

ADVANCE COPY

Six named accused

Petitioners

v.

The Queen

Respondent

FROM

THE COURT OF APPEAL OF THE PITCAIRN ISLANDS

DIRECTIONS OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL UPON A PETITION
FOR LEAVE TO INTERVENE AND DIRECTIONS HEARING,

Delivered the 9th November 2005

Present at the hearing:-

Lord Hope of Craighead

Lord Woolf

Lord Scott of Foscote

[Delivered by Lord Hope of Craighead]

1. Events have moved on since 28 October 2004 when the Board gave the appellants special leave to appeal from the decision of the Court of Appeal of the Pitcairn Islands of 5 August 2004 by which that court dismissed their appeals against the judgment of the Supreme Court of the Pitcairn Islands upholding the legality of these proceedings ("the legality issue"). The trials of the appellants have now been completed. The seventh appellant was acquitted. But the other six were convicted, and notices of appeal have been filed by them against their conviction. The Court of Appeal has indicated that it intends to start hearing their appeals against conviction on 31 January 2006. The hearing is expected to take at least one week.

2. When the case was last before the Board it was assumed that it would be convenient for the appeal on the legality issue to be heard separately from any appeals that might follow from the appellants' conviction of any of the offences with which they had been charged. It was for this reason that their Lordships were asked to consider whether a stay should be ordered of the proceedings which were then current in the Supreme Court. Their Lordships decided that the balance of advantage lay in refusing a stay. They indicated that the fact that special leave of appeal had been given on the legality issue was not intended to prevent the hearing by the Court of Appeal of any appeals that might be brought by the appellants in the event of their conviction. They also indicated that the Board would be willing to deal with two further issues that had been raised, referred to as "the promulgation and late constitution issues", when it was hearing the appeal on the legality issue. All these issues were of a preliminary nature, and were capable of being dealt with separately from any appeals against conviction and sentence.

3. No steps have yet been taken to arrange for a hearing of these preliminary issues by the Board. As matters now stand there is no prospect of their being disposed of by the Board before January when the Court of Appeal will proceed to hear the appellants' appeals against their conviction. The promulgation and late constitution issues have been included in the appellants' notices of appeal to the Court of Appeal. A considerable quantity of additional material relevant to those issues which was not before the Supreme Court when it dealt with them has been discovered the effect of which is to widen the scope of these issues at least to some degree.

4. In the light of these developments the respondent invited the Board to take a fresh look at the proposed timetable. It was suggested that it would now be more convenient if the Court of Appeal were to deal with the promulgation and late

constitution issues before they were dealt with in argument before the Board, that the additional material discovered since these matters were dealt with by the Supreme Court should be presented to the Court of Appeal for its consideration during its hearing of the appeal and that all the matters dealt with by the Court of Appeal should then be the subject of a single consolidated appeal to their Lordships' Board as soon as practicable after the judgment of the Court of Appeal was available.

5. Mr Dacre for the appellants submitted that the better course would be for the Court of Appeal to confine its attention to the post-conviction matters and for the preliminary matters, which he did not seek to be further considered by the Court of Appeal, to be heard separately by the Board as soon as possible. On balance however their Lordships prefer the course which was proposed by the respondent. It is unlikely that it will be possible now for an appeal on the preliminary issues to be heard until the spring of next year at the earliest. The course which the respondent favours is unlikely to result in a material delay, and the Board would find it of advantage to have the benefit of the views of the Court of Appeal on the promulgation and late constitution issues, taking account of the additional material. An order will be pronounced indicating that the appeals against conviction will be dealt with by the Board together with those on all the preliminary issues in a consolidated hearing, on a date to be afterwards fixed by the Registrar.

6. Mr Dacre for the appellants invited their Lordships to give permission for the proceedings before the Board to be transmitted live to Pitcairn Island by means of a video link so that the Island Community, who for obvious reasons would be unable to attend in person, could view them as they were taking place. This procedure had already been adopted for the hearing of the promulgation and late constitution issues in New Zealand by the Supreme Court. Mr Raftery for the respondent accepted that the

proceedings were of very great interest to the Island Community and he did not object to the proposal. The circumstances are, of course, highly unusual. The case raised issues that are of fundamental importance to the whole community and the island is not served, as other parts of the world are, by the media. There is a strong case for affording them public access to the proceedings in this way.

7. There are however a number of practical issues that need to be addressed. The setting up of a live video link would be very expensive, and none of the parties to the appeal are in a position to pay for it. It is likely however that a recording of the proceedings which has been made digitally will be capable of being transmitted to the Island by means of the internet at much less cost and with minimum delay. The methods of recording and of transmission, and their probable cost, will need to be explored in greater detail before final approval can be given. Their Lordships will refuse permission for the proceedings to be transmitted live by means of a video link. But in the exceptional circumstances which they have outlined they will give permission in principle for the proceedings to be recorded by means of a video camera with a view to the recording being transmitted to the Island digitally. The parties are invited to consult with the Registrar before the details are finalised.

8. Their Lordships heard an application by Brian Michael John Young for leave to intervene in these proceedings. He resides in New Zealand but was born on the Island of Pitcairn. He has been charged with a number of sexual offences which he is said to have committed between 1975 and 1986. Proceedings have been taken against him for his extradition to the jurisdiction of the Pitcairn courts so that he can face trial in the Supreme Court on these offences. There is, of course, no question of his joining in these proceedings as an appellant, as no order has yet been pronounced against him against which he can appeal. His purpose in

seeking to intervene is so that he can participate in the presentation of the argument in the promulgation and late constitution issues. Mr Yell explained that Mr Young's intervention would be likely to be short, but that he wished his case to be put on these issues before they were disposed of by the Board. Their Lordships considered his application to be premature, as it was not possible to identify at this stage the points that he wished to address. They were not persuaded that his intervention, which was opposed by Mr Dacre, would add anything which had not already been addressed by others in the course of the argument. They will refuse permission for him to intervene. It will be open to him to reapply when the judgment of the Court of Appeal is available, but any such application will need to be accompanied by a statement of the arguments that he wishes to present which demonstrates that he has something useful to contribute on the issues which are of interest to him.

9. Lastly, their Lordships wish to add that nothing that they have said in this judgment is intended to inhibit in any way the timing or conduct of any further criminal proceedings that may be taken in the courts of the Pitcairn Islands against those suspected of having committed crimes similar to those of which the appellants have been convicted. It will be for the judicial authorities in that jurisdiction to take whatever steps they consider appropriate in the meantime pending resolution of these appeals.

