

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO ACT NO. 4 of 1976

B E T W E E N :-

STANLEY ABBOTT

Appellant

- AND -

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THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
THE REGISTRAR OF THE SUPREME COURT,
MR. G. BENNY
THE COMMISSIONER OF PRISONS,
MR. RANDOLPH CHARLES

Respondents

CASE FOR THE APPELLANT

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1. This is an appeal from a judgment dated the 5th day of May, 1978, of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali C.J., Corbin and Kelsick JJ.A.) dismissing an appeal from a judgment dated the 5th day of May, 1977, of the High Court of Justice (Clinton Bernard J.) dismissing a motion on behalf of the Appellant seeking certain orders and other relief as set out in his Notice of Motion dated the 15th day of March, 1977, the practical effect of which relief being sought was to ensure that the sentence of death by hanging pronounced against him on the 16th day of July, 1973, would not be carried out.

p.56

pp.51-52

pp.3

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2. The principal issue to be determined on this appeal is as to the true construction of the provisions of the Constitution of Trinidad and Tobago as to the exercise by the President of the power of commuting the death penalty and of the provisions of the said Constitution relating to an Advisory Committee on the Power of Pardon and its functions when a person has been sentenced to death and more particularly as to whether upon a true construction the exercise of the functions of the Advisory Committee and relative matters are required to be carried out within a

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reasonable period of time and as to whether there has been a failure so to do and in such event as to the legal consequences that follow.

3. The Appellant on the 16th day of July 1973 was convicted at Port of Spain Criminal Assize of the murder of one Gayle Ann Benson and pursuant to the provisions of Section 4 of the Offences Against the Person Ordinance, Ch. 4 No. 9 there was imposed on him, as was mandatory, sentence of death by hanging. The Appellant appealed to the Court of Appeal against his conviction and sentence. On the 9th day of July, 1974, his said appeal was dismissed. The Appellant appealed to the Judicial Committee of the Privy Council and on the 20th day of July, 1976, the Board by a majority dismissed his said appeal. The reasons of the Judicial Committee are reported sub nomine Abbott v. The Queen (1977) A.C. 755. 10

p.5 11.1-6

4. On the 26th day of July, 1976, (that is to say, six days after the dismissal of the said appeal by the Judicial Committee of the Privy Council) a petition was presented through the Appellant's solicitors to the Governor General for consideration by the Advisory Committee on the Power of Pardon under the then Constitution of Trinidad and Tobago in the Second Schedule of the Trinidad and Tobago (Constitution) Order in Council 1962 (S.I. No. 1875 of 1962). On the 1st day of August, 1976, a new Constitution came into effect namely the Constitution of the Republic of Trinidad and Tobago Act, 1976, (Act No. 4 of 1976) hereinafter referred to as the 1976 Constitution. On the 23rd day of February, 1977, the Advisory Committee on the Power of Pardon provided for under the 1976 Constitution rejected the said petition and on the 16th day of March, 1977, the Marshall received a warrant under the hand of the President commanding him to cause execution to be done upon the Appellant. 20 30

pp.1-3

5. On the preceding day namely the 15th day of March, 1977, the aforesaid Notice of Motion had been filed on behalf of the Applicant under Section 14 sub-section 1 of the said 1976 Constitution upon grounds no longer relied on but the general tenor of which was that the period of detention from the 26th day of July, 1976, (that is to say, the date on which the petition had been presented to the Governor General for consideration by the Advisory Committee on the Power of Pardon) to the date of the Notice of Motion and the conditions under which the Applicant was kept amounted to cruel and unusual treatment and to torture of the Applicant and that the Applicant had been denied equality before the law and that the threat of executing 40 50

the Applicant at the said date of the Notice of Motion amounted to a denial of his life, liberty and security of the person without due process of law.

6. The relevant provisions of the Constitution of the Republic of Trinidad and Tobago Act, 1976, are contained in the Schedule thereto and are as follows.

- 10 (i) Section 4. "It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:-
- (a) The right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) The right of the individual to equality before the law and the protection of the law;"
- 20 (ii) Section 5 and Section 6 respectively provide for protection of rights and freedoms and of savings for existing law as in Constitutions on the Westminster model.
- (iii) Section 14(1) provides for enforcement of the protective provisions and in particular gives original jurisdiction to the High Court and on appeal therefrom to the Court of Appeal as generally in constitutions on the Westminster model and further provides by sub-section (3) that the State Liability and Proceedings Act 1966 shall have effect for the purpose of any proceedings under the section.
- 30 (iv) Section 109 provides inter alia as follows:
- "(1) An appeal shall lie from the decisions of the Court of Appeal to the Judicial Committee as of right in the following cases -
- (a)
- (b)
- (c) Final decisions in any civil, criminal or other proceedings which involve a question as to the interpretation of this Constitution;"
- 40 (v) Section 22 provides that there shall be a President of Trinidad and Tobago.

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(vi) Section 87(1). "The President may grant to any person a pardon, either free or subject to lawful conditions, respecting any offences that he may have committed. The Power of the President under this subsection may be exercised by him either before or after the person is charged with any offence and before he is convicted thereof.

"(2) The President may -

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(a) Grant to any person convicted of any offence against the law of Trinidad and Tobago a pardon, either free or subject to lawful conditions;

(b) Grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence;

(c) Substitute a less severe form of punishment for that imposed by any sentence for such an offence; or

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(d) Remit the whole or any part of any sentence passed for such an offence or any penalty or any failure otherwise due to the State on account of such an offence.

"(3) The Power of the President under subsection (2) may be exercised by him in accordance with the advice of a Minister designated by him, acting in accordance with the advice of the Prime Minister."

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(vii) Section 88. "There shall be an Advisory Committee on the Power of Pardon which shall consist of -

(a) The Minister referred to in Section 87(3) who shall be Chairman;

(b) The Attorney General;

(c) The Director of Public Prosecutions;

(d) Not more than four other members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition."

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(viii) Section 89.

- 10 "(1) Where an offender has been sentenced to death by any court for an offence against the law of Trinidad and Tobago, the Minister shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee.
- (2) The Minister may consult with the Advisory Committee before tendering any advice to the President under Section 87(3) in any case not falling within subsection (1).
- (3) The Minister shall not be obliged in any case to act in accordance with the advice of the Advisory Committee.
- 20 (4) The Advisory Committee may regulate its own procedure.
- (5) In this section "the Minister" means the Minister referred to in section 87(3)."

7. The submissions now relied on on behalf of the Appellant are:

- (1) That the penalty of death could not lawfully be carried into effect until after the procedure relating to petitions for mercy had been completed;
- 30 (2) That Section 87, Section 88 and Section 89 are to be construed as requiring that the Advisory Committee shall tender its advice within a reasonable period of time and that such advice shall be either acted upon or rejected within a reasonable period of time;
- 40 (3) That the time which elapsed between the 1st day of August, 1976, (the date on which the 1976 Constitution came into effect) and the 23rd day of February, 1977 (the date on which the Advisory Committee considered the Appellant's petition and rejected it) and/or the delay between the 1st day of August, 1976, and the 16th day of March, 1977, (the day on which the warrant under the hand of the President for the execution of the Appellant was received by the Marshal) was unreasonable;
- (4) That now to carry into effect the warrant of

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execution of the Appellant would after such unconstitutional delay be a deprivation of the Appellant's right under Section 4(a) of the 1976 Constitution, namely a deprivation of his right to life and the right not to be deprived thereof except by due process of law.

p.26 11.34-42
p.34 11.25-36
8. At the hearing of the motion leave was granted by the court to amend the prayer for an order that the sentence of death on the Applicant be commuted to life imprisonment by substituting a prayer for a declaration that the threat of and/or the carrying out of the sentence of death passed on the Applicant was unconstitutional, null and void and of no effect and for an Order that the Government of Trinidad and Tobago and/or the Registrar of the Supreme Court and/or the Commissioner of Prisons be restrained from executing the Applicant. In the Court of Appeal the only relief sought was a declaration in the following terms: 10

p.66 11.36-46;
p.67 11.1-4
"That the carrying out of the sentence of death imposed on the Appellant is unconstitutional, null and void and of no effect, on the grounds that the State after the dismissal of his appeal by the Privy Council, imposed illegal punishment on him by its procrastination in carrying out his execution, and on the ground that it is an infringement of his right not to be deprived of his life except by due process of law and not to be subjected to cruel and unusual treatment or punishment." 30

As appears from paragraph 7 above it is not now asserted on behalf of the Appellant that the sentence of death was illegal when originally pronounced or that the delay in carrying out such execution has been illegal punishment.

p.32
p.43 11.36-40
9. In relation to the issues now material, Clinton Bernard J. in giving judgment at first instance dismissing the Appellant's motion said that the substance of the Appellant's complaints was that there was an attempt on the part of the Executive to deprive him of his life otherwise than by due process of law. He therefore had a locus standi under Section 14 of the 1976 Constitution. In relation to the contention that there had been a breach of the due process clause of Section 4(a) of the new Constitution, he held that "due process of law" would normally be completed when the Courts of law had finished their respective tasks though due process of law could be breached thereafter. 40

p.45 11.49-52;
p.46 1.1
p.46 11.25-33 50

The delay complained about could not be ground for redress under the due process clause of Section 4(a) since there was no law in the country which prohibited the Executive from executing the Appellant at any time after the date of the dismissal of his appeal by the Privy Council. Accordingly the due process provisions of Section 4(a) had not been breached in relation to the Appellant. The learned judge went on to record that whatever delay there had been, had occurred as a result of incontrovertible factors as follows:

p.47 11.14-30

"A train of events occurred shortly after the submission of the Applicant's appeal to the Mercy Committee on the 26th July, 1976, among them being the repeal of the former Constitution and as a consequence thereof the quashing of the then membership of the Mercy Committee, the Establishment of the Republic, the enactment of a new Constitution with effect from 1st August, 1976, preparations for a general election, the proroguing of parliament, the General Election itself, the appointment of a new body of persons to form the Mercy Committee as required by the new Constitution and the appointment of the designated Minister to advise the President on the exercise of the Powers of Pardon. All these events ended sometime in the month of December 1976. In the circumstances, it can hardly be seriously contended that the expression of the State's will some three months thereafter constituted inordinate delay."

10. The first judgment in the Court of Appeal was given by Sir Isaac Hyatali, C.J. He stated in detail the history of this matter since the conviction for murder of the Appellant (and a co-accused) on the 16th day of July, 1973. In relation to this he said that the complaint about procrastination, as it was ultimately put, was that the State's failure to appoint an Advisory Committee following the inauguration of the new Constitution on the 1st day of August, 1976, was inexcusable. No complaint was made that the Advisory Committee appointed on the 13th Day of December, 1976, under the 1976 Constitution was guilty of procrastination in dealing with the Appellant's petition for mercy or that the President was guilty of procrastination in issuing the warrant of execution. The true extent of the delay complained of therefore was from the 1st day of August, 1976, to the 13th day of December, 1976, a period of approximately four and a half months. The learned Chief Justice held that unless it could be said with justification (and in his judgment it could not) that the State acted from improper motives in omitting to appoint an Advisory Committee before the 13th day of December, 1976, which accusation counsel

p.57
p.58 11.28-45;
pp.59-66 11.1-15
p.67 11.47-49;
p.68 1.1
p.68 11.3-8
p.68 11.9-11
p.68 11.27-33

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declined to make, he was unable to accept that the State was guilty of unreasonable delay or "inexcusable procrastination" as it had been described, in carrying out the sentence of death passed upon the Appellant.

- p.72 11. The second judgment in the Court of Appeal was delivered by Corbin, J.A. who said that he agreed and thought that the appeal should be disposed of very briefly because there was no merit in it. He stated that in the absence of any suggestion, let alone evidence, of mala fides on the part of the State it seemed to him that there were valid reasons why the sentence was not carried out before the 15th day of March, 1977. He was therefore of the opinion that the State had not been guilty of inexcusable delay or procrastination. 10
- p.74 11.39-43 12. The third judgment was delivered by Kelsick, J.A. In relation to the meaning of "due process of law", "according to the law" and "procedure established by law" in Section 4 of the 1976 Constitution, he concurred with the view expressed by Clinton Bernard, J. He held that in so far as delay may possibly found a basis for complaint it must be such as was not attributable to the Appellant himself. He agreed that the Advisory Committee on the Power of Pardon could have been fully constituted under Section 88 of the 1976 Constitution at any time after the 1st day of August, 1976, and that the holders of the offices of Prime Minister, Minister and Leader of the Opposition were by S.14 of the Act deemed to have been appointed to similar offices under the appropriate sections of the 1976 Constitution. Accordingly, the Minister/Chairman and the unofficial members of the Committee could have been appointed. In his judgment "inexcusable delay" was to be viewed objectively, and in so doing only legal criteria were to be applied in determining whether the delay was reasonable and excusable. The political events from the 26th day of July to the 13th day of December 1976 relied on by the trial judge, the learned Chief Justice and Corbin J.A., as valid reasons for excusing the delay were in his view insufficient for that purpose and he disagreed with the conclusion arrived at by his learned brothers that lack of improper motives or of mala fides, could of itself wholly exonerate the Executive for the entire delay in carrying out the sentence of death. He considered that the Advisory Committee under the 1976 Constitution might reasonably have been fully constituted by the first week in September 1976 so that the delay for which the Executive was accountable was between six and seven 20 30 40 50
- p.73 11.42-46;
- p.74 11.1-3
- p.74 11.39-43
- p.83 11.1-3
- p.83 11.12-21
- p.83 11.22-31
- p.83 11.32-36
- p.83 11.43-46
- p.84 11.1-3

months. He said that there was no evidence adduced by the Appellant as to what was the usual interval for processing petitions of mercy. The Appellant had not established that the period of six to seven months constituted unusual and/or inordinate delay in fixing the date for the execution. Since the period of delay had not been proved to be inordinate, he had not found it necessary to decide whether delay could amount in law to the denial of due process, a question which was agitated but not determined in de Freitas v. Benny (1967) A.C. 239. He considered that it might well be that to obtain redress by way of declaration the Applicant would be required to prove not only that the delay was inordinate and inexcusable in law, but also that in consequence of such delay he had been gravely prejudiced or had suffered serious harm or damage. In any event he would have decided that the Appellant was not entitled to the form of redress sought.

p.84 11.16-18

p.84 11.19-29

p.84 11.30-35

p.84 11.43-45;
p.95 11.1-8

13. The Appellant submits that the true questions which arise in law and otherwise are:

- (1) Whether the 1976 Constitution requires that a petition presented by a person sentenced to death shall be considered and reported on by the Advisory Committee therein provided, within a reasonable period of time and if so,
- (2) Whether the period which elapsed in the instant case exceeded a reasonable period;
- (3) The period of delay in the instant case is prima facie excessive and unreasonable. It was therefore for the State to justify such delay which the State failed to do.

It is submitted that in the premises the 1976 constitutional requirements in relation to post sentence procedure to be carried out before execution may lawfully be carried out have been breached, and in such circumstances now to execute the sentence of death would be to deprive the Appellant of life otherwise than by due process of law, contrary to the provisions of Section 4(a) of the 1976 Constitution.

14. The Appellant accordingly submits that the judgment of the Court of Appeal of the Supreme Court of Judicature for Trinidad and Tobago is wrong in law and should be set aside and that this Appeal should be allowed and that it be declared that to execute the sentence of death imposed on the Appellant on the 16th

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day of July, 1973, would be in breach of the Appellant's rights under Section 4(a) of the Constitution of Trinidad and Tobago and that the Appellant be awarded the costs of this Appeal and his costs in the Court below for the following among other

R E A S O N S

1. BECAUSE the Constitution of Trinidad and Tobago requires that a petition for mercy be considered by the Advisory Committee within a reasonable period of time. 10
2. BECAUSE the eventual issue of a warrant of execution under Section 59 of the Offences Against the Person Ordinance, Ch.4. No. 3 was and/or the carrying into effect of such warrant would be contrary to the requirements of Section 4(a) and/or of Sections 87, 88 and 89 of the 1976 Constitution because an Advisory Committee as constituted in Section 88 of the said Constitution did not carry out its functions within a reasonable period of time. 20
3. BECAUSE now to execute the said warrant would be to deprive the Appellant of his life contrary to the due process requirements of the 1976 Constitution.
4. BECAUSE lack of improper motive or mala fides is not the test as to whether delay in considering the Appellant's said petition was unreasonable.
5. BECAUSE the said Court of Appeal was wrong in holding that the undisputed facts disclosed in the evidence did not amount to such unreasonable delay as aforesaid. 30
6. BECAUSE in the premises the aforesaid decision of the said Court of Appeal was wrong.

D.J. Turner - Samuels, Q.C.
W. Birtles

No.37 of 1978

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD
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BETWEEN:-

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- AND -

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THE REGISTRAR OF THE SUPREME COURT,
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THE COMMISSIONER OF PRISONS,
MR. RANDOLPH CHARLES

CASE FOR THE APPELLANT

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