JERSEY / JUDGMENT

X v AG [2024] JRC 007 (10 January 2024)

[2024] JRC 007

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judgment

the bailiff: 1. X seeks leave to appeal against my judgment (X v AG

[2023] JRC 216) ("the Judgment") of 14 November 2023 in which, for the reasons set out therein, I refused leave to bring an application for judicial review of the Attorney General's decision not to prosecute in a certain matter. I will not set out in this brief ruling the details of that application which are referred to sufficiently within the

Judgment.

2. At the time of the argument that gave rise to the Judgment, the Appellant was represented but now represents herself in this application for leave to appeal which I am dealing with on the papers. 3. In essence, the Judgment found that the Applicant had an arguable case in law on the two principal legal issues raised in the application for judicial review (and absent any other reason leave would therefore have been granted to make such an application), but that the delay in bringing the application was such that leave should not be granted. 4. In her application for leave to appeal, and particularly in the correspondence with the Judicial Greffe that preceded it, the Applicant raised for the first time an issue of conflict which she suggested should have disqualified me from sitting on the application. In that correspondence, she puts her arguments in the following terms: "As detailed in my arguments, in the introduction to the draft Gender Recognition Act in 2008, it was identified that Government departments needed to review procedures to ensure compliance and protection of people like me. When the law was introduced in 2010, for some reason this never happened. One would assume that it is the responsibility of the Law Officers' Department to advise Government departments. The Attorney General at the time was Sir Timothy Le Cocq, the current Bailiff, and judge in this case. It was arguably his responsibility to raise awareness of the legislation and had he have done so this 'crime' would have been far less likely. Secondly, the extremely close working relationships between the parties concerned raises significant questions on impartiality. Without going into details now, there is another issue, which needs to remain confidential at the moment. It raises very significant concern over impartiality." 5. I deal with this first as a preliminary matter. Whereas, of course, it is correct that the Law Officers' Department advise Government departments when asked for advice, it is not in general the responsibility of the Law Officers'

Department to raise awareness of legislation. That is a matter for the relevant Government department or statutory body promoting or implementing the legislation. 6. Secondly, it is not clear to me what is meant by " extremely close working relationships " in the context of this matter. The Attorney General and the Bailiff fulfil quite distinct constitutional functions and it is far from unusual for a judge to find against the Attorney General in, for example, criminal matters, or indeed any public law matters. The interest of the Attorney General in such matters, and the interest of any presiding judge, are not personal ones and there is no difficulty in a judge finding against the Attorney General in such matters. 7. I am obviously unable to comment on the last paragraph quoted above as I do not know what additional concerns over impartiality might be in the Applicant's mind. I am unaware of any. 8. No matter of conflict was raised before me and I was and am unaware of any conflict which should have caused me to recuse myself from considering the Applicant's matter. 9. The Applicant's application for leave to appeal goes through and annotates parts of my Judgment on the substantive points, making observations where she disagrees or believes that it sets out matters inadequately. I do not in this ruling make reference to any of those points. Given that my Judgment accepted that the substantive grounds argued for by the Applicant were arguable, the only point in issue in this application is the matter of delay. 10. With regard to the issue of delay, the Applicant points to the fact that delay is a discretionary bar and then develops the reasons for the delay and deals with matters of hardship, prejudice and good administration. 11. In essence, the Applicant's argument is that I should have applied proper principles to the exercise of my discretion, had not fully appreciated the reasons for the delay and, presumably, hardship and prejudice to good administration. 12. The Applicant deploys a full argument relating to these various matters and argues that the basis on which I exercised my discretion was wrong. Ironically, perhaps, the thoroughness with which the Applicant approaches this matter when acting for herself, seems to me to lend credence to the view that she would have been more than capable of advancing the claim within time. 13. The test for granting leave to appeal was set out in Crociani and Others v Crociani

[2014] (1) JLR 426, which stated that an applicant for leave to appeal had to show that: (i) the proposed appeal had a real prospect of success; (ii) there was a question of general principle which fell to be decided for the first time; or (iii) there was an important question of law on which the further argument and decision of the Court of Appeal would be to the public advantage. 14. That is the test that I must apply. 15. In terms of the substance of X's application for judicial review, there were, in my view, important questions of law contained within it. The question of the right to review the Attorney General's decision on prosecution has been the subject of some judicial determination but, in my view, could usefully receive further consideration by the Court of Appeal. As to the Attorney General's interpretation of the applicable law, I am not aware that that has previously been the subject of judicial consideration and it might therefore be said to raise a point of law, potentially an important one, for the first time. 16. If I were dealing with the substance of the original application, then it seems to me that it would easily cross the threshold for leave to appeal and leave would be granted although it may be that the Court

of Appeal would wish for a determination of those issues by the Royal Court before considering it on appeal. 17. The matters before me at the moment, however, are not the substantive issues contained in the application, but rather my decision on delay. This was an exercise of discretion on the principles set out in my Judgment. 18. In my view, my decision on delay fell within the range of reasonable decisions that it was open to a judge to take and applying the test set out above I refuse the Applicant leave to appeal to the Court of Appeal against my Judgment. Authorities X v AG

[2023] JRC 216 Crociani and Others v Crociani

[2014] (1) JLR 426. Page Last Updated: 25 Jan 2024 Back to top About JLIB Accessibility Contacts Copyright Disclaimer Feedback Privacy policy Site map This website is not compatible with your web browser. You should install a newer browser . If you live in Jersey and need help upgrading call the States of Jersey web team on 440099. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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