

PHILIP WALTER MONTGOMERY STRICKLAND

v

POLICE

Date of Zoom hearing: 26 November 2021

Counsel: Mr N George for Applicant
Ms A Maxwell-Scott and Ms J Crawford for Respondent

Date of Judgment: 1 December 2021

**JUDGMENT OF HUGH WILLIAMS, CJ
(re. Application to return funds seized under search warrant)**

[0210.dss]

Introduction

[1] Prior to 22 September 2021, the above-named accused/applicant, Mr Walter Strickland, had been charged with a number and of drug dealing and money laundering offences¹.

[2] The Police being suspicious that Mr Strickland was continuing to commit drug dealing and associated offences, obtained and, on 22 September 2021, executed a search warrant on Mr Strickland's parents' premises, the premises to which he had been bailed. They uplifted a number of items including \$1760 in cash in the form of five \$100 notes, 25 x \$50 notes, and

¹ Together with a number of persons, alleged to be his co-accused, whose cases are proceeding towards trial. The chronology of those matters and other issues are reflected in the various minutes and judgments issued in relation to this operation but do not require recounting for the purposes of this judgment.

one \$10 note. The Police continue to hold this money and intend, if able as a result of this application, to produce it as the prosecution exhibit at trial.

[3] Mr George, counsel for Mr Strickland, says that the \$1760 was money borrowed by the accused from his parents to be paid to Mr George as part-payment of the legal fees for the accused's trial and, on 8 November 2021, filed an application for the return of the money to Mr Strickland for onward transmission to Mr George in part-payment of the accused's fees.

[4] The Crown opposes that application.

Legal issues

[5] At the hearing, some doubt arose as to whether the application was brought pursuant to s 97 of the Criminal Procedure Act 1980-81 or s 50 of the Police Act 2012, the possible difference in approach resulting from the fact that the \$1760 was found in Mr Strickland's wallet which was on his person when it was seized on his arrest.

[6] Section 97 of the Criminal Procedure Act 1980-81 reads:

97. Disposal of things seized – (1) Where any constable seizes anything under section 96 of this Act, it shall be retained under the custody of a constable, except while it is being used in evidence or is in the custody of the Court, until it is disposed of under this section.

(2) In any proceedings for an offence relating to the thing seized, the Court may order, either at the trial or on a subsequent application, that the thing be-

- (a) Delivered to the person appearing to the Court to be entitled to it; or
- (b) Forfeited, defaced, or destroyed (in the case of counterfeit coin, or forged bank notes, or instruments or things for making such coins, notes, or instruments); or
- (c) Otherwise disposed of in such manner as the Court thinks fit.

(3) Any constable may at any time, unless an order has been made under subsection (2) of this section, return the thing to the person from whom it was seized or apply to a Justice for an order as to its disposal, and on any such application the Justice may make any order that a Court may make under subsection (2) of this section.

(4) If, upon the expiry of a period of 3 months after the date of seizure, proceedings have not been brought for an offence relating to the thing seized and the thing is still in the custody of a constable, any person claiming to be entitled to the

thing may apply to a Justice for an order that it be delivered to him; and on any such application the Justice may adjourn the same on such terms as he thinks fit for proceedings to be brought, or make any order that a Court may make under subsection (2) of this section.

(5) Where any person is convicted in any proceedings for an offence relating to any thing to which this section applies, and any order is made under this section, the operation of the order shall be suspended until the expiration of the time for appeal or, where an application for leave to appeal or a notice of appeal is filed, until the refusal of the application or the determination of the appeal; and on the determination of an appeal, the Court determining the appeal may annul or vary the order made under this section.

[7] Section 50 of the Police Act 2012 reads:

50. General searches of people in Police custody – (1) A member of Police may conduct a search of any person who is in lawful custody –

- (a) at a Police station; or
- (b) in other premises or a vehicle, being used for Police purposes.

(2) A member of Police who searches a person under subsection (1) may remove any money or other property found in possession of that person.

(3) Reasonable force may be used to conduct a search and remove any money or property found in possession of that person.

(4) Subject to any order of the Court, all money and every item of property removed from the detainee must be returned when the detainee is released from Police custody, except –

- (a) any money or property that may be required to be given in evidence in any proceeding arising out of any charge brought against the detainee;
- (b) any money or property the possession of which by the detainee constitutes an offence.

(5) Where the detainee is released from Police custody into custody in any prison, all money and every item of property taken from the detainee under subsection (1) of this section (other than that referred to in subsection (4) of this section) must, as soon as practicable, be delivered to the manager or other officer in charge of the prison.

(6) Nothing in this section affects the right at common law of a constable to search any person on the person's arrest.

[8] The possibility that the seizure of the cash may have been under s 50 arose only from the suggestion in an affidavit filed by Detective Sergeant Ngamata opposing the present application and saying that “drug dealers use cash and ... often carry large amounts of cash”

and that, under s 50, “Police have the power to search upon arrest and detain the property taken if required in evidence”.

[9] However, the factual circumstances and an analysis of s 50, suggest that the section cannot be relied upon by the Police to justify the seizure of the cash from Mr Strickland.

[10] The reasons for that conclusion include that the powers given the Police under s 50 arise only in terms of s 50(1) and, in this case, only if the search on Mr Strickland occurred “in other premises or a vehicle, being used for Police purposes”.

[11] The phrase “Police purposes” is not defined but, grammatically, the placement of the comma in s 50(1) shows that a search under that section is only empowered if the premises or the vehicle are being used for “Police purposes”. It would be a stretch of the meaning to suggest that when premises or vehicles are being searched by Police, those premises are thereby being used for “Police purposes”.

[12] In any event, the procedure required by the balance of s 50 largely mimics the procedure required by s 97 so there is no effective difference in this case.

[13] The conclusion that the seizure and search of Mr Strickland’s wallet was pursuant to s 96 of the Criminal Procedure Act 1980-81 and not under s 50 is fortified by the terms of the search warrant itself which was expressly based on the former and authorised the seizure of “cash”. Having seized the cash on execution of a warrant issued under s 96, it is not open to the Police to try to justify that seizure by reference to s 50.

[14] Determination of this application therefore proceeds on the basis that the seizure of the cash was under s 96 and is governed by the provisions of s 97. In that regard subs (2) is presently inapplicable because the Court’s powers arise only “either at the trial or on a subsequent application”; the provisions of subs (3)-(5) are likewise inapplicable as it is not the Police who brought this application, Mr Strickland has now been charged with offences arising out of the execution of the search warrant on 22 September 2021 and he has not yet been convicted of any offences.

[15] It follows that the only possible ground on which the present application can succeed is if, as Mr George contended, the phrase “under this section” in s 97(1) can be read as a general power unaffected by the conditions which govern subss (2)-(5).

[16] As a matter of interpretation, that construction is not open. It is clear from the terms of s 97(1) that the statute requires items seized under search warrant issued pursuant to s 96 to be retained in the custody of the Police except when being used in evidence or in the Court’s custody “until it is disposed of under this section”, that is to say, until the enabling provisions of the balance of the section apply to the then circumstances. In a sense, subs (2)-(5) are a code governing the application of subs (1) and mandating when applications “under this section” can be brought.

[17] In this case, none of subss (2)-(5) apply to Mr Strickland’s present situation, Accordingly the Court has no present power to grant the application.

[18] On the evidence adduced in relation to this application, that result may perhaps be seen as unfortunate for Mr George as both Mr Strickland’s parents filed affidavits saying that Mr Strickland Senior borrowed \$5,000 on 10 September 2021, gave Mr Walter Strickland \$2,000 the same day to pay to Mr George and that Mr Walter Strickland intended to pay the sum, after payment of an unrelated debt, but failed to do so before execution of the search warrant. But, against that, Detective Sergeant Ngamata’s evidence confirms that it is commonplace for those involved in drug dealing and money laundering to possess large amounts of cash in low denomination notes as a result of their illegal activities.

[19] However, for the reasons stated, it is not necessary to try to resolve that difference of opinion as the conclusion is that the Court currently has no power to grant the application whether well-merited or not.

[20] The application is accordingly dismissed.

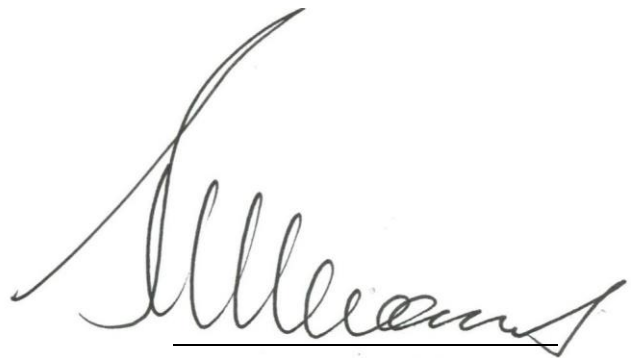
Other Issues

[21] In his submissions of 19 October 2021 in support of Mr Strickland’s bail application, Mr George made additional criticisms about the wording of the search warrant and the way

in which it was executed. He did not pursue those criticisms at this hearing. If relevant they can be pursued by way of a further pre-trial application or be the subject of submissions during the trial.

[22] As an addition to her written submissions, Ms Maxwell-Scott, leading counsel for the Police, attached a lengthy letter dated 24 November 2020 critical of the tone of Mr George's submissions in this and other recent matters and said that, while not making such an application at this stage, the Crown would consider making a formal complaint under s 15 of the Law Practitioners' Act 1993-94 should the intemperate tone of Mr George's submissions continue.

[23] Mr George is, of course, entitled to act robustly in his clients' interests, but in doing so must remain within the bounds of his professional duties and duties to the Court in each case. Robust criticism of the prosecution case does not usually justify robust criticism of the prosecutors. If the Crown Law Office considers he is acting in breach of his obligations, a formal complaint under s 15 is open to them but, since such complaints need to be determined by the Chief Justice under the Law Practitioners' Act 1993-94, no more should be said at this juncture.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ