SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.8 OF 2003

BETWEEN:

MERVYN MOISE

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Adrian Saunders	Chief Justice [Ag.]
The Hon. Mr. Michael Gordon, QC	Justice of Appeal
The Hon. Mr. Hugh A. Rawlins	Justice of Appeal [Ag.]

Appearances:

Mr. Shawn Innocent for the Appellant
Mrs. Victoria Charles-Clarke, Acting Director of Public Prosecutions, with her Ms. Charon Gardner for the Respondent

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2005: February 15;
July 15.

JUDGMENT

[1] RAWLINS, J.A. [AG.]: The Appellant was convicted of murder on 16th February 2001. He was sentenced to death pursuant to the mandatory provisions of section 178 of the Criminal Code of St. Lucia. He appealed against the conviction. On 2nd April 2001, in Spence and Hughes v The Queen, Criminal Appeal Nos. 14 of 1997, St. Lucia, and 20 of 1998, St. Vincent and the Grenadines, this Court ruled that the mandatory death sentence under section 178 of the Criminal Code was unconstitutional. That decision, which was subsequently confirmed by the Privy Council, requires a trial court to conduct a pre-sentencing hearing in order to determine whether there are mitigating factors,

which should result in passing a lesser sentence than death upon a person who is convicted of murder.

[2] The High Court did not conduct the sentencing phase until 9th November 2003. On 12th November 2003 the Judge who conducted the sentencing hearing found that the aggravating circumstances in the case far outweighed the mitigating factors. She sentenced the Appellant to death by hanging. He appealed the sentence on 1st December 2003. That appeal came for hearing on 15th February 2005 and is the subject of this Judgment.

[3] I shall first state, briefly, the facts concerning the murder, and then outline the grounds of appeal. The issues that arise from the grounds of appeal will be considered under appropriate sub-headings.

The Brief Facts

[4] On the night of 4th December 1998, the Appellant and another person were involved in an armed robbery at a gas station in Castries. The robbery resulted in the death of Mr. Peter St. Hill, the 62-year-old owner of the station. Mr. St. Hill was sitting outside the station with one Carlisle Daniel when the Appellant and the other man, who were wearing masks and dressed in camouflage S.S.U. uniforms, approached them. The Appellant was carrying a gun. The other man carried a chopping knife. The Appellant beat the deceased on his head with the gun and shot him in his hip while the deceased was on the ground crying for help. The men then entered the office of the gas station where they robbed Ms. Gene St. Hill, the daughter of the deceased, at gunpoint. She handed over to them the cash tin, which contained about $2,000.00. They fled.

[5] The medical evidence revealed that when the bullet entered Mr. St. Hill's hip, it passed through his liver, the large ischial spine, and the rectum and lodged in his buttock. As a result of these injuries, Mr. St. Hill died of respiratory failure

secondary to ARDS, hypodermic shock, blood poisoning, secondary meningitis and residual pituitary oedema.

Grounds of Appeal

[6] This appeal raises 3 discernible grounds of challenge to the sentencing Judgment. One ground challenges the actual sentencing aspect of the Judgment and the Judge's assessment and analysis of the aggravating and mitigating factors. A second ground is subsumed under the delay issue, which has its legal genesis in Earl Pratt and Ivan Morgan v The Attorney General of Jamaica et al, Privy Council Appeal No. 10 of 1993. The third challenge is primarily procedural and I shall consider it first.

The Procedural Ground

[7] The gravamen of the procedural ground of appeal is that this court should have formally quashed the mandatory death sentence, which the trial court imposed, before remitting the case to the High Court for the sentencing hearing. The Appellant contended that the failure of this Court to formally quash the mandatory death sentence resulted in the imposition of a second death penalty, which was unlawful, null, void and of no effect.

Submissions

[8] The submissions, which Mr. Innocent, Learned Counsel for the Appellant made under this ground were ingenuous. He said that Spence and Hughes, and kindred cases that were tried thereafter, differ significantly from cases such as the present one in which convicted persons received the mandatory death sentence prior to Spence and Hughes. According to Counsel, the procedure by which convicted persons in post Spence and Hughes cases are allowed to mitigate prior to sentencing is distinct from the pre Spence and Hughes cases. In the latter

cases, convicted persons had to suffer the injustice and anxiety of having an unlawful death sentence hanging over them. In the former cases, on the other hand, convicted persons were not sentenced until the sentencing hearing, and therefore did not have to labour under an unlawful death sentence.

[9] Mr. Innocent contended that a person who was convicted of murder post Spence and Hughes did not and do not have to appeal a mandatory death sentence. He said that in fact, in the present case, the Appellant appealed his conviction but not the mandatory death sentence, and this court did not quash that death sentence or order a sentencing hearing pursuant to the principles in Spence and Hughes. Mr. Innocent insisted that there is no procedure by which pre Spence and Hughes cases could be dealt with because there are only opinions that Sir Dennis Byron C.J. expressed in Spence and Hughes. He said that, in any event, since Spence and Hughes held that the mandatory death sentence was unconstitutional, morality, good conscience and good jurisprudence dictate that provisions should have been made for the automatic commutation of mandatory death sentences to life imprisonment.

Findings on the procedural grounds

[10] Parliament made no provisions that accord with Counsel's conjecture that pre Spence and Hughes mandatory death sentences are to be commuted to life imprisonment. In Spence and Hughes, at paragraph 60, Sir Dennis Byron, C.J. suggested that a judge who sets aside a mandatory sentence of death should conduct a hearing on whether the offence was of a capital or non-capital nature and impose a sentence after a hearing. He suggested that the hearing should follow the same procedure, which he outlined in paragraph 59 for post Spence and Hughes cases. These comments are the bases of the mitigation procedure that are presently used, except that the Privy Council has since decided that a judge, rather than a jury, must determine whether the offence was capital or non-capital in nature, and impose sentence accordingly.

[11] The Chief Justice was mindful that impracticalities could attend the sentencing exercise in pre Spence and Hughes cases. His opinion suggested that such cases do not necessarily have to be brought before the trial Judge before whom the person was convicted. It might not always be convenient for the trial Judge to hear the sentencing phase even in post Spence and Hughes cases, on account of illness, death or some other reason.

[12] In the absence of statutory provisions, the procedure that the Chief Justice suggested, as modified by the subsequent decision of the Privy Council, provides reasonable guidelines for the sentencing process in these cases. However, no guidelines were given as to the exact procedure by which the pre Spence and Hughes cases were to be brought before the High Court for death sentences to be reconsidered. In the circumstances I think that the Director of Public Prosecutions could have initiated steps to bring the matter to the attention of Parliament or seek directions from the High Court with some urgency.

[13] It appeared from the submissions of Learned Acting Director of Public Prosecutions, Mrs. Charles-Clarke, that this Court remitted the matter to the High Court for a sentencing hearing when it upheld the Appellant's conviction. That would have provided sufficient authority for the sentencing hearing. Mr. Innocent's submissions seem to suggest, however, that this Court did not formally remit the case for sentencing. I have adverted to the certificate of the Judgment in the absence of a written Judgment or other record. The certificate states that the appeal was dismissed and the conviction and sentence of the trial Judge affirmed.

[14] There is some reason in the submission that Mr. Innocent made that the mandatory death sentence should have been formally quashed. However, the imposition of the death penalty after the sentencing hearing was not unlawful, null, void and of no effect simply because the mandatory death sentence was not formally quashed. Additionally, contrary to Mr. Innocent's submission, there was

no authority upon which the Judge could have quashed the mandatory death sentence and commute it to life imprisonment without a sentencing hearing. The appeal therefore fails on the procedural ground.

The Sentencing Aspect

[15] I shall first outline the principles of sentencing for persons who are convicted of murder, and, against this background, a synopsis of the objections that Mr. Innocent has taken to the sentencing aspects of the Judgment. The essential aspects of the sentencing Judgment will then be considered against the particular complaints that Mr. Innocent raised.

The principles applicable to sentencing

[16] In the jurisdiction of this Court, the legal principles that relate to sentencing in murder cases are fairly settled. They flow from the fountainhead, which is the decision of this Court in Spence and Hughes, and subsequent kindred cases. Alleyne J.A., as he then was, rationalized the principles in Francis Phillip and Kevin John v The Queen, St. Lucia Criminal Appeal No. 4 of 2003. He considered the initial statements that Sir Dennis Byron, CJ, made in Spence and Hughes. He also considered the subsequent statements, which Lord Bingham of Cornwall made in Patrick Reyes v The Queen, Privy Council Appeal No. 64 of 2001. He considered as well a statement that Saunders J.A. (Ag.), as he then was, made in a dissenting Judgment in Christopher Remy v The Queen, St. Lucia Criminal Appeal No. 6 of 2002, and statements that Byron J.A., as he then was, made in Abraham v The Queen, St. Vincent Criminal Appeal No. 12 of 1995.

[17] The cases mentioned in the foregoing paragraph establish that the first principle by which a sentencing Judge is to be guided in these cases is that there is a presumption in favour of an unqualified right to life. The second consideration is

that the death penalty should be imposed only in the most exceptional and extreme cases of murder. At the hearing, the convicted person must raise mitigating factors by adducing evidence, unless the mitigating factors are obvious from the evidence given at the trial. The burden to rebut the presumption then shifts to the Crown. The Crown must negative the presence of mitigating circumstances beyond a reasonable doubt. The duty of the sentencing Judge is to weigh the mitigating and aggravating circumstances that might be present, in order to determine whether to impose a sentence of death or some lesser sentence.

[18] It is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person. The death sentence should only be imposed in those exceptional cases where there is no reasonable prospect of reform and the object of punishment would not be achieved by any other means. The sentencing Judge is fixed with a very onerous duty to pay due regard to all of these factors.

[19] In summary, the sentencing Judge is required to consider, fully, two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case.

The main objections

[20] Mr. Innocent submitted that the death sentence, which the Learned Judge imposed on the Appellant, was manifestly excessive and wrong in principle. He stated that, at paragraphs 21-24 of the Judgment, the Learned Judge espoused the correct approach which is to be considered for sentencing on a conviction for murder. He contended, however, that notwithstanding this, the Judge erred in a number of ways.

[21] Mr. Innocent complained, in particular, that the Learned Judge erred when she took into consideration the fact that the draft Criminal Code categorized a murder that was committed in the course of robbery as capital murder. He also complained that she failed to properly weigh or analyze the factors, which she should have taken into consideration in order to determine the sentence and/or incorrectly or unfairly assessed them. He insisted that when the Learned Judge considered the aggravating factors, she afforded the most significant weight to the finding that the murder was committed in furtherance of a robbery. He noted that the Judge found that the murder was not committed in the heat of passion, but that it was planned and premeditated. He submitted that this conclusion came from the evidence that was given at the trial when the Learned Judge was not the trial Judge. He insisted that it would be dangerous for a sentencing Judge, who did not conduct the trial, to be permitted to draw conclusions or inferences of fact from the trial record. He said that, first, the drawing of conclusions and inferences are within the purview of the jury only. Second, no one knows for certain what inferences the jury drew from the facts during the trial.

[22] The objections against the sentencing aspects of the Judgment may therefore be broadly subsumed under two issues that were raised in the grounds of appeal. One is the objection to the reference in the Judgment to the categorization in the draft Criminal Code of a murder that was committed in the course of robbery as capital. The second is the objection against the manner in which the Learned

Judge weighed and analyzed the factors that she took into consideration for sentencing.

Robbery as capital murder

[23] Mr. Innocent took particular issue with two statements, which the Learned Judge made at paragraphs 26(b) and 29(f) of the Judgment. In those statements, she noted that the murder occurred during the course of an armed robbery. She stated that this type of offence appears to be prevalent and poses a serious threat to the lives of innocent persons in the society, and that it was important to note that the Draft Criminal Code of St. Lucia had identified the kind of murder in this case as a capital murder.

[24] Mr. Innocent contended that the Judge was not entitled to take these factors into account. He insisted that, unlike in Jamaica and Barbados, the Criminal Code, 1992, made no provision for the classification of murders as capital and non-capital. He submitted that, in the premises, the Learned Judge erred by relying on provisions that were non-existent at the time of the sentencing. He submitted that she had therefore usurped the authority of Parliament, and was wrong to conclude that the murder in this case fell into the worst categories of murder sufficient to justify the death penalty.

Findings

[25] The circumstances in which the murder occurred were factors which the Learned Judge was entitled to take into account. She could not have categorized the murder in this case as capital murder simply because it was committed in furtherance of a robbery. She was however entitled to consider the fact that the murder was committed in furtherance of an armed robbery in determining the weight that was to be given to the circumstances surrounding the commission of the offence. This is what she did when she assessed the aggravating factors.

(See in paragraph 26 of the Judgment.). Her approach was legitimate in the context of the prevalence of these offences. She did not merely categorize the offence in this case as capital murder because of the provision in the draft Criminal Code. Her reference to the draft Criminal Code was made in passing after she gave reasons why she thought that the circumstances in which the offence was committed made this case one that was in the category of the worst cases of murder.

[26] At paragraph 26(b) of her Judgment, having stated that the Appellant committed the murder in furtherance of a robbery, the Learned Judge continued:

> "Based on what he said before and after the crime, he was motivated by greed, covetousness, dishonesty and a dislike for the deceased; a reprisal for the deceased's refusal to employ the Accused."

[27] In summary, the Learned Judge actually considered the fact that the murder took place in furtherance of a robbery as a relevant factor of the circumstances in which the act was done. She was entitled to do this and therefore did not err having done it.

Analyzing, weighing and assessing the factors

[28] Mr. Innocent complained that the Learned Judge did not attribute sufficient weight to the mitigating factors that were adduced on behalf of the Appellant. He also complained that the Learned Judge failed to give proper regard to statements that Professor Glenn Elmer Griffin, a Forensic Psychologist, made in his report on his psychological assessment of the Appellant. Learned Counsel further complained that the Judge failed to actually or at all consider the subjective factors and individual circumstances, which might have influenced the Appellant.

[29] Mr. Innocent said that while the Judge identified the mitigating and aggravating factors, she did not properly relate the mitigating factors to the principles on sentencing in murder cases. Counsel said that the result of the failures, which he

adumbrated, is that the death sentence, which the Judge imposed, was not supported by the weight of the evidence that was adduced during the sentencing hearing.

[30] Mr. Innocent took issue with two statements that relate to this aspect of the appeal. One statement is at paragraph 24 of the Judgment. In that paragraph, the Learned Judge stated:

> "The death sentence should only be imposed in the most exceptional cases where there is no reasonable prospect of reformation and the objects of punishment would not be properly achieved by any other sentence. If the Accused's deed is so shocking and [clamours] for extreme retribution, to the point where the society of St. Lucia would demand this Accused's [destruction] as the only punishment for his wrong doing, then retribution must play a decisive role and the death sentence will be the proper sentence."

[31] The second passage that Mr. Innocent complained of is at paragraph 26(c) of the Judgment. Counsel quoted a small portion of it in his submissions. I shall restate most of it in order to put it into proper context:

> "The previous convictions of the Accused reveal, he has a propensity to be violent and dishonest. It would have been a little over five months after he served his six months sentence for stealing from a dwelling house, that he was back planning the robbery of the gas station. The probation report discloses that he began his life of crime at an early age, and despite attempts by his father and the State to correct his behaviour, he continued his life of crime into adulthood. He is a recidivist."

[32] Mr. Innocent submitted that these statements, in addition to the statements referred to at paragraph 23 of this Judgment, indicate that the Learned Judge accorded minimal weight to the mitigating factors that were presented on behalf of the Appellant. He complained, particularly, that the Learned Judge paid little attention to the Psychological Assessment Report of Professor Griffin and to the Social Inquiry Report. Counsel also submitted that the Learned Judge failed to analyze the mitigating factors in the light of these Reports, and that the Judgment was therefore too heavily weighted in favour of finding aggravating factors.

Findings

[33] Both Counsel accepted that the Learned Judge stated correctly the basic principles that should guide the court in determining whether to impose the death penalty. In paragraph 23 of her Judgment, the Learned Judge stated, *inter alia*, that due regard must be given to mitigating and aggravating factors in a degree appropriate to the demands of the particular case. She stated that these factors must be weighed with the main objects of punishment, deterrence, prevention, reformation and retribution. The Judge also stated that her task was to consider whether these four objectives can be properly met by a sentence other than death.

[34] In this case, the sentencing Judge did not conduct the trial. In most murder cases, however, the trial Judge would also be the sentencing Judge. All of the facts and circumstances that surround the offence would be disclosed to the Judge in the evidence that is adduced during the trial. The Judge is at liberty to bear that evidence in mind during the sentencing phase, but only to consider the facts and circumstances in which the offence was committed. The availability of the trial record to a sentencing Judge who did not conduct the trial would have the same effect. A sentencing Judge can only draw such reasonable inferences from the facts, which he or she finds from that evidence that are relevant to the circumstances of the offence.

[35] At the sentencing hearing, it is the duty of the Crown to present evidence of the character and record of the convicted person, as well as evidence of the factors that might have influenced his action. The Court should, in all cases, request a Probation and/or Social Inquiry Report, which should contain a psychiatric report of the convicted person. This would afford the Court findings which it could consider, particularly alongside any Report that is provided on behalf of the convicted person. Any person who presents or participates in the writing of any part of a Report should always be available for cross-examination, unless the sentencing Judge waives their attendance. Mitigating circumstances and

evidence of the prospects of rehabilitation of the convicted person should be presented on behalf of that person at the sentencing hearing. The Crown must present evidence to rebut this evidence.

[36] In this case, the sentencing Judge was entitled to find, as she did, from the facts that were presented, including the trial record, that the murder was planned and premeditated. She did not err when she made that finding.

[37] My concern, however, is in relation to the manner in which the Learned Judge dealt with the Report of Dr. Griffin. She used it, along with the other Reports, to consider the subjective factors, which influenced the Appellant. She set out some of the findings contained in the Reports in the Judgment and concluded as follows at the end of paragraph 13 and at paragraph 14 of the Judgment:

> "Though he [the Appellant] scored an intellectually impaired range he shows no sign of being mentally defective or insane. There was no evidence that he was suffering from any diminished responsibility or mental defect prior to and after the date of the crime. 14. Dr. Griffin's examination and analysis of the Accused was incapable of discerning the state of mind of the Accused at the date of the crime."

[38] It is apparent that these are considerations of the state of mind of the Appellant, which are relevant to the trial process rather than to the sentencing process. This was in error because the question is not whether the Appellant's mind was impaired at the time of the act, so as to afford him a Defence to the charge of murder, but rather, whether or to what degree his state of mind should impact on his sentence for the crime of murder. The Reports should have been used for objectively analyzing the factors that influenced the Appellant's conduct and his prospects for reform and social re-adaptation.

[39] In paragraph 27(l) of the Judgment, the Learned Judge stated, in setting out the mitigating factors, that the Appellant is a good candidate for rehabilitation. She said that this was borne out in Dr. Griffin's Report and also in the Status Report of the Director of Corrections. In paragraph 15 of the Judgment, the Learned Judge

noted Dr. Griffin's opinion that the Appellant is unlikely to initiate violence in prison or to attempt to escape, and that his characteristics make him well disposed to therapy and rehabilitation. However, in the Judgment, this was not fully weighed with the other factors in the general analysis. The analysis did not take account of the time that the Appellant spent under the unlawful death sentence or of the possibility of his reform or social re-adaptation. I therefore agree with the submissions that Mr. Innocent made that the Learned Judge did not adequately consider or analyze the relevant factors, or properly weigh the mitigating factors with the principles of sentencing. The appeal therefore succeeds on this ground.

[40] In the usual course of events, this case would be remitted to the High Court for a new sentencing hearing. However, the issue whether the case falls within the Pratt and Morgan principles on account of delay will first be considered.

Delay

[41] First, I shall state the principles on delay for the purpose of this case. I shall then set out the relevant timelines in this case, the submissions by Counsel and my findings.

The relevant principles

[42] In Pratt and Morgan, the Privy Council stated as follows, at page 26:

> "… in any case in which execution is to take place more than 5 years after sentence there will be strong grounds for believing that the delay is such as to constitute inhuman and degrading punishment or other treatment."

[43] Since the decision in Pratt and Morgan, the Privy Council has explained that the 5-year period is to be treated as a norm from which the courts may depart, if the circumstances of the case require it, rather than as a strict minimum time limit.

[44] In Pratt and Morgan, from pages 24–25, their Lordships stated that if capital punishment is to be retained, it must be carried out with all possible expedition. Their Lordships also stated that capital appeals must be expedited. The aim should be to hear capital appeals within 12 months of conviction and to complete the entire domestic appeal process within approximately 2 years.

[45] Their Lordships have considered the question whether pre-trial delay, the time between which a person is arrested for murder and the date of conviction, should be taken into account under the Pratt and Morgan principle. They held, in Trevor Nathaniel Fisher v The Minister of Public Safety and Immigration et al, Privy Council Appeal No. 53 of 1997, that there is no basis for extending the Pratt and Morgan principle to include pre-trial delay.

[46] Their Lordships observed, in the majority judgment in Trevor Fisher, which Lord Goff of Chieveley delivered, that under the Constitution, pre-trial and post-trial delays enable an accused or convicted person to invoke different rights. They stated that pre-trial delay goes to the validity of the trial and enables an accused person to apply, under common law, to have the charge dismissed for want of prosecution. An accused person may also apply under the Constitution to have the case tried within a reasonable time. Their Lordships stated that, on the other hand, post-conviction delay pre-supposes a valid conviction. The convicted person's attack is therefore against the punishment (the death sentence) under which a convicted person may invoke the Pratt and Morgan principle.

[47] Their Lordships also held in Trevor Fisher, that pre-trial delay may be taken into account on the principle established in Guerra [1996] A.C. 397. It is not to be added to the post-conviction delay. Rather, it might be considered as a factor that could create exceptional circumstances, under which a court might hold that a death sentence, which was imposed for a period that is shorter than 5 years, should be commuted to life imprisonment under the Pratt and Morgan principle.

Submissions

[48] Mr. Innocent admitted that only 4 years have elapsed between the date on which the Appellant was convicted and first sentenced to death, and that this does not bring the present case under the 5-year norm in Pratt and Morgan. He submitted, however, that the Judge should have applied the exceptional circumstances rule in Pratt and Morgan. In this regard he noted that the Appellant was incarcerated under an unlawful sentence of death for about 2 years and 8 months before he was given the opportunity to mitigate his mandatory death sentence, and another 1 year and 4 months from the time that the pronouncement of the second death sentence to the hearing of the appeal against that sentence.

[49] Mr. Innocent suggested that, for the purpose of determining exceptional circumstances, this Court should take into account the following factors:

(a) the un-contradicted objective and empirical evidence that suggest that the Appellant has suffered and is suffering mental anguish and psychological dysfunction during and as a result of his incarceration on death row;

(b) the Appellant was not given an opportunity to mitigate his sentence for murder for over 1 year after he was convicted and his first sentence of death;

(c) the first sentence of death that was imposed upon the Appellant was unlawful;

(d) the delay in the sentencing hearing and the appeal proceedings were due to failure in the administrative process rather than to any fault on the part of the Appellant;

(e) the delay of 2 years and 8 months exceeded the period of 2 years specified in Pratt and Morgan as the time within which the domestic appellate process should be completed.

Findings on delay

[50] In her Judgment, it does not appear that the Learned Judge considered delay independently of the actual sentencing aspect of the case. At paragraph 29(e), she identified two relevant periods of delay. The first was a period of about 1 year and 8 months. This was from the date of conviction, 16th February 2001, and the imposition of the mandatory death sentence to the date on which this Court dismissed the appeal against conviction, 22nd October 2002. The second was the 1-year and about 3 months between the pronouncement of that sentence and the second sentence. At paragraph 29(f), the Learned Judge stated that there are no decisions or existing guidelines that collectively accommodate these periods, and the collective period should not by itself attenuate to reduce the sentence from death to life imprisonment in light of the aggravating circumstances in the case.

[51] The relevant timelines in this case for the purpose of considering delay in the context of the Pratt and Morgan and the Guerra principles are as follows:

4th December 1998	Mr. St. Hill was murdered
10th December 1998	The Appellant was charged for the murder and remanded in prison pending trial
16th February 2001	The Appellant was convicted and the then mandatory death sentenced was imposed against him
2nd April 2001	In Spence and Hughes, this Court held that a mandatory death sentence under section 178 of the Criminal Code was unlawful
22nd October 2001	The Appellant's appeal against conviction was dismissed
11th March 2002	The Privy Council confirmed this Court's decision in Spence and Hughes

9th November 2003	The High Court conducts a sentencing hearing in relation to the Appellant's conviction for the murder of Mr. St. Hill
12th November 2003	The Appellant was sentenced to death for the murder after the sentencing hearing
15th February 2005	Commencement of this appeal hearing

Pre-trial incarceration	2 years and 2 months
Time incarcerated on death row to the sentencing hearing	2 years and 9 months
Time incarcerated on death row between the second sentence and the hearing of the appeal against sentence	1 year and 3 months
Time spent on death row to the hearing of the appeal against the death sentence	4 years

[52] According to the Privy Council's guidelines, the domestic appeals process in death penalty cases should be completed in about 2 years after conviction and the imposition of a death sentence. In this case, 4 years had elapsed by the time that this appeal was heard. This is sufficient to bring this case within the Pratt and Morgan principles on which the death sentence could be vitiated. Even more, however, I think that this case now falls under the Guerra special circumstances rule. This is because during the 4 years on death row, the Appellant has laboured under a mandatory death sentence for 3 years and 10 months after this Court held in April 2001 that it was unconstitutional and unlawful. Additionally, the Appellant was incarcerated for about 2 years and 2 months prior to his trial and conviction.

[53] In any event, it would be futile to remit this case to the High Court for a re-sentencing hearing. This is because the time by which domestic procedures should be exhausted has long passed. Delay that would vitiate the death sentence under the 5-year normative guideline in Pratt and Morgan would by then be applicable. In the premises, the only practical course will be to quash the death sentence and to substitute a term of imprisonment for life on the Appellant.

Order

[54] For all of the reasons stated above, the death sentences that were passed on the Appellant on the 16th day of February 2001 and on the 12th day of November 2003 are hereby quashed and a sentence of life imprisonment is substituted instead.

Hugh A. Rawlins
Justice of Appeal [Ag.]

I concur.

Adrian Saunders
Chief Justice [Ag.]

I concur.

Michael Gordon, QC
Justice of Appeal