

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

GRENADA

**GDAHCRAP2021/0015
(FORMERLY GDAHCRAP2014/0002)**

BETWEEN:

AKIM MONAH

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mde. Louise Esther Blenman
The Hon. Mr. Mario Michel
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Ruggles Ferguson and Ms. Danyish Harford for the Appellant
Ms. Crisan Greenidge, Senior Crown Counsel for the Respondent¹

2021: November 22;
2022: February 23.

Criminal Appeal – Appeal against sentence – Failure of sentencing judge to provide reasons for sentence – Whether sentence manifestly excessive in the circumstances – Constitutional law – Sections 8 and 16 of the Constitution of Grenada – Right to fair hearing within a reasonable time – Unjustified delay in the production of transcript of proceedings – Whether unjustified delay in production of transcript of proceedings by State gives rise to breach of the right to a fair hearing within reasonable time - Redress for breach of fundamental rights – Whether Court can reduce sentence as redress for breach of constitutional rights

Mr. Akim Monah (“Mr. Monah”) was charged with the non-capital offence of murder contrary to section 230 of the Criminal Code of Grenada. He was remanded into custody on 30th June 2012 and pleaded not guilty on his first arraignment. Several months later during his re-arraignment on 14th October 2013, he pleaded guilty. His sentencing hearing was held on

¹ The written submissions on behalf of the State were authored by Mr. Howard Pinnock, Senior Crown Counsel.

23rd January 2014 after several adjournments. During the hearing, the sentencing judge heard Mr. Monah's then defence counsel's plea in mitigation, Mr. Monah's evidence and his mother's evidence. Upon the request of his then counsel, the sentencing hearing was adjourned to 4th February 2014 to allow an authority to be presented by the defence counsel. On 4th February 2014, Mr. Monah was sentenced to 18 years imprisonment, to run from 30th June 2012.

Mr. Monah, dissatisfied with the decision of the sentencing judge initially appealed against both his conviction and sentence on 24th February 2014. Despite repeated requests by him for the State of Grenada to provide the transcript of the proceedings in the court below in order for him to prosecute his appeal, he did not receive the transcript until 7 years after the date of his sentence. The prosecution of his appeal was therefore delayed in excess of 7 years. Furthermore, the transcript primarily consisted only of brief notes totaling 7 pages from the sentencing judge's notebook which did not indicate any reasons for the imposition of the sentence of 18 years imprisonment on Mr. Monah.

During the hearing of his appeal before this Court, Mr. Monah withdrew his appeal against conviction and sought leave of the Court to advance an additional/alternative ground of appeal, namely that the delay by the State in providing the transcript of proceedings resulted in the delay of the prosecution of his appeal which amounts to a breach of his fundamental right to a fair hearing within a reasonable time as guaranteed by the Constitution of Grenada. Upon noting no objection by counsel for the State, leave was so granted.

The four main issues on appeal were: (i) whether the sentence imposed by the learned judge was manifestly excessive; (ii) if so, whether this Court should exercise its discretion so as to reduce the sentence; (iii) whether the delay by the State in providing the transcript of proceedings in the court below breached the fundamental right to a fair hearing within a reasonable time and (iv) if so, what is the appropriate redress in the circumstances.

Held: dismissing the appeal against sentence on the basis that it was not excessive but allowing the appeal against sentence on the basis that the delay by the State in providing the transcript of proceedings infringed Mr. Monah's fundamental right to a fair hearing within reasonable time and making the orders as set out in paragraphs 87(2)(a) and (b), that:

1. Where a sentencing judge fails to provide reasons for the imposition of a sentence, the onus falls on the Court of Appeal to determine whether the sentence was just and appropriate as if the judge had provided reasons. However, the Court will only interfere with a sentence passed by a judge in the court below if there is an error in principle. In this case, it is inappropriate to utilise the new Sentencing Guidelines of the court which were promulgated several years after the date of Mr. Monah's sentencing, to determine whether the judge committed an error of principle. It therefore falls to this Court in determining whether or not the sentence imposed was excessive, to apply the guidelines that were provided by this Court in the cases and which were applicable at that the time of the sentencing hearing. Accordingly, the Court is obliged to give deliberate consideration to: (i) the circumstances of both the offender and the circumstances in which the offence was committed; (ii) the principles of sentencing namely retribution, deterrence, prevention and rehabilitation; (iii) the maximum penalty for the offence and the appropriate notional sentence; (iv) the mitigating and the aggravating factors, weighing them against

each other; and (v) the credit to be given to the guilty plea entered on re-arraignment and to the time Mr. Monah spent in custody awaiting sentence. In all of the circumstances of this case and applying the principles stated above, there is no basis upon which the Court can properly conclude that the sentence of 18 years is manifestly excessive. The appeal against sentence on the basis that the sentence of 18 years imprisonment is manifestly excessive is accordingly dismissed.

Section 230 of **the Criminal Code** Cap 72 of the Laws of Grenada as amended by the Criminal Code Amendment Act applied; **R v Ball** (1951) 35 Cr App Rep 164 applied; **R v Newsome**; **R v Browne** [1970] 2 QB 711 applied; **Romeo DaCosta v The Queen** [2011] CCJ 6 (AJ) applied; **Callachand & Anor v The State of Mauritius** [2008] UKPC 49 applied; **R v Sergeant** (1974) 60 Cr App R 74 considered; **Desmond Baptiste v The Queen** High Court Criminal Appeal No.8 of 2003 (delivered 6th December 2004, unreported) applied; **Desmond Fletcher v The Queen** GDAHCRAP2015/0011 considered.

2. Section 8(1) of the Constitution of Grenada guarantees the right to a fair hearing within a reasonable time. This includes the appellate process. Indeed, the main objective of the reasonable time guarantee in relation to the right to a fair hearing, is to ensure that there is efficient disposition of criminal cases. In this case, the State of Grenada conceded that the unjustified delay in the provision of the transcript of proceedings in the court below occasioned a delay in excess of 7 years of the prosecution of Mr. Monah's appeal. This unjustified post sentence delay amounts to an egregious breach of Mr. Monah's fundamental right to a fair trial within a reasonable time as guaranteed by section 8(1) of the Constitution of Grenada. The situation is further compounded by the fact that this matter was not complex and there was not a full trial in the court below as Mr. Monah pleaded guilty to the offence of non-capital murder. Further, the transcript which was eventually produced consisted of only 7 pages of the judge's notes which indicated no reason for the imposition of the sentence.

Section 8(1) of **the Grenada Constitution Act** Cap. 128A, Revised Laws of Grenada 2010 applied; **Singh v Harrychan** [2016] CCJ 12 (AJ) applied; **Marin v The Attorney General** [2021] CCJ 6 (AJ) applied; **Rashid Pigott v The Queen** ANUHCRA2009/0009 (delivered 13th April 2015, unreported) applied.

3. The Court has a broad discretion to fashion effective redress to secure the enforcement of fundamental rights. However, the redress which the Court provides is fact sensitive. Furthermore, the fact that the Court finds that a sentence imposed in the court below was not manifestly excessive does not restrict the remedies this Court may grant. Additionally, there is a consistent stream of jurisprudence which has established that a breach of the fundamental right to a fair hearing within a reasonable time of a convicted person can result in the reduction of his or her sentence. In this case, there are therefore no impediments which prevent this Court from fashioning redress which includes a reduction in Mr. Monah's sentence in addition to making a declaration to that effect. Mr. Monah has not withdrawn his appeal and is still serving the sentence of 18 years imprisonment.

Section 16 of the **Grenada Constitution Act** Cap. 128A, Revised Laws of Grenada 2010 applied; **Maya Leaders Alliance v Attorney General of Belize** [2015] CCJ 15 (AJ) applied; **Rashid Pigott v The Queen** ANUHCRA2009/0009 (delivered 13th April 2015, unreported) applied; **AG's Reference (No. 2 of 2001)** [2004] 2 AC 72 applied; **Singh v Harrychan** [2016] CCJ 12 (AJ) applied applied; **Frank Errol Gibson v Attorney General of Barbados** (2010) 76 WIR 137 applied; **Marin v The Attorney General** [2021] CCJ 6 (AJ) applied; **Boolell v The State** [2006] UKPC 46 applied; **Elaheebocus v The State of Mauritius** [2009] UKPC 7 applied; **Tapper v DPP** [2012] UKPC 26 considered; **Evans v The Attorney General** SCCrApp. No 181 of 2010 (delivered 6th December 2018, unreported) applied; **Rambarran and others v R** [2019] 5 LRC 431 applied.

4. Taking into account the totality of the circumstances of the breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time and the consistent stream of jurisprudence from the Caribbean Court of Justice and Her Majesty's Privy Council, this Court is of the clear view that the appropriate redress that should be granted to Mr. Monah is a reduction of his sentence of 18 years imprisonment by 2 years or 24 months. Consequently, his sentence of 18 years is set aside and a sentence of 16 years is substituted therefor. In addition, the Court grants a declaration that Mr. Monah's fundamental right to a fair hearing within a reasonable time has been breached by the State of Grenada.

JUDGMENT

Introduction

[1] **BLENMAN JA:** This appeal against sentence mainly highlights the difficulties that are occasioned by the delay, in excess of 7 years, by the State of Grenada in the provision of the transcript of proceedings in the lower court to Mr. Akim Monah ("Mr. Monah") in order to enable him to prosecute his appeal. It also examines the question of whether an unjustified delay by the State in the provision of a transcript of proceedings in the court below breaches a litigant's fundamental right to a fair hearing within a reasonable time and whether that a breach can give rise to the redress or remedy of a reduction of his sentence. In addition, it interrogates the issue of whether the sentence that was imposed by the learned judge was excessive in the circumstances of the case below.

[2] In summary, Mr. Monah was indicted for the offence of murder of Mr. Samuel Gabriel ("Mr. Gabriel" or "the deceased"). He pleaded guilty to the offence several months after he was first arraigned and the case was adjourned for him to be

sentenced. He was eventually sentenced to 18 years imprisonment. Mr. Monah, very shortly thereafter, on 24th February 2014, appealed to this Court against both his conviction and sentence.

- [3] Despite repeated requests by him for the State to provide the transcript of the proceedings in the court below in order to enable him to prosecute his appeal, he did not receive the transcript until 7 years after his sentence.
- [4] As I have indicated earlier, Mr. Monah had originally appealed against both his conviction and sentence. However, during the hearing of his appeal, he sought and obtained leave to withdraw the appeal against the conviction. Additionally, during the hearing of the appeal, he sought and obtained leave of this Court to advance the additional ground of breach of fundamental right to a fair hearing within a reasonable time. There was no objection by the State to this Court granting leave to advance this additional ground of appeal and we accordingly granted Mr. Monah leave to argue the additional ground.
- [5] Mr. Monah's first grievance was that the sentence of 18 years imprisonment was excessive, and he urged this Court to reduce it. However, another of his main complaints during the hearing of the appeal was that there was unreasonable delay by the State of Grenada in the provision of the transcript of proceedings, which resulted in his right to a fair hearing as guaranteed by section 8(1) of the Grenada Constitution Act ("the Constitution")², being impeded. He therefore urged this Court to reduce the sentence of 18 years imprisonment that was imposed by the learned trial judge as a consequence of the breach of his fundamental right, as an additional basis. In effect, he urged this Court to reduce his sentence on two distinct and separate bases. Firstly, that it was excessive and secondly, yet alternatively, that the delay in the provision of the transcript infringed his fundamental right to a fair hearing within a reasonable time.

² Grenada Constitution Act Cap. 128A, Revised Laws of Grenada 2010.

[6] The State initially resisted Mr. Monah's appeal against sentence on both of the bases that it was not excessive and that the delay that was occasioned in the provision of the transcript did not amount to a breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time. However, in subsequent written submissions that were filed by learned Senior Crown Counsel Mr. Pinnock, he quite properly conceded that the State's delay in excess of seven years in the provision of the transcript was unjustifiable. Nevertheless, he took issue with learned counsel Mr. Ferguson's argument that the appropriate constitutional remedy, if the Court finds that there was a breach, should not only be a declaration but that this Court should also grant a reduction in sentence. In opposition to the appeal against sentence, the gravamen of the State's argument was that if this Court were to find that in the totality of circumstances that there was a breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time, this Court should only grant a declaration in order to reflect that there is a breach of Mr. Monah's fundamental rights. In fact, the State maintained that a declaration is the appropriate remedy. Further, both learned Senior Crown Counsel Ms. Greenidge and Senior Crown Counsel Mr. Pinnock maintained that the sentence that the judge imposed was not excessive and therefore urged this Court to affirm the sentence in the lower court and dismiss Mr. Monah's appeal.

Issues on Appeal

[7] Based on the grounds of appeal that were prosecuted in this appeal and the refined oral and written submissions, in my view, four main issues arise for this Court to resolve, namely:

- (1) Whether the sentence imposed by the learned judge was manifestly excessive.
- (2) If so, whether this Court should exercise its discretion so as to reduce the sentence.

(3) Whether the delay by the State in providing the transcript of proceedings in the court below breached the fundamental right to a fair hearing within a reasonable time; and

(4) If so, what is the appropriate redress in the circumstances.

[8] I will now provide the background in some more detail in order to give the context.

Background

[9] Mr. Monah was present at a carnival fete on 29th June 2012 at which the deceased Mr. Gabriel was also present with a small group of friends. One of Mr. Gabriel's friends accidentally hit Mr. Monah's drink and Mr. Monah became upset. Despite an apology being proffered by the person who had accidentally hit the drink, Mr. Monah threw the rest of the drink in that person's face. Mr. Gabriel asked Mr. Monah why he had thrown the drink in his (Mr. Gabriel's) friend's face even though an apology was given for the accident, and it was stated that it was not done on purpose. There was a heated exchange between the two and Mr. Monah took out a knife and stabbed Mr. Gabriel, killing him. Mr. Monah was charged for the offence of murder contrary to section 230 of the **Criminal Code**³ of Grenada. He was remanded into custody on 30th June 2012. He was first arraigned and pleaded not guilty. However, several months later, at his rearraignment on 14th October 2013, he changed his plea to guilty and the judge adjourned the matter for sentencing to 25th November 2013, in order to obtain his evaluation report. The sentencing hearing was further adjourned to 4th December 2013 and then again to 12th December 2013. Later it was adjourned from 12th December 2013 to 15th January 2014. On 15th January 2014, the sentencing hearing was adjourned to 22nd January 2014. The sentencing hearing of Mr. Mohan was eventually held on 23rd January 2014.

[10] For the sentencing hearing, the State provided a social enquiry report together with an autopsy report. Pathologist, Dr. Nicholas Redhead, performed the autopsy on

³ Cap. 1, Volume 1 of 1994 Laws of Grenada.

Mr. Gabriel and stated that 'the cause of Mr. Gabriel's death was hypovolemic shock due to loss of blood resulting from rupture of the organs from the penetrating wounds'. Dr. Redhead indicated that a puncture wound was observed to the abdomen which on internal examination penetrated the liver in two places as well as the pancreas. Dr. Redhead also pointed out that the deceased was an 18-year-old very well built, strong looking young man. The doctor indicated that for the pancreas, which is an organ at the back to be penetrated from the outside, the wound would have to be about 10 cm deep.

[11] The record as reflected in the transcript of the sentencing hearing indicates that the prosecution provided the facts which indicated that Mr. Gabriel had succumbed from the puncture to his liver and pancreas. At the sentencing hearing, Mr. Peter David, who was Mr. Monah's then lawyer, offered the plea in mitigation on behalf of Mr. Monah. He told the court that the knife which Mr. Monah used to stab Mr. Gabriel was found and said that Mr. Monah had no propensity to violence. He submitted that while Mr. Gabriel was not drunk during the carnival fete in question, Mr. Monah was. He pleaded for mercy on behalf of Mr. Monah. Ms. Maria Hosten, Mr. Monah's mother, was called to provide evidence on his behalf. She testified to the fact that his father had died 20 years ago while he was a young child and that had impacted Mr. Monah's life. She told the court that Mr. Monah loved her. She said that he was quiet and respectful to all. She expressed her shock and indicated that her son was very sorry. She accepted that he was wrong. Like counsel, his mother pleaded with the court for mercy. Mr. Monah testified on his own behalf. He indicated his remorse and apologised to the deceased's family. Thereafter, upon the request of his then counsel, the hearing was adjourned to 4th February 2014 in order for an authority to be presented to the court by his then defence counsel.

[12] As I have earlier mentioned, and as extracted from the judge's notebook, the transcript indicates that:

"on 4th February 2014 no authorities being presented by Counsel the convicted man is sentenced as follows:

Sentence:

-Eighteen (18) years imprisonment at Her Majesty's Prisons, to run from date of remand that is 30th June 2012.

-Attend anger management counselling while at Her Majesty's Prisons.

I hope that he will continue to take advantage of all opportunities available at Her Majesty's Prisons while he is incarcerated."

[13] That is the extent of the notes on the sentence that was provided to Mr. Monah. As stated earlier, having been convicted and sentenced, Mr. Monah appealed against his conviction and sentence. However, and by way of emphasis, the prosecution of his appeal was delayed for over seven (7) years due to the unavailability of the transcript of proceedings. Due to the inordinate delay by the State in providing the transcript, Mr. Monah filed an application for bail in which he had sought to assert that the delay in the provision of the transcript justified his application. However, that application was adjourned as a consequence of the assurance that was given to this Court by the State that the transcript was ready and available. Subsequent to the State's provision of a transcript of the proceedings below to Mr. Monah, the appeal was listed to be heard. By emphasis, his appeal came on for hearing before this Court and through learned Counsel Mr. Ferguson, Mr. Monah sought and obtained leave to withdraw his appeal against the conviction. In my view this was an appropriate course to adopt in the circumstances of his guilty plea. However, Mr. Monah maintained his appeal against the sentence.

[14] Before this Court, Mr. Monah's appeal mainly resolved around the four issues that have been identified above. The first two issues which are interrelated would be dealt with under the heading 'excessive sentence'. The third and fourth issues which are also inextricably linked, would be addressed under the caption 'breach of the fundamental right to a fair hearing within a reasonable time.'

Appellant's submissions

Excessive Sentence

[15] The gravamen of Mr. Monah's complaint was that the sentence that was imposed by the learned judge was arbitrary and excessive. Learned counsel

Mr. Ferguson pointed out to this Court that the learned judge did not provide reasons for imposing the sentence of 18 years imprisonment on Mr. Monah in circumstances where he had pleaded guilty to non-capital murder. Mr. Ferguson submitted that the sentence was, in any event, arbitrary given the specific circumstances of the case including the fact that there was a guilty plea. Mr. Ferguson urged this Court to set aside the sentence on that basis. He also criticised the failure of the judge to provide reasons for the sentence which is critical to the determination of the matter of whether the sentence was excessive. Learned counsel Mr. Ferguson complained that the transcript that was eventually produced contained very brief notes from the judge's notebook and quite properly pointed out that this cannot be acceptable.

[16] Mr. Ferguson also emphasised that had the learned judge properly applied her mind to the applicable sentencing principles, she would have determined that a far lesser sentence than 18 years imprisonment was appropriate. He emphasized the fact that since the learned judge provided no reasons for the sentence that was imposed, as evidenced in the brief notes that were provided, the sentence has to be set aside by this Court. Mr. Ferguson submitted that it therefore falls to this Court to undertake the sentencing exercise afresh and urged this Court to utilise the new Sentencing Guidelines in undertaking this task.

[17] Learned counsel Mr. Ferguson was adamant that in seeking to determine the appropriate sentence that should be imposed on Mr. Monah, this Court is mandated to take cognisance of the **Eastern Caribbean Supreme Court (Sentencing Guidelines) Practice Direction 8E**⁴ for the offence of murder. He pointed out that those guidelines were brought into force in Grenada by SRO 18 of 2019. Mr. Ferguson emphasized that once this Court applied the new sentencing guidelines to the factual circumstances, it would conclude that 10 years 11 months and 9 days imprisonment from 4th February 2014 was an appropriate sentence. In arriving at this period of sentencing, Mr. Ferguson subtracted 1 year for the mitigating factors, 5.7 years representative of a 30% discount for Mr. Monah's early

⁴ No. 1 of 2021.

guilty plea and 1 year, 7 months and 5 days which was the time spent on remand. He therefore urged this Court to set aside the sentence of 18 years imprisonment and substitute a sentence of 10 years and 11 months and 9 days instead.

Breach of Fundamental Right to Fair Hearing Within a Reasonable Time

[18] Mr. Ferguson turned to the additional/alternative ground of appeal; namely the breach of Mr. Monah's fundamental right occasioned by the State's failure to furnish Mr. Monah with the transcript of the proceedings in order for him to be able to prosecute his appeal. Mr. Ferguson was adamant that this was totally unacceptable since it resulted in a delay in the hearing of the appeal for over seven years. He reiterated that the situation was made worse by the fact that the judge's notes that were extracted from the judge's notebook and eventually produced were very short. This, he pointed out, resulted in Mr. Monah having to file an application for bail pending the hearing and determination of the appeal, which was eventually not pursued. He indicated that it could never have taken the inordinate length of time for the State to provide those very brief notes from the judge's notebook. Mr. Ferguson reminded this Court of the fact that the State's delay in producing the transcript hindered the hearing of Mr. Monah's appeal for in excess of 7 years. Mr. Ferguson said that this amounted to a breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time. He highlighted the fact that this Court has the discretion to fashion a remedy for the breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time.

[19] Mr. Ferguson relied on **Rashid A Pigott v The Queen**⁵ in support of his argument that the delay by the State in providing the brief notes which form the transcript amounted to a breach of the constitutional right to a fair hearing within a reasonable time. He acknowledged that the remedy for the breach of the fundamental right could be a declaration to that effect as obtained in **Pigott**. However, Mr. Ferguson stated that the delay in the appeal at bar was particularly egregious and this was compounded by the fact that the notes that were provided were very scant and not

⁵ ANUHCRA2009/0009 (delivered 13th April 2015, unreported).

comprehensive. He therefore urged this Court to grant Mr. Monah a reduction or a further discount of his sentence in addition to the declaration that his constitutional right to a fair hearing was breached. In further support of this argument, he referred this Court to **Melanie Tapper v The Queen**.⁶ Learned Counsel Mr. Ferguson accepted that the court had jurisdiction to fashion a remedy for breaches of the Constitution which is not limited to a declaration. He sought to rely on **Flower v R**⁷ in support of his position and stated that there is nothing that prohibits this Court from granting a reduction of Mr. Monah's sentence in addition to the declaration. He maintained that these were the appropriate remedies given the circumstances of his appeal.

[20] Learned counsel Mr. Ferguson argued that the factual circumstances in the case of **Pigott** is vastly different from those in the appeal at bar. He pointed out that in **Pigott**, the appellant had been released from prison having served his 5 year sentence and that it was one year later that he had received the transcript of the proceedings in the lower court. Mr. Ferguson opined that in so far as Mr. Piggott had completed his sentence, it was not open to the Court of Appeal to reduce his sentence. He accepted that given the factual circumstances of **Pigott**, the appropriate remedy was granted namely, a declaration to indicate that there was a breach of Mr. Pigott's fundamental right to a fair hearing within a reasonable time. However, Mr. Ferguson posited that this Court is not similarly constrained since Mr. Monah has not completed his sentence and therefore there is no impediment to this Court reducing his sentence in addition to granting the declaration that has been sought. It was in that context that Mr. Ferguson suggested a reduction in his sentence of 10 years, 11 months and 9 days by twelve months in all of circumstances of this case.

[21] Alternatively, learned counsel Mr. Ferguson advocated that this Court should grant Mr. Monah the remedy of a suspended sentence for the remaining period of time

⁶ [2012] UKPC 26.

⁷ [2000] UKPC 41.

that Mr. Monah had to complete his sentence. He therefore urged this Court to adjust Mr. Monah's sentence by way of a variation in the granting of the redress. He maintained that the remedy should be the reduction of his sentence in addition to the declaration in order to indicate that there has been a breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time. He inaccurately pointed out that Senior Crown Counsel Mr. Pinnock in his subsequent written submissions in reply, had conceded that the State's delay in providing the transcript of the proceedings of the court below resulted in a breach of the fair hearing provisions of the Constitution. Consequently, Mr. Ferguson maintained that the only issue that remained for this Court to resolve was what was the appropriate remedy.

- [22] In concluding, Mr. Ferguson reinforced his submissions that this Court should allow Mr. Monah's appeal against the sentence of 18 years imprisonment, on the basis that it was excessive. He also urged this Court to further reduce the sentence on the basis of providing a remedy for the breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time. He said that this Court should substitute the sentence which reflects a reduction of 12 months together with the declaration sought.

Respondent's Submissions Excessive Sentence

- [23] The oral arguments on behalf of the State were advanced by Senior Crown Counsel Ms. Crisan Greenidge. In her oral submissions, she adopted the written submissions of learned Senior Counsel Mr. Pinnock who had quite properly indicated in his written submissions that in so far as the learned judge did not outline the methodology used to arrive at the sentence imposed, that this Court ought properly to re-sentence Mr. Monah. His main argument was that the sentence was not excessive. Ms. Greenidge submitted that notwithstanding the fact that the learned judge did not provide the methodology that was utilised, the issue and or sole question this Court should resolve is whether in all of the circumstances the sentence was just and appropriate. She stated that if this Court were to conclude

that notwithstanding any error committed by the judge, the sentence was just and appropriate, this Court should not interfere with the sentence. In support of her proposition, she referred this Court to the well-known principles that were stated in **Frank Clifford v The Queen**.⁸

[24] Ms. Greenidge cited a number of authorities from this Court in support of her submissions that the sentence of 18 years imprisonment was not excessive. She also referred this Court to **Williams v The Queen**⁹ in which this Court affirmed a sentence of 20 years imprisonment imposed by the judge and said among other things that ‘the learned judge though not articulating the benchmark in the matter and though not indicating all the relevant principles taken into account, did not err in imposing a sentence of 20 years, using a benchmark of 30 years.’

[25] Learned Senior Crown Counsel Ms. Greenidge submitted that in ascertaining whether the sentencing judge erred in the exercise of her discretion in imposing a sentence of 18 years imprisonment, this Court should have regard to the sentencing guidelines that were applicable at the date of sentence. Ms. Greenidge reminded this Court that it is the law that an appellate court will not interfere with the exercise of the judicial discretion of the lower court unless the sentence is manifestly excessive or wrong in principle or irrelevant matters of fact or law have been taken into consideration. Ms. Greenidge stated that a sentence will be manifestly excessive only when it is outside the broad range of appropriate sentences for the offence and offender. She said that the threshold is not to be satisfied by simply determining whether the Court of Appeal may have imposed a different sentence. Ms. Greenidge was adamant that had the judge properly carried out the requisite sentencing exercise in the court below, she would have imposed a sentence higher than 18 years imprisonment. Ms. Greenidge took the view that the sentence that the judge imposed on Mr. Monah was lenient.

⁸ [2014] EWCA Crim. 2245.

⁹ [2006] UKPC 12.

[26] She pointed out that the sentence that was imposed by the learned judge was so done before the introduction of the modernised Sentencing Guidelines and took comfort in the fact that it was within the range of sentences that was imposed by our Courts at that time. She was adamant that Mr. Monah's sentence was in no way excessive. Ms. Greenidge referred this Court to a number of decisions in which this Court affirmed sentences within the range of 15 years to 18 years imprisonment and maintained that the sentence of 18 years imprisonment that the judge imposed on Mr. Monah was well within the permissible range of appropriate sentences. Indeed, she referred this Court to the several decisions of our Court including **Molton Matthew v The Queen**¹⁰ in which this Court affirmed a sentence of 15 years imprisonment that was based on a plea to a non-capital murder. In further support of her argument that the sentence that was imposed on Mr. Monah was within the permissible range, she relied on **Desmond Fletcher v The Queen**¹¹ in which this Court affirmed a sentence of 18 years that was imposed after a guilty plea to non-capital murder. She therefore urged this Court to refrain from interfering with the sentencing judge's exercise of discretion since it was not excessive or blatantly wrong.

[27] Learned Senior Crown Counsel Ms. Greenidge stated that if this Court were to utilise the traditional approach to sentencing or apply the new Sentencing Guidelines the sentence of 18 years imprisonment that was imposed by the judge is not excessive. She therefore urged this Court to dismiss Mr. Monah's appeal and affirm the judge's sentence.

Breach of Fundamental Right to Fair Hearing Within a Reasonable Time

[28] Learned Senior Crown Counsel Ms. Greenidge acknowledged that by notice of appeal dated 24th February 2014, Mr. Monah appealed against his conviction and sentence. She conceded that the State's delay in providing the transcript as late as 17th September 2021 undermined Mr. Monah's ability to prosecute his appeal.

¹⁰ GDAHCRA2016/0022.

¹¹ GDAHCRA2015/0011.

Ms. Greenidge, in my view, quite properly and professionally acknowledged that the State is unable to justify a delay of over 7 years for a matter that did not go to trial. In fact, she accepted that the fact that Mr. Monah had pleaded guilty further compounded this issue. In my opinion, Ms. Greenidge also correctly acknowledged that the right of a fair hearing is applicable to delay pending appeal, as occurred in this case. It is unfortunate that Ms. Greenidge, had no choice but to state as follows: 'While this Court is no doubt aware of the problems in securing transcripts in an expeditious manner in Grenada, it would be extremely difficult to justify the delays herein'. I refrain from further commenting on this unfortunate situation which Ms. Greenidge was cornered into and which no doubt caused her quite understandably to be uncomfortable.

[29] Moving along, learned Senior Crown Counsel Ms. Greenidge asserted that should this Court conclude that Mr. Monah's right to a fair hearing within a reasonable time has been breached, then this Court could find the guidance which was given in **AG's Reference (No. 2 of 2001)**¹² helpful. She acknowledged that in that case, the Board indicated that the remedies that are available to an appellant whose constitutional rights have been breached include the following:

- (i) A public acknowledgment of the breach.
- (ii) A reduction in the penalty imposed.
- (iii) Payment of compensation to an acquitted defendant.

[30] Nevertheless, Ms. Greenidge sought to rely on **Pigott** in support of her proposition that where the Court concludes that the sentence imposed by the sentencing judge was not excessive, the proper remedy for the breach of the right to a fair hearing occasioned by the delay in the hearing of the appeal is a declaration to that effect. Ms. Greenidge submitted that the State's delay in the provision of the transcript of proceedings in excess of 7 years should not be utilised nor be regarded by this Court as a distinguishing feature from **Pigott**. She posited that the ratio of **Pigott** was that

¹² [2004] 2 AC 72.

where the sentence imposed was just and appropriate in all the circumstances, the Court will not reduce it on the basis of delay which resulted in a breach of the appellant's fundamental right to a fair hearing within a reasonable time.

- [31] It is worthy of mention that Mr. Pinnock in his written submissions in reply, urged this Court to take 'judicial notice of the systemic problems involved in producing transcripts in Grenada'. However, he opined that 'it cannot be argued that the delays herein while unfortunate were deliberate or amounted to such conduct which would require this Court to alter what was a just and appropriate sentence.' Mr. Pinnock maintained that in the specific circumstances of the case, this Court should only grant Mr. Monah a declaration which would be an appropriate remedy for breach of his fundamental right. He urged this Court not to interfere with the sentence of 18 years imprisonment that was imposed on Mr. Monah but merely to grant Mr. Monah the declaration.

Discussion and Conclusion

- [32] It is evident that in this appeal, several legal and constitutional provisions are brought into sharp focus. I will briefly refer to the legal and constitutional provisions that are at the heart of this appeal. I will first state the relevant provisions of the **Criminal Code**¹³ of Grenada which was in force at the time of Mr. Monah's sentencing.

The Criminal Code as amended by the Criminal Code (Amendment Act) of 2012

- [33] Section 230(A) of the **Criminal Code** indicates that the offence of murder is committed where a person intentionally causes the death of another by unlawful harm.
- [34] Section 230(B)(3) provides for sentence for the offence of non-capital murder. The maximum sentence for the offence of non-capital murder is life in prison.

¹³ Cap 72A, Volume 4 of the Continuous Revised Laws of Grenada.

[35] I turn now to the applicable constitutional provisions.

The Constitution of Grenada 1973

[36] There is common ground that several constitutional provisions are engaged in this appeal as a consequence of the State of Grenada's delay of over 7 years in providing Mr. Monah with the transcript of the proceedings in the court below.

[37] Section 8(1) of the **Constitution of Grenada 1973** ('the Constitution') stipulates that if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

[38] Section 16(1) provides as follows:

"If any person alleges that any provision of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if by any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress".

Section 16 (2) stipulates as follows:

"The High Court shall have original jurisdiction –

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such declarations or orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) this Constitution." (Emphasis mine).

Excessive Sentence

[39] I will now address issues number 1 and 2 together since they are inextricably linked. As I have earlier indicated, one of the main crux of Mr. Monah's appeal is his

complaint that the sentence of 18 years imprisonment based on the guilty plea for the non-capital offence of murder imposed on him by the sentencing judge was excessive. In order to undergird this position, among other things, Mr. Ferguson emphasised that the judge's notes of evidence that were produced as the transcript of the sentencing hearing do not indicate what, if any, factors were taken into account. Neither do they indicate the legal principles that the sentencing judge applied in concluding that the sentence was appropriate given the circumstances of the case below. Helpfully, it is common ground that in these circumstances, in so far as it is unclear from the sentencing judge's notes the basis upon which the sentence was imposed on Mr. Monah, it falls to this Court to examine the circumstances and seek to determine whether in all of the circumstances the sentence of 18 years imprisonment is just and appropriate. In effect, this Court has to determine whether the judge exercised her discretion properly in imposing the sentence of 18 years on Mr. Monah.

[40] While it is clear that the notes from the learned judge's notebook were all there was on the record, it is nevertheless worthy to mention that the two sentences stated in the notes which do not indicate the reason for the punishment, can hardly be sufficient.¹⁴ It would have been necessary for the sentencing judge to identify, on the record, the relevant factors and evaluate the factors in reaching the decision. The learned judge must indicate the considerations that influenced her determination.

[41] It is settled law that the appellate court should only interfere with the exercise of discretion of the sentencing judge if the sentence is manifestly excessive. There is a consistent stream of jurisprudence which constrains appellate courts from interfering with sentences only if there is an error of principle in that regard. Indeed, in **R v Ball**¹⁵ it is stated as follows:

¹⁴ It remains unclear whether there was anything more said by the learned judge during the sentencing hearing in addition to what is reflected in her very brief notes extracted from her notebook.

¹⁵ (1951) 35 Cr App Rep 164.

“In the first place, this court does not alter a sentence which is the subject of an appeal merely because the members of the court might have passed a different sentence...It is only when a sentence appears to err in principle that this court will alter it. If the sentence is excessive or inadequate to such an extent as to satisfy this court that when it was passed there was a failure to apply the right principles, then this court will intervene.”

[42] In **R v Newsome; R v Browne**¹⁶ it was held that the appellate court should only interfere with a sentence passed if it is not justified by law; it is passed on the wrong factual basis; some matter has not been properly taken into account; or where it was wrong in principle or manifestly excessive. The appellate court should not interfere with the discretion of the sentencing court merely on the ground that it might have passed a different sentence.

[43] With that guidance firmly in my mind, there are other relevant principles that I must give equal consideration. It is settled law that in determining whether the sentence was manifestly excessive, I must consider the circumstances of the offender and also the circumstances in which the offence was committed. I am equally required to apply the well-known principles of sentencing that were enunciated by Lawton LJ in **R v Sergeant**¹⁷ namely: retribution, deterrence, prevention and rehabilitation. These principles were judicially recognised by Sir Dennis Byron, Chief Justice, as he then was, in **Desmond Baptiste v The Queen**¹⁸.

[44] As I have already stated, it is the law that in all sentencing cases, the judge should advert to the relevant principles. These include the following principles: retribution, deterrence, prevention and rehabilitation as referred to above. Sir Dennis Byron, Chief Justice, as he then was, had cause to address these principles in **Desmond Baptiste v The Queen** and it is apposite to reproduce them, as I hereby do:

“Retribution

Retribution at first glance tends to reflect the Old Testament biblical concept of an eye for an eye, which is no longer tenable in law. It is rather a

¹⁶ [1970] 2 QB 711.

¹⁷ (1974) 60 Cr App R 74 at 77.

¹⁸ Criminal Appeal No. 8 of 2003 (delivered 6th December 2004, unreported).

reflection of society's intolerance for criminal conduct. Lawton LJ stated at page 77 that:

"Society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass."

Deterrence

Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behavior. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behavior that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.

Prevention

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some however never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

Rehabilitation

Here the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison. However, the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course, sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform."

- [45] By way of emphasis, the ineluctable conclusion is reached that Mr. Monah having been sentenced to 18 years imprisonment based on a guilty plea, in the circumstances of this case where the sentencing judge has not indicated the reasons for imposing the sentence of 18 years imprisonment on Mr. Monah, it falls upon this Court to determine whether the sentence is just and appropriate as if the judge had provided full reasons. In so doing, this Court should only interfere with

the sentence if it were to conclude that had the judge provided reasons, the court would have nevertheless concluded that the sentence of 18 years imprisonment was manifestly excessive. Indeed, to put another way, this Court can only interfere with the sentence that was imposed by the judge if it were to conclude that the judge committed an error of principle in so doing.

[46] I agree with learned Senior Crown Counsel Ms. Greenidge that in conducting this exercise, this Court regrettably cannot have recourse to the new Sentencing Guidelines that were recently promulgated. It is apparent that the sentencing judge conducted the hearing and imposed the sentencing of 18 years imprisonment many years before the new comprehensive Sentencing Guidelines were implemented in our courts. Clearly, it is not appropriate to utilize the new Sentencing Guidelines in order to determine whether the judge committed an error of principle. While the new Sentencing Guidelines are very comprehensive and conduce to the uniformity in the approach to sentencing, they cannot be applied in order to test whether or not a judge committed an error of principle in sentencing the appellant long before the date of promulgation of the new Sentencing Guidelines¹⁹. Despite this, there is not much difference in the approach of the sentencing in the Court's cases and the new Sentencing Guidelines. The latter in my view seeks to crystallize the guidelines that predated them and which emanated from the cases of this court.

[47] I have therefore given deliberate consideration to the well-known authorities that were relied on by learned Senior Crown Counsel Ms. Greenidge which are applicable to the appeal at bar. In conducting the sentencing exercise in order to determine whether the sentence is just and appropriate if the judge had provided reasons, the Court is enjoined to consider the mitigating factors and the aggravating factors in this case. The Court is required to consider Mr. Monah's age at the time of the commission of the offence, the maximum sentence for the offence, the notional sentence that should be utilized, the guilty plea, the fact that Mr. Monah

¹⁹ It is also noteworthy that the Sentencing Guidelines on which learned counsel Mr. Ferguson relies, have been revoked by Practice Direction No. 3 of 2021 – Sentencing for the Offence of Murder.

has a previous relevant conviction and is remorseful. Credit has to be given to the time that he has spent in custody and reduced from the sentence that is imposed. It is noteworthy that Mr. Monah was 25 years old on the date of the commission of the offence. He is now 35 years old.

[48] Given that the maximum sentence that the legislature has provided for the offence of non-capital murder is life imprisonment, in my view, the appropriate starting point on notional sentence should be 30 years. This is in keeping with settled the approach of this court in cases such as **Desmond Fletcher v The Queen** and others which require no recitation.

[49] With the requisite sentencing approach finally in mind in conducting the sentencing exercise, I note that the record reflects the following mitigating factors:

- (a) He endured traumatic emotional experience as a child when his father died while he was an 8-year-old infant.
- (b) He had a poor academic record and was assessed to be below average intelligence.
- (c) He has a young child.
- (d) He is remorseful.
- (e) The victim approached him when they argued.

[50] I also pay cognizance to the aggravating factors that are gleaned from the record which are as follows:

- (a) He used a knife in a public place to inflict the fatal wound.
- (b) He has a previous conviction in 2007 for violent assault.
- (c) The incident occurred in a public place in the presence of a 16-year-old boy.
- (d) The deceased and his friends were all unarmed.
- (e) Mr. Monah maintained an unnecessary aggressive attitude from the time the drink was spilled on him which he escalated by throwing the

rest in the deceased friend's face. This culminated with him taking out the knife and fatally stabbing the deceased.

[51] As I have mentioned, in accordance with the authorities of this Court, I will start with a notional sentence of 30 years imprisonment. In the appeal at bar, I have weighed the mitigating factors against the aggravating factors and find that they balance out each other. There is therefore no movement in respect of the notional sentence.

[52] I turn now to the matter of significance which is the fact that Mr. Monah pleaded guilty to the offence of murder when he was re-arraigned. He did not do so on the first opportunity but on the second occasion when he was re-arraigned. He is therefore entitled to a discount because of his guilty plea. It is an established principle that the usual discount that is given on early guilty plea is one third. In so far as Mr. Monah pled guilty not on the first occasion but on the second occasion when he was re-arraigned, I am in agreement with Mr. Ferguson and hold the view that a discount of thirty percent is appropriate. He is therefore given a discount of 9 years. The notional sentence is 30 years and from that, 9 years is discounted which would result in a sentence of 21 years.

[53] This brings me now to consider the time that he had spent in custody pre-trial. It is settled law that as a general rule, prisoners should be credited for the time spent in custody. This was judicially recognised by The Caribbean Court of Justice in **Romeo De Costa Hall v The Queen**.²⁰ Prior to **Romeo Da Costa**, the need for credit to be given for the time spent on remand had also been addressed by the Board in **Callachand & Anor v The State of Mauritius**.²¹ Indeed, at paragraph 9 the Board pronounced as follows:

“...It seems to be clear too that any time spent in custody prior to sentencing should be taken fully into account, not simply by means of a form of words but by any means of an arithmetical deduction when assessing the length of the sentence that is to be served from the date of sentencing...”

²⁰ [2011] CCJ 6 (AJ).

²¹ [2008] UKPC 49.

[54] Consequently, the general rule requires the sentencing judge to give the prisoner full credit for the time that he has spent in custody awaiting sentence. To similar effect, in **Romeo Da Costa** the Caribbean Court of Justice recognised the sentencing judge's discretion to give full credit for the time the prisoner has spent in custody before sentence. However, the Caribbean Court of Justice has quite properly recognised the residual discretion of the sentencing judge to disapply the general rule in appropriate circumstances. The record discloses that Mr. Monah has spent 1 year, 7 months and 5 days or 580 days in custody. Deducting 580 days from 21 years, the sentence of 18 years that was imposed by the sentencing judge was not excessive. This accords with Ms. Greenidge's arguments on this issue, which I accept.

[55] Be that as it may, I am not of the view that this Court should interfere with that sentence since there was no cross-appeal by the Crown and the issue of a possible increase in the sentence was not canvassed by this Court with the parties. Given all of the circumstances, in my clear view there is no basis upon which this Court can properly conclude that the sentence of 18 imprisonment is manifestly excessive. The appeal on the issues of excessive sentence is therefore dismissed.

[56] I now turn to the third and fourth issues in this appeal.

Breach of Fundamental Right to Fair Hearing Within a Reasonable Time

[57] As I have earlier indicated, the State admits that the delay in the production of the transcript of proceedings in the court below was unjustifiable. Learned counsel Mr. Ferguson however asks this Court to find that the delay occasioned a breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time and this Court is asked to decide whether under the Constitution, Mr. Monah is entitled to any relief in addition to a declaration in this regard. More specifically, this Court has to determine whether it should grant redress in the nature of a reduction of his

sentence in addition to a declaration that there was a breach of his right to a fair hearing within a reasonable time.

[58] In **Singh v Harrychan**²² the Caribbean Court of Justice speaking through Sir Dennis Byron PCCJ and Anderson JCCJ, held that the appellate process is undoubtedly part of the trial. I am also of this view.

[59] Given the circumstances that undergird this appeal, one thing is clear in my opinion. In the present appeal, a delay in excess of 7 years in the prosecution of an appeal occasioned by the State's non provision of the transcript is clearly an infringement of the constitutional right to a fair hearing within a reasonable time. This post sentence delay of 7 years in the production of a transcript of proceedings by the State without any justification, is an egregious breach of section 8(1) of the Constitution. It must be acknowledged that the time it took the State to provide Mr. Monah with the very brief transcript from the sentencing hearing is unacceptably long. Indeed, it can be no answer for the State to say that the problem has become systemic. The mere fact that the learned prosecutor invited this Court to take judicial notice of the problem gives me great pause. The situation is even more egregious given as properly acknowledged by the learned prosecutor, that there was not a full trial but rather Mr. Monah had pleaded guilty to the offence of non-capital murder. It is equally striking that the notes of the sentencing judge which forms the transcript of the proceedings merely runs a few pages. It bears repeating that those notes could hardly have taken 7 years to be reproduced by the State. This brings into sharp focus the question of the appropriate redress for the breach of Mr. Monah's fundamental right to a fair hearing within a reasonable time.

[60] Byron PCCJ and Anderson JCCJ writing on behalf of the Caribbean Court of Justice in **Maya Leaders Alliance v Attorney General of Belize**²³ discussed the matter of redress and stated as follows:

²² [2016] CCJ 12 (AJ).

²³ [2015] CCJ 15 (AJ).

“The power...granted to the courts to provide redress for constitutional infractions confers...a broad discretion to fashion effective remedies to secure the enforcement of constitutional rights.”

- [61] I can do no better than to adopt that useful guidance as my own and acknowledge that this Court has a wide discretion to fashion the appropriate redress.
- [62] Indeed, in the appeal at bar, it is clear that section 16 of the Constitution enables the court to fashion a remedy in the form of redress that is appropriate to an appellant whose fundamental rights have been breached. Indeed, the Constitution does not limit the nature or extent of the redress that the Court can provide since the Court is ‘required to make such orders, issue such writs and give such directions as it may consider appropriate’. Courts in the Commonwealth Caribbean have granted an impressive raft of remedies when fundamental rights have been breached. In criminal cases where there have been breaches of the litigant’s fundamental rights, the courts have had recourse to a range of remedies which need no recitation. What is important is for the court to provide a remedy that is effective given the unique features of the specific case. Simply put, the remedies that the court provides for breaches of fundamental rights are largely facts sensitive.
- [63] It is evident that contrary to the submissions that were urged by learned counsel Ms. Greenidge, I am not of the view that the **Pigott** case laid down the principle that where a litigant has completed his sentence and it is subsequently held that there was a breach of his fundamental right to a fair hearing that the only remedy that this Court could fashion is a declaration. Neither is **Pigott** authority for the proposition that once the Court forms the view that the sentence that was imposed was not excessive, it could only grant the remedy of a declaration for breach of the fundamental right to a fair hearing. There is no such principle as advanced by Ms. Greenidge. In fact, the authorities point to a contrary position.
- [64] There is no doubt that there is a great public interest in the efficient and timely disposition of criminal cases. In relation to the right to a fair hearing, the main

objective of the reasonable time guarantee is to prevent persons from remaining in limbo for a protracted period and to ensure that there is efficient disposition of criminal cases.

[65] It is the law as stated in **AG's Reference (No. 2 of 2011)**²⁴ that the court has a discretion as to what is the appropriate remedy for a breach of the right to a fair [hearing] within a reasonable time. In **Singh v Harrychan**, Byron PCCJ and Anderson JCCJ stated: 'In some cases, the consequence of the delay may result in a reduction of the sentence, whereas this may not be an appropriate remedy in others.'

[66] In **Frank Errol Gibson v Attorney General of Barbados**,²⁵ Saunders, JCCJ as he then was, and Witt, JCCJ writing on behalf of the Caribbean Court of Justice considered what was the appropriate remedy where delay has rendered a fair hearing impossible. The court stated that in appropriate circumstances the remedy can be directed at the sentence.

[67] At paragraph 29 of **Singh v Harrychan**, Byron PCCJ and Anderson JCCJ stated as follows:

"...Where the delay has been inordinate to the point of being wholly unreasonable in the circumstances of the case, particularly if, but not necessarily because, the party aggrieved has done all in his power to demand compliance, fair [hearing] considerations and issues of the fundamental right to a fair [hearing] within a reasonable time could arise. This reasonable time necessarily includes the appellate process and in doing justice, the extent and nature of the delay on the part of public officials ... ought always to be of concern to an appellate court. In some cases, the consequence of the delay may result in a reduction of the sentence, whereas this may not be an appropriate remedy in others ..."

[68] By way of reminder, in **Pigott**, this Court held that where there is inordinate delay between conviction and the hearing of the appeal, it may be raised in the Court of

²⁴ [2004] 2 AC 72.

²⁵ (2010) 76 WIR 137.

Appeal as a ground of appeal against conviction and sentence. It was also held that in determining whether there has been an inordinate delay which resulted in the litigant being denied a fair hearing, the factors to be considered are: (i) the complexity of the case (ii) the conduct of the litigant and (iii) the administrative and judicial authorities. In **Pigott**, the Court concluded that the case was not unduly complex, and the delay in the hearing of the appeal was due solely to the record of appeal not being prepared in a timely manner which had nothing to do with the appellant. The administrative and judicial authorities were solely responsible for the preparation of the record of appeal, and no explanation was provided for the delay in its preparation. In the circumstances, the delay of over 4 years to prepare the record was sufficient to constitute an infringement of the appellant's fundamental right to a fair hearing.

[69] However, as quite properly highlighted by Mr. Ferguson, there were some important distinguishing features in **Pigott** that do not exist in this appeal. Indeed, in **Pigott** the appellant had abandoned his appeal against conviction and sentence. He had also completed his 5 year sentence by the time he had eventually received the transcript. Indeed, this Court held that in the specific circumstances of **Pigott**, it would not be appropriate to set aside the appellant's conviction and sentence on the basis of the delay in producing the record of appeal after the conviction and sentence. The Court further reasoned in **Pigott** that in the specific circumstances where the appellant had withdrawn his appeal against conviction, the appropriate remedy was a declaration to the effect that Mr. Piggott's fundamental right to a fair hearing within a reasonable time as guaranteed by section 15(1) of the Constitution had been infringed. It is clear that in **Pigott**, the appellant having completed his sentence and having withdrawn his appeal against conviction and sentence, that this Court felt that it was not open it to reduce his sentence as part of the redress for the breach of his fundamental right.

[70] However, this in no way negates the fact that this Court must consider the specific circumstances that undergird this appeal in determining the appropriate remedy that should be granted to Mr. Monah for breach of his fundamental right to a fair hearing.

[71] In **Gibson v The Attorney General**, the Caribbean Court of Justice when addressing the situation of a delay of some 29 months before the commencement of the preliminary inquiry had reason to comment adversely on that untenable state of affairs:

“60. In answering this question a court must weigh the competing interests of the public and those of the accused and apply principles of proportionality. One starts with the premise that the Executive Branch of Government has a constitutional responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning. A governmental failure to allocate adequate resources, or for that matter inefficiencies within the justice sector, could not excuse clear breaches of the guarantee.”

[72] Based on what I have foreshadowed, it is evident that in devising an appropriate remedy, a court must consider all of the circumstances especially the stage of the proceedings at which it is determined that there has been a breach of a fundamental right. It must be recalled that learned counsel Mr. Ferguson implored this Court to provide the constitutional remedy of a reduction in Mr. Monah’s sentence for the State’s breach of his fundamental right. He was adamant that it would not be appropriate for this Court to merely fashion the sole remedy of a declaration as the proper method of compensating Mr. Monah for a breach of his fundamental right to a fair hearing within a reasonable time which was occasioned by a delay in excess of 7 years in the preparation of the transcript of proceedings. I am in full agreement with him based on the authorities and reasons that I have expressed.

[73] In **Marin v The Queen**,²⁶ a decision of the Caribbean Court of Justice, Barrow JCCJ reviewed the relevant principles that apply to the right to a fair hearing within reasonable time and the remedy for its breach and stated at paragraph 112 as follows:

²⁶ [2021] CCJ 6 (AJ).

“It is clear, therefore, that it is not the normal course that a convicted person whose constitutional right to a fair hearing has been breached will have their sentence reduced or suspended. When that happens, it is done on a principled basis of vindicating the right that has been breached. It is done to uphold the rule of law; to mark the value of the constitutional right; to meaningfully affirm that the administration of the legal and judicial system is as much subject to the law as everyone else. It is done for the good of the community and the public interest.”

[74] There is therefore a consistent stream of jurisprudence which provides very useful guidance and I apply them to the appeal at bar. Further, there are cases in which the Board has held that the appropriate remedy for the breach of the right to a fair hearing within a reasonable time can result in the reduction in sentence. This was so held in **Boolell v The State**.²⁷ The Board in **Boolell** indicated that they would not regard it as acceptable that the prison sentence imposed should be put into operation some 15 years after the commission of the offence unless the public interest affirmatively required a custodial sentence even at this stage.

[75] In **Elaheebocus v The State of Mauritius**,²⁸ the Board considered the ratio in **Boolell**. The Board however having expressed the view that a declaration may well have been a sufficient remedy, went on to state that on the balance it was right to mark the undoubted constitutional breach by making a modest reduction in the sentence.

[76] In **Tapper v DPP**,²⁹ the Board upheld a decision of the Jamaican Court of Appeal to the effect that:

“In the circumstances of this case a reduction in the sentence would be sufficient to compensate the appellants for the effects of the delay.”

[77] In **Evans v The Attorney General**,³⁰ which concerned an appeal against a life sentence for murder, the Court of Appeal of Bahamas reduced the life sentence to

²⁷ [2006] UKPC 46.

²⁸ [2009] UKPC 7.

²⁹ [2012] UKPC 26.

³⁰ SCCrApp. No 181 of 2010 (delivered 6th December 2018, unreported).

40 years imprisonment. One of the reasons for the reduction of sentence was to compensate the appellant for the breach of his right to a fair hearing within a reasonable time after a delay of more than 8 years.

[78] In **Rambarran and others v R**,³¹ two appellants had their sentences reduced to 'time spent' and were ordered to be released immediately from prison after a delay of about 10 years. In that case, the Court of Appeal of Barbados recognised the need to balance, on the one hand, the public interest in ensuring that convicted persons serve their full sentence for crimes they committed and, on the other hand, the public interest in ensuring that constitutional rights are safeguarded by trial and appellate processes that are properly performed by those entrusted to preserve and uphold those rights.

[79] As I have indicated, the state admits that the delay in providing the transcript of proceedings in the court below was unjustifiable and this Court finds that the resulting delay in the prosecution of Mr. Monah's appeal amounted to a breach of his fundamental right to a fair hearing within a reasonable time. Consequently, this Court is asked to decide whether under the Constitution of Grenada, Mr. Monah is entitled to any relief in addition to a declaration and more specifically whether this Court should grant the remedy of the reduction of his sentence.

[80] Like **Pigott** the case was not unduly complex since Mr. Monah pleaded guilty and the delay in the hearing of the appeal was due solely to the transcript of proceedings, consisting of only 7 pages, not being prepared in a timely manner which had nothing to do with Mr. Monah.

[81] There is no doubt that the administrative authorities were solely responsible for the preparation of the transcript, and no explanation was provided for the delay by the state in its preparation. In the circumstances, the delay of over 7 years to prepare

³¹ [2019] 5 LRC 431.

the transcript of proceedings was inordinate and was sufficient to constitute an infringement of the appellant's constitutionally guaranteed right to a fair hearing within reasonable time.

[82] Relying on the cases of the CCJ and the Board which held that the appropriate remedy for the breach of the right to a fair hearing within a reasonable time is in the reduction in sentence, I am of the considered view that the redress to which Mr. Monah is entitled, in the circumstances must include a reduction of his sentence of 18 years imprisonment.

[83] Contrary to what the learned prosecutor has urged and by way of my emphasis, I am not of the view there is any principle to the effect that if the sentence is not excessive that the only remedy for a breach of the fundamental right is a declaration to that effect. In fact, the consistent stream of jurisprudence to which I have referred indicate that the question of the delay is treated as a separate and distinct matter from that of whether the sentence that was imposed was excessive. I agree with Mr. Ferguson that the distinguishing feature of **Pigott** is the fact that by the time the appellate court was finally able to hear this appeal after the 4 year delay, he had not only completed his sentence but had also withdrawn his appeal against the conviction and sentence. It was in those circumstances that this Court held that the appropriate remedy for the breach of his fundamental right was the declaration. In the present circumstances of this case, there are no similar impediments which prevent this Court from fashioning redress that includes a reduction in Mr. Monah's sentence in addition to making a declaration to that effect.

[84] In **Bridgelall v Hariprashad**,³² an appeal from the Caribbean Court of Justice, it was held that the delay of 8 years and 11 months between the conviction and the conclusion of the appeal resulted in the breach of the appellant's fundamental right to a fair [hearing] within a reasonable time.

³² (2017) 90 WIR 300.

- [85] In view of the above settled principles and based on all that I have indicated, it is evident that I am in full agreement with the attractive and persuasive submissions of Mr. Ferguson. As stated above, it is clearly open to this Court to fashion a remedy pursuant to section 16 (2) of the Constitution in order to address the State's breach of Mr. Monah's fundamental right. There is nothing that restrains this Court in these circumstances from granting redress in the form of a combination of a declaration of the breach of the fundamental right to a fair hearing within a reasonable time and a reduction in the sentence.
- [86] Taking into account the totality of the circumstances, in my considered opinion given the breach of Mr. Monah's fundamental right to a fair hearing as provided by section 8(1) of the Constitution, the appropriate remedy is a reduction of 2 years or 24 months from Mr. Monah's sentence of 18 years imprisonment, in addition to a declaration that his fundamental right to a fair hearing within a reasonable time has been breached by the State of Grenada.
- [87] I agree with Mr. Ferguson that the excessive judicial delay in this matter is of grave concern. It cannot be an acceptable situation in any modern justice system that appeals of this nature should be subjected to delays of this magnitude even though it was occasioned by the State's failure to provide Mr. Monah with a copy of the transcript of the proceedings for in excess of 7 years.
- [88] It is also of concern that the transcript that was eventually provided reflect very brief notes from the judge's notebook which could not take more than a few minutes to transcribe. It is not sufficient for the learned prosecutor to merely ask this Court to take judicial notice of the endemic problem of the non-provision of transcripts in Grenada and to rely on that as an effective rebuttal to a proper plea for the reduction in Mr. Monah's sentence caused by a breach of his fundamental right to a fair hearing within a reasonable time.

Conclusion

[89] For the above reasons I would make the following orders:

(1) Mr. Monah's appeal against sentence on the basis that it is excessive is dismissed.

(2) However, Mr. Monah's appeal against sentence is allowed on the basis that the delay by the State in providing the transcript of proceedings infringed his fundamental right to a fair hearing within a reasonable time as provided in section 8(1) of the Constitution of Grenada. Consequently, the Court grants the following redress:

(a) A declaration that the State of Grenada has breached his fundamental right to a fair hearing within a reasonable time;

(b) Mr. Monah's sentence of 18 years imprisonment is reduced to 16 years imprisonment, in order to also reflect the State's breach of his fundamental right to a fair hearing within a reasonable time.

[90] I gratefully acknowledge the assistance of all learned counsel.

I concur.
Mario Michel
Justice of Appeal

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar