

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

AXAHCR 2008/0001 and 2009/0008

Between

**Delano Smith
Cuthwin Davis
Alexis Connor**

Applicants

-and-

Rex

Respondent

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Mr. Darshan Ramdhani K.C. with Mr. Carlyle Rogers of counsel for the applicants
The Honourable Dwight Horsford, Attorney General of Anguilla of counsel for the respondent

2022: July 25;
December 13.
Re-issued
2023: February 2.

Decision on Jurisdiction

[1] **Moise, J:** The applicants were defendants in criminal cases which came to an end in Anguilla in 2008 and 2009. At the end of the various trials, they were all convicted of murder and sentenced to life in prison. At the time of the crimes which they were accused of committing, they were all under the age of 18. By the time of sentencing however, each of the applicants was over 18 years old. They have now filed applications to review their sentences in light of the recent passage of the **Child Justice Act 2021** and the significant changes contained therein regarding sentencing of juveniles in the criminal justice system here in Anguilla. As a preliminary issue, the court is called

upon to determine its jurisdiction to entertain a review of the sentences on the grounds outlined in the applications. It is agreed that if the court has no such jurisdiction, then the applications for review must necessarily be dismissed.

The Facts

- [2] On 10th November, 2006, Delano Smith was only seventeen (17) years old. He was however accused of committing murder on that date. He was tried before the court in Anguilla and found guilty by a jury. On 18th February, 2008, he was sentenced to life imprisonment. At the time of his sentencing he was 18 years, 4 months and 8 days old. No minimum tariff had been set for a review of his sentence in the future. In effect, he is to remain in prison for the rest of his life.

- [3] Cuthwin Davis and Alexis Conner were jointly accused of a murder which took place on 4th March, 2006. At the time they were both sixteen (16) years old. They were convicted by a jury of the offences for which they were charged. On 12th June 2009, they were both sentenced to life in prison. A tariff was set for the two at thirty (30) and twenty (20) year's respectively.

- [4] At the time of the offences for which all three (3) applicants were convicted, the legislation in force regarding the rights and interests of juveniles and children in the criminal justice system was the now repealed Juvenile Act. In that legislation a juvenile was considered to be someone below the age of sixteen (16) and a child was defined as a person below the age of fourteen (14). As such, all three (3) applicants were tried, convicted and sentenced as adults for the offence of murder in accordance with section 186(1) of the Criminal Code of Anguilla.

- [5] It is accepted that at the time of the offences, Anguilla was a signatory to the International Convention on the Rights of the Child. This convention was signed by the United Kingdom on 29th November, 1989 and ratified for its overseas territories, including Anguilla on 7th September, 1994. Signatories to that legislation agreed by way of treaty to recognize various rights relating to children. In that treaty, a child is defined as a person below the age of 18. There is no dispute that the Juvenile Act in force in Anguilla at the time of the offences and the subsequent trials of the applicants was not in keeping with the treaty obligations which the country had been a signatory to by virtue of its ratification of 7th September, 1994.

- [6] Quite apart from the definition of a child, the treaty also contained various provisions regarding the manner in which children ought to be treated in a criminal justice system for all of its signatories. Counsel for the applicants therefore referred to Article 37 of the Convention which states as follows:

“(a) No child shall be subject to torture or inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age. (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

- [7] On 27th April, 2021, the Legislature of Anguilla passed the **Child Justice Act**. In its pre-amble, the legislation is defined as:

“AN ACT to establish a criminal justice process for children accused of committing offences based on restorative justice and which aims at protecting the rights of children as provided for in international conventions; to provide for the minimum age of criminal capacity of such children; to institute diversion of cases away from formal court procedures; to establish assessment of children and an initial inquiry as compulsory procedures; to extend the sentencing options available in respect of children; to consolidate the laws on the administration of justice for children; and for connected purposes.”

- [8] There is no doubt that the International Convention on the Rights of the Child was one of those treaties which the legislation sought to honour insofar as it relates to the obligations agreed to. In fact, that was expressly stated to be the case in the explanatory notes attached to the bill. In light of that a child under the new regime is defined as a person under the age of eighteen (18) years. The legislation came into force in July, 2021.

- [9] It is important to note that counsel for the parties are not at odds with the general thrust of the new legislation. No one doubts that this was a welcome and necessary change in the manner in which children were made to navigate the criminal justice system. The issues before the court are not

designed to place blame or fault on any one. However, it is worth noting that had Anguilla been in compliance with its treaty obligations at the time of the trial of the applicants, they would have no doubt been treated rather differently. In Mr. Smith's case, he was tried at seventeen (17) years old as an adult and subsequently sentenced to life in prison with no minimum period of review added to his sentence. In the case of the other two applicants, they were both sentenced to life in prison for a crime which was committed at the age of sixteen (16). In their cases a minimum tariff was set at thirty (30) and twenty (20) years respectively. I have no doubt that the sentences handed down in each case were designed to take into account the seriousness of the crimes which these young men were convicted for. However, notwithstanding that, under the new regime, the maximum sentence which each defendant would have been handed had the same circumstances exist today would be ten (10) years in prison. They would have also been subject to the rather different procedure of diversionary justice for offenders of that age. That is a striking change from what obtained at the time of their trials.

- [10] Where the parties are at variance however, is on the question of whether the **Child Justice Act** can provide any retroactive relief to the applicants by creating an avenue for a review of their sentences to bring them into conformity with the new procedures. In order to address that issue the court must give consideration to section 83 of the **Child Justice Act**. The section states as follows:

The following transitional provisions shall have effect-

- (a) where an order has been made in respect of a child pursuant to a prior Act before this Act comes into force, this Act applies where the order is brought before the court for review; and***
- (b) an application for an order made pursuant to the prior Act is continued pursuant to and in conformity with this Act; unless the court orders, a hearing adjournment under the prior Act is continued pursuant to and in conformity with this Act.***

- [11] Therefore, the preliminary issue which has to be determined is whether the court is empowered to now apply the provisions of the Act to the applicants in light of the transitional provisions contained in section 83? On what basis are those powers to be retroactively applied?

The Applicant's Submissions

- [12] Counsel for the applicants argue that there would be no basis for including section 83 into the legislation other than to recognize that there had in fact been a prior breach of the intended rights of children under the provisions of the Convention and to make provision for those who had been sentenced prior to the passage of the Act. The purpose of the section, according to counsel, was to provide an avenue for prior sentences of those currently in the criminal justice system to be reviewed and brought into conformity with the new regime. In fact, counsel goes on to argue that the legislation may very well have placed an obligation on the Government of Anguilla to take proactive steps in bringing persons such as the applicants before the court for a review of the sentences which had been imposed on them.
- [13] It is also argued that no timeline has been set by the section as to when such sentences are to be reviewed. Counsel argues further that section 83 does not place any limits to the definition of the term 'order' contained therein. This must therefore mean that a sentence imposed on the applicants can be viewed as an order which can appropriately be reviewed within the meaning of the section.
- [14] Counsel argues that in light of the express provisions of section 83, the court is not barred from reviewing the sentences of the applicants on the basis of the common law doctrine of *functus officio*. There is, according to counsel, adequate authority for the proposition that statute can in fact empower the court to review sentences even though the appellate process has neither been engaged nor expired. One such authority is that of section 2(1)(b) of the Criminal Procedure Act 1993 of Ireland. In that section, the court is empowered to review a sentence if new evidence is presented to prove that the sentence handed down against the convicted person is excessive, to the extent that a miscarriage of justice may have occurred. The court was referred to the case of **DPP v. Johnson**¹ from the courts in Ireland where the section was considered. Further reference was made to the case of the **DPP v. BM**² where a previous appeal by the applicant was deemed to be no bar to a further application pursuant to section 2(1)(b).

¹ [1996] Lexis Citation

² [2019]IECA267

- [15] Counsel for the applicants readily accepts that there are distinguishing elements between section 2(1)(b) of the Irish Criminal Procedure Act and section 83 of **Child Justice Act** in Anguilla. However, at paragraph 30 of his submissions it is argued that there is no reason a review of a sentence in similar circumstances cannot be placed within the powers of the High Court, whether an appeal had previously taken place or not. In my view, quite apart from the distinction referred to in paragraph 30 of the submissions, I express some doubt as to whether the wording of section 83 can necessarily be equated to what is contained in section 2(1)(b) of the legislation in Ireland. The Irish legislation is written in less ambiguous terms and is clearly designed to create a right to seek a review of the sentence. It is left to be determined as to whether section 83 of the **Child Justice Act** is intended to give a right to seek a review or was merely referring to the application of the new legislative regime where a review has already been set to take place, either by order of the court or by virtue of some other legislative enactment.
- [16] Counsel for the applicants go on to refer to section 94B of the Criminal Procedure (Scotland) Act 1995. This section makes provision for a referral to be made to the High Court for review of a conviction and sentence, regardless of whether the appellate process had been previously engaged. Reference had also been made to a number of cases from the United States Supreme Court in which it has been determined that the sentence imposed on a juvenile can be reviewed by the court. Perhaps an argument can therefore be made that the court has an inherent power to review a sentence even without any specific legislative provision allowing it to do so. It may be that a potential miscarriage of justice may be sufficient to invoke this inherent jurisdiction if it would serve the purpose of protecting the court's process. However, that must be balanced against the need for finality to litigation which is also an important feature in the court's need to protect its own process.
- [17] Insofar as it relates to our own courts, reference was made to the case of **Coard et al v. The Attorney General of Grenada**³, where the sentences previously imposed on the offenders were declared to be invalid and the matter was remitted to the court for sentencing. However, I make just one observation as it relates to the case of **Coard et al. v. the Attorney General**, which may have an influence on the decision I have to make. Counsel argues that this case stands as an authority for the propositions put forward in support of the application currently before me. However, to my

³ (2007) 69 WIR 295

mind, the case does not stand for those propositions. What transpired before the Privy Council was that there was an agreement that the sentences of the appellants were unconstitutional and they were therefore set aside altogether as being invalid in the first place. This was not a review of a sentence but rather a re-sentencing after the sentences had been effectively challenged within the court's public law powers. I doubt very much that the case is helpful in determining whether section 83 of the **Child Justice Act** is a section which can be invoked so as to constitute a right to apply for a review of the sentences without the sentences themselves being declared to be unconstitutional or invalid in some way.

- [18] To put it differently, the question here is whether section 83 of the **Child Justice Act** empowers the court, sitting in its criminal jurisdiction and without an actual vacation of the sentences duly imposed on the applications, to conduct a review by way of direct application from the offenders. That is a different process from the actual challenge of the sentence either by way of appeal or, for example, as a breach of the constitutional rights of the offender.
- [19] However, Mr. Ramdhani K.C. argues that this is precisely what the section was designed to do. It is submitted that the commitment warrant signed by the Registrar of the High Court, committing each applicant to prison for a specific term is an order within the meaning of section 83 of the **Child Justice Act**. Insofar as the section refers to an order which has been made in respect of a child pursuant to a prior Act before this Act comes into force, that is not limited to orders made pursuant to child justice legislation. An order as referenced in the section can relate to a sentence handed down even though the applicants were not considered juveniles at the time of the offences for which they were convicted. Counsel therefore argues that the court is not *functus officio* and can review the sentences so as to bring them into conformity with the present legislation.
- [20] For my part, and for reasons which I will explain later, I do agree that an order for committal to prison as was made against the applicants in 2008 and 2009 falls within the ambit of section 83. However, that is a different issue altogether from the question of whether the section creates a right to seek a review on the basis of its provisions. Where a review is to be conducted in relation to a previous order where a juvenile is concerned, the section does create an obligation to consider the provisions of the Act in general in conducting this review. However, where a sentence is lawfully

passed and is not up for review, there is some doubt in my mind as to whether the section is designed to create that right of invocation on the part of the applicants.

The Crown's Response

- [21] In his response the Honourable Attorney General highlighted 10 propositions in opposition to the applications for the review of the various sentences. In summary it is argued that Section 83 (a) is a transitional provision insofar as it relates to orders made under the legislation previously in force. That was the Juvenile Act. It is submitted that this is the only legislation in respect of which any relevant reviewable order could be made in keeping with the provisions of section 83 of the Act now in force. According to the Honourable Attorney General, the Juvenile Act which was in force at the time of the commission of the offences of murder defined a 'child' to mean a person under the age of 14 years and a 'juvenile' was defined as a person under the age of 16 years. As such, neither applicant was viewed as a child during the course of the prosecution against them. Therefore, the sentence of life imprisonment imposed upon the applicants following their trial and conviction in the High Court was not regulated by the Juvenile Act. The new **Child Justice Act** therefore, also does not relate to them.
- [22] It is argued further that the transitional effect of Section 83(a) can only apply to reviewable orders made pursuant to the prior Act which is the Juvenile Act. As the Honourable Attorney General puts it, on the principles of proper construction, section 83(a) is not a portal for the retrospective application of the new procedures and juvenile justice framework enacted by the **Child Justice Act**. On that premise the court is *functus officio*, in that the applicants were all appropriately sentenced in accordance with the legislation in force at the time. The sentences are not reviewable within the meaning of section 83(a) of the Child Justice Act. Consequently, the court has no jurisdiction to hear and grant the present applications.
- [23] The Attorney General also argues that there are existing principles which the courts have used in order to ascertain the legislative intent which underpins transitional provisions contained in acts of parliament. The court is therefore referred to the case of **Bentley 1962 Ltd v. Bentley Motors Ltd**⁴ where the following was noted:

⁴ [2021] Bus LR 736 at [56] and [57]

“...what happens when a new legislation comes into force? If the legislation is creating an entirely new right, then it is possibly for the legislature to start with a clean sheet. More usually, however, there will be existing rights to which the legislation may apply. In these circumstances, the legislature is faced with a series of choices. Should the new legislation only apply fully prospectively, that is to say, to rights which come into existence after the legislation comes into force? Or partially prospective, that is to say, both to existing rights and to new rights, but in the case of existing rights only in respect of a future act of infringement? Or retrospectively which may extinguish existing causes of action if the right is narrowed or turn lawful acts retrospectively into unlawful ones if the right is broadened? Should there be some form of phasing in period...it is the function of transitional provisions to address these questions...”

- [24] In my view, these are no doubt questions which the legislature and the court itself may grapple with when new legislation is brought in force. When it relates to the criminal justice system in particular, legislation of this nature affects the procedural aspects of matters which may have been before the court prior to the enactment and still pending at the time of its promulgation. It may also raise significant questions as to whether justice ought not to be balanced by creating an avenue for persons to reengage the courts in relation to how they had previously been sentenced or even treated within the system prior to the new enactment. It may seem entirely unfair for one to have become the subject of criminal sanction for a crime which had subsequently been repealed. Or perhaps one can see the inherent injustice where one is serving a significantly lengthy sentence for a crime which the new legislation has either repealed or the length and terms of the sentence for similar offences have been significantly reduced.
- [25] Transitional provisions and how they are interpreted, can therefore bridge the gap between new developments in the law and the injustice which can be created by ignoring how the legal principles were applied in the past. In fact, one may argue that natural justice and fairness alone may compel a legislature to take steps to correct such injustices when a new regime of legislation is brought into being. Perhaps it may even be the case that the court, in its inherent jurisdiction to protect its own process may have the power to reconsider its own previous decisions in light of these new developments.

[26] What makes the present application more challenging however, is that the legislation is brought in force so as to give effect to treaty obligations which had existed for decades prior to its enactment. It is no minor issue, that since the signing of the convention on the rights of the child, children have been left to navigate the justice system as if they were adults. Perhaps even the society's general sense of justice and fairness would recognize the need not only to bring the legislation into conformity with the treaty obligations, but also to correct any injustice which may have been done in the past due to the failure to observe those very rights which had been ratified on behalf of the country. The question however, is whether this was what section 83 of the Act was designed to do.

[27] In **Bentley 1962**, Arnold LJ went on to state that:

In devising appropriate transitional provisions, a fundamental guiding principle that has often been applied by the UK parliament is that of continuity of the law. The concept of continuity of the law is not easy to define with precision, but in broad terms, it refers to the idea that the law should continue to apply in a seamless a manner as possible after a change in the law. A simple example is where legal proceedings are extant, but have not yet been determined, as at the date when the law changes. The principles of continuity of the law mean that such proceedings should not fall into some legal abyss, but would continue in being. As this example shows, however, the principle of continuity of the law can be given effect to in more than one way. The first way, and the way that is generally accepted as representing continuity of the law in the truest sense in this context, is for the old law to continue to apply to the subject matter of the existing proceedings even if it has otherwise been repealed or replaced. A second way is for the new law to apply to the subject matter of the existing proceedings. A third way is for the old law to apply to some aspects and the new law to others."

[28] I understand the submissions of the Honourable Attorney General to be that the legislation which the **Child Justice Act** is designed to replace is the Juvenile Act which preceded it. Insofar as the concept of the continuity of the law is concerned, section 83 of the Act can only relate to matters which were to be determined under the previous Act. Given that the applicants were not considered to be children at the time of the offences and the criminal proceedings did not fall to be determined

under that piece of legislation, the transitional provisions do not relate to them. This is especially the case since their matters have long come to an end and there is no review of their sentences now before the court by way of order or any legislation.

[29] However, the Attorney General acknowledges that the terms '**order**' or '**a prior Act**' as contained in section 83 have not been defined in the interpretation section of that Act. The question of whether those terms are limited to orders made pursuant to the Juvenile Act is therefore a matter to consider. It is therefore argued that the meanings ascribed to these words are therefore to be gathered from surrounding words in the provision and statute itself. It is further submitted that in order to determine the meaning of the section, one must turn to the intention of parliament itself. The court was referred to the case of **Lacey v. Attorney General of Queensland**⁵ as an authority for the proposition that the purpose of a statute is not something which exists outside the statute. It resides in its text and structure, albeit it may be identified by reference to common law and statutory rules of construction.

[30] In light of this, it is submitted that section 83 of the **Child Justice Act** can only be interpreted by reference to the legislation itself. The subsections of the provision relate to each other and are designed as transitional provisions. The purpose and intent is to accommodate the transitioning of the same subject matter; i.e. things governed by the existing law, now to be accommodated by the new law in the meantime. It is argued therefore that the provision does not relate to sentences handed out under legislation other than the Juvenile Act which was then in force. Given that the applicants and the sentences imposed upon them were not handed down pursuant to the Juvenile Act, section 83 does not relate to their sentences and gives no power to the court to conduct a review pursuant to those transitional provisions.

[31] The Honourable Attorney General also invites the court to apply the *ejusdem generis* rule of statutory interpretation in order to determine the meaning of the terms "a prior Act" within the context of section 83 of the Act. In his submissions he states that the court ought not to view the phrase '**a prior Act**' as a standalone, importing the widest meaning to include the Criminal Code, or to embrace any prior act of the Assembly existing before the CJA came into force. To do so would be nonsensical. It is submitted therefore, that within the context of the legislation, section 83 should

⁵ [2011] HCA 10

be interpreted by the use of the words “the prior act”, instead of what was in fact contained in sub-section (a). It is therefore submitted, that sentences or orders handed down under legislation such as the Criminal Code do not fall within the ambit of section 83. It is only orders which were made pursuant to the Juvenile Act, being “the prior Act” which falls to be considered under the legislation.

[32] For my part, as I have already stated, I do express my disagreement with this submission. If indeed the court is to apply the *ejusdem generis* rule to interpret section 83 of the Act, then I find it difficult to accept that the context of the legislation itself would exclude any consideration of orders previously granted under the Criminal Code. That code is ultimately the legislation which regulates the substance and perhaps some measure of procedure regarding the bulk of criminal liability and sanction in Anguilla. Even as it now stands the legislation in force for juvenile defendants must work in tandem with the Criminal Code in order for its full meaning and effect to be appreciated. The **Child Justice Act** does not create criminal offences; neither does it outline the full ambit of criminal sentencing in any way. For example, charges for murder and other serious criminal offences are laid within the provisions of the Criminal Code. That has not changed with the new regime. What changes is that the procedure for dealing with children and their sentencing has been carved out of the code and related legislation and procedure to a limited extent. In fact, insofar as the new regime is concerned all that has been said regarding sentencing is that a maximum period of incarceration is limited to 10 years. That does not necessarily render the provisions of the Criminal Code inapplicable to juvenile offenders regarding sentencing in a broad sense. As such it simply cannot be said that an order under the Criminal Code cannot fall within the ambit of section 83 of the legislation.

[33] In addition to that, I note that the very purpose of the new Act was designed to bring the previous legislation into conformity with the treaty obligations which had been signed on to for decades prior to its passage. It is inescapable therefore, that the approach taken to criminal procedure and sentencing for persons below the age of 18 but older than 16 fall within the ambit of what the law was designed to address. Therefore within the context of the legislation, including section 83, there would be nothing absurd in considering orders previously granted in relation to persons below the age of 18 within the Criminal Code, where such orders would now come under review within the context of the new regime. In fact, I would find the section to be somewhat absurd if it were to be interpreted otherwise.

[34] Therefore I do not accept the submission that the terms “a prior Act” must necessarily be limited to mean the prior juvenile legislation. That was not what parliament said and I am of the view that it was not what parliament intended. Section 83 can therefore apply to sentences previously handed down under the Criminal Code in relation to persons who would now fall within the context of the legislation. For example, if an order previously made under the Criminal Code comes to be reviewed in relation to a 17 year old offender, I would have very little difficulty in applying the provisions of the current legislation to that offender, regardless of whether the previous order had been made under the Criminal Code. In light of this, it is worth repeating that I am of the view that the issue in the current application before me is whether the section itself creates the right to seek a review without one having been previously ordered or without the sentence previously handed down being set aside. It is this issue which troubles my mind more than anything else.

The Court’s conclusions

[35] I have, throughout this decision, expressed my own views on the various submissions made by counsel in relation to the questions I am called upon to consider. In summary, it is my view firstly, that there is no doubt that the trial and sentencing of the applicants were in fact in breach of the convention rights to which Anguilla had been a party. The Honourable Attorney General has argued that a breach of those rights is not a ground upon which the current application can be based. For that proposition, the court was referred to the cases of *R v. Secretary of State for Work and Pensions*⁶ as well as that of *AG & Ors v. Joseph and Boyce*⁷. It is a well-established principle that a treaty obligation signed by the Executive does not have the force of law until it is domesticated within local legislation. Therefore the sentences handed down to the applicants were perfectly lawful. I agree with that submission. However, the issue doesn’t end there.

[36] To my mind, it is important for this Court, in this forum, to leave open the question of whether the sentences may be the subject of review within certain other jurisdictions which the court may have. It is not an appropriate forum within which to go further than merely to decide at this juncture on whether section 83 of the **Child Justice Act** gives a right to apply for a review of the sentence in its

⁶ [2021] 3 WLR 428 (UKSC)

⁷ (2006) 69 WIR 164 (CCJ)

own right. I say so as the question which the impact that a breach of the treaty's obligations may have had on the sentencing procedure and processes is a matter best left for a different forum if it so arises.

[37] As it relates to the specific provisions of section 83 of the Act, I am of the view that it can in fact relate to orders which were previously made pursuant to the Criminal Code. However, I am not of the view that it is a section which is designed to create a right to apply for a review within the criminal proceedings which had already taken place. That review must already fall to be determined from provisions outside of section 83. All the section is designed to do is to state that **where the order is brought before the court for review** the provisions of the Act will apply. In the appellant's cases, they were lawfully convicted and sentenced within the provisions of the law in force at the time. As I have stated one cannot doubt the challenges which now confront them given the striking changes which had taken place in the law. These are all the more challenging because the country had already been a party to those obligations from prior to the passage of the Act. However, I am constrained to agree with the Honourable Attorney General where it is argued that the section does not create the jurisdiction within which the sentences can be reviewed, without there being a prior order in place. Unless the legality of the sentences is challenged otherwise, the court is *functus officio* at this stage in the proceedings.

[38] I make just one final observation here. Whilst it is true that the new legislation creates a stark difference in sentencing for juveniles, it also encourages a fundamentally different approach as to how children are engaged with the criminal justice process from the very inception. A ten (10) year maximum sentence for what is clearly a gruesome crime committed by a seventeen (17) or sixteen (16) year old can come across to some as being rather low in punishment; notwithstanding their age. But the Act is designed to give effect to broader policy considerations such as diversion and even the manner in which the children are to be treated and counseled during the period of their incarceration. It is all the more reason for the Court to be cautious about simply adopting the approach of engaging an application of this nature. It would appear that what the applicants will be seeking in a review is the application of that maximum sentence to them in circumstances where none of the other procedures inherent in a diversionary juvenile justice process had been applied to them in the first place. On the one hand it may seem a fair approach to take. However, on the other it may mean that the Court would be embarking on a process of simply releasing them back into

society without first giving due consideration to the possible dangers of doing so given the nature of the sentences they had been handed down and the seriousness of the crimes which they had in fact committed. It is all the more reason I am of the view that this would not be the appropriate forum within which to entertain such issues regarding the sentences which had been imposed on the applicants in the first place.

[39] I therefore find that the Court has no jurisdiction to review the sentences at this stage and the applications must therefore be dismissed. I would make no order as to costs.

Ermin Moise
High Court Judge

By the Court

Registrar