

**GRENADA**

**IN THE COURT OF APPEAL**

**CIVIL APPEAL NO. 1 OF 2000**

**IN THE MATTER OF THE CONSTITUTION OF GRENADA  
AND  
IN THE MATTER OF AN APPLICATION BY COSMOS RICHARDSON,  
ANDY MITCHELL AND VINCENT JOSEPH FOR REDRESS  
PURSUANT TO SECTION 16 OF THE SAID CONSTITUTION OF GRENADA FOR  
CONTRAVENTIONS OF SECTIONS 3 AND 8 OF THE SAID CONSTITUTION  
IN RELATION TO THE SAID APPELLICANT**

**BETWEEN:**

**ATTORNEY-GENERAL**

Appellant

and

**[1] COSMOS RICHARDSON**

**[2] ANDY MITCHELL**

**[3] VINCENT JOSEPH**

Respondents

**Before:**

The Hon. Mr. Albert Redhead

Justice of Appeal

**Appearances:**

Mr. K. Hudson-Phillips, Q.C. for the Appellant Mr. H. Wildman  
with Mr. Phillips, Mr. Phillips instructed by K.H. Phillips and Co.  
Mr. K. Scotland for the Respondent  
Mr. C. Hood with him

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2002: February, 20.  
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**JUDGMENT**

[1] **REDHEAD J.A:** This matter came on for hearing before me on 20<sup>th</sup> February, 2002. I granted the extension of a Stay of the order of Alleyne J. pronounced on 14<sup>th</sup> February, 2002 and stayed by Singh J.A. on 14<sup>th</sup> February, 2002. I now give reasons in writing.

- [2] The respondents filed a notice of motion on 28<sup>th</sup> June, 2001 seeking the following:-
- (a) A declaration that the continued imprisonment and/or continued detention of the [Respondents] beyond the period of the first sentence of 15 prison years is unconstitutional and illegal.
  - (b) A declaration that the decision of the trial judge to punish the [Respondents] by imprisoning two periods of 15 years where the second period of imprisonment was to be served consecutively was in the circumstance of this case unconstitutional and illegal.
  - (c) An order that the [Respondent] be released from prison forthwith.
  - (d) An order that monetary compensation including aggravated damages and/or exemplary damages be assessed by a judge in chambers and paid by the [Appellant] to the [Respondents] as a result of the abovementioned unconstitutional action.
- [3] The matter came on for hearing on 14<sup>th</sup> day of February, 2002 before Alleyne J. and the learned judge granted the declarations and order that:-
- (1) the continued imprisonment and/or continued detention of the applicants beyond the first sentence of 15 years is unconstitutional and illegal.
  - (2) the decision of the trial judge to punish the Applicants by imposing two periods of 15 years where the second period of imprisonment was to be served consecutively was in the circumstances of this case unconstitutional and illegal.
  - (3) “that the Applicants be released from prison forthwith”
- [4] On an oral application before Singh J.A. on 14<sup>th</sup> day of February, 2002, he ordered that execution of the order of Alleyne J. dated 14<sup>th</sup> day of February, 2002 be stayed and that the hearing of the matter be fixed for Wednesday the 20<sup>th</sup> day of February, 2002 at 9.00 am.
- [5] Singh J.A also ordered that the appellant/defendant do file a written application with Affidavit in Support on Friday the 15<sup>th</sup> day of February, 2002 and immediately

serve a copy of same together with a copy of the order on the respondents returnable on the 20<sup>th</sup> day of February, 2002 at 9.00 a.m. Mr. Scotland, learned Counsel for the respondents, took two preliminary objections-

- (i) that the court had no jurisdiction to entertain the application for a stay pursuant to Rule 11.6(2) of the Civil Procedure Rules 2000
- (ii) because there is nothing on the record to indicate that there was an application for a stay at first instance and that application was refused, it is a fatal flaw in procedure and law and ought not to have been granted.

[6] Upon the conclusion of learned Queen's Counsel's reply, Mr. Scotland withdrew his preliminary objections and therefore made it unnecessary for me to rule on them.

[7] In arguing the continuation of the Stay of Alleyne J. Mr. Hudson-Phillips pointed out that the respondents sentence and convictions were dismissed by the Grenada Court of Appeal.

[8] Learned Queen's Counsel contended that there are now two conflicting orders, one by a Court of Appeal, the other by a judge at first instance. The judge at first instance exercising a constitutional position under Section 16.

[9] Mr. Hudson-Phillips argued that the jurisdiction which Alleyne J. purported to execute was one within the competence of the Court of Appeal.

[10] Learned Queen's Counsel contended that the appellant has very strong arguments against the way Alleyne J. sought to construe section 80 of the Criminal Code Cap. 1 of the Laws of Grenada. This section provides in part as follows:

- “(1) With respect to cases where one act constitutes of several crimes, or where several acts are done in execution of one criminal purpose, the following provisions shall have effect, this is to say-
- (2) If a person by one act assaults, harms or kills several persons, or in any manner causes injury to several persons or things, he shall be punishable only in respect of one of the persons so assaulted, harmed or killed of the persons or things to which injury is caused, but in awarding punishment the court may take into consideration all the intended or probable consequences of the crime”.
- (3) The learned judge having then referred to the meaning of “act” in the definition section concluded:-  
 “Bearing this definition in mind, subsection 2 of section 80 is pellucid. It clearly provides, in the context of the agreed facts in this case, that if a person, by one act, including any series of acts, and any combination of acts, kills several persons, he shall **be punishable only in respect of one of the persons killed** but that the judge, in passing sentence in respect of that one killing, may take into consideration all the other homicides of which the accused person has been convicted. The accused person may be convicted of all the homicides, but may be sentenced only in respect of one, the judge taking into account, in passing sentence, the other homicides of which the accused has been convicted.” [my emphasis]?

[11] The learned judge then opined:-

“The applicants were each convicted of several offences of manslaughter, all arising from one act, series of acts or combination of acts, and the matter of sentence was clearly within the provisions of and governed by Section 80 of the Code.

By Section 232 of the Criminal Code, the maximum penalty which may be imposed for the offence of manslaughter is imprisonment for 15 years. In the circumstances of this case, both the trial court and the appeal court acted per incuriam and fell into error in imposing consecutive terms of imprisonment.”

[12] Mr. Hudson-Phillips disagrees with the interpretation put on Section 80(2) by the learned judge. He argued that the matters subsections 1 and 2 deal with, none of which is applicable in the instant case.

[13] He also contended that those two subsections are governed by the first two lines in subsection 1.

- [14] I cannot agree with the learned judge when he interpreted section 80(2) of the code to:
- “...It clearly provides, in the context of agreed fact in this case, that if a person, by one act including any series of acts, and any combination of acts, kill several persons he shall be punishable only in respect of one of the persons killed....”
- [15] I turn now to the preliminary issue raised before the learned judge. It was submitted that the applicants were tried and convicted of the offence of manslaughter. The applicant, Mitchell, was convicted on eight counts. Joseph and Richardson on eleven counts.
- [16] The applicant, Mitchell was sentenced to fifteen years on each count with sentence on count two of the indictment to run consecutively making a total of thirty years. In the case of Joseph and Richardson they were sentenced on counts 2 and 9 to follow consecutively after the other making for a total of 45 years.
- [17] The applicants had all appealed against conviction and sentence. The appeals were dismissed on 3<sup>rd</sup> December, 1991.
- [18] The appellant in his submission alleged that the motion filed by the applicants was a collateral attack upon the judgment of the Court of Appeal and this the applicants were not allowed to do.
- [19] Reliance by the appellant was placed on **Ramesh Lawrence Meharaj v Attorney-General** of Trinidad and Tobago (No.2) 29 WIR 325, **Chokoling v Attorney-General** of Trinidad and Tobago 1980 32 WIR 354.
- [20] In **Chokoling Lord Diplock** said at page 359-
- “Acceptance of the applicant’s argument would have the consequence that in every criminal case in which a person who had been convicted alleged that the judge made any error of substantive law as to the necessary characteristics of the offence, there would be parallel remedies

available to him; one by appeal to the Court of Appeal, the other by originating application under section 6(1) of the Constitution to the High Court with further rights of appeal to the Court of Appeal and to the Judicial Committee. These parallel remedies would be also cumulative since the right to apply for redress under section 6(1) is stated to be "without prejudice to any other action with respect to the same matter which is lawfully available."

The convicted person having exercised unsuccessfully his right of appeal to a higher court, the Court of Appeal he could nevertheless launch a collateral attack (it may be years later) upon a judgment that the Court of Appeal had upheld by making an application for redress under S.6(1) to a Court of co-ordinate jurisdiction, the High Court.

To give chapter 1 of the constitution an interpretation which would lead to such a result would, in their Lordships' view, be quite irrational and subversive of the rule of law which it is a declared purpose of the Constitution to enshrine."

[21] Alleyne J. sought to distinguish the **Chokoling** case from the case at bar. In doing so he reasoned that-

"...I cannot conceive that their Lordships would have intended to apply the principle there stated as to hold that an applicant who, under the relevant law was liable to a maximum sentence of 15 years, and who, by an error on the part of the courts of competent jurisdiction action *per incuriam*, had been sentenced to 30 or 45 years imprisonment, in the face of Constitutional protection of the right to personal liberty, would not enjoy the aid of the court in bringing to an end the term of imprisonment which was clearly beyond the authority of the trial court to impose."

[22] The learned judge concluded by holding:-

"What is more, the alleged error in this case is not, as in **Chokoling** "as to the necessary characteristics to the offence." The issue raised in this case is not as to the characteristics of the offence, but as to the limits of the sentencing authority of the court. I do not find it possible to extend Lord Diplock's dictum to encompass the very different circumstances of this case. On that ground, therefore, and on the ground that the Constitution of Trinidad and Tobago establishes "due process" in contrast to the Constitution of Grenada, which requires that the matter of complaint be "authorized by law" as the criterion to be applied, Chokoling can be clearly distinguished, and the preliminary objection is, in my view, without merit."

- [23] Section 3 of the Grenada Constitution mandates:
- “No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say-
- (a) in the execution of a sentence or order of a court, whether established for Grenada or some other country, in respect of a criminal offence in respect of which he has been convicted.”
- [24] In my judgment there could be no difference between Section 1(a) of the Trinidad and Tobago Constitution (due process) and section 3 of the Grenada Constitution (authorised by law) as held by Alleyne J.
- [25] **In Richards Hinds v The Attorney-General and The Superintendent of Glendairy Prison** Privy Council Appeal No. 28 of 2000, Lord Bingham of Cornhill delivering the opinion of the Board said at page 19
- “...it would be undesirable to stifle or inhibit the grant of constitutional relief in cases where a claim for such relief is established and such relief is unavailable or not readily available through the ordinary avenue or appeal. As it is a living, so must the Constitution be an effective, instrument. But Lord Diplock’s salutary warning remains pertinent. A claim for constitutional relief does not ordinarily offer an alternative means of challenging a conviction or a judicial decision, nor an additional means where such a challenge based on constitutional grounds, has been made and rejected. The appellants complaint was one to be pursued by way of appeal against conviction, as it was, his appeal having failed the Barbadian courts were right to hold that he could not try again in fresh proceedings based on Section 24.”
- [26] Section 13(2) of the Barbados Constitution is in the same terms as Section 3 of the Grenada Constitution. And section 24 is similar in terms with section 16 of the Grenada Constitution.
- [27] Mr. Scotland, learned Counsel for the respondents argued that the appellant failed to show special circumstances and therefore the Stay ought not be granted.

[28] Mr. Scotland referred to **Monk v Bartram** 1891 1 Q.B. 346

The headnote reads:

Where a Stay of Execution has been refused by a judge at the trial, an application made to the Court of Appeal for a Stay pending an appeal supported by Special Circumstances, and allegations that there has been misdirection, that the verdict of the judgment was against the weight of evidence or that there was no evidence to support the verdict or the judgment, are not Special Circumstances on which the Court will grant the application.

[29] This case can be distinguished from the case at bar because although the notice of the application for the Stay was filed in the Supreme Court of Grenada there was neither a hearing nor a refusal by “a judge at trial on the application.”

[30] Learned Counsel, Mr. Scotland, referring to the authority of Richard Hinds [supra] argued that an error in the interpretation of misapplication of the law is not Special Circumstances.

[31] He disagreed that there were two different rulings by a judge of first instance and the other by the Court of Appeal. Mr. Scotland argued that the point raised before the learned trial judge was not raised before the Court of Appeal. He contended finally that the Court of inferior jurisdiction was not asked to pronounce on issue dealt with by the Court of Appeal.

[32] I disagree with learned Counsel's contention because in my opinion an appeal against sentence must encompass the legality or otherwise of the sentence, whether it is framed in a constitutional motion or otherwise, and that is exactly what the learned judge pronounced on. He said:

“By section 232 of the Criminal Code, the maximum penalty which may be imposed for the offence of manslaughter is imprisonment for 15 years. In the circumstances, of this case, both the Trial Court and the Appeal Court acted *per incuriam* and fell into error in imposing consecutive terms of imprisonment.”

- [33] Learned Counsel, Mr. Scotland also argued that apart from special circumstances, and the appellant has shown, none; the appellant has also failed to make out that there are strong grounds of appeal. He referred to, among other things **Scotland District Association Inc. v Attorney-General** 53 WIR 66.
- [34] Mr. Hudson Phillips, Queen's Counsel argued that the principle is special circumstances, not exceptional circumstances. Even, so, he contended that the proceedings show exceptional circumstances even without an affidavit. It is a judgment, he, argued that denied the people and the government of the fruits, of judgment by a jury and confirmed by a Court of Appeal. This is the most exceptional matter for a High Court Judge to overrule a Court of Appeal. This matter cannot again be raised in the Court of Appeal.
- [35] Finally, Mr. Hudson Phillips, argued that if the Stay is lifted and the respondents are released it may be difficult to have them rearrested.
- [36] In my judgment having regard to the foregoing I am satisfied that there is sufficient merit in this appeal.
- [37] In the exercise of my discretion, therefore I granted an extension of the Stay until the hearing of the appeal.

**Albert J. Redhead**  
Justice of Appeal