

ANTIGUA AND BARBUDA

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL JURISDICTION)

CASE NO. ANUHCR 1995/0062

BETWEEN:

THE KING

-and-

MELLASON HARRIS

MARVIN JOSEPH

Appearances:

Shannon Jones-Gittens for the Crown (Respondent)

Mr. Sherfield Bowen for the Applicants

2024: March 18th, April 12th, May 23rd,

July 5th, 17th, September

SENTENCING REVIEW

INTRODUCTION

1. Bakre J. The two accused persons were convicted by a jury in February 1996 for the murder of four persons. The sentence was for the then mandatory penalty of death by hanging. In January 2000, warrants of death were read to them in preparation for their execution but they were granted stay before the execution could take place. The Attorney General had approached the court for

declarations that their Constitutional rights were breached when the mandatory death sentences were passed.

2. The court granted the declaration that their rights were breached and ordered that they be re-sentenced by the High Court.
3. On the 28th of November 2016, the accused persons were re-sentenced by His Lordship Dashan Ramdhani to life imprisonment with a clause that it may be reviewed after they have served (45) forty five years. The court had relied on Section 3B of the Offences Against The Person (Amendment) Act 2013.

The sentences read:-

“Marvin Joseph, you are sentenced to life imprisonment. You shall serve a minimum of 45 years as representing the punitive element of this sentence. Also time spent on remand or under detention shall be deducted from this period, at the expiry of that period, you are to be reviewed by a court in accordance with Section 3B of the Offences Against The Person Act Cap 300, for possibility of early release”.

“Mellanson Harris, you are sentenced to life imprisonment. You shall serve a minimum of 45 years as representing the punitive element of this sentence. Also time spent on remand or under detention shall be deducted from this period, at the expiry of that period, you are to be reviewed by a court in accordance with Section 3B of the Offences Against The Person Act Cap 300, for possibility of early release”.

THE LAW

4. **Section 3B of the Offences Against The Person (Amendment) Act 2013** reads:-

“(1) where a person is convicted of any offence under Part I and II of this Act, and sentenced to life imprisonment or to a lesser period of imprisonment, the court may order that the sentence imposed on the convicted person be reviewed by a court of competent jurisdiction after the person has served not less than a period of:-

- (a) Thirty years where the sentence is for life imprisonment, and thereafter at intervals of five years;*
- (b) Twenty years, in case of a lesser term of imprisonment, and thereafter at intervals of three years,*

...and there consider whether it is any longer necessary for the purpose of deterrence, retribution, rehabilitation and in the public interest that the convicted person should be further detained. “

THE FACT

5. The applicants along with one Donaldson Samuel had gone to rob some visitors to the island on their yacht which was anchored around the coast of Barbuda. In the course of the robbery, the applicants killed the four occupants of the boat in a gruesome manner. The applicants were charged in 1994 and convicted for the murders of four persons. The other person, Donaldson Samuel, pleaded guilty to the offence of manslaughter and gave evidence for the prosecution. In 1996, both applicants were sentenced to death by hanging.

6. The fact of the incident, as captured by the judgment of Ramdhani J. in the re-sentencing judgment is as follows;-

"On the 26th of January 1994, the yacht 'computer challenger' arrived from Antigua to the Low Bay Lagoon, Barbuda. There were four persons on board visiting the twin islands of Antigua and Barbuda. There was the captain Ian Cridland, his mate Thomas Williams (a young man in his 20s), and a couple Norman and Kathleen Clever, the former being in her 40s and the latter in his early 50s.

7. *Sometime in the afternoon of the next day, the captain of a nearby yacht noticed that the dinghy of the 'Challenger' was anchored about 40 miles from the Challenger with no one nearby. He became suspicious and sent a crew member to check on the Challenger. This resulted in the gruesome discovery of four lifeless and bloodied bodies slumped and fallen around a table; 'there was blood all over'. The bodies were found bound and gagged. The subsequent police investigation led to the arrest of a number of persons. Three persons, these defendants, and one Donaldson Samuel were later charged with the murder of the four victims. Samuel pleaded guilty to manslaughter and gave evidence for the prosecution against these two defendants.*
8. *It was the case before the jury which the jury would have accepted that the defendants and Samuel had met several days before the attack and had planned to execute an armed robbery on any one of the yachts that frequented the Low Bay area. In preparation for this crime, the defendants, Harris and Joseph planned and executed a housebreaking and stole a 12 gauge pump action shotgun from one Griffiths; the gun had five live shells at the time.*
9. *It was buried until it was needed for the robbery and then was dug up. It was agreed that they would use a small boat described as 'Sunfish' which had been earlier hidden at Low Bay. (One witness testified that the 'Sunfish' had been stolen from him in October 1993.) The men agreed they would use a small speedboat, a Boston whaler which was often moored along the lagoon at Pier Codrington to get to Low Bay, Barbuda. Their plan came to fruition on the 27th January 1994 and they identified the Challenger as the target of their attack. That night they did 'borrow' and use the Boston Whaler to speed off to Low Bay where they pulled out their 'Sunfish from where they had earlier hidden it. They then 'paddled by hand' some 15 minutes in the darkness of the night to get to the yacht.*

10. *When they boarded, the defendant, Joseph was armed with the gun. They encountered the captain and Joseph 'stuck him up' with the gun. On their command, the captain roused the other occupants and they came out of their cabin. At gunpoint, all were immediately tied up with rope and their mouths taped. One of the victims managed to untie the rope and tried to get away. He was immediately recaptured and retied, this time the defendant Joseph did the tying. Samuel, at the direction of Joseph, went down to the cabin to search where a number of items were found, including money, a camera, and a bird gun. This lasted between 30 minutes and an hour.*
11. *The jury was told by Samuel that the victims were bound, gagged and seated around a table, and that after the search was completed and items were taken and placed in a bag found on the yacht, he tried to get the defendants to leave. He said that no one listened to him. The defendant Joseph then shot the mate the young Thomas Williams. Samuel testified: "Marvin shot the young guy. He passed the gun to me. I told him I don't know how to use it. I dropped it on the step. I told him I don't know how to use... before he passed it to me he said shoot. ..then he passed it to Mel who shot the other victims.'*
12. *The defendant Harris gave three statements to the police and he stated in one of those that Joseph shot the first victim, Mr. Thomas and he, Harris shot the other three after Joseph passed the gun to him and told him to shoot those persons. In one of the subsequent statements, Harris also stated that he shot the first person and then Joseph who did not believe that person was dead took the gun from him and shot him in the back of his head to ensure he was dead.*
13. *Harris stated that he killed the others because "as one dead, I did not see no reason to keep the others alive." The medical evidence showed that Thomas was shot in his head and the pellets also hit his back suggesting he was shot from above confirming that he was seated at the table. The victim Kathleen Clever was shot next. When she was shot she was trying to hide behind the table. There was medical evidence of the entry origin of the gunshot injury which supported that finding that she was moving. Norman Clever sitting next to her was then shot. He was shot point blank to his chest. Then the captain was shot. The medical evidence showed that he was shot point blank to his chest. The medical evidence showed there was blood in his lungs supporting a finding that he lived for about 15 minutes after he was shot.*
14. *Samuel told the jury that after the killings, they left the yacht on board the 'sunfish' taking the BB gun and a bag filled with the stolen items. They paddled to Low Bay and then used the speedboat, the Boston Whaler to get back to Codrington Bay. He said that the three of them hid the shotgun in a sandpit west of the airport and the bag in a sandpit southeast of the airport.*
15. *Harris' fingerprint was found on the tape that bound Kathleen Clever's mouth. He also gave statements accepting in large part the role he played in the murders. He also took the police to where the bag and items stolen from the yacht was found. The bag bore a label marked with the words 'Captain William Clever', 'Jethau' and his phone number.*

16. *These defendants were convicted on the 28th February 1996 and were on that same day sentenced to death. There was no mitigation hearing as at that time, it was considered that the sentence was a mandatory sentence in the sense that it was to be imposed as a matter of course.*
17. *In January 2000 a death warrant was read to each of the convicts. They were to be executed within days. They were measured for their coffins. Hours before their execution was to be carried out the High court granted a stay of execution to allow for various appeals to be filed. Those appeals were pursued but the convictions and sentences were affirmed. With the passage of time, the rulings by the Privy Council in **R v Pratt and Morgan [1994] 2 AC 1** became relevant and it appeared that the prison authorities accordingly took no steps to carry out the execution of the convicts. No formal pronouncements or orders, however, were made at the time and for all intents and purposes, these men remained in prison under the original sentence of death. Each spent some ten years in maximum security section of the prison and was then transferred to the 'general population' on the basis of their conduct and an assessment that their risk level was low.*
18. *In 2014, the Attorney General, fulfilling an obligation of the State, took matters in his hands, and on behalf of these men and five others who were similarly being held under sentences of death for unrelated offences, a claim by way of Originating Motion was filed in the high court for orders that the sentences of death which had been imposed on each man as a matter of course as a mandatory sentence was unconstitutional.*
19. *On the 4th June 2015, the Honourable Justice Cottle granted the declaration which was sought and ordered that each of these men be re-sentenced by the high court at the earliest opportunity.*
20. *When this matter came on for re-sentencing each of these men had spent just over 20 years in prison, ten of which was spent in maximum security. It also seemed that when notice was sent out in September 2016 to each of the defendants to attend to their sentencing hearing, neither man had been informed of the order made by Justice Cottle. It also became clear that even the prison authorities had not been formally notified of the order and records of the Prison continued to reflect that each man was under a sentence of death."*
21. *Subsequent to this, on the 28th of November 2016, Ramdhani J. in compliance with the court order of Justice Cottle, carried out the Re- sentencing exercise of the two applicants. A sentence of life imprisonment with a review upon expiration of 45 years under Section 3B of the Offences against the Persons Act Cap 300, was made against the two applicants.*

THE APPLICATION

22. *The applicants, having spent the number of years stated in the said re-sentencing Order have now applied to this court for a review of the sentence.*

23. In the bid to consider this application, this court requested for and received the following:-

1. Psychiatric Report on Mellanson Harris.
2. Psychiatric Report on Marvin Pernell Josseph.
3. Social investigation Report on Mellanson Harris.
4. Social investigation Report on Marvin Joseph.
5. Prison Character Report on Mellanson Harris.
6. Prison character Report on Marvin Joseph

The documents were all deemed properly admitted as exhibits.

24. In the course of the hearing, the crown called the following as witnesses:-

1. Bonnie Floyd, daughter of Norman and Kathleen Clever (two of the victims).
2. Jermaine Anthony Jr. the Chief Prison Officer.

25. Subsequent to these testimonies, each of the applicants also gave evidence in respect of their applications.

26. **Bonnie Floyd** gave evidence on the impact of the action of the applicants on her and her siblings. She stated that she is now a minister of the gospel and that two of the victims were her biological parents. She said she was 33 when the incident happened. She testified that she has four other siblings from her mother but she was the father's only child. She said her brothers were aged 21 and 25 when the incident happened. She narrated how she was informed about the gruesome murder of her parents and how the news devastated and shattered her.

27. She shared the last set of pictures taken by her parents and said she has tried to feel peace in forgiveness. She ended by saying that she still feels the pain of the death of her parents.

28. **Jermaine Anthony Jr.** gave evidence and tendered the prison reports of the applicants. He described Mellanson Harris as a model inmate and said he believes he has shown himself to be disciplined, responsible and obedient. He said he considers him a trusted inmate.

29. He rated Harris at topmost level of trust and said they assign roles to him regularly. He stated further that Harris has educated himself and completed several programs including a course at the University of West Indies. He said he also did programs in anger management, and professional conduct.

30. He said Harris has also trained as a mechanic while in prison and he considers him dependable and he is one of the auto body work specialist in the prison. He also said he is responsible for the property room of the inmates and also assists the quartermaster.

31. He suggested that Harris is totally remorseful with deep regret for his past action. According to him, Harris has no record of infraction in the last 30 calendar years he has been in prison.
32. On Marvin Joseph, he said he keeps to himself and that he could not say if Joseph is remorseful or whether he has a record of infractions. He admitted however that he sometimes ran afoul of prison rules and was once instrumental to a prison riot which was allegedly over quality of food. He said he was not aware of their situation when they were on death row as he was not there then.

The applicants also gave evidence.

33. Mellanson Harris was the first to take the stand. He said he is 52 years old and that he had been in prison since he was 21 years old. He said he was involved in the murder of four people and that he has been struggling with that mentally. He said he listened to the testimony of Bionne Floyd and that he seeks her forgiveness for the offence. He said he was young and totally immature when the offence took place. He apologized to the community of Barbuda for letting them down and that he will always try to get the forgiveness of the people.
34. He said his parents were alive when he was locked up but they are now late. He said if he is released he would be able to stay in his parent's old house. He confirmed that he has learnt auto body works and will be able to sustain himself if he is considered for a release. He said he was never in any infraction with prison rules for the 30 years spent in prison.
35. When asked under cross examination if he has now admitted he actually killed the victims, he said he has tried to avoid thinking about the incident.
36. Marvin Joseph was also called to the stand. He said he has been in prison for 30 years. He said he is sorrowful, and does not have a nice memory of the event. He also apologized to Bionne Floyd saying he is sorry for the pain he caused her. He said a few things that he has achieved in prison were not stated by the prison officer and that he has tried to also learn a trade.
37. He said he has acquired IT skills while in prison and that he has natural skill in craft making and masonry. He said he attended a course in climate impact and life skill training and has tried to develop himself in case he has a second chance and that he has business plans he would be able to live on.

ANALYSIS

38. As earlier stated I have had the opportunity to listen to various witnesses and also read various reports in respect of this review.
39. I have noted the continuous and emphatic statement of the applicant's counsel that this is not a sentencing exercise. It is my understanding that the position of the applicant's counsel is that, this

court at this stage is to accept all that has transpired thus far in this case as settled, and merely to review the sentence already delivered. In doing that, I am of the view that this would mean that all proceedings, holdings and orders earlier made with respect of the case are deemed settled and without a need to review the facts.

40. I appreciate the fact that this review exercise is also guided by certain principles as enunciated in the law and judicial precedents. With this in mind, I shall proceed to consider the application. The statute has stated what should be the consideration of the court in this exercise. The law states that the court should consider whether it is any longer necessary for the purposes of deterrence, retribution, rehabilitation and in the public interest that the convicted persons be further detained. (See Section 3B.)
41. All these requirements along with prevention have been said to be the objectives of sentencing. In **Desmond Baptiste v The Queen High Court Criminal Appeal No. 8 of 2003** the court explained each of the objectives of sentencing as follows:

“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 the law. It is rather a 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.”

42. It is thus my understanding that by this provision, the court is guided to determine this review for purposes of deterrence, retribution, rehabilitation and in the public interest. This exercise is carried out by the consideration of the reports on the applicants submitted to the court.

I will endeavor to consider the review application with respect to each of the applicant.

MARVIN JOSEPH.

43. In considering this application, it is important to consider the role played by each of the applicants in the crime committed. Counsel to the applicants invariably asked that all that had been held in this case would be considered as settled, thus I will refer to the roles presumed played as found at the trial of the offence.
44. Marvin Joseph may be regarded as the leader of the group. He was alleged to be the mastermind of the crime itself. He was said to have shot the first victim and ordered the killing of the three others. Joseph was only 20 years of age when he committed this offence and has been in prison for 30 years. The first victim was just about his age then and he shot him point blank in the cold blooded murder.
45. Having been the one who also ordered the killing of the others, he cannot be totally discharged of the liability of the death of all other victims. The crown has cited the case of **R v. Jogee, R v. Ruddock 87 WIR 439 at paragraph 1** to emphasize the fact that having ordered the shooting; he is as culpable like he did it by himself.
46. Be that as it may, the victim had been convicted and sentenced for the offence. They are before this court at the moment for a review of the said sentence as provided for in Section 3B of the Offences against the Person (amendment) Act 2013.
47. On behalf of Marvin Joseph a social investigation report, a psychiatric report and a prison report were submitted. Further to these, testimonies of some witnesses were also received.

48. On his psychiatric report, he was not diagnosed as suffering with any acute psychiatric disorder despite his history of marijuana use. He is said to have a grandeur idea of what he wants to do if he is released.

The conclusion of the consultant psychiatrist on him is as follows-

"The evidence on Mr. Marvin Pernell Joseph supports an assessment of medium to high risk of re offending. Therefore, it is my opinion that it may not be appropriate to discuss his release from prison at this time. However, he may benefit from psychological and social therapeutic interventions....."

49. Mr. Joseph is said to still be in denial of all that he did. He was said to have participated in the protest within the prison and also accused of breaking the rules within the prison on several occasions.
50. He had worked in community construction even while on death row but he was eventually removed because of consistent violation of trust. He was said to still abhor animosity against his partners in crime. He is said to have difficulties expressing remorse.
51. The conclusion on his psychiatric report is that he is assessed to be medium to High risk of re-offending.
52. His social investigation report is based on interviews with those who know him. The applicant himself was interviewed. He described himself as a very quiet and helpful person. He said he has tried his best to keep peace. He denies being associated with a gang. He admitted that he did wrong and that he is sorry. He claims he is fully rehabilitated and would be productive if he is released.
53. His daughter said she has no relationship with him as she was just a few months old when the incident happened. She opined that he is selfish but believed he has changed. She said she does not want to have anything to do with him.
54. His sister gave a good report about him and wishes he would be released. Incidentally, out of all the people interviewed, she is the only one who has a positive view about the release of the applicant. The prison authorities also stated that applicant was helpful and had participated in cleaning the beach and other parts of the country. He however was shown to have been removed from these duties because he caused further embarrassment to the country by taking a picture on the beach with a tourist which picture eventually was posted on social media while he was supposed to have been serving a jail term for murder.

55. The social impact report which contains report of interview with the victim's daughter also project Marvin as a huge risk to the daughter of the victim, who said all her attempt to speak to Marvin Joseph was rebuffed.
56. The prison report said he has had the benefit of anger management and cognitive thinking counseling. The applicant is said not to have been positively impacted by these counseling sessions and that he is yet to demonstrate any remorse or to accept responsibility for his action. He is said to be constantly challenging the authorities.
57. These reports, including the testimony of the witnesses do not seem to project Mr. Marvin as a person who would have achieved a sense of deterrence, retribution or rehabilitation despite the number of years spent in prison. It is clearly not in the public interest that Mr. Marvin Joseph be released at this time based on the reports of his current activities.

MELLANSON HARRIS

58. It is on record that this applicant shot and killed three of the victims, acting on the instructions of Marvin Joseph. He was 21 years old when he planned with other persons and committed the gruesome murder of Ian Cridland, Thomas Williams, Norman Clever and Kathleen Clever. This applicant and Marvin Joseph were originally sentenced to death by hanging. They were re-sentenced in 2016 to life imprisonment with a possibility of review after spending thirty years.
59. This court also received a social investigation report, a psychiatric report and a prison report with respect to Mellanson Harris. Further to this, testimonies of some witnesses were also received.
60. It is the provision of the statute that in the consideration of this application for a review, the court should take into consideration these reports to be able to determine whether the society would have achieved a sense of deterrence, retribution and rehabilitation on Mellanson Harris, based on the number of years spent in prison.
61. The psychiatric report on this applicant was prepared on the 29th May 2024 and signed by Dr. Griffin Benjamin, consultant Psychiatrist.
62. In the report, it was stated that he was not diagnosed as suffering from any major psychiatric condition and that he shows no sign of acute psychosis. He is said to have no feature of disorganization of speech or behavior, no hallucination or delusion.
63. The report stated that this applicant displayed a negative attitude to re-offending. He is said to maintain a positive attitude and seemed optimistic about his life when (sic) released from incarceration. He is said to reflect on the incident with regret.

64. The conclusion on his psychiatric report is as follows:-

“There is evidence that Mr. Mellanson Harris has made progress while in prison as manifested by the assessment of a low risk of offending. Therefore, it is my opinion that it is appropriate to discuss his release at this time.”

65. The social investigation report on this applicant shows regrets for his action which he said was caused by youthful idleness. His sister, Charlene Harris attested to his quietness and desire to help others. She said she would be willing to help resettle her brother if considered for a release.

66. The report also stated that members of Barbuda community and the prison authority spoke positively of the character of this applicant.

67. The conclusion of Mr. Denfield Phillips, the senior probation officer who prepared the report is that the applicant is polite, quiet, remorseful and willing to apologize.

68. The prison report dated 4th of June 2024 was also received on Mellanson Joseph. He was described as a model inmate who has learnt the trade of auto body and engineering repairs. The report said Mellanson Harris has earned a title of Trusted Inmate. He was described as hard working, obedient and industrious.

69. The report spoke to how Mr. Harris has taught himself to read and write and has authored several poems. It was said that he benefitted from the University of West Indies Seeds of Hope scholarship where he studied climate change and its effect on health. He is also said to have done a course on anger management and cognitive thinking sponsored by Impact USA and Ministry of Social Transformation. It was concluded that Mr. Harris has become a better person.

70. The testimony of Mr. Jermaine Anthony also painted this applicant in glowing colors and assessed him as a reliable and responsible inmate.

IMPACT OF THE OFFENCE.

71. Based on the Victim impact report of Denfield Phillips, it is clear that the offence had a terrible and devastating effect on the children of the deceased. The evidence of Bonnie Floyd (a daughter of two of the victims) during the trial showed that even after these 30 years the family of the deceased continues to feel the devastating effect of the actions of the two applicants.

72. Mrs. Floyd is obviously still nervous and extremely fearful for her life. She is still very hurt from the effect of the incident. She said she is now a minister of God and that she has forgiven the applicants for their actions but the continuous rebuff of speaking to her by Marvin Joseph makes her very uncomfortable and fearful for her life whenever she remembers. She is of the opinion that if Marvin Joseph is released, she will quit her ministry in Barbuda as she believes her life is

threatened. She is of the view that Marvin Joseph cannot be rehabilitated and has never accepted responsibilities for his actions.

73. On Mellanson she said she has also not been able to speak with him but believes he is a person that can be rehabilitated.
74. It is also the case of the respondent that the social impact of the actions of the applicants should be considered. The killing of tourists visiting the island had a negative effect on the entire society as it projects the country as unsafe for tourist.
75. Also the respondent referred to the action of Marvin Joseph who in the course of his imprisonment and while working on the beach took a photograph on the beach shirtless with a tourist and her young child and which photograph emerged in the media causing the government a great deal of embarrassment leading to the writing of an apology letter to Mrs. Floyd.
76. It is the position of the respondent that this application be refused as both prisoners have not met all the circumstances for the consideration of their release and it would send a wrong signal to the general public if they are released now.
77. In examining this review, the court uses the provisions of Section 3B of the Offences Against The Person (Amendment) Act 2013 to consider whether it is any longer necessary for the purposes of deterrence, retribution, rehabilitation and in public interest that the convicted person be further detained.
78. It is my view that in reviewing the reasoning of the parliament for the creation of this section, it is clear that the mission is to create an avenue for the reconsideration of the sentence of an offender to see if such an offender has been reformed. The question to be asked is, why would parliament have a rethink and amend the law so that a court may re-assess the sentence of an offender after a particular time. In my view, it is because the parliament feels there is a need to give a second chance, where necessary.
79. The court is enjoined to use the reports to determine the maturity, character, behavior and attitude of the offender in prison to generally determine the offender's ability to make amends and be a better citizen.
80. It is clear that this exercise should not be taken for granted in the interest of both the deserving offender and the society at large.
81. To refuse to properly consider a review in the circumstances of a reformed offender would be totally inimical to the intention of the parliament which created the said amendment. It cannot be over emphasized that the law seeks to give a second opportunity to a convicted offender upon

meeting the conditions set out in the said statute otherwise why would such an amendment creating a review after certain number of years be necessary.

82. It is my view further that it would not matter the nature of the offence. It is the law that where an option of review is pronounced along with the sentence, the law is clear on when to consider a review with respect to different sentences and what to be considered in the review. This is not to say that the court in the course of the exercise shall not have reason to reconsider the nature of each offence and the degree of its impact. Each case is separate and distinct and it will not be one cap fits all.

CONCLUSION

83. As stated I had the benefit of listening to witnesses, considering various reports and having the briefs of counsel of both the applicant and the Respondent with respect to this review application.

84. I have analyzed the report of various analysts on each of the applicants.

85. As stated in the analysis, it is clear that each of the offenders has responded differently to the prison terms and opportunities given to them.

Marvin Joseph

86. **Marvin Joseph** in my view has not met with the expectation of the court, based on the evidence and reports received to be considered in the interest of the public for a release at this stage. It is clear that Mr. Joseph is totally unremorseful and certainly not particularly rehabilitated enough. He does not appear to have learnt enough in prison to make him fit to be released into the society. He has continuously been unruly even in prison. He has within the 30 years in prison led or participated in a riot and has caused the government an embarrassment by his actions in the cause of serving his prison terms.

87. This court is put on red alert by the report of the psychiatrist and other experts who assessed the offender and states that he has a medium to high risk of re offending or that he is unremorseful and totally undeterred.

88. I have taken into consideration all reports of this offender. I realize that even his daughter and the mother of his daughter would rather not have anything to do with him. He is, in my view, at this stage unfit to be considered for a release or even a review of his sentence.

89. Marvin Joseph shall continue to serve his term as ordered by his Lordship Justice Ramdhani in 2016 subject to a review after another five years from today according to Section 3B of the Offences Against The Persons (Amendment) Act 2013.

Mellanson Harris.

90. This applicant has considerably improved his character and attitude to life as seen by the various testimonies and reports on him. Firstly, Mr. Harris has taken advantage of the trainings in different capacities including being a beneficiary of the University of West Indies Scholarship where he is said to have had training in climate change and its effect on health.
91. He trained himself to read and write while in prison and has also acquired a skill in auto body building. He has also benefitted from the counseling in anger management and cognitive thinking.
92. He is variously described as a *“model inmate or trusted inmate”*. These achievements in my view say a lot about the character of this particular applicant. The report of the psychiatrist is that from his assessment, this applicant has a low risk of reoffending.
93. It is the understanding of this honorable court that this applicant should be favorably considered. To do otherwise is to send a signal that no matter how reformed an offender is, the society through the courts will never, despite the provisions of Section 3B give such an offender a second chance after all what better favorable report would a court expect before giving effect to Section 3B. This, in my view, is a clear case of where the intention of the parliament is best given a meaning that an offender who meets the criteria set by the law would be positively reconsidered.
94. I have considered all reports and testimonies given on Mellanson Harris. I am truly convinced that his application at this time merits a review. I am sufficiently convinced that Mr. Harris is exemplary in the rehabilitation processes provided by the prison system.
95. I hereby order that Mr. Harris be released unconditionally at this stage. He has, in the view of this court, met the criteria set for a review and it is no longer necessary for the purpose of deterrence, retribution and in the public interest for him to be continuously detained.
96. This exercise of review is done in a bid to advance the remedy sought to be created by the parliament when they amended Section 3B of the Offences Against The Person Act to provide for a review exercise after certain conditions are met.

ORDER

97. In all, at this point in time, **I decline to grant the application of Marvin Joseph for a review of his sentence and hold that it be deferred till another five years.**
98. **On Mellanson Harris, the application has merit. The applicant, Mellanson Harris sentenced to life imprisonment having served a period of years that qualifies him for a review of his sentence is hereby released unconditionally.**

Tunde A Bakre

Judge