

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 21/88

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

BETWEEN	DANHAI WILLIAMS	APPLICANT/APELLANT
AND	THE ATTORNEY GENERAL	1ST RESPONDENT
AND	THE MINISTER OF NATIONAL SECURITY	2ND RESPONDENT
AND	THE SUPERINTENDENT OF POLICE, SAINT ANDREW DIVISION	3RD RESPONDENT

Richard Small & Steve Shelton for Appellant

E.H. Oniss & Frank Williams for Respondents

5th November & 5th December, 1990

CAREY, J.A.

On 5th November, having heard the submissions of counsel, we allowed the appeal, set aside the order of the court below and remitted the matter to the Minister for hearing. We ordered the respondents to pay the appellant's costs of appeal and in the court below. We intimated that we would put our reasons in writing. We now do so.

This was an appeal against an order of the Full Court (Wolfe, Ellis and Panton, JJ.) discharging an ex parte order for certiorari to remove into the Supreme Court and to quash certain orders made by the Superintendent of Police, St. Andrew, Northern Division and the Minister of National Security. By an order made on or about the 10th March, 1987, the Superintendent of Police revoked the firearm licences of the appellant and on or about the 17th September, 1987, the Minister dismissed an appeal by the appellant from the decision of the Superintendent of Police, St. Andrew, Northern Division. We note in passing, that

although the actual decision by the Full Court was given as far back as 15th February 1988, the reasons therefor were not forthcoming until some considerable time had elapsed, namely some time in the present year. We are not aware of the reasons for the delay but for my part, that delay has contributed to the unhelpful nature of the reasons, which is a matter of regret.

The appellant was the holder of Firearm User's Licences in respect of two firearms, a Browning 9 mm pistol and a Remington 12 Gauge shot gun. These licences were revoked by the Superintendent of Police Northern Division on 15th February, 1987. The appellant appealed on 19th March, 1987 to the Minister pursuant to Section 37 (1) of the Firearms Act. Thereafter the appellant sought to obtain from the Superintendent of Police and the Minister the reasons for the decision to revoke his licences. But these were not forthcoming nor has the appellant ever learned the reason or reasons. The appellant also sought permission to be present and to be represented at the appeal to the Minister. In May 1987, the appellant had heard nothing of his appeal to the Minister. Accordingly, he wrote the Minister who solaced him by advising on 13th May and 18th June, 1987 that the matter was being investigated. Frustrated by the Minister's lack of urgency, the appellant applied for and was granted an ex parte order of mandamus requiring the Minister to hear and determine the appeal. The date for hearing was fixed for 28th September 1987. Perhaps spurred on by this order nisi, the Minister ten days before that hearing, advised the appellant that the appeal was dismissed.

The appellant deposed in his affidavit in support of his application for certiorari that neither himself or his attorney was advised of the allegations which formed the basis of either the Superintendent's enquiry or the Minister's consideration of the appeal. Nor was he advised of a hearing date. Nor was he

afforded an opportunity of being heard or represented before the Minister. Nor was he given reasons for the decision by the Minister.

So far as the complaints against the Superintendent go, this Court has already held that the Superintendent is not obliged to provide the appellant with the reasons for the revocation of his licence. In Clough v. Attorney General & Anor (unreported) S.C.C.A. 24/88 dated 14th July, 1989, I said -

".....I desire to observe that when a Superintendent of Police is exercising his power of revocation of a Firearm User's Licence, he is not required to act judicially; he is required to act fairly but that does not involve either hearing the holder or giving him reasons. For all practical purposes, it means having a prima facie case or acting bone fide. He is obliged to give his reasons only to the Minister if the holder is aggrieved by the decision."

Downer J.A. to the like effect, held at p. 24 -

" There is, therefore no omission by the legislature. It was not necessary for the 'appropriate authority' to award the appellant a hearing as any such hearing as is appropriate, is available before the Minister."

and later at p. 28 -

"There are no provisions in the Act or Regulation nor does the common law compel the Superintendent to give reasons to the appellant for revoking his licence."

Morgan J.A., the third member of the Court agreed.

Mr. Small, it must be said, was well aware of this decision by which we were bound and did not put forward any arguments in this regard. Indeed he filed supplementary grounds which challenged the actions of the Minister only. The question for the determination of this court is whether the acts or omissions of the Minister in dealing with the appeal against revocation of his Firearm User's Licence amounted to breaches of the rules of natural justice. Mr. Oniss told us that the Minister

observed the rules of natural justice and there was no breach of the Minister's duty to act judicially.

In Clough v. Attorney General & Anor. (supra) the court dealt with the rules of natural justice in relation to the "appropriate authority" i.e. the Superintendent of Police of a parish who has the power to revoke Firearm User's Licences by virtue of section 36 of the Firearms Act. We held then that the rules of natural justice save and except for the rule requiring the "appropriate authority" to act fairly did not apply to this tier of the regime set up by statute. I said then at p. 9 -

" The statute by allowing a hearing by the Minister after revocation by another official, provided a procedure whereby the principles of natural justice, for example, reasons for the decision and a hearing, could be satisfied."

We must now consider beyond the first tier to see not whether but which rules of natural justice are applicable to the proceedings before the Minister. The power of appeal is contained in Section 37 (1) of the Firearms Act. It provides as follows -

"37.—(1) Subject to this section, any aggrieved party may within the prescribed time and in the prescribed manner appeal to the Minister against any decision of an appropriate authority —

.....

(c) revoking or refusing to revoke any licence,....."

We turn then to the Firearms (Appeals to the Minister) Regulations, 1967. These are quite brief. They require an appeal to be lodged with the Minister within 21 days of the date of revocation and a copy served on the appropriate authority. (Rule 3). The appropriate authority is required within 14 days of receipt of notice of appeal to furnish the Minister with the reasons for his decision. (Rule 4). The appellant has no automatic right to be present at the hearing but may be granted leave by the Minister to do so. Where such leave is granted an attorney-at-law may appear

on behalf of the appellant (Rule 5).

Certain aspects of these rules provoke comment, and in particular some obvious omissions can be discerned. There is no specific requirement as to fixing a date for hearing and giving notice thereof to the appellant. The appellant is required to submit his notice of appeal which includes his grounds of appeal at a time when he would have no certain knowledge of the specific reasons for the revocation. I say this because the appropriate authority is entitled to revoke where the holder of a licence is "of intemperate habits or of unsound mind or is otherwise unfitted to be entrusted with a firearm" see Section 36 (1) (a) -

"36. —(1) Subject to section 37, the appropriate authority may revoke any licence, certificate or permit if —

- (a) he is satisfied that the holder thereof is of intemperate habits or of unsound mind, or is otherwise unfitted to be entrusted with such a firearm or ammunition as may be mentioned in the licence, certificate or permit;.."

This covers such a wide range of anti-social or deviant behaviour that the licence holder would hardly be expected to know the specific misdemeanour with which he is charged. The statute provides for one eventuality about which the holder must, however, be aware. Section 36 (1) (b) states -

"36. —(1)

- (b) the holder thereof fails to comply with a notice under section 35."

By Section 35, the appropriate authority is empowered to vary the conditions subject to which a licence is held. The breach of such a variation is not only an offence under the Act, but also renders the offender liable to have his licence revoked by the appropriate authority.

These omissions in the Rules governing appeals before the Minister allow the court some room for manoeuvre. Should the court then insist on the interpolation of judicial type procedures? As was said in Virgo Enterprises Ltd. & Ors. v. Newport Holdings Ltd. Miscellaneous Appeal 1, 2, 3/89 dated 15th May, 1989 citing with approval the words of Lord Reid in Wiseman v. Borneman (1969) 3 All E.R. 275 at p. 277 -

If the court is to intervene, it must be shown

....."that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation."

The Rules speak of an appeal. The Minister is clearly called upon to adjudicate, to hear both sides and to give a decision. He is in the position akin to a judge holding an "inter partes" hearing after the grant of an ex parte injunction. Although the aggrieved party has no right to be present, it seems to me he should know the date on which the hearing of the appeal is to take place. It will enable him to decide whether he should retain counsel to apply to be present. He may wish to apply for further time to submit further representations.

Further if the aggrieved person is to be able to appeal the decision, he should be in a position to know the basis of the revocation seeing that the reasons for revocation are categorized in specific and general terms. Is it being said that he is insane - or is "otherwise unfitted"? This phrase covers, I would suggest, a multiplicity of ill-assorted sins. I would hold that it would be wholly unreasonable to assert that an aggrieved person against whom serious allegations could be made as affecting his reputation or good name, is fairly treated if he is expected to appeal a decision founded upon charges, the nature of which has never been vouchsafed to him.

Mr. Oniss on behalf of the Attorney General did not suggest that advising an aggrieved person of the nature of the charges made against him would present any practical difficulties. I would not suggest that the Minister is obliged to furnish the aggrieved person with a copy of the statements from any witness or the like. The Rules do not require the presence of the appellant, it requires his representations. In my view, it would not be right to hold that statements or names of witnesses should be provided as that could reasonably provoke a call for the right to cross-examine the witnesses. But the procedure in the Rules is an appeal to the Minister, not a Board of enquiry or investigation carried out by him or his officers.

The right to a firearm is not a Human Right; Jamaicans have no constitutional right to bear arms. They may only bear arms if licensed to do so. But having been licensed, so to do, they acquire property. Before that property is taken away, I venture to think that the removal should be subject to procedural safeguards. Otherwise the free and democratic society we seek to build, will remain forever beyond our people.

In the present case, the appellant was not notified of any date of hearing nor was he advised by the Minister of the basis of the revocation. The Full Court was however furnished with the reasons of the revocation by way of an affidavit deposed to by Superintendent Derrick Johnson, "the appropriate authority." He deposed as follows -

"5. That as a result of the information received, I concluded that Danhai Williams was not a fit and proper person to hold a Firearms Users Licence and accordingly as the appropriate Authority for the Saint Andrew Northern Division I took a decision to revoke Mr. Williams' Firearm Users Licences.

"7. That by letter dated the 16th February, 1987 Mr. Williams was notified by me of my decision to revoke both his firearms licences in accordance with the provisions of the Firearms Act.

8. That my decision to revoke Mr. Williams' Firearm Users Licences was based upon confidential intelligence information and for security reasons."

The nature of that "confidential intelligence information" was never divulged to the court. No explanation has been forthcoming for the reticence. In Clough v. Attorney General & Anor. (supra) the information was given but privilege was claimed for the sources which this court upheld as justified. The sources of the information were therefore never disclosed. I do not think the course adopted in this case can be sanctioned. It is unfair and dangerous. I have heard no argument in justification. "Inter arma, leges non silent." Even amid the clash of arms, the law is not silent. There is no clash of arms: in truth there is a war against violence especially gun violence. But I do not accept that it warrants this treatment of a citizen against whom criminal charges have not been brought. In Clough v. Attorney General & Anor. (supra) the allegations made related to criminal offences in respect of which no charges had been brought. But the court was not concerned with whether the charges had been or could have been proved; its concern was the nature of the allegations and whether they fall into conduct proscribed by Section 36 (1) (a) of the Firearms Act.

The Full Court took the view that because the Minister's decision to revoke was based on a matter of national security or the national interest, that justified the Minister in withholding his reasons for dismissing the appeal. In my view, the question for the Full Court was whether the Minister had acted judicially, not whether he acted in the interests of the nation or on a matter

of national security. The reasons for revoking a licence are prescribed. A man who is of intemperate habits for example, is plainly unsuited to hold a Firearm User's Licence. I would hesitate to say that he is a threat to national security. He is rather a threat to himself.

In my view, the circumspection of their lordships in the court was misplaced. To advise a drunk of the reason for the dismissal of his appeal on that ground can affect the national security or national interest not one jot or tittle. Nevertheless, I do not myself think that failing to advise an aggrieved party of the reasons for dismissing an appeal, amounts to a breach of natural justice. It is not an inevitable consequence of a court that reasons are given. The obvious illustration is the Petty Sessions Court where lay persons often preside or a jury who as judges, albeit of facts, give no reasons and indeed, never have been required to do so.

There is one other matter with which I must deal. The appellant requested permission to be present and to be represented but was never advised whether he could attend in person or be represented. This silence was never explained nor did the Full Court consider whether a breach of natural justice occurred where the Minister ignored the appellant's request to be present and represented. The point seems to me unarguable that this failure by the Minister to consider this request could only mean that the appellant has been denied an opportunity of being heard. There can be no question that the Minister is bound to consider the request and either grant it or refuse it: he cannot ignore the request made. Nor can it be put on the same level as failing to respond in a timely way to requests by the appellant to be advised of the status of the appeal and thus to be dismissed in the language of Wolfe J., "as nothing more than the usual Civil

Service discourtesy of not replying to letters."

In the result, I am of opinion that there was a breach of the rules of natural justice. The Minister ought to have indicated to the appellant -

- (i) the nature of the charges against him to enable him fairly to meet them;
- (ii) the date of the hearing so that he was afforded a time frame within which to apply to make further representations; and
- (iii) that although a request was made for the appellant to be present or represented that request was not considered by the Minister.

In the result, I am driven to conclude that there was a breach of the rule to act judicially or fairly in the respects I have indicated. I hold that certiorari should go to quash the order of the Minister dismissing the appellant's appeal. The result is that the order of revocation would stand and the appeal to the Minister would remain to be heard. For the removal of all doubt the incumbent Minister of National Security would be required to hear that appeal.

WRIGHT, J.A.:

The very ample treatment of the relevant issues by both Carey, J.A. and Gordon, J.A. (Ag.) obviates the necessity for a similar treatment by me since I am in agreement with their reasons and conclusions. I will, therefore, content myself with a brief comment.

Neither under the Constitution of Jamaica nor under any other law of this country is there accorded any right to bear arms. The privilege to do so is conferred by statute making provisions for the grant of a licence so to do (Section 20 of the Firearms Users Act). But, undoubtedly, because of the nature of a firearm, the privilege to hold a licence and with it the firearm is not lightly regarded. A licensee must qualify as not being "of intemperate habits or of unsound mind or is otherwise unfitted to be entrusted with a firearm" (Section 35(1)(a). Put otherwise, a licensee must be fit to be entrusted with a firearm. The grant of a firearm licence, therefore, may be viewed as a character endorsement in this wise and entitles the licensee to rely on "Omnia praesumuntur rite et solemniter esse acta" (all acts are presumed to have been done rightly and regularly). He is entitled to conclude that the appropriate authority, who alone has the power to grant the licence, has taken the necessary advice before deciding to grant his application for a licence.

If the revocation of a licence so granted could be done whimsically, then a person who has done nothing to besmirch his character could find himself embarrassed by the arbitrary revocation of his licence and if a seal of silence were sanctioned, he would remain forever in the dark as to whether it was being alleged that he was of unsound mind, of intemperate habits or that he was guilty of any of the myriad

reasons which may be accommodated under the umbrella "otherwise unfitted".

The appeal to the Minister invokes the intervention of a tribunal at a higher level than the appropriate authority. Accordingly, to sanction treatment by him similar to that of the appropriate authority, in which the appellant takes no part, labels the right to appeal as illusory. It would be an exercise in futility to enable a person to appeal and then to deny him meaningful participation in the resultant proceedings. Merely to file grounds of appeal denying any breach of the qualifications for a licence, which is all he can do at this stage, is just a general denial that does not come near meeting the specific reasons for the revocation.

The omission from the Firearms (Appeals to the Minister) Regulations 1967, requiring the Minister to inform the appellant of the allegations he has to meet is both patent and unfortunate, unless, of course, it is thought to be so inherent an aspect of the appeal process as not to require legislation. I agree that the right to obtain reasons from the Minister must be held as inviolate as the immunity of the appropriate authority from being required to supply reasons to the licensee.

GORDON, J.A. (AG.)

Section 20 of the Firearms Act forbids a person to be in possession of a firearm "except under and in accordance with the terms and conditions of a Firearm User's Licence." possession of a firearm without a licence is a criminal offence and so prevalent have gun crimes been that a special court - the Gun Court - has been established to deal with gun offences.

A licence to hold a firearm is granted on application, by the "appropriate authority": section 28 and section 29 give the appropriate authority the discretion to grant licences, certificates and permits in respect of weapons other than prohibited weapons or restricted weapons or restricted ammunition. The legislation thus provides that the exercise of the discretion as to granting or refusing to grant an application for a licence is absolute and unqualified.

Section 36 deals with the revocation of licences, section 37 with the right of appeal and section 38 defines the appropriate authority. For the purposes of this appeal the appropriate authority is as defined in section 38 (5) viz:

"The appropriate authority for the grant, amendment or revocation of any Firearm User's Licence or Firearm Disposal Permit or Firearm User's (Employee's) Certificate shall be the chief officer of police for the parish or police division in which the applicant for such licence, permit or certificate resides or carries on business."

The facts of this case have been chronicled in the judgment of Carey J.A. and I do not deem it necessary to repeat them. Suffice it to say that the appropriate authority acting under section 36 revoked the licence of the appellant and so informed him by letter dated 16th February, 1987 which the appellant said he received on 10th March, 1987. Nowhere in the

record is a copy of the letter sent to the appellant by the appropriate authority, exhibited. An indication of what the letter contained can be gleaned from the affidavit of Superintendent Derrick Johnson the officer in charge of Constant Spring Police Station, and as such, the appropriate authority, dated 19th November, 1987. Paragraph 7 of this affidavit reads:

"That by letter dated the 16th February, 1987 Mr. Williams was notified by me of my decision to revoke both his firearms licences in accordance with the provisions of the Firearms Act."

Revocation had of course to be in accordance with section 36 (1) and (2) which reads:

"Subject to section 37, the appropriate authority may revoke any licence, certificate or permit if -

(a) he is satisfied that the holder thereof is of intemperate habits or of unsound mind, or is otherwise unfitted to be entrusted with such a firearm or ammunition as may be mentioned in the licence, certificate or permit; or

(b) the holder thereof fails to comply with a notice under section 35.

2. Where the appropriate authority revokes any licence, certificate or permit under this section or under section 18 or 46, he shall give notice in writing to the holder thereof -

(a) specifying that he has revoked such licence, certificate or permit;

(b) requiring such person to deliver up such licence, certificate or permit to him on or before the day (not being less than three days after delivery of such notice) specified in such notice."

And the right to appeal is given by section 37 (1) (c) thus:

"37 (1) Subject to this section, any aggrieved party may within the prescribed time and in the prescribed manner appeal to the Minister against any decision of an appropriate authority -

- (a)
- (b)
- (c) revoking or refusing to revoke any licence, certificate or permit; or
- (d)"

The general nature of the letter from the appropriate authority is evidenced by the appellant's letter dated 10th March, 1987 addressed to the Honourable Minister of National Security appealing from the decision of the appropriate authority -

"Dear Minister

By letter dated 16 February 1987 which was only handed to me on 10 March 1987, I have been advised by the Superintendent of Police for St. Andrew Northern Division that my firearm licences in relation to a Browning 9mm Pistol and a Remington 12 Gauge Shotgun have been revoked by the Superintendent of Police. He has given no reasons for the revocation.

I wish to appeal this decision. The grounds for this appeal are that I am not a person of imtemperate habits or of an unsound mind; nor am I otherwise unfit to be entrusted with such firearms or ammunition, nor have I failed to comply with the notice under Section 35 of the Firearms Act.

Danhai Williams"

The grounds of appeal in this letter purported to answer the bases for revocation contained in section 36 (1) (a) and (b) and by their nature were in general terms. The complaint of the appellant, as I understand it, is that he was unaware of the specific basis or charge leading to revocation and he was not given an opportunity to answer it nor was he afforded a hearing by the Honourable Minister of Justice.

If he was denied an opportunity to address the specific area of complaint leading to the revocation of his licence, he was denied a fair hearing by the Minister. The regime established by statute for dealing with appeals from decisions of the appropriate authority revoking a licence is contained in the Firearms (Appeals to the Minister) Regulations 1967. The relevant paragraphs state -

3. (1) Every appeal shall be commenced by notice in writing addressed to the Minister and filed within twenty-one days of the date on which the decision from which the applicant is appealing is communicated to him, or within such longer period as the Minister may in any particular case allow.
- (2) The applicant shall state in his notice his grounds of appeal and shall forward a copy of such notice to the appropriate authority.
4. Within fourteen days of the receipt of a notice of appeal, the appropriate authority shall forward to the Minister a statement in writing setting out the reasons for the decision from which the applicant is appealing together with a copy of every other document relating thereto.
5. (1) The Minister may, in his discretion, permit any applicant to appear before him to put forward arguments in support of his appeal.
- (2) Any applicant permitted to appear before the Minister as aforesaid, may do so in person or may be represented by Counsel or Solicitor if he so desires.
- (3) Where the Minister permits an applicant to appear before him, he shall invite the appropriate authority to be represented at the hearing if the appropriate authority so desires."

"6. So soon as may be practicable after the filing of all documents or the conclusion of the hearing of the appeal, as the case may be, the Minister shall communicate his decision in writing to the applicant and to the appropriate authority and to give to the appropriate authority such directions as may be necessary."

Regulation 3 (1) clearly indicates that the aggrieved party (the appellant) is required within 21 days of receipt by him of the appropriate authority's decision to revoke his licence to file his notice of appeal and state his grounds of appeal. The appropriate authority is not required to supply the appellant with reasons for the decision but regulation (4) requires that these reasons should be supplied to the Minister within 14 days of the receipt of the notice of appeal. In Clough v. Superintendent Greyson and The Attorney General S.C.C.A. 24/88 (unreported) dated 14th July, 1989 the appellant sought by certiorari to quash the order of the appropriate authority revoking his licence issued under the Firearm's Act on the ground that he had not been provided by the appropriate authority with its reasons for the decision. This court held that there was no right in the appellant to be supplied with these reasons by the appropriate authority as the regulations stipulated that the appropriate authority's obligation was to supply them to the Minister.

Indeed the aggrieved party has no right of audience before the appropriate authority but he has such a right before the Minister on appeal from a decision of the appropriate authority. In exercise of this right the Minister may allow him to appear in person or by his attorney or he may hear him by considering the written submissions contained in the grounds of appeal or otherwise.

The law gives the aggrieved party the right to appeal against the decision revoking his licence. It also gives him a right to a hearing for the first time and it would seem in these circumstances that there should be conformity with the rules of natural justice, he must be told what he has to meet. If the right to appeal is real and not illusory then the grounds of appeal should relate to a specific basis of complaint for revocation of the licence. Section 36 (1) (a) contains bases of complaint viz:

- (i) intemperate habits
- (ii) unsound mind
- (iii) otherwise unfitted

This latter complaint is wide enough to include involvement in criminal activity (which is itself extremely wide).

The right to appeal involves the right to the legitimate expectation that the rules of natural justice will apply. These rules subscribe to a right to fairness. How can one submit meaningful grounds of appeal if he is unaware of the basis for the revocation? In my view the appellant should have been informed of the basis of complaint.

Since the appropriate authority is not required to supply the aggrieved party with any reasons for the revocation and the rules of natural justice require the Minister to act fairly, it follows naturally it would seem to me, that the Minister must supply the aggrieved party with the information which will enable him to present his case to the Minister. It cannot be said that the appellant has had a fair hearing by the Minister if he has not been given the opportunity to file grounds of appeal challenging the actual basis for revocation.

For these reasons I agree that the appeal should be allowed, the order of the Court below be set aside and the matter be remitted to the Minister for hearing.