

Darius James Pearce v The Attorney General

Jurisdiction:	Jersey
Judge:	J. A. Clyde-Smith O.B.E.
Judgment Date:	29 April 2021
Neutral Citation:	[2021] JRC 125
Court:	Royal Court

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Text

[2021] JRC 125

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith O.B.E., Commissioner, sitting alone

Darius James Pearce
and
The Attorney General

Mr Pearce **appeared in person.**

M. R. Maletroit **Esq., Crown Advocate**

Authorities

Proceeds of Crime (Jersey) Law 1999.

AG v Dixey & Pereria [\[2017\] JRC 066](#).

Saisie judiciaire — contempt of court

THE COMMISSIONER:

- 1 On 10th February 2021, Darius James Pearce (“the Defendant”), who is in custody awaiting sentence, lodged a handwritten Representation with the Court, effectively seeking to challenge the ambit of a *saisie judiciaire* granted by the Court against his realisable property.
- 2 The Representation was served upon the Attorney General and came before the Court for the first time on 19th April 2021, when I reserved my decision. Immediately before the start of the hearing, the Defendant filed a further typewritten document in which he sought a finding of contempt of Court against Crown Advocate Maletroit for failing to comply with certain orders of the Court made on 29th January 2021 and he made what would now be his fourth application for bail.
- 3 I take each of these matters in turn.

Saisie judiciaire

- 4 The Defendant was convicted on 17th December 2020 of money laundering offences following a trial before the Inferior Number and is due to be sentenced on 5th July 2021, following a delay ordered at his request to allow a psychiatric report to be undertaken.
- 5 The *saisie judiciaire* was granted on 14th January 2021 in respect of the realisable property of the Defendant, including a number of bank accounts held in the name of Jersey Online Traders Limited (“JOT”), a collection of comics, shares in any company including JOT and businesses conducted by JOT.
- 6 It is not in dispute, and the Defendant confirmed, that he is the legal owner of the issued share capital of JOT which conducted a number of businesses. The information before the Court at his trial was that he was the sole director of JOT and in sole control of its businesses.
- 7 Paragraph 2 of the *saisie judiciaire* is in the following terms:

“2. THAT:

the Defendant inform the Viscount and the Attorney General in writing within 14 days of the Order being served on him of all his assets and all assets under his control whether in or outside the Island of Jersey whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets;

the information disclosed by virtue of paragraph 2(a) above be confirmed in an affidavit which must be served on the Attorney General within 21 days after this Order has been served on the Defendant, to include:

the names and addresses of all persons including financial institutions known to be affected by this Order;

details of the Defendant's current salary or other form of income identifying the amount paid, by whom it is paid and the bank account or accounts into which such sums are paid;

the identity of all bank accounts held by or under the control of the Defendant or JOT Ltd, together with the name and address of the place where the account is held and the sums in the account;

details (including addresses) of any immovable property in which the Defendant has any interest, including an interest in any of the net sale money if the property were to be sold; such details to include any details of any charge(s) on the property;

details of any motor vehicles owned by the Defendant:

details of all National Savings Certificates, unit trusts, shares or debentures in any company or corporation wherever incorporated in the world in which the Defendant has an interest;

details of all trusts of which the Defendant is a beneficiary including the name and address of every trustee;

details of all endowment policies held in the name of or for the benefit of the Defendant;

particulars of any other income or debt due to the Defendant including the name and address of the debtor;

details of all assets over £500 in value transferred by the Defendant or anyone on his behalf since the 3rd October 2013 identifying the names and addresses of all persons to whom such property was transferred;

details of any cryptocurrencies held by the Defendant, or which the Defendant otherwise has an interest in; and

details of any bullion or precious metals held in the name of the Defendant or of

any of the above mentioned businesses whether in or outside the Island of Jersey.”

8 Under the Representation, the Defendant sought the following relief from the Court:

- “a) That the seizing order dated the 14th January be rescinded.*
- b) That any replacement order exclude assets of legal persons other than the representor, assets held in trust by the representor.*
- c) That parties be convened as the Court believes necessary.*
- d) That damages caused to the representor, including damages arising to third parties as a result of the unlawful seizing ord (sic) be awarded.*
- e) that the costs of the action be paid by the Attorney General.*
- f) any other order the Court may consider necessary.*
- g) that Legal Aid be ordered to provide legal advice in order that the representor be able to bring this action in the proper form.*

Dated this day the 10th February 2021

DARIUS PEARCE

REPRESENTOR”

9 The Defendant acknowledged that he had not complied with his obligations under paragraph 2 of the *saisie judiciaire*. He said he had no assets at all and was therefore not obliged to do so. He explained:

- (i) That the shares in JOT were held by him in trust, although no evidence supporting the existence of such a trust was produced.
- (ii) That all the businesses he had previously conducted through JOT had been transferred to his brother, Thaddeus Brian Pearce, and his cousin, Simon Greene, before his trial. This was done, he asserted, on the basis of their undertaking legal responsibility for the debts of these businesses and thus the transfers were for value.

10 Under Article 2(1) of the Proceeds of Crime (Jersey) Law 1999, “**realisable property**” is defined as meaning not only any property held by a defendant, or to which he is beneficially entitled, but any property held by a defendant of which he has directly or indirectly made a gift, caught by Part 2 of the Law.

11 Paragraph 2. b) j. of the *saisie judiciaire* expressly required the Defendant to give details of

all transfers of assets over £500 made by him or anyone on his behalf since 3rd October 2013, so that the fact that the Defendant may have transferred or procured the transfer of assets prior to the date upon which the *saisie judiciaire* was imposed in no way relieves him of his obligation to give full details of all of those prior transfers.

- 12 Crown Advocate Maletroit informed me that the Viscount had taken possession of a large quantity of items of property that will take months to catalogue. The Viscount had received claims from third parties, but she had no way of dealing with them because of the Defendant's unwillingness to cooperate in the process, and in particular, by complying with the orders made against him. In Crown Advocate Maletroit's view, the Court's time should not be utilised in dealing further with the Defendant's Representation because of his failure to provide the Court, as ordered, with the evidence that it needed to consider the application properly.
- 13 At the hearing, the Defendant went into some detail orally as to how he had dealt with the assets and businesses of JOT from which it is clear to me that he is perfectly capable of setting the same out in writing, and having it confirmed on oath by way of affidavit. It is also clear from what he said that he was in sole control of the assets and businesses of JOT and was instrumental in their transfer to his brother and cousin. He might seek to argue, however, that these transfers were made by JOT and not him and that they therefore fall outside the terms of the orders made against him.
- 14 The Court has wide powers under Article 8 to order a defendant to provide information to assist the Court in carrying out its functions, and subject to the further input of the parties, I therefore intend amending the *saisie judiciaire* by adding a further sub clause to paragraph 2. b) as follows:
- "m. details of the assets and businesses of JOT Ltd and of any transfers of those assets and businesses by JOT Ltd since [3rd October 2013]."*
- 15 Assuming such an amendment is made the Defendant will have a further 14 days from the date of the amendment to provide that information to the Viscount (and any other information he is required to give under the *saisie judiciaire*) and 21 days from the date of the amendment to confirm that information by way of affidavit.
- 16 If the Court is going to consider the Defendant's application to vary the terms of the *saisie judiciaire* then, as Crown Advocate Maletroit says, it must have the evidence necessary to so. The onus is therefore very much upon the Defendant to ensure that the Court is provided with that evidence.

Contempt of Court

- 17 The Defendant claimed that Crown Advocate Maletroit had failed to provide him with the

cases upon which the prosecution intended to rely on at sentencing, contrary to the order of the Court of 29th January 2021. He asked for Crown Advocate Maletroit to be found in contempt of Court and that he be remanded in custody until such time as he has purged his contempt.

18 The Act of Court of 29th January 2021 is in the following terms:

“Upon hearing Crown Advocate Matthew René Maletroit and the defendant Pearce in person, the Court, having refused the defendant Pearce's application to be admitted to bail, and having noted the undertaking of the said Crown Advocate to provide the defendant Pearce with the Crown's draft conclusions, with the sentencing range, and authorities by no later than 24 February 2021, in accordance with the conclusions of the said Crown Advocate, remanded the defendant Pearce in custody to be brought before the Superior Number of the Court on the said 10 March 2021, at 10.00 a.m., to receive sentence.”

19 Crown Advocate Maletroit informed me that he had indeed complied with his undertaking in that:

(i) A full draft of the prosecution's summary and conclusions (which set out all of the authorities relied on) was sent to Advocate Baker, who was then representing the Defendant, on 9th February 2021 and to the Defendant personally at the Prison.

(ii) When Advocate Jones was appointed to represent the Defendant on Legal Aid on 18th February 2021, he was also provided with a copy of the draft prosecution's summary and conclusions.

20 Crown Advocate Maletroit pointed out that the prosecution's summary and conclusions is not normally provided until a week before the sentencing hearing, and these documents have been provided in draft well in advance and before production of the social inquiry report.

21 The Defendant acknowledges having received these documents and his complaint appears to be that, whilst the conclusions refer to the authorities relied on, no doubt with extracts therefrom in the usual way, he should have received copies of each case referred to in full.

22 I have no hesitation in confirming that Crown Advocate Maletroit has complied with his undertaking given to the Court on 29th January 2021, and that this complaint on the part of the Defendant is scurrilous.

Bail

- 23 The Defendant was convicted on 17th December 2020, and consistent with the well-established policy of the Court as per *AG v Dixey & Pereria* [\[2017\] JRC 066](#), he was remanded in custody with his bail application being refused. Bail applications were then made and refused on 23rd December 2020 and 29th January 2021.
- 24 Those bail applications were, he said, made on the following grounds:
- (i) That it was not possible to conduct his own defence from a prison cell and that to force this on a defendant constitutes a breach of Article 6 of the [European Convention on Human Rights](#);
 - (ii) That it was not inevitable that a custodial sentence would arise from the conviction;
 - (iii) That he had sought the opinion of Queen's Counsel as to the conduct of the trial which would likely lead to a successful appeal.
- 25 He said those applications were rejected on the grounds that it was likely, but not inevitable, that he would receive a custodial sentence and that Crown Advocate Maletroit would comply with Court orders, so that he would be able to represent himself.
- 26 The Defendant informed me that Queen's Counsel had found no fault in the conduct of the trial, but the appeal would focus on the decision to deny the Defendant legal assistance without having his capability to represent himself professionally assessed. It would seem that Legal Aid for an appeal would only be forthcoming if a positive opinion was produced and to date, there had been no positive opinion, but that may change once the psychiatric report was produced.
- 27 The Defendant now sought bail on two grounds:
- (i) the time he had spent on remand, 124 days, would now be likely to exceed his sentence and
 - (ii) it was still not possible to effectively represent himself from a prison cell “*especially when the Crown Advocate does not comply with Court orders.*”
- 28 Taking the first ground put forward, Crown Advocate Maletroit informed me that the provisional sentencing range put forward in the draft prosecution conclusions was 7 1/2 to 8 1/2 years' imprisonment. The Defendant put forward a number of points that he said he would rely upon in mitigation, and which he said supported his submission that he had a low level of culpability, but these are serious offences for which it is clear that the prosecution will be seeking a substantial sentence of imprisonment. As per *AG v Dixey &*

Pereria, it is likely, therefore, that a custodial sentence will be imposed upon him, notwithstanding the points in mitigation, he will rely upon.

29 As to the second ground put forward for bail, the Court has been informed by the Chief Executive Officer of the Law Society:

(i) That the Defendant has been granted Legal Aid in respect of his representation at his sentencing hearing;

(ii) That the Defendant has now been granted Legal Aid in regard to his appeal against conviction;

(iii) That as confiscation hearings are ordinarily eligible for Legal Aid, it is anticipated that he will be granted Legal Aid in relation to a confiscation hearing arising from the *saisie judiciaire*.

(iv) An application by the Defendant on 21st January 2021 for Legal Aid in responding to the *saisie judiciaire* was refused on the basis that responding to a *saisie judiciaire* is an information gathering and administrative exercise that does not require legal input. The Defendant appealed the refusal to the Bâtonnier on 26th January 2021 and the decision to refuse Legal Aid was upheld on 29th January 2021.

(v) The Defendant applied on 8th February 2021 for Legal Aid in seeking to vary the terms of the *saisie judiciaire* but, as with the provision of responses to a *saisie judiciaire*, an application to vary the same is not eligible for Legal Aid, and it was refused. It may exceptionally be granted in respect of an application by a connected party, such as a spouse or partner who has an interest on or shared ownership of property attached to the *saisie judiciaire*.

30 The Court has made inquiry of the Prison Governor as to the facilities made available in the Prison to a prisoner in the position of the Defendant, and awaits a reply, but the information received from the Law Society makes it clear that the Defendant is being represented in respect of his sentence and his appeal and will be represented on any confiscation hearing. He will not therefore be representing himself on those matters.

31 As to the Representation, before the Court can properly consider his application to vary the terms of the *saisie judiciaire* he must provide the information ordered and I have no doubt that he is quite capable of doing that without the assistance of a lawyer.

32 In my view, the Defendant has failed to establish the existence of any exceptional circumstance justifying the granting of bail, and the application for bail is refused.

Conclusion

- 33 In conclusion the *saisie judiciaire* will be amended and the defendant given further time to comply with it. In the meantime, the Representation is adjourned *sine die* pending the Defendant's compliance with the orders against him.