

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

**ANTIGUA AND BARBUDA
CASE NO. 50 OF 1995**

BETWEEN

THE QUEEN

vs.

LORRISTON CORNWALL

Appearances:

*Mr. Anthony Armstrong, Director of Public Prosecution and Mrs. Shannon Jones-Gittens
for the Crown*

Mr. Clement Bird and Mr. Kendrickson Kentish for the Defendant

2016: September 19, 21, 22, October 12, 28
November 3, 9, 13, 22

*Criminal Law - Re-Sentencing - Murder - Conviction on Trial - Original Sentence of Death
declared unconstitutional - Court's approach on re-sentencing - Application of normal sentencing
principles - Considerations of aggravating and mitigating features - Appropriate Benchmark
Sentence - Fixing a commensurate Sentence - Relevance of Delay on Sentence - Question of
whether delay and circumstances of incarceration amounted to cruel and inhumane treatment -
Relevance of declaration of unconstitutionality of Original Death Sentence on Commensurate
Sentence.*

On the 18th of March 1996, the defendant, Lorrison Cornwall was found guilty of the murder of his estranged common law partner and he was sentenced to what was then regarded as the only possible sentence, a sentence of death.

The prosecution's case to the jury, was that the lifeless body of the deceased was found strangled on the 12th March 1994. The defendant and the deceased had been involved in a common law relationship for over 9 years but this had gone sour when he believed that she was cheating. He continued to harbour strong feelings for her and they continued to meet occasionally. On the fateful day they met near her farm and they had consensual sexual intercourse. After that, he took a rope and strangled her and left her naked body in a galvanized bathtub in rubbish dump covered with bushes.

He denied the offence. The jury rejected his alibi and convicted him. Upon his conviction and sentence of death, he was placed in maximum security in the prison.

He was placed in the maximum security wing of the prisons awaiting the execution of his sentence. In 2000 a death warrant was read to him. He was measured for his coffin which was placed near to his cell so that he saw it very time he was let out of his cell for those few days. The gallows were built and he heard them being tested on a daily basis. It was at this time he confessed that he had committed the crime and that he was giving his soul to Christ. His execution was stayed hours before the appointed moment. Since then nothing more was done to carry out the sentence of death. He has continued to accept that he was guilty of this offence and has expressed real remorse.

He has been under a sentence of death, kept in the maximum security section of the prison for all these years; on lockdown in a cell for 23 hours a day. In 2015, the Prison Authorities noting his good behaviour and was satisfied that he posed no threat, wanted to place him in the general population section but he declined in an attempt to avoid 'trouble'.

In 2014, the State filed proceedings to regularize his status in prison and the His Lordship Justice Cottle declared that the original sentence of death was unconstitutional and it was accordingly quashed. It was also ordered that he be re-sentenced for the crime.

At the re-sentencing hearing it was argued that this was a case in which a life imprisonment was not appropriate having regards not only to the offence and the offender, but also having regard to the length of time which had elapsed.

Held: The defendant is sentenced to a term of 30 years, which will effectively mean he is to be released immediately for the following reasons:

1. The death penalty not being relevant, the maximum penalty which may be imposed for murder is a discretionary life sentence which is a whole life sentence. Notwithstanding the delay and complaints of Constitutional breach, on this sentencing exercise this court as a court acting in its criminal jurisdiction may as a preferred approach, first apply in the usual way ordinary common law principles of sentencing and in this regard consider the matter in the round having regards to the offence and the offender including the progress he has made in prison. In arriving at a notional commensurate appropriate sentence, the court must then consider whether there has indeed been any breach of the defendant's Constitutional rights. Where such a finding is made, the court must then consider whether in the circumstances of this case, any such violations and the delay will impact on the sentence.
2. As a matter of principle, in the context of the delay, this approach must give regard to whether the whole of the commensurate sentence or a portion thereof is grounded in retribution or deterrence. Where those elements of the sentence have been satisfied the court must go on to consider whether the defendant is sufficiently rehabilitated and there is no other public reason why he should not be released immediately. Where the court is of the view that one or the other of these elements have not been satisfied, but they may be

so satisfied by an extended period of incarceration, then the court ought to fix a review period under the regime of section 3B of the Offences against the Person Act Cap 300,

3. An examination of this offence and the offender as he stands today, the aggravating and mitigating features, though making this an extremely serious offence does not place as sufficiently serious as justifying a term of life imprisonment. The aggravating features of the case comprised of the fact that the defendant strangled the deceased with a rope and that this occurred shortly after the two of them had engaged in an act of consensual sex. It was further aggravating that the defendant left the deceased nude body in a rubbish heap covered with bushes and a galvanized bathtub. The mitigating features in the case included the fact that this defendant was to be regarded as a man of previous good character. Further, it was a crime of passion involving intense feelings of jealousy and betrayal. Having regards to the all of the circumstances in the round and taking a starting point of 30 years, a commensurate sentence would be a sentence of 35 years.
4. There were several Constitutional violations in this case. First, there was a violation of the defendant's right to a fair trial when upon his conviction, he was automatically sentenced to death without the benefit of a mitigation hearing. This breach was further aggravated when a death warrant was read to him and he was measured for his coffin. His right to a fair trial was also breached by the delay of over 20 years in the imposition of a sentence in accordance with law. These matters also amounted to inhumane treatment in breach of section 7 of the Constitution. The unconstitutional sentence of death was imposed on the 18th March 1996 and since then he remained in Prison under that sentence. Even after the death sentence was declared unconstitutional in 2015, neither the offender nor the Prison Authorities was informed of his change of status, and that a re-sentencing exercise was to be held. He was only notified when notice was sent out by this court.
5. These breaches were significant in this case and will operate to mitigate the sentence. Considering these breaches as against the actual circumstances of the offence a fixed term of 30 years is therefore an appropriate sentence. Having regards to the time he has already spent in prison and his good behavior, he shall be released immediately.

DECISION

- [1] **RAMDHANI J. (Ag.)** This is a re-sentencing exercise commenced by this Court on the 19th September 2016 pursuant to an Order made by Justice Brian Cottle.¹ At the end of the hearing, a sentence of 30 years - effectively meaning his immediate release - was considered in all of the circumstances of this case to be the appropriate sentence for the reasons now set out.

¹ Suit No. ANUHCv 2014/0359, Order dated the 4th June 2015.

- [2] On the 18th March 1996, the defendant Lorrison Cornwall was found guilty of the murder of his one-time common law partner, Patricia Farrell who was found strangled to death on the 12th March 1994.
- [3] The prosecution case at the trial was that the defendant and the deceased had been involved in a common law relationship for approximately nine years. During this period the defendant gave the deceased \$200.00 per week and provided food for her three children - he was not their father. The relationship deteriorated as the defendant believed that the deceased was having an affair with another person. He terminated the relationship on the 3rd September 1993. He began writing of his feelings for her in a notebook and on various post cards. These writings not only evidenced deep hurt and jealousy over his belief that she had been unfaithful to him, but also his continued 'strong good feelings for her'. In fact even after the break up, he proposed marriage to her and she had told him that she needed time to consider this proposal.
- [4] The deceased was last seen alive between 12 midday and 1 p.m. on the 12th March 1994. At about 9 p.m. her lifeless nude body was found covered with bushes and vines and in a galvanized bathtub in a rubbish dump in a place called the Garden. Her vagina contained spermatozoa deposited there less than 12 to 14 hours before death. The following day at around 8.30 a.m. the police found freshly burnt debris at the defendant's farm. In that debris was burnt fabric and a small safety pin. The latter was identified as belonging to the deceased by her daughter. The defendant raised the defence of an alibi and claimed that he had been in the Garden area before 10 a.m. and between 5 and 6 p.m. but not between 10 a.m. and 5 p.m. the prosecution led two witnesses who rebutted this and stated that the defendant was seen in the Garden between 10 a.m. and 5 p.m. regarded as the relevant time.
- [5] In January 2000 a death warrant was read to the defendant Cornwall. He was to be executed on the 27th January 2000. He said that he fell to his knees and gave his life to Christ and he asked God for forgiveness, He was measured for his coffin. Shortly after, he

actually saw the coffin on his way the bathroom. Hours before his execution the high court granted a stay of execution to allow for the appellate process to take its course.

[6] That appeal has since been dismissed. Even though the stay would have expired, it appeared that the prison authorities in view of the decision in Pratt and Morgan took no steps to carry out the execution of this man along with others who were facing similar fate for capital offences.

[7] Just after the death warrant was read to him the defendant accepted that he had killed the deceased that day. He presented to this court affidavit evidence which had not been contradicted by the prosecution to the following effect. He said that in 1993, he had found out that the deceased was having a number of affairs. He confronted her about each affair but that she had denied them. It was these affairs that caused the break up between them. He said that he had 'blind love' for the deceased and he was unable to completely move on.

[8] On the 12th March 1994, he met her and they had consensual sex in the pasture. He said that there was no argument but that he was still feeling hurt and angry and after the sex something came over him and he strangled her with one of the ropes that she used to tie her goats. He said he left her body there and went away.

[9] The defendant has expressed his remorse to this court. He stated: 'I would rather be dead than Ms. Farrel. I am truly regretful of what happened.... I am truly sorry for the pain I have caused [the] family'.

[10] The years passed. His status in prison remained as a prisoner under a sentence of death. He was kept in the maximum security wing for all the years. At some point in 2015, the prison authorities informed him that he could be allowed in the 'general population' because he was not seen as a security risk. He refused and has explained to this court that he did not wish to mix with other prisoners as 'the yard is hell'. In maximum security,

he is essentially on 'lock down' for 23 hours a day, being allowed only one hour out into the yard for all his hygienic and recreation needs.

[11] In 2014, the Honourable Attorney General took matters in his hands, and on behalf of this defendant and six others who were similarly being held under their original sentences of death, a claim (Suit No, ANUHCV 359 of 2015) for filed in the high court for orders that the sentences of death which had been imposed as a matter of course as a mandatory sentence was unconstitutional. On the 4th June of 2015, the Honourable Justice Cottle granted the declaration which was sought and ordered that this defendant and the others were to be re-sentenced by the high court at the earliest opportunity.

[12] When this matter came on for re-sentencing this defendant had spent just over 20 years in prison, all of which was spent in maximum security.

The Submissions from the Prosecution and the Defence

[13] Having regards to the unique task facing the court, both sides were invited to make submissions; these were both oral and in writing.

[14] Mr. Anthony, the learned Director of Public Prosecutions submitted that

[15] Mr. Bird in his written submissions and Mr. Kentish in his oral arguments submitted that if the normal sentencing principles were applied to this case, having regard to the aggravating and mitigating features of the offence and offender, and taking into consideration that the defendant could be considered as properly rehabilitated, a suitable sentence would be a sentence of a fixed term of imprisonment which would result in his immediate release.

[16] The attorneys also argued that in this re-sentencing exercise, the court was exercising powers under section 18(2) of the Constitution of Antigua and Barbuda, which gave the

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" court power to make any order necessary to remedy or prevent any breach of a person's Constitutional rights. He argued that these powers 'are uncircumscribed and un-curtailed and therefore permit a wider range of possible disposals than are available to the sentencing judge at the original criminal trial.'

- [17] In this context it was submitted that there were a number of matters which amounted to violations of the Constitution. First, it was argued that among these violations was the mandatory imposition of the sentence of death was since 2002 recognized as being unconstitutional (the order of Justice Cottle came only in 2015). This breach was further exacerbated by the reading of the death warrant and the preparation to execute him. Second, the length of time which the defendant had spent under the sentence of death violated his constituted rights as being cruel and inhumane treatment. Third, the general conditions of the prisons under which he was detained was also raised as amounting to cruel and inhumane treatment. It was submitted that these matters should have the effect of affecting any commensurate sentence with the ultimate result that the defendant should be released forthwith.

The Evidence Considered at the Mitigation Hearing

- [18] The evidence considered at the mitigation hearing included the testimony of several witnesses, a pre-sentence report from the probation department which included a victim impact statement and a psychiatric report prepared by doctor.

The Pre-Sentence Report - Lorraston Cornwall

- [19] At the date of sentencing the convicted man was presented to this court as a 59 years old man from All Saints who prior to his incarceration worked as a carpenter. He has been on remand since his arrest for this offence and has now spent nearly 20 years in prison for this offence.

[20] The court leant that the defendant came from a bible loving family with strong family ties. Family and community members have varying impressions of the defendant. Some have described him as being as a guitar playing man who is 'quiet, giving, intelligent, skilled and very nice'; he is not known to be a violent person. Others perceive him as 'wicked, bad, ignorant and untrustworthy' and there is some anecdotal information about him being once in a violent confrontation with his brother.² Community members recalls the relationship between the defendant and the deceased and it was generally described as positive. It would appear that in large part the defendant was a responsible man in life who longed for stability.

[21] The report did not touch on the defendant's years in prison.

2013 Report from the Acting Superintendent of Prison and Oral Evidence from Current Prison Superintendent and Senior Officer

[22] A 2013 report from former superintendent Percy Adams, a report from Reverend Canon Emerson Richardson, the Chaplain at the Prisons in 2013, and a report from the Prisons' Medical Officer were admitted by consent.

[23] The Reverend Richardson had positive things to say about the defendant. He stated that the defendant 'is ever grateful to Almighty God for sparing his life in 2000 when the court ruled a stay of execution. In 1997 he accepted Christ and now has a new outlook of life. He sees himself, not as an inmate of Her Majesty's Prison, but as a 'prisoner for Christ'. He believes that God can and will deliver him and Jesus Christ is his lawyer and his everything.'

[24] The 2013 Report from Mr. Adams says of the defendant: 'A stay of execution was granted to the inmate Cornwall and his behavior has changed from being angry to well behaved, and he reads the bible as his guide.' He 'conducts classes with fellow inmates.'

² This has not been proven and cannot be used by this court.

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- [25] The current Superintendent of Prisons, Mr. Albert Wade swore to an affidavit dated the 16th September 2016. He stated he is familiar with the defendant in his capacity as Superintendent of Prisons and he has read through the defendant's record.
- [26] He states that there has been no indications of a disciplinary nature involving the defendant since he was incarcerated on the 18th March 1996. He is a respectful prisoner.
- [27] He states that the defendant keeps mostly to himself and continues to stay in the maximum security section of the prison. He was told that he could be removed and placed into the general population but he has declined the offer preferring to remain in the solitude of the maximum security wing so that he may avoid conflicts with others. For the same reason, he has declined to involve himself in any prison activities. The superintendent has opined that the defendant is rehabilitated and from that standpoint, suitable for release into society.

The Psychiatric Report

- [28] A psychiatric examination of the defendant was conducted by Dr. James A. King. A report dated the 13th October 2016 was presented to the court and was by consent admitted into evidence. It was the opinion of the doctor that at the evaluation of the defendant, no present or past history was elicited for symptoms consistent with any anxiety, effective or psychotic disorder. He was competent and had no relevant medical issues.
- [29] The doctor stated that his insight, judgment and impulse control were adequate during the evaluation. Further along the doctor said that nothing was elicited from the defendant which suggested that he was a person who was aggressive or violent. He was deemed competent to participate in his sentencing hearing.
- [30] The doctor also assessed him for dangerousness. It was opined that he leaned towards being eccentric and that his 'relative risk to recidivism seemed low to moderate. It was

recommended that if he is released, he could benefit from ongoing long term social worker intervention.

The Impact of the Offence on Surviving Relatives

[31] At the request of the court, a family impact statement was contained in the pre-sentence report. Two of the deceased's three children have spoken about the impact that the offence has had on them.

[32] Ms. Ezel Farrel, a sister of the deceased, Patricia Farrel, is now 60 years old. She stated she and her sister were very close, sharing significant life experiences together. She said that the death of her sister 'hit her very hard'. She said that she 'felt light like a cock' when she had heard that her sister was missing, and when she was found dead, she was sick for many days but could not cry.

[33] The son of the deceased, Mr. Joyle Edwards also spoke of the loss of his mother. For him, his mother was both his father and mother. He said that he was very attached to his mother and when she died, he spent nearly five years in agony trying to adjust. He was the one who has reported his mother missing and assisted in the search for her. When he saw her dead, he collapsed. He had many sleepless nights, afraid of being alone, afraid of the defendant and afraid of everything and nothing.

[34] Ms. Karen Edwards is a daughter of the deceased. She spoke of her continuing grief. She was closest to the defendant during the latter relationship with the deceased. She was devastated when her mother died and it affected her schooling. She was a child when her mother died and others had to care for her. Today she continues to feel loss and anger over this tragedy.

The Court' Approach and the Appropriate Sentence

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[35] This court has embarked on this sentencing exercise as a direct result of the Order of Justice Cottle. The learned Judge had ruled that the original sentence of death which had been imposed was unconstitutional and was accordingly quashed. The Order directed that the defendant be sentenced by the High Court at the earliest opportunity. On this exercise this court is acting as a criminal court conducting a sentencing exercise under the original criminal proceedings.

[36] It is accepted that the prescribed and discretionary death penalty is not relevant in this sentencing exercise, the maximum penalty which may be considered for this offence is a discretionary term of life imprisonment. Under the common law a sentence of life imprisonment means imprisonment for the whole of the natural life of the prisoner, so much so that even if a prisoner is released on licence this sentence continues to remain on him until his death.³

[37] In deciding whether sentences of life imprisonment or lesser fixed terms are appropriate in this case in relation to this defendant, this Court, in the absence of any statutory scheme is guided by the common law principles or aims of punishment⁴ including retribution, deterrence, prevention, rehabilitation and restoration. It is these principles that will inform this Court's determination as to what is a commensurate and appropriate sentence in this matter. It will further inform the court whether in any given case which of the sentencing principles will take precedence so that for instance in a given case, a commensurate sentence may well be a sentence which rests more firmly on retribution than on rehabilitation.

[38] The court has been urged that both on ordinary sentencing principles applied in the normal way and on the basis of several violations of the Constitution arising in large part from the original mandatory imposition of the death penalty and prolonged incarceration of the defendant as a prisoner under a sentence of death for all these years, an appropriate

³ See RV Foy

⁴ Desmond Baptiste v R Criminal Appeal No. 8 of 2003

sentence would not be a term of life imprisonment but instead a fixed term of imprisonment.

[39] Now, in my view, in this exercise, the court may as a preferred approach first approach this matter as it would any sentencing exercise without regards to any delay and any complaints of constitutional breach. The court should apply those ordinary principles of sentencing, and consider the matter in the round, having regards to both the offence and the offender, save that in considering the latter, regards be had to him as he stands before the court today. With these consideration an appropriate sentence should be fashioned. It is only then the court should consider whether the delay and the other complaints would have any effect on the sentence. I turn to consider the circumstances when a life term would be appropriate.

[40] Under the common law, a discretionary life sentence may be imposed where it is commensurate sentence necessary for retribution and deterrence; namely applicable for offences among the worst of the worst. Even recent English courts, construing present day statutory prescriptions, have accepted that these discretionary life sentences are reserved for offences of utmost gravity.⁵

[41] Quite apart from being a purely punitive sentence, a life imprisonment may equally be appropriate where there are considerations of the risk to society as well as rehabilitation of the offender; it really requires considering both the offence and the offender.⁶ A term of life imprisonment may also be appropriate where such a sentence is necessary to protect the public from a dangerous offender.⁷

[42] Whilst it is clear that the courts are prepared to impose a whole life term for grave and heinous offences even where the offender have had previously good character, it has been recognized that even persons serving a life sentence can be released after serving what

⁵ *R v Wilkinson* [2010] 1 Cr. App. R(S) 100

⁶ **David Roberts v R** Criminal Appeal No. 8 of 2008

⁷ Some territories have codified this principle. See for example section 1097(2)(b) of the Criminal Code St. Lucia.

could be regarded notionally as the punitive part of the sentence and it is shown that they have been rehabilitated and pose no danger to society.^a

- [43] The experience of the courts have shown an approach that a starting point of life imprisonment is considered appropriate where the offence falls into a notional category of extremely serious and rare, but a real possibility exists that changing circumstances may lead a court to conclude that the prisoner has satisfied all the punitive elements of his sentence and he is sufficiently rehabilitated and there is no other matters of public interests which should not operate against his release.
- [44] The effect of this approach is that would be a rare case where the offender would have been required to serve a whole life sentence, such a sentence only being reducible on the basis of the exercise of the clemency by the Governor General. It recognises the primacy which is given to rehabilitation in keeping with the State's obligation to subscribe to a modern approach to punishment.
- [45] This jurisdiction has given legislative voice to this recognition in providing an available scheme for early release for offenders serving life or extended sentences for certain offences. In Antigua and Barbuda, the possibility of the review of life terms or long term sentences for certain offences including murder, is now addressed by section 38 of the Offences Against the Person Act, Cap 300 as amended by the Offences Against the Person (Amendment) Act No. 13 of 2013.⁹
- [46] The early release provisions remind the court that a sentence of life imprisonment may be based on several elements and it should not inadvertently amount to a sentence for the full natural life of the prisoner. The 2013 amendments clearly intend in appropriate cases, to provide life termers with some hope of the possibility of release before the end of the natural life. Parliament must have intended by way of restorative justice where it is

⁸ Section 3B of the Offences against the Persons Act, Cap 300

⁹ This section has been discussed in Harris and Joseph Criminal Case No. 62 of 1995 judgment delivered on the 21 November 2016

appropriate to do so, to have some regard to the duty to respect human dignity of the prisoner including his 'right not to live in despair and helplessness, and without any hope of release regardless of circumstances.¹⁰

[47] In this regard therefore, it would seem to me that notwithstanding the use of language directory in nature, a court in considering the imposition of a life sentence or any extended fixed term sentence must give consideration. as to whether a review date for release should be fixed. Where the life sentence is made up of several components, one being that part representing the punitive aspect of punishment, a review date should be fixed marking the expiration of that period.

[48] In the unusual situation facing this court, the court is not tasked with a review but rather of imposing a sentence many years after the conviction. This being so, this court must at the very least consider whether the deterrent and retributive elements of this sentence may have run its course, and if so, whether there is any public interest matter or issues of rehabilitation which may militate against release. In these circumstances, if it is relevant, considerations will be given to whether a review period may be suitable with regards any of this offender.

[49] I turn to consider the aggravating and mitigating features of this case.

The Aggravating Features of this Case

[50] There are a number of aggravating matters in this case. This was a killing by strangulation and for reasons which would be explained shortly it would have come after this defendant and the victim would have had sexual intercourse. This would have been a gruesome death.

[51] It is also an aggravating feature that this defendant intended to kill this victim. Murder is an offence which can be committed by either an intention to kill or an intention to cause

¹⁰ **State v Tcoeib · [1997] 1 LRC 90**

grievous bodily harm where death then results. Here from the clear facts as the jury would have found them, this defendant intended to kill the deceased.

[52] It was also aggravating in this case, that the defendant left the deceased naked after he killed her. This was someone he had had sex with, who he had been involved with for 9 years. This was a shaming and sadistic act.

[53] Learned Counsel for the defendant have argued that the fact there had been sexual intercourse with the deceased shortly before he killed her is not an aggravating feature in that it is not indicative of nothing. They submit: 'there has never been any suggestion that this was not consensual and could not be interpreted as an indicator of passion or indifference....' There is nothing indicating he was in any way cold-blooded towards her or that this murder was premeditated.'

[54] This Court does not agree. Any way this is looked at, the fact that this man had sex with this lady and then he killed her makes this an aggravating feature. This was a cold blooded act to have strangled her after he had sex with her. The fact that she was found nude leads to an irresistible inference that he would have killed her just after they had sex. This is an aggravation in this matter. I agree with the learned Director on this matter.

The Mitigating Features

[55] I turn to consider the mitigation in the case. The defendant committed this offence when he was 38 years old. He is regarded by this court as not having any previous convictions. It is a mitigating feature in this case that at 38 years of age the defendant was a man who had not come into conflict with the law. Today he stands before this court as a man who has been of good behaviour for all the years he has been in prison. He will be regarded as a man who has been rehabilitated.

[56] It is also a mitigating feature in this case that the defendant was laboring under strong emotional feelings at the time. This was a relationship which had gone wrong and

regardless of whether he was justified, he was acting under extreme jealousy and feelings of betrayal.

- [57] . Not long after he was convicted, he ceased denying that he had committed the offence and accepted that he had killed the deceased. He has expressed genuine remorse for his actions and this will now mitigate his sentence.

[58] The original unconstitutional sentence of death, the length of time this has taken to be regularized, the conditions and circumstances of the defendant's incarceration have been presented to this court as matters which should mitigate any sentence which the court may have fixed as being commensurate but for these matters. One or all of these matters may in an appropriate case have this effect. These matters will be considered shortly.

The Notional Sentence

[59] In this case, this gravity of this offence was high, as there was a sadistic element to this offence. This defendant had had sex with the victim. This court is prepared to accept the inference favourable to him that this sexual intercourse was consensual. But just after that, he killed this lady, and then he left her naked body in a rubbish dump as if she were garbage. This was a shaming act. This offence is a brutal offence and would have required an amount of depraved indifference to the woman he had just been very intimate with. This is a case therefore, in which, in the normal way, a sentence of life imprisonment would have been the appropriate starting point.

[60] That being the case, this court would go on to consider and fix the minimum period which would represent the punitive aspect of this sentence. I have noted the cases and in this case, 35 years would represent that period. In these circumstances, a notional commensurate sentence would therefore be a term of life imprisonment to be reviewed for early release after a period of 35 years has been served. I now turn to consider the impact of the extraneous mitigating matters on this sentence.

[61] This court has considered the cases which were supplied by both sides as well as others which the court's own research found as relevant. Among those considered were: David Roberts v The Queen - [2009] ECSCJ No. 146; Jerry Martin v The Queen - [2011] ECSCJ No. 121 Nardis Maynard v R Criminal Appeal No. 12 of 2004 SKN; Kamal Liburd and Jamal Liburd v R Criminal Appeals Nos. 9 and 10 of 2003; Lyndon Lambert v R Criminal Case No. 57 of 2003; David Roberts v R [2009] ECSCJ No. 146; Curvin Jeremiah Isaie v R Criminal Appeal No. 6 of 2006; Rudolph Lewis v R; Berthill Fox v R Criminal Appeal No. 40 of 1998; R v Avie Howell and Kaniel Martin Criminal Case Nos. 29 and 30 of 2010; R v Jay Marie Chin Criminal Case No. 31 of 2011; R v Lasana Riley and Jevorney Richards Criminal Case No. 11 of 2012; R v Gideon Jackson, Omari Phillip and Timore Elliot Criminal Case No. 44 of 2013; R v Isaiah Benjamin, Edwin Gomez and Jerome Anthony Criminal Case No. 66 of 2013; R v Samuel Lewis Jnr. Criminal Case No. 25 of 2002.

[62] In **Andrew Millon v R** Criminal Appeal no. 6 of 2009 and Dennis Campbell v R Criminal Appeal No. 7 of 2009, the deceased was strangled to death. The Court of appeal found that a sentence of life imprisonment was appropriate with a minimum of 30 years with parole after 35 years.

[63] I now turn to consider the complaints of Constitutional violations and their effect in this case.

The Delay and Other Violations

[64] In this case, the defendant was, without the benefit of any mitigation hearing, subjected automatically to death on his conviction on the 18th March 1996. That sentence of death was so imposed as all courts locally and regionally with similar statutory provisions at the time proceeded on the basis that it was proper and lawful. This sentence led the Executive in January 2000, to read out to the defendant a warrant of death; his execution was to be carried out within a matter of days He was measured for his coffin. He saw his coffin for these few days thereafter as he was let out to use the bathroom. During this period, he

heard the gallows being tested every day. Just hours before the time fixed for his execution he was granted a stay.

[65] I agree that the manner in which the sentence of death was imposed on the defendant in 1996, was a violation of his Constitutional right to a fair trial which includes that right to be heard on his sentencing and to be given an opportunity to present a sentencing court with mitigation relevant to the circumstances of the offence and himself. See *Reyes v R* [2002] UKPC 11. The fact that matters went as far as the death warrant being read out to him and him being measured for his coffin and seeing it and hearing the gallows being tested on a daily basis has only aggravated this breach.

[66] The declarations that the mandatory penalty of death was unconstitutional took this region by storm and it led to many governments being required to address such sentences which had been imposed in the past. Notwithstanding this, it is a matter of alarming curiosity that nothing was done about this with regards this defendant until 2015 when the State itself sought and obtained a formal order that the sentence of death was an unconstitutional sentence.

[67] The delay in this exercise had had one clear effect on the fate of this defendant. He has spent more than the five years on death row, and so even if the original sentence of death had been a lawful sentence, it could no longer be carried out. (See *Pratt*). It must be noted that the 'five years period' is not prescriptive as *Pratt* itself has recognized. Depending on the circumstances of the case including the conditions under which the defendant is held, a much shorter period may have the effect of preventing the State from carrying out the death sentence.¹¹ Even if it has been suggested as being applicable to this case, it would have been rejected.

¹¹ See the case of *Kigula and Others v Attorney General*, Constitutional Court of Uganda, Constitutional Petition No. 6 of 2003 referred to in *The Republic v Njiratenga Banda*; 3, High Court of Malawi Homicide Sentencing Re-Hearing No, 8 of 2015

[68] That result however, does not diminish the pain and suffering that the defendant must have endured having been under a sentence of death for all these 19 years. This uncertainty must have a real source of punishment to this defendant.

[69] The manner in which the defendant has been treated by the State is largely inexcusable. No person should have been kept for this length of time under this sentence of death. As the Caribbean Court of Justice stated not so long ago: "*... the Constitution affords even to persons under a sentence of death, rights that must be respected and that the true measure of the value of such rights is not just how well they serve the law-abiding section of the community, but also, how they are applied to those for whom society feels little or no sympathy.*"¹²

[70] There was one commendable effort to regularize this when the then Attorney General in 2014 moved the court to quash the original death sentence and put right this matter. That however, was not followed through as vigorously as it could have been. Even after the order was made by the court in 2015, no-one informed the defendant or the prison authorities that the defendant was no longer under a sentence of death.

[71] It is recognized, that this case is different from those cases where there has been a delay in the actual trial where an accused waits for years leading to his conviction and then he is sentenced. This is a case where the issue of the defendant's guilt has long been determined and all appeals on his conviction dismissed, and even he himself has accepted that he committed the offence after initially denying it.

[72] Nonetheless, these violations must result in a remedy. A remedy in these cases must take into account not only the violations but also the nature and gravity of the offence as well as the public interests. It will be these considerations which will guide whether an appropriate remedy would be, on the one end of the scale, a public acknowledgement of the violation, and on the other end of that scale a reduction of the commensurate sentence. Even apart

¹² Attorney General et al v Jeffery Joseph and Lennox Boyce

from the nomenclature of a 'remedy', the period and circumstances of the defendant's incarceration are really in effect a mitigating feature, though distinct from the usual mitigating features that ought to be weighed in the balance in fixing the final sentence.¹³

[73] As this court has noted earlier, an application of the usual principles have led to a finding that a commensurate sentence in this case is a life sentence with a review after 35 years. In the circumstances of this case a mere acknowledgement of the Constitutional violations is not sufficient. The death penalty was never applicable to this case. Thus, the imposition of such an unlawful and unconstitutional sentence on him was cruel and unusual punishment. It is in the public interests that persons should only be punished in accordance with law. Thereafter the hangman's noose hung over this man's head for many years. That too is cruel. Everyone appeared to have forgotten this man until that Honourable Attorney General filed the claim in 2015. These breaches were further aggravated by the conditions under which he was detained.

[74] This court has weighed these breaches against this offence, bearing in mind the learning set out in *Rummun* which indicates that in some cases of considerable gravity even the breach of a Constitutional right ought to affect the final sentence. This, however, is a case in which it will impact the sentence. This court will decline to impose any life term with a period of review. A suitable remedy must therefore result in a fixed term sentence of 30 years. Having regard to all the¹⁴ time spent in custody for this offence and the fact the defendant is considered sufficiently rehabilitated, the appropriate disposal in this case must be that the defendant must be released immediately.

[75] The Court's gratitude goes to counsel, the probation department, the prison officials and all others for the assistance in this matter.

¹³ See *Pratt v Morgan*

¹⁴ See the approach of *Rummun v State of Mauritius* [2013] 1 WLR 598 at paragraph 13 where the court was considering a remedy for delay. The Board stated: *In some instances it may not be a factor of great weight and there may even be some cases in which, because of the strength of countervailing factors such as the gravity of the offence, it will be accorded no weight at all.*"

A handwritten signature in black ink, appearing to read 'Darshan Ramdhani', with a stylized flourish at the end.

Darshan Ramdhani
High Court Judge (Ag.)