

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CONSTITUTIONAL)

ON GRENADA

CASE GDAHCV 2024/0410

**IN THE MATTER OF ALLEGED BREACH OF SECTION 3 AND SECTION 8 OF THE
GRENADA CONSTITUTION, WITH CONSTITUTIONAL REDRESS SOUGHT PURSUANT
TO SECTION 16 OF THE CONSTITUTION;**

AND

**IN THE MATTER UNDER SECTION 72 OF THE CONSTITUTION ON THE LEGALITY OF
COMMUTATION TO LIFE IMPRISONMENT IN 1991 OF SENTENCE OF DEATH PASSED
IN 1988;**

AND

IN THE MATTER OF APPEAL AGAINST SENTENCE AND RE-SENTENCING.

BETWEEN

RUDOLPH HALL

CLAIMANT

AND

ATTORNEY GENERAL OF GRENADA

DEFENDANT

APPEARANCES on zoom

Counsel Jerry Edwin for the claimant.

The claimant Rudolph Hall appeared in person on zoom from the prison.

Crown counsel Camille Gooding-DeSouza appeared for the Attorney General.

Prison officers Felix and Courtney also appeared for the Prison.

2025: JULY 21

RULING

On retrospective illegality of commutation of death sentence

- 1 **Morley J:** Rudolf Hall seeks relief under the **Constitution of Grenada**, arguing automatic sentence of death passed for double murder in 1988 became retrospectively illegal owing to evolving case law from the 2000s, so that commutation of his sentence in 1991 by the Governor General to life imprisonment, being commutation of an unlawful sentence, has also become retrospectively unlawful, meaning presently in prison he is not under lawful sentence; in consequence he seeks release, with declaration he has been illegally detained since 1991, or in the alternative seeks re-sentence by the High Court so that his sentence becomes lawful.
- 2 Further, if the commutation is lawful, he seeks relief from imprisonment for the '*remainder of his natural life*', as stated in the commutation, which words may suggest he can never be released, claiming such a form of words is unknown to sentencing practice, and therefore unlawful, requiring instead refinement of the articulation of the commutation so that it reflects a lawful imprisonment, which should then mean he can be further assessed by the prison review committee for release, after now 37 years, given his progress toward rehabilitation.
- 3 Distilled, Hall wants to find some mechanism to be considered for release soon, noting that most others on Grenada who have been sentenced to death and commuted have been released, but not him.
- 4 On the other hand, the position of the Attorney General (AG) is that the commutation should stand, which reads that Hall is to remain in jail for the rest of his life, subject only to mercy from the Governor General; while further, Hall is regarded locally as very dangerous.

History of case

- 5 In brief, the facts and history of proceedings are as follows, gleaned from affidavits and the original case file, in particular the signed confession of Hall at Grenville police station on 26.03.88.

- a. On 16.03.88, at about 11am, Hall then aged 23 had an unlawful firearm with 9 bullets, and near the airstrip came upon Benson Williams aged 22 and Diane Marshall aged 19 in a car engaged in sexual activity. Hall said he wanted to have sex, showing the gun, Benson said he would agree, Diane did not agree, Benson offered Hall \$20 it seems to go away, and Diane then hurriedly got into the driver's seat to drive off. At this point, standing close to the right of the car, Hall fired 5 bullets into the car at the couple, and ran off, hiding the gun in a hole he dug at 05.00hrs next day. Benson later died from gunshot injuries on 19.03.88 and Diane on 22.03.88.
- b. Hall has been in prison since 28.03.88.
- c. On 04.07.88, being tried as Grenada **Case 37 of 1988**, file found, he was convicted by jury of the murder of both Benson and Diane and reports in his affidavit in these proceedings dated 08.10.24 he received automatic sentence of death, by hanging, as was in practice then the application of law.
- d. His appeal against conviction and sentence, being Grenada **Appeal no. 8 of 1988**, file now lost, was later dismissed by the Court of Appeal on 02.05.89.
- e. Then on 20.09.91, his sentence of death was commuted to life imprisonment by the Governor General Sir Paul Scoon exercising powers of mercy under **s72 Constitution**, the warrant of commutation saying:

Rudolph Hall is given a pardon in respect of the said conviction on condition that the said Rudolph Hall shall be kept in custody to hard labour for the remainder of his natural life and be confined in the Richmond Hill prison as her Majesty's Governor General shall from time to time direct.
- f. On 13.12.13, the prison review committee recommended Hall for release.
- g. On 06.01.14, the prime minister and minister for national security objected, so that Hall was not released.
- h. During his 37 years, Hall has committed various infractions of the prison rules recorded in 1996, 2008, 2010, 2014, and 2016, is active in sporting activities, has worked on the prison farm, in the canteen, and in prison administration, while also attending various rehabilitation courses.

History of proceedings

- 6 On 08.10.24, Counsel Edwin filed this constitutional motion.

- a. On 28.11.24, Actie J ordered trial on 18.03.25.
- b. The matter was transferred by the ECSC Chief Registrar to the instant judge on 27.02.25.
- c. The trial was adjourned on 18.03.25 to 5 further hearings, on 06.05.25, 13.05.25, 26.05.25, 02.06.25 and 25.06.25 for further information and hearing, with written ruling to be delivered today 21.07.25.

7 As filings:

- a. Counsel Edwin for Hall has filed 5 submissions dated 23.12.24, 03.04.25, 20.05.25, 22.05.25, and 16.06.25, being in combination 28 pages, with supporting authorities;
- b. Counsel Gooding for the AG has filed 4 submissions dated 30.01.25, 15.04.25, 21.05.25, and 09.06.25, being in combination 29 pages, with supporting authorities;
- c. The prison filed:
 - i. a report dated 15.04.25 on Hall as to his conduct at the prison, per para 5h above; and
 - ii. a report dated 29.05.25 as to how many death sentences have been commuted, with later release, which appears to mean David Noel (conviction date not reported), Ronnie Gittens (convicted in 1991), and Rudolph Hall, are the only persons still in jail under commutation, while 6 others commuted in 1991 have been released, except Hall.
- d. The Registrar gathered the original case file for case 37 of 1988 from the ODPP¹ as a scan of 156 pages, disclosed to the court on 12.05.25, but has been unable to locate the appeal file, **no. 8 of 1988**, recalling there was much damage to Grenada records by Hurricane Emily in 1993 and Hurricane Ivan in 2004.

8 The quality of written argument offered by Counsel Edwin for Hall has been notably high, and he reports much credit is due to his researcher, Mr Joseph Layne, who the courts thanks and notes has several law degrees. Further, the quality of argument offered by Counsel Gooding for the AG, particularly orally, has also been striking, being relentless, even formidable, offering every imaginable argument to keep Hall from succeeding.

¹ Office of the Director of Public Prosecutions.

Assessing this case

- 9 The evolution of case law relating to the death penalty in the Caribbean is voluminous, particularly since the 1990s. Compelling points of much sophistication have been made by leading advocates from throughout the region, and from wider, examining various state constitutions, human rights, criminal law legislation, and myriad cases on sentencing in the Caribbean, and from throughout the Commonwealth, before the very best judges in the region, including the Eastern Caribbean Supreme Court (ECSC), and at the highest courts, being the Caribbean Court of Justice in Trinidad and His Majesty's Privy Council in London, with some decisions being reversed, or subtly distinguished, in what has become now a minefield of jurisprudence.
- 10 To my mind, this is not a complicated case, though the copious filings almost make it so. The judgement which follows will be to the point and will not recite every aspect of jurisprudence in the cases, nor every argument advanced, instead distilling the issues to a reasoned decision, avoiding an over-academic analysis, where the most important cases discussed have been:
- Regina v Hughes & Spence 2001**, concerning St Lucia and St Vincent & the Grenadines, at the ECSC Court of Appeal²,
Regina v Hughes 2002, concerning St Lucia, at the Privy Council³,
Fox v Regina 2002, concerning St Kitts & Nevis, at the Privy Council⁴,
Coard et al v AG Grenada 2007 concerning Grenada, at the Privy Council⁵, and
Chandler v AG Trinidad 2022 concerning Trinidad & Tobago, at the Privy Council⁶.
- 11 In my judgment, the route to a decision is to ask as follows:
- a. Was Hall lawfully convicted of double murder;
 - b. Did Hall receive automatic sentence of death;
 - c. If so, what is the effect of *Coard et al*;
 - d. In considering *Coard et al*, what is the effect of the later case of *Chandler*;

² 2001 ECSC 02.04.01, Appeal no. 20 of 1998.

³ 2002 UKPC 12.

⁴ 2002 UKPC 13.

⁵ 2007 UKPC 7.

⁶ 2022 UKPC 19.

- e. Is automatic sentence of death unconstitutional on Grenada;
 - f. If so, was it in 1988;
 - g. If so, what is the effect of it having been unconstitutional in 1988 on the commutation in 1991; and
 - h. Separately,
 - i. is the commutation as it is articulated lawful;
 - ii. if so, could release be contemplated by the prison review board;
 - iii. what constitutional and lawful sentence could Hall receive; and
 - i. If the 1991 commutation is unconstitutional, what should happen to Hall?
- 12 As to whether Hall was lawfully convicted, there is no argument offered, and so it stands he murdered Benson Williams and Diane Marshall in 1988. As a double-murderer, receiving sentence of death, plainly this court will not be contemplating he should not have been commuted but released in 1991 if the death sentence was retrospectively unconstitutional, or released straightaway now, which though clever and understandably offered in argument to see how it fares, is a technical and unmeritorious point common-sensibly to be dismissed: the real question is, if his death sentence was automatic, should he be re-sentenced.
- 13 More developed, the issue is having been sentenced to death in 1988, said automatically and argued therefore retrospectively unconstitutional, he was commuted to imprisonment in 1991 for the rest of his life as an executive act, which is not a sentence by a judge, also argued retrospectively unconstitutional because tainted as flowing from an unconstitutional sentence of death; and so Hall wants to challenge the commutation, including as written which suggests he can never be released, instead now wanting full re-sentence by a judge as a judicial act.
- 14 And so, the first step is to consider the sentence on 04.07.88. It was death by hanging. The starting point is the legislation as it then was in Grenada for murder, being then **s230 Grenada Criminal Code**, which said (though now repealed and much changed on 14.09.12 by **s39 Criminal Code Amendment Act**):

Whoever commits murder shall be liable to suffer death.

- 15 The expression '*liable to suffer death*' is capable linguistically of meaning sentence of death is discretionary.
- 16 However, I find I am sure as a fact the practice in Grenada in 1988, and specifically in this case, and in 1986 as assessed in **Coard et al 2007**, was to treat death as mandatory, or to use another word, 'automatic', because:
- a. Hall says in his sworn affidavit of 08.10.24 at para 2, '*mandatory sentence of death was imposed on me*';
 - b. The original prison record on file shows in handwriting '*appeal was dismissed, sentence of death stands*', not appeal against sentence was dismissed, suggesting the appeal was only against the conviction, suggesting if convicted there could be no other sentence for murder as automatic;
 - c. The original court record on file shows '*Appeal dismissed. Conviction and sentence in the court below affirmed*', not 'appeals' in the plural, suggesting as in para 16b above there was one appeal, namely against conviction, not sentence as it was automatic;
 - d. The Crown can produce no evidence to show the sentence was discretionary, to rebut what Hall has said, and the above analysis; and
 - e. To find the death penalty automatic on 04.07.88 is consistent with para 30 of **Coard et al 2007** where Byron J (as he then was) in Grenada had passed automatic sentence of death on 04.12.86, exercising no discretion, said by the Privy Council to have been '*correctly applying the law as it was understood at the time*'; while further
 - f. In **Hughes 2002** at the Privy Council, it was opined by Lord Rodger at para 19 it was '*unthinkable*' the words '*liable to*' on St Lucia, with similar language to Grenada, would make the death penalty discretionary, and at odds with the UK interpretation of this phrase, when in 1888 these precise words were enacted in the UK to articulate then a mandatory death sentence for murder.
- 17 It is for the Crown to show this analysis wrong, that the death penalty in this case had in fact been discretionary, which the Crown cannot do, and not vice versa as argued by Counsel Gooding, for Hall to show the sentence had been automatic, as sworn in his affidavit; absent

- being able to show otherwise, I am satisfied on the material presented it is a fact in these proceedings Hall's death sentence had been automatic.
- 18 The question which comes next is whether an automatic sentence of death, which I find Hall received on 04.07.88, is unconstitutional.
- 19 What an automatic sentence means is Hall was unable to attempt to mitigate and thereby try to argue in the court's discretion sentence of death would be excessive in his case.
- 20 It is now settled law from the ECSC majority in **Spence & Hughes 2001** that on St Lucia and St Vincent, automatic sentence of death is inhuman treatment, and violates constitutional right to life, as there are many types of murder, where some are far more heinous than others and it undermines human dignity to ignore both circumstances of the offence and the personal circumstances of the offender. Other states have made similar findings in various decisions.
- 21 The Grenada constitution was contemplated in **Coard et al 2007**, which concerned 13 convicted on 04.12.86 of the murder of Prime Minister Maurice Bishop and others in 1983, then receiving automatic sentence of death. At para 26, Lord Hoffman said, after dealing with preliminaries:
26. Their Lordships therefore return to the main submission, namely that the mandatory sentence of death was unconstitutional. Mr Dingemans QC, [now Dingemans LJ], appearing for the Attorney-General of Grenada, did not contest this point. It was so held in relation to the similar constitutions of other Caribbean states in **Reyes v The Queen [2002]** 2 AC 235 (Belize); **Regina v Hughes [2002]** 2 AC 259 (St Lucia); **Fox v The Queen (2002)** 2 AC 284 (Saint Christopher and Nevis) and **Bowe v The Queen [2006]** 1 WLR 1623 (The Bahamas). The last case decides that upon the true construction of the Grenadian Constitution, such a sentence was unconstitutional at the time it was passed in 1986. The result is that section 230 of the Criminal Code must be interpreted to mean, and has meant since the Constitution came into force in 1974, that the death penalty for murder is discretionary: a person convicted of murder may be sentenced to death but may instead be given a lesser sentence. The judge did not exercise this discretion and the sentence was therefore unlawful.
- 22 Of note, in 2007, the then government of Grenada did not contest automatic sentence of death is unconstitutional, though Counsel Gooding now does so on behalf of the current government. Her argument relies on **Chandler 2022**, where the Privy Council found automatic sentence of death is constitutional on Trinidad & Tobago, owing to the effect of the 'general savings clause'

- in **s6 Trinidad & Tobago constitution**, which as articulated, at its simplest, means laws existing prior to its enactment which are wholly inconsistent with the Constitution, and not capable of being read in a modified manner, are not in law invalidated by it, but protected by **s6** as still constitutional.
- 23 However on Grenada, there is no equivalent general savings clause. Instead at **s5(2) Grenada Constitution**, enacted on 07.02.74, there is a 'special savings clause' which uses different language, and which applies specifically to inhuman treatment. An almost identical section exists in **para 10 of schedule 2 of the St Lucia Constitution** and also in **the St Vincent Constitution**. The effect of **Hughes & Spence 2001** decided by the ECSC Court of Appeal, upheld by the Privy Council in **Hughes 2002** has been to find automatic sentence of death is unconstitutional on St Lucia and St Vincent, and by extension is unconstitutional on Grenada, being specifically then found to be so by the Privy Council in **Coard et al 2007**, who concluded, as in both *Hughes appeals*, the death sentence *per se* is not unconstitutional, only that it cannot be automatic.
- 24 However, in response, Counsel Gooding has raised the impact of **s111(13) Grenada Constitution**. This was not considered in **Coard et al 2007**. Like provision is not in the constitutions of St Lucia and St Vincent. The section concerning interpretation at **s111(13)** reads:
- Any reference in this Constitution to a law made before the coming into operation of this Constitution shall, unless the context otherwise requires, be construed as a reference to that law as it had effect immediately before the coming into operation of this Constitution.
- 25 The answer to this point lies to begin in the case of **Fox 2002**, where the Privy Council declared the mandatory death penalty in St Kitts & Nevis to be unconstitutional, when significantly **s119(13) St Kitts & Nevis constitution**, being the equivalent interpretation section to **s111(13)** states in almost identical terms, though was not referred to in the judgement:
- ...any reference in this Constitution to a law made before 19th September 1983 [when the constitution came into force], shall, unless the context otherwise requires, be construed as a reference to that law as it had effect immediately before that date.
- 26 This suggests in 2002 the point was implicitly considered ahead of the case of **Coard et al 2007**, and because not mentioned, it must be irrelevant. However, Counsel Gooding counters in a

further bold submission it was missed in both cases, so that both are wrongly decided, meaning she must also be arguing the automatic death penalty constitutional on St Kitts & Nevis.

- 27 What does the **s111(13)** mean? Counsel Gooding argues it means the discretionary articulation of the death penalty arising under **s230 Criminal Code** ‘*had effect*’ as mandatory, and so the special savings clause under **s5 Grenada constitution** saves its effect as constitutional, if inhuman, which said:

5. Protection from inhuman treatment

(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Grenada immediately before the coming into operation of this Constitution.

- 28 However, in my judgement the argument advanced by Counsel Gooding is incorrect when viewed in **s111(13)** alongside the words ‘*unless the context otherwise requires*’. Here the context of automatic death is to conduct proceedings which are unjust, as found in **Spence & Hughes 2001**, where at para 54 Byron CJ as he then was said:

A procedure which provides for no opportunity to offer personal mitigation before imposing a mandatory death penalty is not reasonable, not just and not fair...

- 29 It follows this context trumps saving how the law had effect, if saving its effect is to create such fundamental unfairness, in a sense it being the whole purpose of the **Constitution of Grenada** to create rights against unfairness, and so in my judgment **s111(13)** does not save the automatic death penalty from being unconstitutional.

- 30 Finding the automatic death sentence unconstitutional has retrospective effect, per **para 28 Coard et al 2007**, so that it was unconstitutional in 1988, which then has the effect of rendering the 1991 commutation unlawful, as based on an unconstitutional sentence, per **para 29**, which says of the commutation in *Coard* on 15.08.91 of the death penalty passed on 04.12.86:

...the validity of the life sentence substituted by the warrant of commutation is dependent upon the validity of the sentence of death. In the absence of such a sentence, the Governor-General has no power to order that the appellants be imprisoned for life and the appellants therefore remain held in detention without lawful authority.

- 31 The finding today Hall's sentence in 1988 was unconstitutional means Hall should not have received an automatic death sentence, which should therefore have been appealable, even though in 1988 there had not yet been the decision in **Coard et al 2007**, arriving almost 20 years later, so that during **Appeal no 8 of 1988** in reality it would never then have been a winning argument to ask for the automatic death sentence to be set aside for sentence to be reheard in the High Court as to whether, after mitigation, it would be discretionary. There are two consequences:
- a. The commutation to life imprisonment was of an unconstitutional sentence, and therefore per **para 29 Coard** the commutation too is retrospectively unlawful; and
 - b. Hall since *Coard* has now an appeal point to challenge the 1991 commutation he did not have then available to him, properly to seek re-sentence.
- 32 Insofar as Counsel Gooding has sought to argue **Coard et al 2007** turns on its own facts, owing to the uniquely political nature of the offending, with no wider application, though offered with zest, I find this argument fails: *Coard* is directly on point in Hall's case.
- 33 In principle, the remedy here ought to be an appeal against sentence to the Court of Appeal on the retrospective point arising from the evolution of the law, asking for special leave to be heard out of time in the court's discretion. Such evolution of the law ought to mean the dismissal of the appeal in 1988 does not mean the point *res judicata*, as appeal can properly arise later if the legal circumstance changes, as contemplated by **Coard et al 2007** at para 28, where Lord Hoffman opined to estop an action for *res judicata* in these circumstances would be 'artificial'. If refused leave, there might then be a constitutional argument filed, but the first approach here ought to have been appeal. This court does not encourage constitutional arguments to run alongside cases on indictment, creating parallel litigation, as warned by Lord Diplock in **Chokolingo v AG Trinidad & Tobago [1981]** 1 WLR 106:

Acceptance of the applicant's argument would have the consequence that in every criminal case...there would be parallel remedies available to [the accused]: one by appeal to the Court of Appeal, the other by originating application under ... the Constitution...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...to a court of co-ordinate jurisdiction, the High Court. To give to...the Constitution

an interpretation which would lead to this 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."

34 However, it being accepted constitutional argument has here been raised in good faith, not in mischief, this court will not close off remedy under the action as brought, because in **Hinds v AG Barbados 2002 AC 854**, Lord Bingham qualified the dictum of Lord Diplock, saying:

It would be undesirable to stifle or inhibit the grant of constitutional relief in cases where a claim to such relief is established and such relief is unavailable or not readily available through the ordinary avenue of appeal. As it is a living, so must the Constitution be an effective, instrument.

35 It follows relief will be granted under this action to the effect Hall should be re-sentenced by a judge of the High Court, meaning there shall be a declaration his current circumstance of incarceration is retrospectively unconstitutional. However, this does not mean he can claim damages for being wrongly in jail since 1988: he has been rightly in jail, as a double-murderer, lawfully so ordered at the time, but now invalid on legal evolution.

36 It bears noting, for the re-sentencing exercise, the sentences available on Grenada, and as articulated for murder in the **ECSC sentencing guidelines for homicide**, republished in 2025⁷, designed to clarify murder sentences, in the discretion of the court are

1. death, or
2. a whole life term, or
3. a determinate term.

37 Consideration in re-sentencing will be expected, per **para 32 Coard et al 2007** to *'take into account such progress as made...in prison'* toward rehabilitation by Hall during his 37 years in jail.

38 In so far as the commutation warrant described keeping Hall jailed for *the 'remainder of his natural life'*, as noted above this is not a judicial decision but an executive act, and so is no guide to the outcome of the re-sentence, while in parallel the Privy Council has said at **para 14 Coard**

⁷ See: <https://eccourts.org/ecsc-sentencing-guidelines>.

et al 2007, *‘Their Lordships...interpret the warrants as having been intended to do no more than substitute a sentence of life imprisonment’*, which may not automatically preclude earlier release.

- 39 Moreover, this court notes Hall was at one point recommended for release on 13.12.13 by the prison review committee, under the prerogative of mercy per **s72 Grenada Constitution**, so that in theory, if revisiting the prerogative, prior to the re-sentencing exercise, the Governor General might yet release him under **s72**, as was recommended in 2013, and if so, as a matter of practicality this litigation could then close. If not, it bears noting there may yet be litigation prior to any re-sentence, where this decision is appealed, even to the Privy Council, with no change in Hall’s incarceration circumstance for several years, being how long it may take to litigate any appeal.
- 40 As to costs, I order reasonable costs payable to the Claimant, to be taxed by the Registry, as the claimant argument has prevailed, in what has been hard fought disputation.
- 41 The effect of this ruling is, declaring the 1991 commutation retrospectively unconstitutional, I make a consequential order that Rudolf Hall, lawfully convicted of double-murder in 1988, shall remain remanded in custody for sentence, as a re-sentence, in Grenada, with expedition by an ECSC High Court Judge, to be appointed by the Chief Justice.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

21 July 2025⁸

⁸ Ruling subject to minor edit on 31.07.25 following discussion on zoom with counsel.