respect of a decision made by a Judge of the Parish Court—

(i) and referred to in section 7(4)(a) or 10(3); or

(ii) upon a review conducted under section 11;

...

(7) On an appeal under this section, the Judge in Chambers may affirm the decision that is the subject of the appeal, or grant or refuse bail to the defendant, revoke the grant of bail to the defendant, impose conditions on the grant of bail to the defendant, or vary or remove any condition of bail imposed on the defendant.”

[47] The wording of section 12(1)(a) grants access on appeal from what is described as two different decisions. The first is under section 10(3), which provides:

“(3) Where a deciding official—

(a) grants or refuses bail;

(b) imposes a condition in granting bail;

(c) varies any conditions of bail; or

(d) revokes bail,

the reasons for the decisions shall be given in accordance with subsection (4).”

[48] Section 10(3) requires that the deciding official give reasons for the decision and employs section 6 by necessary implication. The second is the review by a Parish judge of a decision of a constable or Justice of the Peace.

- [49] The issue raised by this application is whether the statutory scheme of the Bail Act, 2023, creates a right to appeal to a Judge of the Supreme Court in Chambers more than once on the same decisions of deciding officials. In my judgment, the statute does not confer a right to bring repeated appeals to the Supreme Court from the same decision/s on bail.
- [50] An examination of the Bail Act shows that the right of appeal is tied to a specific decision made by a particular deciding official. This is evident from the legal requirement that, after a bail decision is reached, the official who made the decision must serve the reasons for that decision in the prescribed form within 48 hours. Section 10(5) further provides that, where a decision is made and the defendant is not represented by an attorney-at-law, it is the deciding official who shall inform the defendant of the right of appeal to this Court.
- [51] Any application to the Supreme Court must, as a matter of law, include the decision being challenged and the reasons for that decision, which must be served on both the prosecution and the defence, or on the defendant where he is unrepresented, within 48 hours. This decision is the starting point of the analysis.
- [52] Section 12(1)(a) grants the appellant the right to appeal to a Supreme Court Judge in Chambers against a decision of a Parish Court Judge. Section 12(1)(a) applies where the decision is made under section 7(4)(a) or section 10(3) of the Act.
- [53] The distinction drawn by the statute is important. A decision referred to in section 10(3) includes a decision to grant bail, refuse bail, impose conditions, vary conditions, or revoke bail.
- [54] A decision made upon review under section 11 is a distinct statutory power. It is a decision made in the exercise of the statutory review jurisdiction created by that section and applies only to decisions of a constable or Justice of the Peace.
- [55] The Court of Appeal considered the structure of these provisions in **Marlando Rowe v R**.⁴ Straw, JA identified the two relevant categories of appeal under section 12. The Court said that, so far as relevant, a defendant has a right of

⁴ [2025] JMCA Crim 21

appeal to the Supreme Court in respect of a Parish Court judge's decision refusing bail, imposing conditions, varying bail conditions or revoking bail under section 10(3), and also in respect of a review conducted by a Parish Court judge where the previous decision was made by a constable or Justice of the Peace under section 11. The Court expressly recognised the power to review the decision of a constable or JP as a separate statutory review category.

[56] The Court of Appeal in **Rowe** also made clear that section 11 is not engaged merely because a Parish Court judge has refused bail. Straw JA stated that the "distinct jurisdiction" under section 11 arises where the deciding official at first instance was a constable or a Justice of the Peace, and the reviewing court is either the court with jurisdiction to try the offence or the court before which the defendant first appears.

[57] Therefore, the original refusal and revocation in this application were decisions of Parish Court judges, and no review of a constable's or a Justice of the Peace's decision was conducted. Section 11 is therefore inapplicable to the present appeal before me.

[58] The conclusion in **Rowe** was that the appellant had appealed to the Supreme Court from two decisions of Parish Court judges who refused and revoked his bail. He had thereby exercised his right of appeal under section 12(1)(a)(i). Since no section 11 review had been conducted, section 12(1)(a)(ii) was not engaged. The Court held that "*the appellant has exhausted his right to appeal*" and that the Supreme Court judge's decision was final. It further held that the Act did not grant a further right of appeal to the Court of Appeal.

[59] That reasoning does not mean that an appeal from a decision refusing bail can never again be considered. The Act preserves the possibility of an appeal where the statutory procedure for doing so is followed. There is a clear distinction between a second appeal from the same decision, which is not permitted, and a fresh appeal made, which is.

[60] The correct approach is that a first refusal of bail by a Parish Court judge constitutes the decision referred to in section 10(3). It is appealable to a Judge of the Supreme Court in Chambers under section 12(1)(a)(i). Once that appeal is determined, the defendant has exhausted any statutory right of appeal from

that decision. The defendant cannot bring another appeal to the Supreme Court from the same refusal.

- [61]** In the case of a later bail application before the Parish Court judge, properly grounded in a material change of circumstances or relevant new facts not before the deciding official when the decision was made, the Parish Court judge makes a fresh decision, which forms the basis of a new section 10(3) decision.
- [62]** A renewed application for bail results in a fresh decision that cannot be regarded as the same as the earlier refusal. A fresh appeal under section 12(1)(a)(i) can then be brought to the Supreme Court from the decision on the renewed application.
- [63]** I therefore hold that the Bail Act, 2023, does not create an unrestricted right to appeal to the Supreme Court more than once from the same Parish Court bail decision. It creates a right of appeal from decisions made under distinct statutory provisions in separate circumstances, which must be demonstrated in any application before this Court. That is because the appeal then attaches to a new bail decision, not to the decision already determined on appeal.
- [64]** In the instant appeal, the decisions being appealed are not fresh decisions of the Parish judges; they are the same decisions already appealed and determined by Mott Tulloch Reid, J, whose orders stand. The application is therefore without jurisdiction, and I so hold.
- [65]** An appellant on appeal to this Court should ensure that the following is included in an affidavit in support of the appeal⁵:
- 1) The full name, age and date of birth of the appellant;
 - 2) The usual place of abode or address where the defendant normally resides;
 - 3) The length of time at that address and with whom the defendant resides;
 - 4) Employment details;
 - 5) The charges;
 - 6) The allegations;
 - 7) The next Court date/s at which Court/s;

⁵ **Rick Edwards v The DPP** [2024] JMSC Crim 2

- 8) The investigating officer's name and station.
- 9) The likely sentence if convicted.
- 10) Any particulars as to whether and, if so, in what other Court bail has been refused to the defendant;
- 11) Bail conditions if on bail;
- 12) Where the defendant is being detained;
- 13) Previous convictions;
- 14) The address at which it is proposed the defendant would reside, if granted bail;
- 15) Full particulars of all offences with which the defendant is charged and the Courts having conduct of those matters;
- 16) Identifying information, such as whether the defendant is the holder of one or more passports;
- 17) The identity, address and occupation of any proposed independent surety;
- 18) The name, age, address, occupation and contact information of a surety on any previous recognisance;
- 19) Whether there have been any previous applications for bail or appeals from any refusal of bail in respect of the offences with details;
- 20) Whether any warrants have been issued in relation to the defendant.
- 21) What surety and/or other conditions relating to bail (if any) the defendant is proposing;
- 22) What are the proposed conditions of release;
- 23) The personal circumstances of the defendant;
- 24) Any other relevant circumstances.

[66] Counsel would be well advised to ensure that the checklist is included in their appeals so that there is material upon which the court can assess the risk, which is a statutory requirement under the Bail Act.

[67] Orders

1. The appeal is refused.
2. No order as to costs.