

JERSEY / JUDGMENT

Michel v AG [2010] JCA 018 (21 January 2010)

[2010] JCA 018

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

COURT OF APPEAL st January 2010 Before : Dame Heather Steel, Q. C., President; M. S. Jones, Esq., Q. C., and; Miss Clare Montgomery, Q. C... Peter Wilson Michel v Attorney General The Court will sit to hear submissions from both parties following the Order from Her Majesty in Council given on 17 th November 2009 whereby the Judicial Committee of the Privy Council had quashed the conviction of the above and remitted the case back to the Jersey Court of Appeal for a decision on whether or not to order a re-trial. Advocate D. Le Quesne for Michel. S. M. Baker, Esq., Crown Advocate.

JUDGMENT

THE president: 1. On 14th May 2007 in the Royal Court of Jersey, the applicant, Peter Wilson Michel was convicted, after trial before Sir Geoffrey Nice QC Commissioner and two Jurats, of nine counts of money laundering contrary to Article 32 (1) of the Proceeds of Crime (Jersey) Law 1999 . His co-defendant Simone Gallichan was acquitted of each count alleged against her. The applicant and Simone Gallichan had each been convicted of a similar offence at an earlier trial which is not the subject of this application. The trial the subject of this application is referred to as the second trial. 2. On 18th June 2007 the applicant was sentenced to six years imprisonment concurrently on each of the ten counts in the first and second trials. On 19th October 2007 a confiscation order was made against the applicant in the sum of £9.7 million. No confiscation was ordered in respect of count 4, the subject of the first trial. £1,731,783 of the funds confiscated under Count 1 of the second trial related to the client relationship charged in Count 4. 3. On 13th December 2007 the Court of Appeal of Jersey dismissed the applicant's appeal against his convictions on the second trial. The Court concluded that Ground 1 of the application, which related to the number and nature of interventions of the Commissioner during the course of the evidence, was clearly arguable and granted leave to appeal on that ground. By Special Leave of the Board of the Privy Council the applicant appealed the decision of the Court of Appeal to the Judicial Committee of the Privy Council. 4. On 4th November 2009 the Board humbly advised Her Majesty that the appeal should be allowed and the convictions quashed on the first ground only, that the prosecution should pay the applicant's costs of that appeal and the appeal below, and that the case should be remitted to the Court of Appeal of Jersey for that Court to decide whether or not to order a fresh trial. 5. On the 17th November 2009, Her Majesty; having considered the opinion and report of the Judicial Committee of the Privy Council: to the effect that the appeal

should be allowed and the conviction quashed on the first ground only, that the respondent should pay the appellant his costs of this appeal and the appeal below, and that the case should be remitted to the Court of Appeal of Jersey for that Court to decide whether or not to order a fresh trial. The parties having 21 days in which to put in submissions on costs at first instance: was pleased by and with the advice of Her Privy Council to approve the report and to order that those charged with administering the Government of Jersey and all others whom it may concern are to ensure that it is punctually observed and obeyed. 6. On 3rd December 2009 in the Judicial Committee of the Privy Council, after consideration of the submissions on costs ordered that the question of the applicant's liability for the trial costs be remitted to the Court of Appeal of Jersey for this Court to consider and determine at the same time as it decides whether or not to order a fresh trial. 7. The two Orders in Council have been registered in the Royal Court in accordance with the requirements of the Code of 1771. 8. The applicant invited the Court of Appeal to consider three issues:- (i) Does it have jurisdiction to order a retrial? (ii) If it has jurisdiction, should a retrial be ordered? (iii) The costs of the second Royal Court trial. [A] JURISDICTION 9. The Court of Appeal was invited to hear and determine the issue of jurisdiction in accordance with Article 30 of the Court of Appeal (Jersey) Law 1961 which reads:- "The Court of Appeal shall, for the purposes of and subject to the provisions of this Part, have full power to determine, in accordance with this Part, any question necessary to be determined for the purpose of doing justice in the case before it." 10. Advocate Le Quesne submitted that Article 28 of the Court of Appeal (Jersey) Law 1961 represented the only power in the Court of Appeal to order a retrial. He argued that it has no application where an appeal is allowed by the Judicial Committee of the Privy Council. 11. Article 28 was introduced by an amendment sanctioned by Her Majesty in Council in 1998, which introduced to the Court of Appeal in Jersey the power to order a retrial after a successful appeal against conviction. 12. Article 28 reads:- "Power to order a retrial

- (1) Where the Court of Appeal allows an appeal against conviction and it appears to the Court that the interests of justice so require, it may order the appellant to be retried on a fresh indictment to be brought in the Royal Court within the period of 2 months of the making of the order or such further period for which it may give leave for the indictment to be brought." 13. It was submitted that as the precondition of the appeal being "allowed by the Court of Appeal" is not here satisfied, and that as the power to order a retrial is solely governed by the Court of Appeal (Jersey) Law 1961, the words had no application in a case where an appeal has been allowed by the Privy Council. 14. It was suggested that, if the Court of Appeal (Jersey) Law 1961 does not give the Court the jurisdiction in this circumstance to order a retrial, the Privy Council could not, as part of the Royal prerogative or otherwise, direct the Court of Appeal judges to act outside their statutory powers. 15. Advocate Le Quesne argued any direction to the Court of Appeal to consider a retrial other than in the circumstances contemplated in Article 28 would risk the violation of the oath of a Court of Appeal judge which obliges a judge to uphold the laws, liberties, usages and ancient customs of the 'Bailliage.' Article 1 of the Court of Appeal (Jersey) Law 1961 reads:- "There shall be a Court of Appeal with such jurisdiction as is conferred upon it by this Law." 16. It should be noted that it was common ground between the parties that the Privy Council has

power to order a retrial in any criminal appeal from Jersey. Section 13 of the Judicial Committee Act 1833, which has been registered in the Royal Court in accordance with the Code of 1771, provides for the Privy Council to direct a retrial. Advocate Le Quesne submitted that this is not a power which the Privy Council can delegate to a lower court. 17. This argument however ignores the effect of Section 21 of the Judicial Committee Act 1833 which is in these terms:- "The order or decree of His Majesty in Council on any appeal from the order, sentence, or decree of any court of justice in the East Indies, or of any colony, plantation, or other His Majesty's dominions abroad, shall be carried into effect in such manner, and subject to such limitations and conditions, as His Majesty in Council shall, on the recommendation of the said judicial committee, direct; and it shall be lawful for His Majesty in Council, on such recommendation, by order to direct that such court of justice shall carry the same into effect accordingly, and thereupon such court of justice shall have the same powers of carrying into effect and enforcing such order or decree as are possessed by or are hereby given to His Majesty in Council: Provided always, that nothing in this Act contained shall impeach or abridge the powers, jurisdiction, or authority of His Majesty's Privy Council as heretofore exercised by such Council, or in anywise alter the constitution or duties of the said Privy Council, except so far as the same are expressly altered by this Act, and for the purposes aforesaid." 18. Advocate Le Quesne argued that Section 21 was not intended to permit the Privy Council to override local legislation restricting the powers of the local courts. He submitted that Section 21 was administrative in nature. It would require clear and specific words in a statute to give Her Majesty unfettered power, through the Judicial Committee of the Privy Council, to require a statutory court to act beyond its statutory jurisdiction. 19. We were also referred to Article 48 of the Court of Appeal (Jersey) Law 1961, which provides:- "Save as provided by Article 14, nothing in this Law shall affect the prerogative of Her Majesty or the jurisdiction of Her Majesty in Council." 20. Advocate Le Quesne was driven to concede that the language of Sections 13 and 21 of the Judicial Committee Act of 1833 read together with Article 48 might be read as indicating that the Queen in Council had the authority to direct the Court of Appeal to exercise the powers possessed by the Privy Council to consider whether to order a retrial and to make an order for such a retrial if it was thought appropriate. 21. However Advocate Le Quesne argued the use of the royal prerogative to give the Court of Appeal jurisdiction which it is not given by a local Law would be not consistent with constitutional convention. 22. It seems to us that Advocate Le Quesne's arguments founders on two points. First that the Judicial Committee Act of 1833 is itself a local law, registered as such which confers power on the local courts appealed from to exercise the powers of the Privy Council so as to give effect to its judicial pronouncements. Second that, in our view, the power vested in the Court of Appeal under Article 28 of the Court of Appeal (Jersey) Law 1961 does not limit the power of the Court of Appeal to give effect to the judicial pronouncements of the Privy Council. Article 28 gives additional powers to the Court of Appeal, it does not purport to limit or restrict the existing powers of the Court to give effect to orders of the Privy Council, as Article 48 confirms. 23. The Court was told that the applicant has a limited personal interest in the issue of jurisdiction, for if the Court of appeal does not have jurisdiction to comply with the order of

the Privy Council, it is believed that the Privy Council does have such jurisdiction and itself would decide the matter. The matter was raised as an issue which may have constitutional importance for Jersey and a court should satisfy itself that it has jurisdiction before hearing a matter. 24. For the reasons set out above we accept the respondent's submission that the applicant's submissions under this head are misconceived. 25. There is an express power in the Judicial Committee Act 1833, registered in Jersey, which enables a retrial to be considered/ordered in the present circumstances. The Court of Appeal (Jersey) Law 1961 was designed to enlarge the rights of civil and criminal appeal, not to cut back in any way the existing powers of Her Majesty through the prerogative to grant relief to Her subjects in Jersey. Article 48 reinforces the primacy of the existing prerogative powers. 26. The submission that there is conflict between the 1961 Law and the use of the prerogative is untenable. The 1961 Act does not contain an exhaustive description of the Court of Appeal powers for present purposes. These powers derive additionally from the Judicial Committee Act, registered in Jersey by the consent of the Insular authorities in the nineteenth century and in force in Jersey ever since. The purpose of Article 28 of the 1961 Law is not to limit the power to order a retrial but to grant such a power when the interests of justice require. 27. In addition the Respondent placed reliance on section 8 of the Judicial Committee Act 1833, which provides: "... it shall also be lawful for his Majesty in Council on the recommendation of the said committee, upon any appeal, to remit the matter which shall be the subject of such appeal to the court from the decision of which such appeal shall have been made, and at the same time to direct that such court shall rehear such matter, in such form, and either generally or upon certain points only, and upon such rehearing take such additional evidence, though before rejected, or reject such evidence before admitted, as his Majesty in council shall direct; and further, on any such remitting or otherwise, it shall be lawful for his Majesty in council to direct that one or more feigned issue or issues shall be tried in any court in any of his Majesty's dominions abroad, for any purpose for which such issue or issues shall to his Majesty in council seem proper." 28. If it were necessary to consider the power under section 8 we do not consider the reference to a 'rehearing' would preclude reliance upon this section in circumstances such as the present. For the reasons here set out by the respondent, we are satisfied that the Court of Appeal of Jersey does have jurisdiction to hear and determine the matters set out in the Orders in Council and remitted to this Court, and that this part of the application is rejected. [B] SHOULD A RETRIAL BE ORDERED? 29. The Court was invited to consider first whether the interests of justice require a retrial, then to decide whether to order a retrial. 30. The applicant's submissions were that the interests of justice do not require that a retrial should be ordered. 31. His grounds for that submission were as follows:- (i) The applicant has served the majority of the six year sentence which was imposed concurrently for the offences in both the first and second trials. As a result of his conviction in the first trial and to extensive publicity of the subsequent trials he is and will remain in the eyes of this community, a convicted man who has lost his reputation. The "punishment" element of the judicial process has been achieved. The applicant is now 63 years old and has suffered the impact of the criminal investigation and prosecution since July 2001. His business substantially ended trading at

that point. Since the investigation began he has suffered two minor strokes and clinical depression from all of which he has recovered. He has suffered face cancer in prison and continues to suffer other severe problems; (ii) It would be unjust and unfairly burdensome for the applicant to have to undergo a third trial on substantially the same facts. He has been tried twice through no fault of his. His evidence in the first trial lasted four days, in the second, nine and a half during which he reiterated the evidence given in the first trial and more, on which he was subjected to public and unfair cross examination from the Commissioner, so that the humiliation thereby suffered has damaged his confidence in the judicial system; (iii) The passage of time which has elapsed since his business was searched and the alleged offences were committed is likely to prejudice a fair trial due to fading memories. We were referred to a schedule said to demonstrate the extent to which the memories of the applicant and witnesses were relevant to the narrative surrounding the documents on which the case was based. The applicant's evidence in a third trial would be crucial in offering an explanation regarding his client relationships and to explain the prosecution documents. He would be greatly disadvantaged by the fact that he has been in prison since August 2006 without access to his papers and his recollection of important matters will be damaged. Further there is a likelihood that his experience at the hand of the Commissioner in the second trial will affect his confidence in giving evidence a third time. The court was referred to paragraphs 46-53 of the judgment of Southwell JA in the case of *Holley v Attorney General*

[2003] JLR 22 ; (iv) The witnesses in the second trial were so improperly dealt with that their evidence may be affected by their experience. Their evidence may be tainted by knowledge of the applicant's convictions, and as a result of the hostile questioning from the Commissioner. We were provided with extracts from the evidence of nine prosecution witnesses to demonstrate the nature of the Commissioner's questioning; (v) The publicity which this case attracted means that it may be difficult to find Jurats unaffected by it, and the fact finders in a third trial will know that they have before them a person who has a conviction for money laundering and whom they know they are retrying merely because of a judicial failure. We were shown press reports from the internet in which the Privy Council judgment was made available and shown comments from members of the public thereon. We were again referred to *Holley v Attorney General*

[2003] JLR 22 and the judgment of Southwell JA who referred to the history of the proceedings and at paragraph 50 said:- "it is inevitable that, in the small community of Jersey, it is unlikely that any potential juror could be found who is not well aware of the case and that *Holley* has twice been convicted of murder." (vi) The applicant accepted that the potential confiscation of substantial assets may be a good reason to order a retrial, to penalise and prevent unjust enrichment. It was submitted that these purposes are not significant in this case. The confiscation order, which has been paid, was properly assessed in relation to money belonging to the applicant's clients and the assets seized were almost all in existence well before the applicant's business was alleged to be illegal. Advocate Le Quesne accepted that if there was no retrial the applicant would not suffer the penalty of

confiscation relating to the second trial, but submitted that in the public perception the real penalty was the public humiliation and the prison sentence. We were invited to conclude that deterrence was not relevant in the present circumstances. 32. The respondent submitted that the interests of justice do require that the applicant be retried. 33. Advocate Baker made the following submissions:- (i) This is a case of great importance to the Island of Jersey because it relates to the financial services industry and the effectiveness of the judicial authorities enforcement of money laundering offences may be critical to the international reputation of the Island and its economic interests; (ii) This was a very serious case of its kind. It involves very large amounts of money and a confiscation order of as much as £9,000,000. It is also a case of considerable gravity, involving significant damage to Jersey and to the fiscal interests of the U. K. and other foreign states; (iii) The prosecution case is very strong, as was acknowledged by Lord Brown in paragraph 1 of the judgment when he described the case as appearing to be "overwhelming" and at paragraph 26 as "a formidable one". The appeal was allowed by the Privy Council solely on the ground of judicial misconduct. The decision involves no criticism of the prosecution of the case, let alone its cogency; (iv) So far as the claim that there could not be a fair trial, Mr Baker submitted that an application to stay the indictment on this ground could not succeed. The evidence is overwhelmingly documentary. No real issue of recollection arises. The applicant's case is very straightforward amounting to an acceptance of the facts but a general assertion that his conduct and state of mind were throughout honest and reflected contemporary practice. He will have no greater difficulty in presenting his defence in 2010 than in

2007. We were referred to a narrative summary of the facts leading to the convictions of the applicant which need not be set out as relevant to our conclusion on these submissions save to the extent that the facts revealed evidence of a substantial money laundering service; (v) The Court of Appeal is further entitled to have regard to the importance of the confiscation order which would result from conviction. It would be wrong for the applicant to escape without financial loss if he is guilty of these offences, equally, the public purse should not lose a very large sum, sufficient to cover the costs of this investigation, unless a court decides that the case is unproven. The court should have regard to the widely acknowledged and important public interest in depriving offenders of the proceeds of their crimes; (vi) The fact that the applicant will have effectively completed his sentence before any retrial is not a compelling argument against a retrial. A case attracting such a substantial sentence should be resolved by the appropriate tribunal of fact, not the improper interventions of a judge. 34. We were referred to the Australian authority *The Queen v Taufahema*

[2007] HCA 11, in which Special Leave to appeal was granted by a majority of the Australian High Court in a case where a conviction had been quashed as a result of trial judge error rather than by the prosecution, and a trial described as flawed. Paragraph 51 of the majority judgment includes the words:- "An order for acquittal conflicts with the desirability, if possible, of having the guilt or innocence of the [accused] finally determined by a jury

which, according to the constitutional arrangements applicable ... is the appropriate body to make such a decision." 35. In *Reid v The Queen*

[1980] AC 343 at 350 the Privy Council approved the following statement of the Full Court of Hong Kong in *Ng Yuk Kin v The Crown*

(1955) 39 HKLR 49 at p 60: "It is in the interest of the public, the complainant, and the appellant himself that the question of guilt or otherwise be determined finally by the verdict of a jury, and not left as something which must remain undecided by reason of a defect in legal machinery." The word 'complainant' here related to an allegation of rape. 36. We consider these expressions of view to be helpful. We are persuaded that the submissions made by the respondent have considerable force in this matter and in the Island of Jersey; we have considered all the matters before us and whilst fully taking into account the applicant's submissions, we conclude that the present case is one where both the public interest and the interests of justice demand a retrial. We therefore order that the applicant be retried as soon as can be arranged on a fresh indictment to be brought in the Royal Court within the period of two months of the making of this order or such further period for which leave may given for the indictment to be brought. [C] COSTS OF THE SECOND TRIAL 37. On 3rd December 2009 the question of the applicant's liability for the trial costs was remitted to the Court of Appeal of Jersey by the Judicial Committee of the Privy Council to consider and determine at the same time as it decides whether or not to order a fresh trial. Following the quashing of the applicant's convictions on the second trial it is clear that the order for payment of the prosecution costs in that case must also be quashed. 38. Having determined that a fresh trial shall take place, we make no order in relation to the defendant's costs of the second trial. This question and any question relating to any payment of prosecution costs shall be considered and determined by the Royal Court at the conclusion of the third trial. Authorities Proceeds of Crime (Jersey) Law 1999. Court of Appeal (Jersey) Law 1961. Judicial Committee Act 1833. *Holley v Attorney General*

[2003] JLR 22 . *The Queen v Taufahema* [2007] HCA 11. *Reid v The Queen*

[1980] AC 343 . *Ng Yuk Kin v The Crown* (1955) 39 HKLR 49. Page Last Updated: 02 Aug 2016
BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2010/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/michel-v-ag-2010-jca-018-21-january-2010>

Prepared on 23 October 2026 · Esheria