



In The Supreme Court of Bermuda
APPELLATE JURISDICTION
2026: No. 12

BETWEEN:

SHELTON BAKER

Appellant

-v-

JEROME ASTWOOD, POLICE SGT

Respondent

JUDGMENT

Date of Hearing: 10th April 2026

Date of Judgment: 4th May 2026

Appearances: Mr Adley Duncan, Senior Crown Counsel, for the Appellant
Ms Nicole Smith, Legal Aid Counsel, for the Respondent

JUDGMENT of Richards J

1. This appeal arises in somewhat unusual circumstances, the matter having already come before this Court on a previous occasion¹ (“**the First Appeal**”). On 31st January 2025, the learned Magistrate, the Worshipful C. Craig S. Attridge (“**the Magistrate**”), issued a ruling discharging the Appellant on Information 23CR00123. That decision was appealed by the prosecution and on 17th April 2025², I allowed that appeal and remitted the matter to the

¹ Appeal 3 of 2025, neutral citation: [2025] SC (Bda) 42 app

² I announced my decision on this date, but the Judgment and Certificate of Appeal were both issued on 24th April 2025.

Magistrate, with a direction to proceed to judgment. With characteristic timeliness, the Magistrate issued his judgment on 29th April 2025. He found the Appellant guilty and, in due course, he was sentenced to 4 months' imprisonment.

2. In the meantime, Counsel for the Appellant (formerly the Respondent) filed a Notice of Appeal seeking to appeal my decision directly to the Court of Appeal. That Notice was dated 23rd April 2025 and thus drafted before I issued my written judgment on 24th April 2025³. In that judgment I recognized that “...given the significance of the point argued in this appeal and the variety of subtly (and less subtly) different judicial views expressed in connection with it (and not yet at the level of the local Court of Appeal), there is a high likelihood of the unsuccessful party before me seeking to appeal further.”⁴ I then set out section 17(1) of the Court of Appeal Act 1964 (“**the 1964 Act**”), emphasizing that only “a person convicted by a court of summary jurisdiction and whose appeal to the Supreme Court under the Criminal Appeal Act 1952, has not been allowed, may appeal to the Court of Appeal”. The Appellant (then the Respondent) was not at that stage a person convicted by a court of summary jurisdiction and might never have become one. I therefore wrote:

“As such it does not seem to me that he is able presently to appeal my decision directly to the Court of Appeal. If the Magistrate convicts him, he can appeal to this Court and, if his appeal is dismissed, he can then appeal that decision to the Court of Appeal...

Plainly I cannot decide the limits of the Court of Appeal's jurisdiction. That is a matter for them, but the statute seems clear to me. I would simply point out that attempting to go to the Court of Appeal prematurely... could waste significant time.”⁵

3. However, no attempt was made to appeal the Magistrate's judgment of 29th April 2025 to this Court, until 4th March 2026, when the Appellant made an application for an extension

³ [2025] SC (Bda) 42 app

⁴ Ibid., paragraph 55

⁵ Ibid., paragraphs 56 and 57

of time in which to file a Notice of Appeal. I heard that application on 27th March 2026. It was not opposed and I granted it, despite the considerable delay, because I remained of the view that the point raised would benefit from consideration by the Court of Appeal. A Notice of Appeal was then filed on 8th April 2026. The heading included the numbering “Criminal Appeal 3 of 2025” (i.e. the number of the previous appeal). However, this must properly be regarded as a fresh appeal (brought by the former Respondent) and has therefore been assigned the number 12 of 2026 in this Court.

4. The Notice of Appeal includes the following text:

“Grounds of Appeal against Conviction:

- (1) That the Learned Trial Judge erred in finding the Appellant guilty of the offence given the misinterpretation of the application of *s. 199(4) of the Criminal Code Act 1907*; and
- (2) Such other grounds as Counsel may advise.

Relief Sought from the Supreme Court:

- (1) That the Appellant’s conviction based on the application of *s. 199(4) of the Criminal Code Act 1907* be referred to the Court of Appeal for its determination on that point of law and its application;
- (2) Such further and other Orders as Counsel may advise.”

5. With respect, the first ground of appeal is not clearly expressed. If “Learned Trial Judge” is intended to be a reference to me, I did not (and could not) try the Appellant or find him guilty. If it is intended to be a reference to the Magistrate (who did try and convict the Appellant), it is odd that the Appellant should assert that he erred. The Appellant’s true position must be that *I* erred when I remitted the matter to the Magistrate with a direction to proceed to judgment. He must contend that the Magistrate’s original decision to discharge him was correct and that his subsequent conviction should accordingly now be quashed.

6. I previously observed that:

“If [the Appellant’s] appeal to this Court were solely on the basis that the Magistrate’s Ruling of 31st January 2025 was correct, one would hope that the parties would agree to proceed summarily, so the matter could move on to the Court of Appeal without undue delay, but of course other grounds of appeal could conceivably arise.”⁶

7. However, it is clear that no other grounds of appeal are now pursued and both Counsel confirmed, during a brief hearing on 10th April 2026, that they did not wish to make any further submissions and would be content for me to issue a short judgment affirming my earlier holding re section 199(4) of the Criminal Code.
8. As to the relief sought in the Appellant’s Notice of Appeal, I know of no mechanism by which I may refer a conviction to the Court of Appeal. There does not appear to be any such provision in the Criminal Appeal Act 1952 (“**the 1952 Act**”) and, although the 1964 Act allows for references to that court, it is the Governor who is empowered to make them⁷. If I could refer a question, I would be content to refer this one, but since I am not satisfied that I can, I refuse to do so.

Conclusion

9. Since my view of the law remains as stated in my judgment in the First Appeal, it seems to me that the appropriate course is for me simply to dismiss this appeal against conviction.
10. As “*a person convicted by a court of summary jurisdiction and whose appeal to the Supreme Court under [the 1952 Act], has not been allowed*”⁸, the Appellant may now appeal this decision to the Court of Appeal. I previously “*wondered whether the [Appellant] would require leave to appeal my decision and, if so, whether I could grant it*”⁹, signalling an openness to doing so. However, as I presently understand the Appellant’s arguments, his

⁶ [2025] SC (Bda) 42 app, paragraph 56

⁷ See section 27 of the 1964 Act

⁸ Section 17(1) of the 1964 Act

⁹ [2025] SC (Bda) 42 app, paragraph 55

appeal to the Court of Appeal would involve a question or questions of law alone¹⁰ and so would not require leave¹¹. If I am wrong about that and the Appellant seeks to pursue a ground or grounds of appeal that involve questions of fact alone or mixed law and fact, he may seek my certificate under section 17(1)(b) of the 1964 Act by applying in writing within 14 days. Alternatively, he may seek the necessary leave from the Court of Appeal.

Dated this 4th day of May 2026


THE HONOURABLE MR JUSTICE ALAN RICHARDS
PUISNE JUDGE

¹⁰ The Respondent could only bring the First Appeal upon such a ground, but had the benefit of a deeming provision (section 4(2)(c) of the 1952 Act). The equivalent provision on appeal to the Court of Appeal (section 17(5)(c) of the 1964 Act) cannot avail the Appellant under these circumstances.

¹¹ Section 17(1)(a) of the 1964 Act