

2DS 2023/26

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
STAFF OF GOVERNMENT DIVISION**

Between:

GARRY RICHARD VERNON

Applicant

and

HIS MAJESTY'S ATTORNEY GENERAL on behalf of THE KING

Respondent

Constitution of the court:

Judge of Appeal Cross KC
Acting Deemster Wild
Acting Deemster Smith

**Judgment [2] of the court on
permission to appeal to the Judicial Committee of the Privy Council
delivered on the papers on 12 November 2025**

INTRODUCTION

1. By an application of 15 September 2025 Mr Vernon seeks our permission to appeal a decision of this court of 5 January 2024; an interlude of 21 months. It is contended by Mr Rodgers on behalf of the Applicant that he is not prevented from making such an application despite the passage of 21 months as no time limit was in force at the relevant point in time. He further contends that his case has sufficient merit for it to be considered by His Majesty in Council. He is wrong on both counts. This application is wholly misconceived and utterly meritorious. The application is dismissed for the reasons set out below.
2. We set out in our judgment of 5 January 2024 all the relevant facts, however it is necessary to repaint the picture presented to this court and the court below because, as will be seen from the decision that we have reached, Mr Rodgers persists in attempting to deal with this case on the basis of figures alone. This case was, and is, about much more than an accounting exercise.
3. Mr Evan Fargher was a retired gentleman living in a nursing home. He had worked hard all his life farming the land. He had been careful with his money and intended to leave his considerable estate of over £1 million in part to his family. He was a staunch methodist and he had also bequeathed money to his chapel.

4. In his mid-80s his investments were placed in the hands of the Applicant. He was married to Mr Fargher's granddaughter. Over the course of years the Applicant stole, what amounted to be, Mr Fargher's entire fortune. The offences took place between 1 January 2010 and 30 April 2013. Mr Fargher died in April 2013 at the age of 89 and it was then that this offending came to light.
5. The Applicant fought a trial and was convicted by the jury. As long ago as 28 April 2023 he was sentenced by Deemster Cook to nine years' custody for the theft of that huge sum of money. He sought to appeal the sentence which came before us in November 2023, when we refused the appeal giving an *ex tempore* judgment and provided fuller reasons on 5 January 2024. We made plain then, as we do now, that the appeal against sentence was meritless.
6. The passage of time and the content of the application before us reveals no new information that would allow us to change our view. In fact, the application is largely a regurgitation of the submissions that were made before us in 2023. It is necessary though, an application having been made, for us to set out in brief our reasons for refusing this application for permission. The reasons relate not only to procedural matters but also, as we have already indicated, to the merits themselves.

THE PROCEDURAL FAILING

7. Historically no time limit existed in respect of an appeal to His Majesty in Council. Section 24 of the High Court Act 1991 [the '1991 Act'] says:

"Appeals to Her Majesty in Council

(1) The judgments and orders of the Appeal Division may be appealed from to Her Majesty in Council with either —

- (a) the leave of the Appeal Division; or*
(b) with the special leave of Her Majesty.

(2) When giving leave to appeal under subsection (1)(a) the Appeal Division may order that such security shall be given for the costs of the appeal as it may direct".

8. As is clear from the statute, no time limit is set out for an application for permission to the Staff of Government Division. Historically time limits as to service of applications for permission were set by Judges of Appeal (as the case demanded) when upholding decisions of the Court of General Gaol Delivery.
9. It would appear that the Island was an exception in this regard. Other jurisdictions, for example Jersey, had a considerable time ago, instituted their own time limit for matters of this sort.
10. Accordingly, and in order to correct this quite obvious failing, the Deemsters on 1 December 2024 introduced a 21-day time limit by their powers under section 25 of the 1991 Act to impose a rule as to time limits.

11. At the time of delivering the change the Deemsters had to give consideration to cases that were in the pipeline. We are of the view that the Deemsters could not have thought that there might have been, even then, a case eleven months old where an appeal was being contemplated. Accordingly, in order to cater for cases such as that, by virtue of a transitional provision the Deemsters indicated that the rule did not apply to any appeal notice filed with the Staff of Government Division immediately prior to the commencement of the provisions.
12. We recognise that there may be cases where it is necessary to seek permission to appeal a decision of this court either outside the time limit now extant or in times historic. This situation could arise in a variety of ways, one example being where new evidence emerges years later, then of course an application would be made for leave to appeal. Mr Rodgers' erroneous contention is that in historic cases an application for leave to appeal could have been made at any future time, without any time constraints whatsoever.

THE CHRONOLOGY

13. As we have already indicated, the offences were committed between 2010 and 2013. The investigation took place in the years that followed, but the trial did not take place for reasons that are set out in paragraph [11] of the judgment of 5 January 2024. The matter came before the Court of General Gaol Delivery in January 2023 eventually for trial and, as we have already indicated, we heard the appeal at the end of that year.
14. Confiscation proceedings took place which were eventually resolved on 27 November 2024. The upshot of those proceedings was that of the almost £1 million that was stolen from Mr Fargher, only £151,014.19 was realisable from the Applicant's property. The vast bulk of the money that was stolen has therefore not been recovered.
15. The application for leave was submitted on 15 September 2025, thus, one year and nine months had expired between the judgment of January 2024 and the application. However, we remark that we had given in reasons for our decision an outline when we dismissed the appeal in November 2023, giving Mr Vernon and Mr Rodgers even more time to think about the alleged errors of our way.
16. Mr Rodgers contends that there is good reason for the delay in lodging this appeal. That is a matter to which we shall turn to in due course.

SUBMISSIONS ON THE TIME LIMIT

17. Mr Rodgers submits that no time limit exists in this case. He submits that as the time limit imposed by the Rules of the High Court of Justice 2009 amendment No. 2/2024 Act was not in place, no time limit was in place. He submits that there is a general presumption against retrospective legislation and that if this court were to conclude such were possible, that would deprive the Applicant of the right to challenge the sentence before the Judicial Committee of the Privy Council [JCPC].
18. Mr Rodgers though fails to draw our attention to section 50 of the Interpretation Act 2015 [the '2015 Act'] which provides:

"Doing things for which no time is fixed

If something must or may be done but no time is provided for doing it, the thing must or may be done as soon as reasonably possible and as often as needed”.

19. Mr Robinson on behalf of the Attorney General submits that the application is out of time by virtue of that section and he draws our attention to the decision of this court in *AG v Kewley* 2001-03 MLR Note 25 where the Appeal Division at paragraph [10] stated:

“... In our judgment, as a matter of statutory construction, there is no time limit for the making of a reference but in each case the Court will have regard to the provisions of section 38 of the Interpretation Act 1976 which provides that ...”.

20. Mr Rodgers, although he does not refer us to the Interpretation Act 1976, recognises in a rather occluded manner that it is necessary for him to explain how it is that nearly two years have passed before a notice of appeal was lodged. The reasons which he offers are that he *“spent around 12 months working on the confiscation proceedings until resolved on 27 November 2024”* and *“After that, the application for leave was progressed”*. He then refers us to an issue that he had with the Chief Registrar in relation to another case. Mr Rodgers seems to be suggesting that his workload was such on this case that he simply could not have applied his mind to the question of whether or not merits existed for consideration by this court in relation to an application for permission.
21. Mr Robinson submits in the first instance that the application is out of time on the basis of the change in the Rules. We do not feel as though we need to give any consideration to that submission for reasons which are obvious.

DETERMINATION ON THE TIME LIMIT

22. It seems to us that we are obliged to consider a number of factors in the interest of justice. We are certain that a time limit exists by virtue of section 50 of the 2015 Act. The factors that we are bound to consider in exercising our discretion are:
- (1) the length of the delay;
 - (2) the reasons for the delay;
 - (3) the chances of the appeal succeeding if the application is granted; and
 - (4) the degree of prejudice to the potential respondent if the application is granted.

This though is not an exhaustive list. Other factors may arise in other cases.

23. We are of the view that the length of the delay in this case is inordinate. We find the reasons given by Mr Rodgers unacceptable. If Mr Rodgers was convinced that there was an injustice here, we are absolutely satisfied that his first advice to the Applicant would have been as to the prospects of success in an appeal to the JCPC from the decision of the Staff of Government Division. His priority would have been to attack that decision, not to have applied his mind, as he contends, to the procedure under the Proceeds of Crime Act 2008. Nor do we accept that the advocate’s other work prevented him from applying his mind to this case. Consequently, we simply do not accept that there is material which would provide an adequate reason for the delay.

24. So far as the remaining two factors are concerned, we will deal with those in a rolled-up way when dealing with the substantive merits of the application.

THE MERITS OF THE APPLICATION

25. The matters set out are a rehash of the submissions made by the Applicant at the hearing in 2023. They relate primarily to the complaint regarding inflation and the effect of guideline authorities.
26. The complaint that the Deemster and we were required to follow guidelines from other jurisdictions is difficult to understand. There is no such requirement in statute, nor in case law. However, even if that were the case, Courts of Appeal in those jurisdictions where guidelines exist have frequently reminded courts that guidelines are just that; they are not tramlines.
27. We make the following comments: sentencing policy is a matter for the Isle of Man courts. That is very, very clear. The Applicant's persistent desire to revisit the formulaic approach that he set out in his original appeal continues to ignore authority. When we refused the appeal, we reminded him of the words of Russell LJ in *R v Clarke* [1998] 2 Cr (App) R 137 at paragraph [14]:

"... The value of the fraud is of course an important factor, but as Russell LJ made plain in Clarke it is not the only factor (see page 141G). This aligns with common sense. The assessment of culpability and harm involves not only an assessment of value, but a complex analysis of the criminality involved and the assessment of harm on the victim(s) (see Barrick pages 146 – 147)".

28. Unsurprisingly, the Respondent submits that these matters raised by the Applicant do not disclose an arguable point of law but reveal a matter of sentencing discretion for the Isle of Man courts and that, consequently, they are not matters of public importance which require consideration by the JCPC now.
29. The sentence imposed by the Deemster upheld by this court was entirely justified. There is simply no chance of any appeal to the JCPC being successful at all. The Applicant completely ignores the prejudice caused by the application. The application ignores the effect of the theft on the family of Mr Fargher.

CONCLUSION

30. This application in the first instance is out of time, and no good reason has been provided as to why it is so. Secondly, the application raises no arguable point of law of general public importance which requires determination. Thirdly, there is no miscarriage of justice here at all, let alone a serious one. The Applicant's repeated submissions have ignored the aggravating factors and have sought to apply a mathematical formula to what was an extremely serious abuse of trust of a very elderly man.
31. We refuse permission to appeal to the JCPC.

COSTS

32. As we have indicated, we consider that this application is totally without merit. However, we anticipate that, as is the Applicant's right, he may seek to renew his application for permission to the JCPD. If that application is made and is refused, and/or no application is made, then we will consider the question of costs upon notification by the parties.
33. Any application for permission to appeal to the Judicial Committee of the Privy Council must be filed within 21 days of this judgment.

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Judge of Appeal Cross KC

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Acting Deemster Wild

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Acting Deemster Smith