IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO.: C87 of 2016

BETWEEN

THE KING

and

CARLOS CHUC

Applicant

Before: The Honourable Justice Nigel Pilgrim

Appearances:

Mr. Glenfield Dennison, Crown Counsel, for the Crown.

Mr. Leeroy Banner for the Applicant.

2024: April 12th; and
May 3rd.

JUDGMENT

RIGHT TO TRIAL WITHIN A REASONABLE TIME- CONSTITUTION OF BELIZE- REMEDY- STAY OF PROCEEDINGS

[1] **PILGRIM J**.: Carlos Chuc, ("the applicant"), was charged with the offence of use of deadly means of harm, contrary to section 83 of the **Criminal Code**[1] ("the Code") on 22nd September 2012. The offence allegedly occurred the day before. The applicant has invited the Court to find that his constitutional right to trial within a reasonable time has been breached owing to the more than 11 years since the offence and that the appropriate remedy in these circumstances is a permanent stay of the proceedings.

The legal framework

[2] It would be helpful to first consider the legal framework of this application.

[3] The Court first turns to the **Constitution.** Section 6(2) provides as follows:

> *"6(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."*

[4] This right was considered by our apex court, the Caribbean Court of Justice ("the CCJ") with a similar constitutional provision from Barbados, section 18(1) of their Constitution, in the case of **AG v Gibson**[2]. The significance of the guidance requires extensive quotation, per Saunders and Wit JCCJ, as they then were:

> *"[48] The public have a profound interest in criminal trials being heard within a reasonable time. Delay creates and increases the backlog of cases clogging and tarnishing the image of the criminal justice system. Further, the more time it takes to bring a case to trial the more difficult it may be to convict a guilty person. For a variety of reasons witnesses may become*

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] [2010] 5 LRC 486.

unavailable or their memories may fade, sometimes seriously weakening the case of the prosecution which carries the burden of proof…Defendants released on bail for lengthy periods have an opportunity to commit other crimes if they are so disposed. The longer an accused is free awaiting trial, the more tempting becomes the opportunity to skip bail and avoid being tried. On the other hand, keeping remanded persons in custody for excessive periods increases prison populations and aggravates the evils associated with overcrowded jails. Moreover, there is a financial cost to the public in maintaining a person on remand.

[49] Even more telling than the societal interests at stake are the consequences to an accused of a breach of the reasonable time guarantee. This is evident in the case of a defendant who is not guilty. That person is deprived of an early opportunity to have his name cleared and is confronted with the stigma, loss of privacy, anxiety and stress that accompany exposure to criminal proceedings. But a defendant facing conviction and punishment may also suffer, albeit to a lesser extent, as he is obliged to undergo the additional trauma of protracted delay with all the implications it may have for his health and family life…By deliberately elevating to the status of a constitutional imperative the right to a trial within a reasonable time, a right which already existed at common law, the framers of the Constitution ascribed a significance to this right that too often is under-appreciated, if not misunderstood.

…

[53] …First, we pose the question in a general sense. Is it appropriate for a Barbados court, in a fit case, to order a permanent stay or dismissal of a charge purely for breach of the right to be tried within a reasonable time?

…

[54] Section 18(1) gives three different and free-standing rights to any person who is charged with a criminal offence …These rights correspond to separate obligations imposed by the Constitution on the state. For every accused person whose charge has not been withdrawn the state is obliged to afford a hearing that is: (a) fair; (b) before an independent and impartial tribunal established by law, and (c) held within a reasonable time.

[55] The fulfilment by the state of each of these obligations is fundamental to the criminal justice system and the obligations referred to at (a) and (b) are irreducible. Thus, if a trial is not likely to be or has not been fair, then, as stated earlier, the breach vitiates the trial

process. Similarly, a court will not sanction a trial before a tribunal whose characteristics threaten to or actually fall short of basic requirements of independence and impartiality. Redress for an infringement of either of these rights cannot be limited by any overriding public interest in part because, unless the charge is altogether withdrawn or dismissed, it will normally be possible to convene a new trial on conditions that are fair or to hold one before a proper tribunal as the case may be. It is possible, so to speak, to reset the clock so as to grant the accused the full measure of the right in question.

[56] This is not the case when the reasonable time guarantee has been breached. Once there has been excessive delay in trying an accused, a court may issue orders aimed at expediting the trial or provide some form of relief to the accused but there is nothing that the court can do to remedy the breach that has occurred in a way that will undo the past delay and its effects on the accused and the society. It is not possible to wipe the slate clean and revert to the status quo ante.

[57] ***Section 13(3) of the Constitution gives a clear indication that a trial held after an unreasonable time is not necessarily fatally compromised merely on account of the delay, at least certainly not in relation to a person who has been in custody****. …That subsection provides, inter alia, that if the accused is in custody and he has not been tried within a reasonable time he must be released either unconditionally or upon reasonable conditions 'to ensure that he appears at a later date for trial …' The reasonable time guarantee therefore differs from the other two guarantees of s 18(1) in two important respects. Firstly, in the case of the other two guarantees, remedial action can be taken which will effectively cure the breach. This is not possible in the case of the reasonable time guarantee as one cannot turn the clock back. Secondly, while breach of the other two guarantees automatically vitiates the trial,* ***the Constitution itself clearly suggests that breach of the reasonable time guarantee does not necessarily prevent a valid trial being held.***

[58] ***A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case-by-case basis. It cannot be reached by applying a mathematical formula, although the mere lapse of an inordinate time will raise a presumption, rebuttable by the state, that there has been undue delay. Before making such a finding the court must consider, in addition to the length of the delay, such***

factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the state. An accused who is the cause and not the victim of delay will understandably have some difficulty in establishing that his trial is not being heard within a reasonable time. *One must not lose sight of the fact, however, that it is the responsibility of the state to bring an accused person to trial and to ensure that the justice system is not manipulated by the accused for his own ends. Even where an accused person causes or contributes to the delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused the overall delay has been too great to resist a finding that there has been a breach of the guarantee…*

[59]…The question therefore is what should the appropriate remedy be when there is a breach of the reasonable time guarantee?

[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*** *…*

[61] ***When devising an appropriate remedy a court must consider all the circumstances of the particular case, especially the stage of the proceedings at which it is determined that there has been a breach****. In particular, the court should pay special attention to the steps, if any, taken by the accused to complain about the delay since, as was pointed out by Justice Powell in the US Supreme Court … delay is not an uncommon defence tactic.*

[62] ***A permanent stay or dismissal of the charge cannot be regarded as the inevitable or even the normal remedy for cases of unreasonable delay where a fair trial is still possible. Quite apart from prejudicing the operation of s 13(3), to so hold, as some other jurisdictions have done, would create too great a risk of unnecessarily placing trial courts in the uncomfortable position of having to choose between equally undesirable alternatives, namely: to permit a possibly dangerous criminal to avoid***

being tried or else to raise to an unacceptably high level the threshold for deeming unreasonable obviously inordinate delay. Having an inevitable permanent stay or dismissal of the charge as the single sanction for breach of the reasonable time guarantee may well reward the guilty, who escape being brought to justice, even as it does little or nothing for the innocent, who cannot regain the time they have lost suffering under a cloud of suspicion or worse, being remanded in custody. *We accept the view of the Inter-American Court of Human Rights that 'the State's duty to wholly serve the purposes of justice prevails over the guarantee of reasonable time' …* ***The fundamental objective of the reasonable time guarantee is not to permit accused persons to escape trial but to prevent them from remaining in limbo for a protracted period and to ensure that there is efficient disposition of pending charges.*** *The guarantee is an incentive to the state to provide a criminal justice system where trials are heard in a timely manner.*

[63] ***But equally, we do not agree that a mere breach of the reasonable time guarantee could never yield a permanent stay or dismissal of the charge and that instead such relief should be reserved only for instances where the trial will be unfair or the accused can show prejudice. As previously indicated at para [42] above, s 24(1) of the Constitution affords the court flexibility, power and a wide discretion in fashioning a remedy that is just and effective, taking into account the public interest and the rights and freedoms of others. No conceivable remedy, including a permanent stay or dismissal, ought to be removed from the range of measures at the disposal of the court if the relief in question will prove to be appropriate. Given the high level of public interest in the determination of very serious crimes, however, it will only be in exceptional circumstances that a person accused of such a crime will be able to obtain the remedy of a permanent stay or dismissal for the breach only of the reasonable time guarantee. Of course, such a remedy will be readily granted in cases where the delay has rendered it impossible to hold a fair trial.***

[64] ***Where breach of the reasonable time guarantee is established before trial the court should consider issuing a suitable declaration denouncing the breach and making an order that expedites the hearing.*** *If the accused is in custody then the court must have regard to s 13(3) of the Constitution which requires the release on bail of the*

accused. If at the trial there is a conviction then the trial judge should always consider a reduction in the severity of the sentence in light of the delay." (emphasis added)

[5] It is to be noted that Belize has a similar constitutional terrain to Barbados. The equivalent of their section 13(3) is our section 5(5)[3] and their enforcement provision to protect constitutional rights at their section 24(1) is our section 20(2).

[6] The CCJ adopted its reasoning in *Gibson* in the Belizean context in the case of **Solomon Marin Jr. v R[4]**, per Barrow JCCJ:

"[104] The grant of a remedy for breach of the right to a fair hearing within a reasonable time is very much a matter of discretion. This is established in the language of s 20(2) of the Belize Constitution, which provides that the Supreme Court, among other things, may make such declarations and orders "as it may consider appropriate" for the purpose of enforcing or securing the enforcement of any of the fundamental rights provisions of the Constitution. ***There is no right to any particular remedy****.*

…

[110] The element of discretion as to what is the appropriate remedy for a breach of the right to a fair trial within a reasonable time that was discussed in Gibson requires courts to consider the matter on a case-by-case basis, taking account of all the circumstances of the case…

[111] The discussion in Gibson provides a helpful indication of relevant circumstances to consider in deciding what is an appropriate remedy. Thus, an accused person may have contributed substantially to delay and there may have been other factors contributing to delay including lack of legal representation or access to critical resources, such as a highly specialised expert. ***Wider considerations may also be included in the circumstances a court must consider, such as the nature of the crime and the impact on the society's sense of justice, when deciding on what is appropriate****." (emphasis added)*

[3] *"If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is released, be entitled to bail on reasonable conditions."*

[4] [2021] CCJ 6 (AJ) BZ.

[7] The Court understands *Gibson* and *Marin* to be saying that whether there has been a breach of the applicant's right to trial within a reasonable time requires consideration of several issues and is a case-by-case determination. It is not a mathematical exercise. The Court also understands that even if there has been a breach of that constitutional right there is a balancing exercise that must be done where that breach is weighed against the public interest in bringing persons who may have committed serious crimes to justice. There is no right to a particular constitutional remedy. The imposition of a stay of proceedings is an exceptional remedy and should only be considered if delay causes prejudice so that no fair trial can be held.

[8] The **Indictable Procedure Act**[5] ("the IPA") provides as follows, in relation to service of indictments and the appearance of a defendant after he has been committed to stand trial:

> *"59(1) If an accused person who is committed for trial is admitted to bail, the recognisance of bail shall be taken in writing, either from the accused person and one or more surety or sureties, or from the accused person alone, in the discretion of the magistrate, according to the nature and circumstances of the case, and shall be signed by the accused person and his surety or sureties, if any.*
>
> *(2)* ***The condition of the recognisance shall be that the accused person shall personally appear before the Supreme Court at its next practicable sitting, which shall be specified, to be held in Belize City, Corozal Town, Dangriga, or elsewhere, as the case may be, there and then, or at any time within twelve months from the date of the recognisance, to answer to any indictment that may be filed against him in the said court for any crime wherewith he may be charged by the Director of Public Prosecutions, and that he will not depart from the said court without leave of the court, and that he will accept service of the indictment at the prison to which he would have been committed to await his trial if he had not been admitted to bail****.*
>
> *…*

[5] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.

76(1) Subject to the provisions contained in this section, every indictment shall be filed in the registry three days at least before the day of trial of the accused person charged in the indictment.

(2) ***The Registrar shall, two days at least before the day of trial, deliver or cause to be delivered to the keeper of the prison to which the accused person has been admitted to bail, a certified copy of the indictment, and the copy shall be given by the keeper to the accused person forthwith, if he is in custody, and when he calls for it, if he is on bail.***

(3) For the purposes of sub-section (2)-

(a) the delivery to the keeper of the copy may be made by transmitting it in a registered letter by post properly addressed to him;

(b) any receipt purporting to be given by any officer of the Post Office for the registered letter shall be deemed prima facie evidence of the posting on the day stated therein of the letter addressed as described in the receipt; and

(c) a certificate, signed by the Registrar, that a certified copy of an indictment was enclosed in the registered letter shall be deemed prima facie evidence that that copy reached the accused person charged in the indictment.

…

88. Where any person against whom an indictment has been duly presented and who is then at large does not appear to plead thereto, whether he is under recognisance to appear or not, the court may issue a warrant for his apprehension." (emphasis added)

[9] The **Criminal Procedure Rules 2016** ("the CPR") also provides:

"Service of the indictment

9.5 The Registrar shall cause a copy of the indictment to be served upon each Defendant or his attorney within 7 days of the indictment being filed with the Court or at the time of the Arraignment hearing, whichever is the earlier."

[10] The Court, on a plain reading, interprets the process for service of indictments for persons on bail under the IPA and the CPR to be as follows:

i. The defendant has as a condition of his bail three requirements on committal pursuant to section 59(2) of the IPA. The first is that he personally appears at the then Supreme Court at its next practicable sitting, such date being specified in the recognisance, to answer an indictment if one is filed. The second is that he does not leave the jurisdiction of the court without leave of the court. The third is that he agrees to accept service of the indictment at the prison to which he would have been committed to await his trial if he had not been admitted to bail.

ii. Pursuant to section 76(2) of the IPA the Registrar shall send certified copies of the indictment to the keeper of the prisoner who shall give it to a defendant on bail "when he calls for it." The CPR also provides for service on the attorney of the defendant on bail.

iii. If a defendant does not appear to plead to the indictment when it is called at the High Court that court can issue a warrant for his attendance, whether under recognisance or not.

[11] The offence of use of a deadly means of harm has a maximum penalty of 20 years imprisonment[6].

The application

[12] The applicant deposes in his affidavit that after his committal in 2013 for this offence he kept checking with the authorities at the then Supreme Court to establish whether any indictment had been filed against him. He indicated that he kept checking for years but got no positive feedback, so he ended up stopping as the situation seemed unchanging. Then in September 2023 he was advised that he had a matter at the High Court. The applicant concedes that he has suffered no actual prejudice.

[13] The preliminary enquiry in this matter was completed, without a consideration of the evidence, on 18th November 2013 more than 1 year after the offence. The depositions were certified by the examining magistrate almost 1 year after committal on 30th October 2014. The indictment with which he was served was filed on 3rd October 2016, almost 2 years after the magistrate's certificate. The applicant has also deposed as to his information that a nolle prosequi was filed but none has been produced. He has deposed that this matter is not complex so that this matter should not have taken so long to be tried.

[6] Section 83 of the Code.

[14] The Crown in response filed the affidavits of Ms. Sheiniza Smith, Senior Crown Counsel and Mr. Alford Humes, a Legal Assistant. Ms. Smith deposes that she has spoken with the virtual complainant in this matter, and he is willing to proceed and the Crown has always been ready to proceed at the High Court level. She further indicated that it was the applicant who was absent and bench warrants were issued for him with notices issued to his sureties.

[15] Mr. Humes deposes that the matter was called up before several judges and the applicant did not appear and bench warrants were issued by more than one judge without success in locating the applicant since 2016. He deposed that the Office of the Director of Public Prosecutions ("ODPP") attempted to locate the applicant which proved futile.

Analysis

[16] The Court begins by contextualizing the application with the words of Jamadar JCCJ in *Marin*:

> *"[1] In the delivery of justice, delay is anathema. Delay has a corrupting effect on the purity of justice. It renders its delivery increasingly valueless for parties and all too often even prejudicial. It undermines public trust and confidence in the justice sector. It corrodes the very fabric of society. Delay denies justice. Such is its toxicity. Indeed, it is constitutionally renounced in Belize."*

[17] Delay in criminal trials is no small thing and not to be regarded with any complacency. However, as the CCJ noted in **Bennett v R**[7], "fairness…is not limited to the defendant; the trial should be fair to all: defendant, victims, witnesses and society as a whole."

[18] Firstly, whatever may occur in practice, the onus by the IPA is placed on the applicant as a condition of his bail, owing to the conjoint effect of sections 59(2) and 76(2), to check with the relevant authorities, by law the keeper of the prison, and accept service of the indictment there. It is a trite principle that all persons are presumed to know the law and consequently the provisions of the IPA.

[7] 94 WIR 126 at para 4.

Even without a legalistic interpretation, from the applicant's point of view, he must have appreciated that he was committed to stand trial in 2013 and he had no information that the matter was concluded. The applicant has not contested, and the Court accepts, that bench warrants were being steadily issued from 2016 up until 2022 from several High Court judges. Had the applicant checked with the authorities, either the High Court or the keeper of the prison, the Court is confident that he would have been appraised of the status of the matter. It is not fit for the applicant under the statutory conditions of his bail at section 59(2) of the IPA to say, "well I got tired checking, so you come find me". It has been pleaded by the Crown, without challenge, that the authorities including the courts and the ODPP were making consistent efforts to locate the applicant.

[19] In that regard the Court finds that the applicant is wholly responsible for the delay from 2016 to 2023.

[20] There were delays at the magisterial level in this matter. Though mentioned by the Crown in its argument, it has not been deposed in their affidavits, when the magisterial bundle was received by the ODPP after the examining magistrate certified the bundle in 2014. Consequently, there is an unexplained delay of almost 2 years in indicting the applicant. The Court will hold the Crown responsible for the delay from 2012-2016 when the indictment was filed.

[21] The Court is of the view that the delay in this case raises a presumption of undue delay as 11 years, 7 months and 22 days between today and the date of offence is by any stretch of the imagination a very troubling passage of time. However, the delay attributable to the Crown is 4 years. The Court of Appeal was not prepared to hold that a period of 7 years in the Belizean context from the date of the offence to trial was not a constitutional breach in the context where much of the delay was on a defendant's side in **R v Zita Shol**[8]. In any event, the consideration of a breach must be made on a case-by-case basis.

[22] In this case the Court would find it perverse to hold that a defendant who disregarded his responsibility under his bail condition and did not check on his matter for 7 years between 2016 and 2023 could then complain that his right to trial within a reasonable time has been breached.

[8] Criminal Application 2 of 2018 at para 42.

[23] The Court does not in those circumstances find that there has been a breach of the reasonable time trial right of the applicant on the facts of this case.

[24] The issue of the nolle prosequi does not move the needle on the applicant's contentions. The basis of his knowledge of the existence of the nolle prosequi is hearsay, firstly. It strikes the Court as odd, however, that the affidavits of the Crown do not address this, and they would be the ones to confirm this position. However, the second point is that even if one were filed, by virtue of section 174 of the IPA, a discharge by virtue of a nolle prosequi is not a bar to a subsequent prosecution.

[25] The Court further states that even if it is wrong with regard to there being no breach the applicant's rights he would not have been entitled to a stay. The authorities speak to this being an exceptional remedy and the public interest in a trial, both holding the guilty accountable for their acts and the innocent having their names cleared by a jury of their peers, is a strong consideration. This is a serious offence with a maximum penalty of two decades in prison. Weapon related violence in Belize, as in the rest of the Caribbean, is prevalent and a threat to public safety. The applicant has conceded that there is no actual prejudice occasioned by a trial. In that regard the applicant's case would have required the refusal of a stay even had his rights been breached.

Disposition

[26] The Court finds that there has been no breach of the applicant's right to trial within a reasonable time. The Court consequently refuses the application for a stay. The Court will however commit to commencing the trial of this case before the end of this session.

Nigel C. Pilgrim
High Court Judge
Criminal Division
Central District
Dated 3rd May 2024