



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

B E T W E E N:

THE KING

-v-

GEORGE FOX

Defendant

Appearances: **Mr Matthew Frick, Crown Counsel, for the Prosecution**
 Ms Elizabeth Christopher, Counsel for the Defendant

Dates of Hearing: **29th June and 16th July 2026**
Date of Ruling: **7th August 2026**

RULING

Drugs Offences - Mode of Trial - Abuse of Process

RULING of Richards J:

Introduction

1. The Defendant is charged in an indictment with two offences under the Misuse of Drugs Act 1972 (“MDA”). He seeks a stay of these proceedings on the grounds of an abuse of process. For the reasons set out herein, I refuse that application and propose to remit this matter to the Magistrates’ Court for trial.

The Proceedings Below

2. The either way offences charged were both allegedly committed on 20th May 2024. The information containing them was first laid before a Magistrate on 20th May 2025. A summons was issued on that date and served. The Defendant made his first appearance before the Magistrates' Court as a result on 30th June 2025. He subsequently appeared on no fewer than nine occasions before that court. Most of those hearings were taken up with the process of disclosure by the Prosecution. It does not appear as though a trial date was ever set. During the course of those proceedings, Defence Counsel, Ms Christopher, raised an issue as to the validity of the information. She contended that it was out of time for summary trial, having been laid on the anniversary of the offences, and so not within twelve months of them having allegedly been committed. She asserted that that was a requirement of section 27(5) of the MDA.
3. The Prosecution initially sought to contest Ms Christopher's argument. They did not disagree with her as to the effect of section 27(5), but they disagreed about whether the information was out of time. Mr Audley Quallo, then employed as Crown Counsel in the Department of Public Prosecutions, set out his argument in an email to Ms Christopher dated 18th March 2026. He first asserted that "*these proceedings commenced on the last day of the 12-month statutory period*". He then went on to refer to section 9(e)(i) and (ii) of the Interpretation Act 1951. The relevant parts of those provisions are as follows:

"In every Act... in computing time... a period of days from... the doing of any act... shall be exclusive of the day on which... the act... was done [and] if the last day of a period of days from... the doing of any act... is a Sunday or other public holiday... then such period shall include the next following day which is not [a Sunday or other public holiday]."

On this basis, Mr Quallo contended that the first day of the period was 21st May 2024 and that that period expired on 21st May 2025, meaning that the information had been sworn "*well within time*".
4. Ms Christopher told me that she did not agree with Mr Quallo at the time, but that she has come to agree with him since. Mr Frick told me that the correctness or otherwise of Mr

Quallo's reasoning has been the subject of significant debate in his office and that they have identified a range of international case law that expresses different opinions about it. He did not refer me to any of that case law, but for reasons that will become apparent, I do not think it is important conclusively to resolve this point. Although my view on it is, therefore, entirely *obiter*, I will express it, even at the risk of adding to an already scattered debate. To my mind section 9(e)(i) and (ii) of the Interpretation Act only assist with respect to computing time expressed as "*a period of days*". Of course a month includes a number of days, but how many? Section 7 of the Interpretation Act says that "*month*" means a calendar month. The number of days in a calendar month varies depending on the month. The number of days in a period of months will vary depending on how many and which months and, potentially, also the years. The number of days in a 12-month period will depend on the year(s). It will be either 365 days or 366 days, but it will be 12-months either way. A period of time expressed in months cannot be accurately converted into a number of days without more information. My own view is that Ms Christopher was right that "*within twelve months from the time when the offence was committed*" should be construed as including all days up to, but not including the anniversary of the offence. It would be different if the provision said "*not more than twelve months after the day on which the offence was committed.*" I think one would then have to count a year starting with the day after the offence and ending on its anniversary.

5. Someone in the Department of Public Prosecutions must have taken a similar view because, instead of pursuing the argument, Mr Quallo attended the Magistrates' Court on 19th March 2026 (the day after his email) with an "amended information". As Mr Frick accepted in argument, the document was not ideally presented. Although it was described as "amended", the substance of the information (i.e. the charges it contained) had not changed. It purported to have been sworn by a different officer and was redated "*taken this 18th March 2026*". What was significant was that it then bore a certificate under the hand of the Director of Public Prosecutions to the effect that, in her opinion, the offences charged were fit subjects for prosecution upon indictment. Ms Christopher tells me and indeed the Magistrates' notes reflect, that she sought to argue that this was an abuse. However, the Magistrate concluded that he should send the case to the Supreme Court and that that was an argument she would

have to advance here. I infer that he took the view that section 450(a) of the Criminal Code required him to treat the charges as though they were indictable only, given the terms of the DPP's certificate. There is nothing in section 450 requiring such a certificate to be on the information sheet. It is generally convenient that it should be, but in these circumstances, where the information had already been laid without a certificate and was not, in substance, being amended, I think it would have been better if the certificate had stood as a separate document.

6. It is also said on the Defendant's behalf that, between December 2025 and February 2026, Ms Christopher had been in discussion with the Director of Public Prosecutions about the case. I do not have direct evidence before me as to exactly what was said. Ms Christopher characterises it as a threat equivalent to: *"If the Defendant does not plead guilty, we will take this matter up on indictment"*. Mr Frick says it was not a threat and was instead closer to: *"We think will have to take this matter up on indictment, due to the time limit), but if you are prepared to plead guilty we could agree to keep it down."*
7. For reasons that will become apparent, I do not think it is necessary to resolve this dispute. When this matter was first argued before me, I queried the parties' reading of section 27(5) of the MDA. My preliminary view was that it should not be construed as imposing a time limit on the summary prosecution of an offence that is triable either way. Mr Frick was willing to support that view. Ms Christopher was not. I adjourned the hearing of the application, in part to allow the parties to further consider their arguments in light of my preliminary views.

Section 27(5) of the MDA

8. Section 27(5) of the MDA provides as follows:
"Notwithstanding anything in section 80 of the Criminal Jurisdiction and Procedure Act 2015 summary proceedings for an offence under this Act may be commenced at any time within twelve months from the time when the offence was committed."

9. Section 30(2) of the Firearms Act 1973 (“FA”) is in identical terms.
10. As a matter of practice, these provisions have been treated as imposing a time limit on the summary prosecution of either way offences created by the relevant Acts. Drugs offences are much more commonly tried summarily than firearms offences, but in neither context has the issue previously been the subject of a properly reasoned judicial decision¹. If it has been argued at the Magistrates’ Court level (where it may have resulted in an unpublished decision), no resultant holding has been challenged in this Court.
11. I think it is important to begin this discussion with the fact that our laws contain no general time limit on the prosecution of offences that are triable either way. The only general time limit that does exist is as to summary offences. That is done by section 80 of the Criminal Jurisdiction and Procedure Act 2015 (“CJPA”), which uses clear mandatory language (emphasis added):
- “80 Limitation of time for commencing summary prosecutions***
- (1) *Subject to subsection (2), a prosecution for a summary offence must, unless otherwise expressly provided, be begun within a period of—*
- (a) *12 months after the offence is committed; or*
- (b) *6 months of the date when facts sufficient in the opinion of the Director of Public Prosecutions to justify the institution of criminal proceedings first come to his notice, whichever period last expires.*
- (2) *Unless otherwise expressly provided, no prosecution for a summary offence shall be begun more than 18 months after the offence is committed.”*
12. On its face section 27(5) of the MDA imposes no time limit. The active language used (i.e. the words from “summary” to the end) is permissive and not mandatory or prohibitive. It is not stated that summary proceedings *must* be begun within 12 months or that they *may not* be begun outside 12 months, but that they *may* be begun within 12 months. That obviously begs the question under what circumstances summary proceedings outside such a timeframe

¹ Neither my own research, nor that of Counsel have identified any.

would be impermissible? The opening words of 27(5) direct one to the answer: section 80 of the CIPA.

13. The time limit imposed by section 80 of the CIPA applies only to summary offences. Summary offences are those which may only be prosecuted summarily (subject to the proviso to section 13 of the Criminal Code). Since there is no general time limit on when either way offences may be prosecuted (whether summarily or upon indictment) it seems to me clearly wrong to interpret the permissive language of section 27(5) as imposing such a time limit in respect of either way offences created by that Act.
14. What then is the purpose of section 27(5) of the MDA? If it is intended to apply to summary offences why does it say they may be prosecuted within 12 months when section 80 of the CIPA already says that they must be prosecuted within that period (or up to 18 months, as long as they are prosecuted within 6 months of the DPP becoming aware of them)? The answer is that section 27(5) predates section 80 of the CIPA and the amendment of it, when the CIPA was enacted, was imperfectly executed. Prior to that amendment section 27(5) read as follows:

“Notwithstanding anything in section 452 of the Criminal Code summary proceedings for an offence under this act may be commenced at any time within 12 months from the time when the offence was committed.”

15. Before its repeal (also by the CIPA) section 452 of the Criminal Code read as follows:

“452 Limitation of time for commencing summary proceedings

- (1) A prosecution for a summary offence must, unless otherwise expressly provided, be begun within a period of six months after the offence is committed or within a period of three months of the date when facts sufficient in the opinion of the Director of Public Prosecutions to justify the institution of criminal proceedings first come to his notice, whichever period last expires:*

Provided that, and unless otherwise expressly provided, no prosecution for a summary offence shall be begun more than 12 months after the offence is committed.”

16. To my mind this is all starting to make sense: the general time limit for the prosecution of summary offences used to be 6 months and section 27(5) was intended to extend that general limit to 12 months, without the need for a DPP’s certificate. Such a provision is consistent with the overall scheme of a draconian statute like the MDA – one in which, for example, the general rule that inchoate offences carry a maximum sentence of half that for the completed offence is displaced (see section 28). It would be quite inconsistent with such a scheme for the Act to impose a time limit on the prosecution of either way offences when there is generally no such limit known to our law.
17. The MDA creates two summary offences (and may have created more in the past): those contrary to sections 20(3) and 36(2) of the Act (see section 27(4)). However, the FA does not currently create any offences triable only summarily and, as mentioned above, section 30(2) of the FA is identical to section 27(5) of the MDA. The CJPA amended them both in the same way (replacing the reference to section 452 of the Code with one to section 80 of the CJPA). This almost persuaded me that my reading must be wrong. However, the pre-CJPA version of section 30(2) has been part of the FA since it was first enacted and at that very different time, several firearms offences were triable only summarily.
18. Mr Frick also astutely observed that the position of subsection (5) within section 27 of the MDA is instructive: it comes immediately after the subsection that prescribes the maximum penalty for the two summary offences created by the Act (a small fine) and not after those that prescribe the maximum penalties for either way offences ((1) and (2)).
19. Ms Christopher does not agree, but with no disrespect intended, she did not advance any argument that has persuaded me that the foregoing analysis is wrong. She seems to believe that the first thirteen words of 27(5) may essentially be disregarded and that, when the rest of the provision says that “*summary proceedings for an offence under this Act may be*

commenced at any time within twelve months” what that means is that they may only (or must) be so commenced. If that is what the Legislature had intended, I believe it would have used that language.

20. That said, the drafting of section 27(5) is not as precise as it might be because, out of context, one would not naturally read “*summary proceedings for an offence*” as bearing the same meaning as “*proceedings for a summary offence*”. The latter wording would have been clearer. However, when one looks at the language of the subsection as a whole and considers the legislative history, it is clear that it imposes no time limit on the summary trial of either way offences. I further note that section 80 of the CJPAA and its predecessor (section 452 of the Criminal Code) are both entitled “*Limitation of time for commencing summary prosecutions*” and not, as they might more precisely be: “*Limitation of time for prosecuting summary offences*”.
21. What then is the residual effect (if any) of section 27(5)? I believe it may have one although I doubt that it was intended. Given the “*unless otherwise expressly provided*” in section 80 of the CJPAA, it seems to me that 27(5) may now have the effect of negating section 80(1)(b) and (2). In other words, it is arguable that it precludes the DPP from prosecuting a summary offence created by the MDA after 12 months, but within 18 months. Sections 20(3) and 36(2) do not create offences that are often charged, so it may not matter much, but it is anomalous and contrary to the clear intention of the provision when it was first enacted (i.e. to extend a general time limit and not contract it). Given the current lack of summary offences in the FA, section 30(2) of that Act cannot continue to have any meaningful effect. The Legislature may wish to consider repealing both provisions.
22. Before leaving this topic, I will simply observe that a time limit that only applies to the lesser mode of trying either way offences does not make much sense. It might serve to dissuade (but not prevent) a prosecutor from proceeding on the least serious such charges after the time limit expires; those for which indictment would plainly be excessive. However, many offences will lie at a level of seriousness at which proceeding on indictment would not be inappropriate, but proceeding summarily is also acceptable. There is not some clear and rigid

threshold at which the appropriate mode of trial suddenly switches. Why should cases which could reasonably be tried in either court have to be tried on indictment just because they are charged a day later? At least the sentencing powers of the courts under the MDA overlap and so the Supreme Court is not bound to impose a sentence in excess of what would be imposed for the same offence summarily. Under the FA, however, the minimum sentence provisions mean that an offence that cannot attract more than 7 years' imprisonment summarily cannot attract less than 12 years' imprisonment on indictment. If section 30(2) really applied to such an offence, being prosecuted a day later could require a procedure that would add at least 5 years to a person's sentence! That is plainly ridiculous and, if satisfied that the Legislature intended that result, the courts would likely conclude that it offended constitutional principles. However, my point is that the absurdity of such a scenario further supports the conclusion the these provisions cannot have been intended to and, properly construed, do not have the effect of limiting time for the prosecution of either way offences.

The Application to Stay

23. In *R v Maxwell*² it was reaffirmed by the Supreme Court of the United Kingdom (per Lord Dyson) that “*a stay will be granted where the defendant would not receive a fair trial or where it would be unfair to try the Defendant at all.*” The precise origins of this well-established doctrine may be debateable, but in *R v Latif*³ the House of Lords (Lord Steyn) said that:

“The speeches in ex parte Bennett⁴ conclusively establish that proceedings may be stayed in the exercise of the judge's discretion not only where a fair trial is impossible but also where it would be contrary to the public interest in the integrity of the criminal justice system that a trial should take place. An infinite variety of cases could arise. General guidance as to how the discretion should be exercised in particular circumstances will not be useful. But it is possible to say that in a case such as the present the judge must weigh in the balance the public interest in ensuring that those who are charged with grave crimes should

² [2010] UKSC 48

³ [1996] 1 WLR 104

⁴ *R v Horseferry Road Magistrates' Court ex parte Bennett* [1994] 1 AC 42

be tried and the competing public interest in not conveying the impression that the court will adopt the approach that the end justifies the means.”

24. Ms Christopher argued forcefully that I should stay these proceedings as an abuse of process. She contended that the way in which the Prosecution had acted was improper and that, as a result, the proceedings should not be allowed to continue. These are my words rather than hers, but I believe she would say that the earlier conduct of the proceedings afforded her client the legitimate expectation that he would be tried summarily or (if she were found to be right about the calculation of the time limit) not at all.
25. In her written submissions Ms Christopher accused the Prosecution of “*a pattern of conduct that offends the Court’s sense of justice and propriety and that would bring the administration of justice into disrepute if these proceedings were permitted to continue.*” She contended that (i) improper pressure had been put upon the Defendant to plead guilty, (ii) that he had improperly been denied his choice of venue (i.e. in the Magistrates’ Court); and (iii) that the Prosecution had contradicted themselves.
26. As to the first of these complaints, it is clear to me that the reason why the Prosecution decided belatedly that they wished to try this case on indictment was not in an unsuccessful attempt to procure the Defendant’s guilty plea (which has not in any event been forthcoming), but because they had come to the conclusion that the information had been laid out-of-time for a summary trial. They may have felt that an indictment could nevertheless be avoided if the Defendant agreed to plead guilty and, by so doing, submitted to the jurisdiction of the Magistrates’ Court. I am not so sure about that, but I am fully satisfied that the matter could validly have proceeded summarily. The foundation for the Prosecution’s decision to certify the matter for trial upon indictment was therefore erroneous.
27. Errors of law happen. Judges and lawyers make them from time to time. The law is complex and reasonable practitioners can disagree about how to interpret and apply it. Sometimes mistakes are swiftly detected and corrected and other times they may linger. By way of example, Ms Christopher seems to believe that she made an error of law in this case. She

told me that she has come to agree with Mr Quallo's approach to the calculation of time (see paragraph 3 above), despite disagreeing with him previously. However, I do not think she was wrong to assert that the original information in this case had not been laid within twelve months from the time when the offence was committed⁵. If she has made an error of law here, in my view it lies in her subsequent agreement with the analysis contained in the email of 18th March 2026. Either way, one of these views must be wrong.

28. The fact that the Prosecution caused this matter to be indicted because they wrongly believed that it could not proceed summarily is just such an error of law. In my judgment it cannot sensibly be characterised as misconduct meriting a stay of proceedings. It might be different if they had believed that the matter should proceed summarily, but indicted it only because the Defendant would not plead guilty. It might also be different if he had pleaded guilty only because he had been pressured to do so by the threat of an indictment. However, we are in neither situation.
29. The error of law that underpinned the certification of the matter pursuant to section 450(a) of the Code is also eminently remediable. Mr Frick has told me that the Prosecution would be willing to withdraw the certificate and have the matter tried summarily, if I conclude that it properly can be. The Court's exceptional power to stay criminal proceedings exists to remedy situations that cannot otherwise be remedied. A fair trial is still possible in this case and, although I can understand the Defendant regarding his involuntary excursion to the Supreme Court as an inconvenience, it is not, in my judgment, a proper foundation for saying that it would be unfair for him to be tried at all. Mistakes happen and this one can quite easily be fixed.
30. During the hearing, I hypothesised a scenario in which an information charging an either way MDA offence of moderate seriousness (i.e. that could reasonably be tried in either court) has been laid 13 months after the offence. The prosecution notice this on the second appearance of the matter in the Magistrates' Court and then attempt to have the charge sent to the Supreme Court for trial. Ms Christopher maintained that that would be abusive. She

⁵ Although I do not think that it mattered.

said “*they have to get it right!*”. Getting things right first time is certainly to be encouraged, but the law does not demand such an unrealistic standard of perfection, even from the state.

31. The authorities Ms Christopher is relying upon demonstrate that serious misconduct by the prosecution *can* justify preventing an otherwise fair trial from taking place, but only when Lord Steyn’s weighing exercise concludes that the seriousness of the charges (and thus the public interest in them being tried) does not outweigh the misconduct. I accept that these are not particularly serious charges. They are certainly not serious enough to exceed the sentencing powers of the Magistrates’ Court. The public interest in seeing them tried is not nil, but nor is it great. It probably would not outweigh much, but if there is no misconduct, there is nothing to outweigh.
32. Ms Christopher also argued that the DPP’s certification of these charges “*was a deliberate procedural step designed to render the jurisdiction argument moot and to nullify the Defendant’s election [of summary trial]*”. I do not understand Mr Frick to dispute that the Prosecution had concluded that Ms Christopher was (or at least may have been) right in her “*jurisdiction argument*”. They simply believed that the matter could still be tried on indictment instead. Ms Christopher seems to assume that, if she had been allowed to make her argument to the Magistrate and had succeeded, there would have been no trial at all, but I do not think that assumption is necessarily correct. The Prosecution’s position in reply would presumably have been that, if the information were held to be out-of-time for summary trial, the matter could still proceed upon indictment. They may well have indicated that they would present the Magistrate with a section 450 certificate if he so ruled. If he had instead dismissed the information, the Prosecution may have appealed that decision under section 4 of the Criminal Appeal Act 1952 or they may have sought the consent of a judge of this Court to prefer a voluntary bill of indictment pursuant to section 485(2)(c) of the Criminal Code. I do not know what they would have done, but it cannot be said that Ms Christopher’s argument would necessarily have ended the matter, even if it had succeeded.
33. The irony is that Ms Christopher now says, in effect, that her argument ought not to have succeeded and, if she is right about that, this case should still be in the Magistrates’ Court.

In my judgment, she *is* right about that, but not because the information was laid within twelve months of the offence. It was not, but for the reasons I have given, there was no such requirement and no bar to the summary trial of the information in this case.

Section 450 of the Criminal Code

34. Since Mr Frick has indicated that the Prosecution will withdraw the section 450 certificate if I conclude (as I do) that the matter can properly be tried summarily, I do not have to decide whether I could require it to be so tried in any event. The following remarks are, therefore, wholly *obiter*. However, I do not believe that section 450 of the Code necessarily empowers the Director of Public Prosecutions to require that an either way offence be sent to the Supreme Court for trial at any stage of the proceedings. In much the same way, I doubt whether a Defendant who initially consents to summary trial is absolutely entitled to change his election. I would acknowledge that courts may allow either side to reelect, but I think that may properly be a matter for the court's discretion rather than a right. Mr Frick submitted that that would be a sensible position, but not consistent with the wording of section 450 (as far as the DPP is concerned):

“450 Power to require offence triable summarily or on indictment to be treated as indictable offence

Where a person is charged with an offence triable either way then the following provisions of this section shall have effect—

- (a) *where, in the opinion of the Director of Public Prosecutions, the charge is a fit subject for prosecution by indictment, the Director of Public Prosecutions may issue a certificate in writing accordingly, and upon production of such certificate to the magistrate before whom the accused person stands charged the magistrate shall not sit as a court of summary jurisdiction to deal summarily with the charge but shall treat the charge as though the offence were an indictable offence which is not triable summarily;*
- (b) *[Repealed]”*

This language does not greatly assist as to when, in the course of summary proceedings for an either way offence, a section 450 certificate may validly be presented. It may, therefore,

be argued that it can be at any time. However, I think it is at least arguable that such a liberal reading of section 450 would be inconsistent with Part III of the CIPA, and in particular sections 15 and 20. It also occurs to me that the Court of Appeal's pending decision in *R v Isaiah Smith, Omari Williams & Jaja Desilva*⁶ (about whether and when a court may reject a *nolle prosequi*) may have some bearing on this question. I will therefore resist the temptation to engage further with it at this time.

Conclusion

35. I refuse to stay these proceedings as an abuse of process.
36. I hold that section 27(5) of the MDA should not be read as imposing any time limit on the summary prosecution of either way offences created by the Act. To the extent that the subsection has been interpreted in that way in the past, it has been misinterpreted. There was, therefore, no bar to this matter proceeding summarily and there is not now.
37. Sections 27(5) of the MDA and 30(2) of the FA are provisions that have been rendered anomalous by imperfect amendment in the course of wider legislative changes. Their continuing effect, if any, is limited and they may therefore be ripe for consideration of repeal.
38. Since the sending that occurred in this case was precipitated by an understanding of section 27(5) that I have now found to be wrong and since the Prosecution has said that, in those circumstances, it will not persist in requiring this matter to be tried on indictment, I will, unless the Defendant now wishes to assert his right to be tried here, remit this case to the Magistrates' Court for trial.

Dated this 7th day of August 2026


THE HONOURABLE MR JUSTICE ALAN RICHARDS
PUISNE JUDGE

⁶ Criminal Appeal 2 of 2024