

**IN THE SENIOR COURTS OF BELIZE**

**CENTRAL SESSION-BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE**

**INFERIOR APPEAL (CRIMINAL) NO.: IC20130057**

**BETWEEN:**

**DWAYNE BROASTER**

Appellant

and

**POLICE/DIRECTOR OF PUBLIC PROSECUTIONS**

Respondent

**Appearances:**

Mr. Leeroy Banner Counsel for the Appellant

Ms. Portia Ferguson Crown Counsel for the Respondent.

-----  
2024: April 11; 19

May 23  
-----

**JUDGMENT**

**INFERIOR APPEAL-POST-CONVICTION DELAY- RIGHT TO TRIAL WITHIN A  
REASONABLE TIME- CONSTITUTION OF BELIZE**

- [1] **NANTON, J.:** Dwayne Broaster, (“the Appellant”), was convicted and sentenced by the learned Senior Magistrate (“TLM”) in the Belize Judicial District on 24<sup>th</sup> May 2013 for offences of theft which occurred in 2008.
- [2] On 31<sup>st</sup> May 2013 he filed his notice of appeal against conviction and sentence well within the 21-day limit to lodge his appeal pursuant to **Order LXXIII Inferior Courts (Appeals)**<sup>1</sup> (“the Rules”).
- [3] On 25<sup>th</sup> June 2013 he filed his written grounds of appeal against conviction and sentence in compliance with Rule 6 of the Rules.
- [4] On 26<sup>th</sup> June 2013 the Learned Senior Magistrate provided her reasons for her decision in compliance with the Rules which require that within 1 month<sup>2</sup> of that notice being filed that TLM prepared a statement of her reasons<sup>3</sup>. The notes of evidence were also submitted by the Magistrate’s Court within the required timeframe.
- [5] This matter first became assigned to this Court in October 2023. The Appellant through his attorney sought the Court’s leave to make further submissions before this Court, the Court granted Counsel’s request and allowed the Respondent the opportunity to respond.

### **The Grounds of Appeal**

- [6] The Appellant had filed the following written grounds of Appeal:
- i. The decision was unreasonable or could not be supported having regard to the evidence.
  - ii. The decision was erroneous in point of law.

---

<sup>1</sup> Made under the **Supreme Court of Judicature Act** Chapter 82

<sup>2</sup> Rule 5(2) of the Rules.

<sup>3</sup> Rule 5(1) of the Rules.

- iii. The decision was based on a wrong principle or was such that the Inferior Court viewing the circumstances reasonably could not properly have so decided.
- iv. The sentence was unduly severe.

[7] In further oral submissions and as a preliminary point, Mr. Banner for the Appellant submitted that there had been exceptional and unreasonable delay in this matter for which there is no justification. As a result Counsel contended that the Appellant can no longer have a fair hearing of his appeal and as such the appeal should be allowed and the conviction and sentence quashed with no retrial ordered.

[8] In his oral submissions, Counsel further elaborated on the Appellant's filed written grounds of appeal.

#### **Respondent's Submissions**

[9] On the issue of delay, the Respondent accepted that there has been significant delay attributable to the State in the hearing of this appeal. However, Counsel submitted that the delay did not prohibit the Court from considering the appeal and making a determination on the merits, since the Magistracy was able to produce the notes of evidence and TLM's reasons for the decision.

[10] In relation to the filed grounds, the Respondent essentially denied the propositions advanced by the Appellant.

#### **Right to a Trial within a Reasonable Time**

[11] The CCJ, in **Solomon Marin Jr. v R**<sup>4</sup>, had to determine as a preliminary point, whether the Court of Appeal or the Apex Court had jurisdiction to decide the constitutional issue of the breach of Marin's fundamental right to a fair trial on a

---

<sup>4</sup> [2021] CCJ 6 (AJ) BZ.

hearing of a criminal appeal. The State argued that the Court of Appeal and the CCJ lacked the necessary jurisdiction to entertain the issue, as it did not 'arise out of and' was not 'bound up with the (substantive criminal) proceedings' and argued that Marin was required to file a separate originating application before the Supreme Court.

[12] The Court, in a judgment authored by Jamadar JCCJ explained the CCJ's approach to the interpretation of the Constitution and found that the Court of Appeal can, in certain circumstances, grant relief and a remedy for a breach of an individual's fundamental rights, where the breach arises during a case before it, even if not directly related to the issues that may or do arise from the substantive criminal trial. In such instances, there is no necessity for an aggrieved individual to seek such relief by way of a separate originating application in the Supreme Court. Marin was thus granted relief for the breach of his constitutional right to a fair hearing within a reasonable time- in that case the delay in the hearing of the appeal was 9 years.

[13] In a separate judgment, Anderson JCCJ found that the Court of Appeal possessed jurisdiction to pronounce upon Marin's claim of constitutional violations, because that claim could properly be said to have arisen in the appellate proceedings before that court. He agreed that a clear breach had occurred and that a permanent stay of further enforcement of the sentences was the appropriate redress in all the circumstances of the case.

[14] There has now been a delay of 11 years at the appellate level alone. This Court, in its appellate jurisdiction is thus compelled to answer the question of whether there has been a breach of the constitutional rights of the Appellant to a trial within a reasonable time, and if so what is an appropriate remedy.

[15] 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."*

[16] This right was considered by the apex court, the CCJ with a similar constitutional provision from Barbados, **Section 18(1)** of their Constitution, in the case of **AG v Gibson**<sup>5</sup>, per Saunders and Wit JJ, 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....*

*[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.*

...

*[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.*

[17] 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)**<sup>6</sup> and their enforcement provision to protect constitutional rights at their **Section 24(1)** is our **Section 20(2)**.

---

<sup>5</sup> [2010] 5 LRC 486.

<sup>6</sup> "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."

- [18] The CCJ adopted **Gibson** for this jurisdiction in the Belizean decision of **R v Henry**<sup>7</sup>. There the CCJ considered the position of the constitutional right to trial within a reasonable time in the appellate process, per Anderson JCCJ:

*“[37]...The delay of five years in the hearing of the appeal was entirely unsatisfactory. It must be unsatisfactory for a convict to serve his entire sentence before his appeal is heard and decided. Such delay renders the right of appeal more an illusion than a right. As the appellate process is undoubtedly part of the trial, such a delay constitutes an infringement of the constitutional right to a fair trial within a reasonable time.*

...

***[41] ...not all infringements of the constitutional right to a fair trial within a reasonable time must necessarily result in the allowing of the appeal and the quashing of the conviction. Indeed, this remedy is, as we have said, ‘exceptional’; the emphasis is on fashioning a remedy, ‘that is effective given the unique features of the particular case’. Remedies for breach may be a declaration, an award of damages, stay of prosecution, quashing of conviction, or a combination of these or some other or others. Everything depends upon the circumstances.”***  
*(emphasis added)*

- [19] The Court is prepared to treat the full period of delay as predominantly the fault of the State. Although no explanation has been proffered, the Court can only deduce that the delay is attributable to the matter not being scheduled and listed for hearing before a Judge sitting at the High Court. The appeal was filed within the requisite time limits and TLM’s reasons and notes of evidence were prepared in compliance with the Rules.
- [20] There has been no explanation or justification for the delay in having the matter listed at the High Court. The responsibility for this egregious delay lies largely at the doors of the criminal justice system in Belize.
- [21] The Court notes that in **Gibson** the CCJ held that a 5-year delay was unsatisfactory and in **Marin** a 9 year delay for the determination of an appeal was held to have been unconstitutional.

---

<sup>7</sup> [2018] 5 LRC 546.

[22] The Court echoes 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.”*

[23] The Court is prepared to hold that the delay of 11 years in this case is a breach of the Appellant’s rights under **Section 6(2) of the Constitution**.

[24] The Court now moves on to the question of what is an appropriate remedy.

#### **What is an Appropriate Remedy?**

[25] In his oral submissions, Counsel only advanced one desired remedy i.e. that the conviction be quashed. It should be noted that the Appellant has already served the two month sentence imposed upon him by TLM.

[26] 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 **Section 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.<sup>8</sup> Cases must be decided on a case by case basis.

[27] In **Gibson** 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 **Section 13(3)** of the Constitution which requires the

---

<sup>8</sup> Solomon Marin supra

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.

[28] However, in Solomon Marin the CCJ recognised that unlike the case of Gibson, where a person claiming the breach of his constitutional right has already been convicted and sentenced, the remedies that may be considered by the Court in relation to him are more limited. No question can arise of possible prejudice or unfairness of a trial, so as to require dismissing the charges. Neither can his sentence be reduced for failure of the Sentencing Court to take account of the delay, which Gibson established was a relevant consideration for the judge passing sentence.

[29] In contrast with Gibson, Bridgelall v Hariprashad<sup>9</sup> was an appeal by a convicted person in which this Court considered the remedy for breach of the right to trial within a reasonable time. Saunders JCCJ observed that “*courts make orders that span an impressive variety*” which “*have ranged from the setting aside of a conviction to the quashing of a death sentence.*” The Court indicated that its principal concern is with fashioning a remedy that is effective given the unique features of a particular case and decided, in that light, that the appropriate remedy in that appeal would be to stay further action against Bridgelall with respect to the enforcement of the imposed prison sentence.

[30] R v Henry<sup>10</sup> the CCJ held that quashing the conviction is an exceptional remedy and should only be considered where the delay might cause substantial injustice.

[31] In Fraser v State<sup>11</sup> the Court stated that it is only in special or exceptional circumstances that post-conviction delay, will result in setting aside of a conviction properly arrived at. In that case the CCJ upheld the decision of the Court of Appeal

---

<sup>9</sup> [2017] CCJ 8 (AJ), (2017) 90 WIR 300 (GY).

<sup>10</sup> [2018] CCJ 21 (AJ), [2018] 5 LRC 546 (BZ)

<sup>11</sup> [2019] CCJ 17 (AJ), [2020] 1 LRC 457 at [16]



of Guyana not to quash the conviction, because of delay but to stay the further imprisonment of the Appellant.

[32] In the instant case, the Appellant has already served his two month sentence; therefore, a suspension of his sentence would not be of any practical effect.

[33] It is not lost on this Court that the offences for which the Appellant has been convicted are morally reprehensible and that persons entrusted with State funds should be held accountable for the appropriation of such funds. The Court; therefore, must strike the appropriate balance between the public interest in ensuring that convicted persons serve their full sentence for crimes they committed, and on the other hand, the public interest in ensuring that constitutional rights are safeguarded by trial and appellate processes that are properly performed by those entrusted to preserve and uphold those rights.<sup>12</sup>

[34] This is an exceptional case of delay -wholly attributable to the State -with very limited options available to this Court by way of remedies. A declaration that there has been a breach would not suffice.

[35] The Court therefore considers that the only remedy that would be of any value to the Appellant would be to quash his conviction and order no retrial.

[36] **Solomon Marin Jr**, 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*

---

<sup>12</sup> Rambarran v R [2019] 5 LRC 431 (BB CA) at [200]

*in Gibson requires courts to consider the matter on a case-by-case basis, taking account of all the circumstances of the case. This was reflected in the judgment of this Court delivered by Byron PCCJ and Anderson JCCJ in Singh v Harrychan when they stated:*

*... In some cases, the consequence of the delay may result in a reduction of the sentence, whereas this may not be an appropriate remedy in others.*

*[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.*

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

- [37] The Court recognises that it is not the normal course that a convicted person, whose constitutional right to a fair hearing has been breached will have their conviction quashed or sentence reduced or suspended. In this case, however due to the exceptional delay and absence of other appropriate redress this Court considers that such an exceptional course is warranted.

### **Disposition**

- [38] The Court declares that there has been a breach of the Appellants fundamental right to a fair hearing within a reasonable time protected by **Section 6(2)** of the Constitution of Belize.
- [39] As redress for that breach, the Court hereby quashes his conviction and sentence.

**[40]** The Court further orders that a copy of this Judgment be sent to the learned Chief Magistrate and the Registrar of the Senior Courts.

**Candace Nanton**

High Court Judge

Senior Courts of Belize

Dated: 23<sup>rd</sup> May 2024