

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No CV 2 of 2005
BB Civil Appeal No 29 of 2004

BETWEEN

**THE ATTORNEY GENERAL
SUPERINTENDENT OF PRISONS
CHIEF MARSHAL**

**FIRST APPELLANT
SECOND APPELLANT
THIRD APPELLANT**

AND

**JEFFREY JOSEPH
LENNOX RICARDO BOYCE**

**FIRST RESPONDENT
SECOND RESPONDENT**

*Before the Rt Honourable
And the Honourables*

*Mr Justice de la Bastide, President
Mr Justice Nelson
Mr Justice Pollard
Mr Justice Saunders
Mme Justice Bernard
Mr Justice Wit
Mr Justice Hayton*

SUMMARY

**of the Judgment of The Honourable Mr Justice Nelson which was
delivered on November 8th 2006**

Nelson J considered that the main issue was whether the constitutional rights of the respondents, convicted of murder in February 2001, had been infringed by the failure of the Barbados Privy Council (“the BPC”) to wait for and consider the report of the Inter-American Commission on Human Rights (“the IACHR”) before the BPC recommended to the Governor-General that the respondents be denied clemency. The Court of Appeal held that the denial of clemency in such circumstances was a breach of the respondents’ constitutional rights; and commuted the death sentences to life imprisonment.

Nelson J agreed with the leading joint judgment of the President and Saunders J dismissing the appeal and with the order for costs they proposed.

The learned judge noted that the principal ground for the judgment of the Court of Appeal was that since it was unlikely, as was in fact the case, that the report of the IACHR could be completed and delivered to the BPC within 5 years after the respondents' conviction, i.e by February 2006, the delay between conviction and execution was long enough to amount to "*inhuman or degrading punishment*" contrary to section 15(1) of the Barbados Constitution. The Court of Appeal rightly considered itself bound by *Pratt and Morgan* (1994) and *Bradshaw v Attorney-General* (1995), decisions of the Privy Council. Accordingly the Crown correctly conceded that the death penalty could not in the circumstances be re-imposed.

Nelson J held that the respondents were correct in contending that the decisions of the BPC were reviewable and that *Lewis v Attorney-General* (2001) was right on this point. The ouster clause in section 77(4) of the Constitution did not bar review by the courts of decisions of the BPC for errors of law, breaches of natural justice or alleged breaches of the Constitution.

While the learned judge agreed that ratified but unincorporated treaties normally afforded no rights to individuals enforceable in domestic courts he was of the view that the principle did not apply where the citizen had a legitimate expectation that rights conferred on him or her by a treaty would be honoured based on the State's established practice or conduct.

In the present case the established practice was that the BPC would await the report of the international human rights tribunal before deciding on clemency. Alternatively, the conduct of the Barbados authorities in relation to the petition was such as to lead the respondents to expect that the report of the IACHR would be received and considered before the BPC took a decision on clemency. Nelson J agreed with the Court of Appeal and with the respondents that failure to await the termination of the Inter-American review process was accordingly a breach of the respondents' right to the protection of the

law. Nelson J therefore arrived at the same result as the Privy Council in *Lewis*, although by a different route.

Commutation pursuant to powers under section 24 of the Constitution was the proper remedy for the breach of the respondents' right to protection from inhuman or degrading punishment, as the Privy Council in effect held in *Pratt and Morgan* and *Bradshaw v Attorney-General*.

Nelson J emphasized the paradox which the courts faced in death penalty cases. A judge must sentence to death a person convicted of murder, but the Constitution mandates that the convicted murderer must not be hanged unless there is a clemency hearing before a tribunal appointed by the executive. However, the executive has signed and ratified treaties which confer on the citizen a right after exhausting his or her domestic appeals to challenge his or her conviction and sentence before an international human rights body that tends not to favour the death penalty. Another element of the paradox was that the death sentence declared by the trial judge to be mandatory really has an expiry date. It is not clear that recent amendments to the Constitution have eliminated the paradox.

This is a brief statement of the main points discussed in the judgment and is not intended to be a substitute for the full text as delivered by The Hon Mr Justice Nelson of the Caribbean Court of Justice on Wednesday 8th November 2006.

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