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

ANTIGUA AND BARBUDA
CASE NO. 35 of 1998

BETWEEN

THE QUEEN

vs.

ATTLEY ALEXANDER

Appearances:

Mr. Anthony Armstrong, Director of Public Prosecution and Mrs. Shannon Jones-Gittens for the Crown
Mr. John Fuller and Mr. Ralph Francis for the Defendant

2016: September 19, 22 October 12, 28
November 3, 9, 23, 28

Criminal Law – Re-Sentencing - Murder – Conviction on Trial – Original Sentence of Death declared unconstitutional – Order of Re-sentence – Court's approach on re-sentencing – Application of normal sentencing principles – Considerations of aggravating and mitigating features – Range of sentence – Fixing a commensurate sentence – Relevance of delay on sentence – Relevance of time spent on death row – Relevance of declaration of unconstitutionality of original death sentence on commensurate sentence.

On the night of the 17th December 1997, the defendant, Attley Alexander set fire to the wooden home of Jacqueline Simon and her three daughters. Prior to this, he and Jacquelyn had been involved in an intimate relationship marked with domestic abuse. She had broken off the relationship and there was a matter pending in the court related to the abuse. A restraining order was obtained. In the days before the fateful night he was vacillating between wanting her back and being vengeful. In his vengeful state he expressed an intention to kill Jacqueline and all of her children. That night he carried out his intention. Jaqueline Simon and two of her daughters, Amber James and Sophia Jones, did not escape the blaze that night and perished. At the time, Simon was 9 months pregnant and her daughters Amber and Sophia were 13 and 10 years old respectively. Her eldest child who awoke during the blaze, barely managed to escape with her life.

On the 9th November 1999, the defendant was found guilty of all the murders and he was sentenced to death and placed in the maximum security wing of the prison awaiting execution. In January 2000 a death warrant was read to him but hours before his execution a stay was granted. Since then no steps were taken to carry out the sentence but he remained in the prison's records as a man under a sentence of death. In 2015, the State sought and obtained an order that the sentence of death was unconstitutional and ordered that he be brought before the High Court to be sentenced for the crime committed in 1997. At the mitigation hearing, it was argued that having regards to various matters including the imposition of an unconstitutional sentence and a period some 22 years of delay, the sentence should be a fixed term sentence.

Held: The defendant is sentenced to a term of life in prison with a review after 42 years in accordance with section 3B of the Offences against the Persons Act, Cap 300, for the following reasons:

1. The death penalty not being relevant, the maximum penalty which may be imposed for murder is a discretionary life sentence which is a whole life sentence. Notwithstanding the delay and complaints of constitutional breach, on this sentencing exercise the court exercising its criminal jurisdiction may, as a preferred approach, first apply in the usual way ordinary common law principles of sentencing and in this regard consider the matter in the round having regards to the offence and the offender as he now stands before the court and fix a notional sentence.

2. As a matter of principle, in the context of the delay, this approach must give regard to whether the whole of the commensurate sentence or a portion thereof is grounded in retribution or deterrence. Where those elements of the sentence have been satisfied the court must go on to consider whether the defendant is sufficiently rehabilitated and there is no other public reason why he should not be released immediately. Where the court is of the view that one or the other of these elements have not been satisfied, but they be so satisfied by an extended period of incarceration, then the court ought to fix a review period under the regime of section 3B of the Offences against the Person Act Cap 300.

3. In any event, in arriving at an appropriate sentence, the court exercising its criminal jurisdiction is entitled to consider there has been a breach of the right against a fair trial and the constitutional guarantee against cruel and inhumane treatment. Where there has been any such breach of the defendant's constitutional rights, the court must then consider whether in the circumstances of this case, those breaches and the delay will impact on the sentence. Breaches of the right to a fair trial and the guarantee against inhumane punishment may have the effect of mitigating the sentence in some cases, but it has been recognized that having regards to the seriousness of the offence, such breaches may carry little weight.

4. An examination of this offence and the offender, aggravating and mitigating features shows that this is an extremely serious offence. Three persons lost their lives that day. One of these persons was nine months pregnant at the time, two were mere children, and the defendant knew this. He intended to kill his estranged partner and all her children. One barely managed to escape or else he would have killed four persons that night. Everyone was asleep when he lit the house ablaze using gasoline. This was a ghastly crime. None of

the usual and ordinary mitigating features could have reduced the seriousness of this offence. I have given considerations to his present age, his violent past and the fact that the progress he has made. A notional sentence of life imprisonment without the possibility of release would have been appropriate in this case.

5. There were significant breaches of the right to a fair trial and to the guarantee against cruel and inhumane treatment. His right to a fair trial was breached when the court automatically imposed on him a sentence of death in 1999. This right was also breached when there was a delay of some 18 years before this sentencing hearing was conducted with a view of imposing a lawful sentence for his conviction. This breach was aggravated by the fact that he remained under this sentence for all these years and early into that sentence a warrant for his execution was read to him. These matters also breached the constitutional guarantee against inhumane treatment. These breaches will have a mitigating effect in this case in relation to the punitive element of the notional sentence.

DECISION

[1] RAMDHANI J. (Ag.) This is a re-sentencing exercise commenced by this Court on the 19th September 2016. At the end of the hearing, a sentence of an indeterminate life imprisonment with a minimum period of 42 years was considered in all of the circumstances of this case to be the appropriate sentence with regards to the defendant for the reasons now set out.

[2] On the 9th November 1999, the defendant, Attley Alexander was found guilty of a single charge of murder which involved the killing of three persons, his one-time girlfriend, Jacqueline Simon and two of her daughters, Amber James and Sophia Jones. On that same day in October 2000, he was sentenced to death and placed in the maximum security wing of the prison.

[3] In January 2000 a death warrant was read to the defendant; he was to be executed within days. He was measured for his coffin. Hours before his execution was to be carried out the high court granted a stay of execution to allow for various appeals to be filed. Those appeals have since been pursued but the conviction and sentence were affirmed. With the passage of time, the rulings by the Privy Council in R v Pratt and Morgan became relevant, and it appeared that the prison authorities accordingly took no steps to carry out the

execution of this defendant. No formal pronouncements or orders, however, were made at the time and for all intents and purposes, this defendant remained in prison under the original sentence of death. He spent some ten years in maximum security section of the prison but was then transferred to the 'general population' on the basis of his conduct and an assessment that his risk level was low.

[4] In 2014, the Attorney General took matters in his hands, and on behalf of this man and six others who were similarly being held under sentences of death for unrelated offences, a claim for 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. On the 4th June 2015, the Honourable Justice Cottle granted the declaration which was sought and ordered that each of these men to re-sentenced by the high court at the earliest opportunity.

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

The Facts

[6] At about 1.30 a.m. on the 17th December of 1997, police officers at the Grays Farm Police Station acting on a report of a possible arson and attending a burnt wooden home at Cooks Hill, St. John, discovered the remains of two burnt persons among the smoldering remains of the building. On the outside was a third person a young female, badly burnt, blackened and barely alive – she died a few hours later at the hospital. These were Jacqueline Simon a nine months pregnant lady, her 13 years-old Amber James and 10 years old Sophia. Lying next to the body of the Jacqueline Simon in the smoking remains to the building was a fetus, its limbs burned and shortened.

[7] All three persons died from the fire. The Pathologist opined that Jacqueline Simon died from shock resulting from extensive burns to her body. She was burnt to over 90 % of her body to the point that her skull was fractured. The body of thirteen years old Amber James

was found to be 'charred', the heat also fracturing her skull exposing her brain. Ten years old Sophia James died of respiratory failure; 90 per cent of her body was also burnt.

[8] The prosecution case was that the defendant had planned to kill the deceased Simon and all her children and had on the night of the 16th December 1997, executed that plan. That night after they had all retired, Jackeyma James, Jacqueline's 19 year old daughter and the sole survivor, was awakened by the smell of gasoline. She got up and checked the windows, doors and a gas tank that was in the house and she found nothing suspicious. About fifteen minutes later she again smelt gasoline – it was even stronger this time. She got up in bed and as she was about to place her feet on the floor she heard an explosion and felt the house shake. Almost immediately the house became engulfed in flames. She ran to the other bedroom where her sister Amber slept with her mother and called out but got no reply. The fire at this point was so intense that she was forced to break the glass louvres of a bedroom window and jumped through it. A few minutes later she saw Sophia outside the house and she was all 'black'. Amber and Jacqueline never came out. Their bodies were recovered by the police from among the burnt and charred remains of the house. The house itself was a wooden house and had a galvanized roof. It measured 12 x 16 feet and in the opinion of the fire officer, it would have been completely destroyed within four to five minutes.

[9] Several witnesses testified that on the 16th December 1997, and a few days before the fire, the defendant told them that he was going to kill Jacqueline and her three daughters. Another witness told the jury that the defendant asked him early in December 1997, to ask Jacqueline to drop a court case she had been pursuing against him. This witness said that same day, the defendant took him to Cooks' Hill and showed him where Jacqueline lived so that he could deliver the message. He was also seen watching the house that evening and just before the fire he was seen in the Cooks Hill area walking at a fast pace and running down a hill close to the home of the victims. The alibi that he raised at the trial was rejected.

The Mitigation Hearing

[10] The evidence considered at the mitigation hearing included the testimony of several witnesses, a pre-sentence report from the probation department dated the 13th October 2016, which included a family impact statement, and two psychiatric reports prepared by Dr. James A. King. The Court also received and considered sentencing guidelines from the Crown and written submissions from Mr. Fuller.

The Pre-Sentence Report – Attley Alexander

[11] At the date of sentencing the convicted man was presented to this court as a 64 years old and originally from Bolans Village. He was 45 years old at the date of the commission of the offence. He claims to be the father some 20 children with seventeen different women. Many of the children he states came from 'one night stands'.

[12] The defendant has now been incarcerated for about 19 years for this offence. He spent most of that time in maximum security only being allowed into general population in 2015 when the incoming superintendent of prisons assessed that his risk level had been reduced.

[13] His young life was a bit unsteady coming from a big family and being abused by his father. He was also a witness to the abuse of his mother by his father. Apart from being beaten regularly, he recounts an incident where his father deliberately burnt him during an accusation that he had stolen his father's money. Much of his early support came from his grandmother and she died when he was still very young. It is suggested that this may have greatly affected him.

[14] He was unable to complete high school and even before he was 18 years old he got into some trouble with the law for stealing. As he grew older, he became a professional boxer, a dancer and a calypsonian. He says that he was the boxing champion in Antigua and Barbuda, and it seemed that his lifestyle must have been a whirlwind for him having regards to this his many one night trysts.

[15] He admits to an odd matter having regards to his popularity with the ladies. He states that was found guilty of rape and he was given a brief sentence in prison. (This was indeed reflected in his records from the police department which listed him as having a long list of prior offences some of which involved violence.)

[16] Community members remember him as a troublemaker and a man with 'several personalities'. Some describe him as gentle and loving and others consider him intimidating. His own family members had similar varied views about him.

[17] He claims that some prison officers have tortured him because of their belief that he committed this offence. He outlines a number of things which he alleges were done to him. There was nothing to substantiate any of this and the court was unable to make any finding on this.

[18] To his credit, he has participated in anger management workshops in prison and received several certificates. He also participated in programmes held by the Directorate of Gender Affairs and Light Ministries International.

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

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

[20] The Reverend Richardson spoke of the defendant's assertions that the crime was really an accident. The Reverend goes on to relay a promise made by the defendant that if he is released he will be a more regular worshipper at church and be a better person in the community.

[21] The 2013 Report from Mr. Adams describing the defendant as being an 'angry prisoner and always in conflict with others'. For the past three years [prior to 2013] there has been a difference in the behavior of Attley Alexander. He has been listening and obeying instructions given to him by officers.

[22] The current Superintendent of Prisons, Mr. Albert Wade gave oral evidence. He stated that when he took on his role in November 2014 he reviewed the defendant file and noted that the defendant continued to be listed as a man who is under a sentence of death.

[23] He stated that he has had some interactions with the defendant who continues to discuss that he has been abused by some prison officers in the past. The Superintendent states that these allegations related to matters before his time. He says that the defendant has said to him on a number of occasions that he continues to keep his emotion under check and that speaking with the superintendent helps to 'keep him calm'.

[24] He said that he has found the defendant to be overall a calm person and that the defendant has from time to time been helpful – on one occasion he actually brought a 'shank' (crudely fashioned knife) and handed it over to the superintendent.

[25] He stated: "[F]rom my interactions and pronouncements made by him, I would have some reservations about whether he is safe to be returned to society'. He added to a question posed by Mr. Fuller that: "These reservations are less serious than they were a few years ago. His manner and behaviour has improved."

The Psychiatric Report

[26] A psychiatric examination of the defendant was conducted by Dr. James A. King. A report dated the 13th October 2016 was presented to the court and was by consent admitted into evidence. It was the opinion of the doctor that at the evaluation of the defendant, no

present or past history was elicited for symptoms consistent with any anxiety, effective or psychotic disorder. He was competent to participate in his sentencing hearing. He was recorded being blind in one eye and as suffering from hypertension and was receiving medication for same.

[27] The doctor evaluated him for the risk of dangerous and it is useful to set out the doctor's opinion in full:

"Attley Alexander's history of physical abuse suffered at the hands of his father during his childhood and the behaviors observed by the HMP's prison staff which included physically attacking and verbally threatening to harm them is a cause for concern. No amount of certificates in 'bible study' or 'anger management classes' while incarcerated would have adequately addressed the psychological scars he must have from his childhood and adolescent years. Unfortunately HMP would not have had the resources to effectively help him. Even if he were not incarcerated this would have been a herculean task to remedy particularly if he had limited finances, motivation and support and support in his community. He also neglected to divulge he had been incarcerated in Guadeloupe where he reportedly lost the sight of his left eye in a fight. He preferred instead to reminisce about the days he boxed when he was in that island and other territories. His lack of insight regarding why he spent years in solitary and shackled confinement which had to do with his reported inappropriate, aggressive and abusive behavior and nothing to do with the staff of HMP being simply vindictive is quite disconcerting. He was also observed lasciviously 'eyeing female HMP staff' while being evaluated. He of all the inmates evaluated had traits most consistent with APD [Antisocial Personality Disorder], which is a poor prognostic sign. His relative risk of recidivism was assessed as high."

The Impact of the Offence on Surviving Relatives

[28] At the request of the court, a family impact statement was contained in the pre-sentence report. Jackeyma James who survived the fire is now 36 years old. She now has two

children. This crime continues to affect her and she was described as being very angry and emotional.

[29] Ms. Janice Simon Samuel is a sister of the deceased Jacqueline. She stated that even today she is affected by this crime. She revealed that the fire which consumed her sister's house also destroyed her house which was in the same yard, and she struggles even today with rebuilding that. She said that though she has forgiven the defendant she cannot forget what he has done by this crime.

[30] Mr. Devon Simon is a 51 years old man. He is a brother of the deceased Jacqueline and uncle to the children who were killed. He said that he and his sister were very close and he was emotionally affected and continues to be. He says this crime makes family re-unions especially difficult. This gentleman actually recounts that he was present when the house was burning and was trying to get in to save his sister and her children but he could not when the house collapsed. His niece who came out badly burnt died the next morning in the hospital.

[31] The family continues to be in pain and anger.

The Maximum Sentence and Principle of Sentencing

[32] As with the other re-sentencing exercises which engaged this court during these Assizes, this was matter arose from an Order of the Constitutional Court made on the 4th June 2015 which declared the original sentence of death which had been imposed on this defendant was an unconstitutional sentence and directed the High Court proceed to impose a sentence on this defendant for the crime for which he had been found guilty in October 2000. This court therefore is proceeding as a criminal court involved in a sentencing exercise and may exercise all the powers of such a court.[1]

[1] See for a similar approach the decision in The Republic of Malawi v Njiratenga Banda, Homicide Sentencing Re-Hearing No. 8 of 2015

[33] In the usual way, a court in Antigua and Barbuda tasked with the sentencing of a criminal offender, must approach the matter having regards to the common law principles of sentencing, considering both the offence and the offender as he presently stands before the court. The court must have regard to all of the aggravating and mitigating features that would ordinarily fall to be considered. This would the normal way lead the fixture of a commensurate sentence. In this case, having arrived at this sentence, the court will go on to consider whether the extraneous matters would also have a mitigating effect on the sentence.

[34] When murder is committed in this jurisdiction, the maximum penalty is a sentence of death. Such a sentence may be found to be an appropriate punishment if the offence falls within the worst of the worst. In R v Trimmingham - [2010] 1 LRC 205. There the Privy Council made it clear such a penalty be appropriate in rare cases; the worst of the worst murders. It was held that two principles must be followed:

> *First, that the death sentence should be imposed only in cases which, on the facts of the offence, were the most extreme and exceptional 'the worst of the worst' or 'the rarest of the rare'. In considering whether a particular case fell into that category, the judge should compare it with other murder cases and not with ordinary civilised behaviour. The second principle was that, for the death sentence to be imposed, there should be no reasonable prospect of reform of the offender and that the object of punishment could not be achieved by any means other than the ultimate sentence of death. The character of the offender and any other relevant circumstances were to be taken into account insofar as they might operate in his favour by way of mitigation and were not to weigh in the scales against him."*

[35] The principle being stated, it is however accepted by both sides and this court agrees, that having regards to the passage of time the prescribed and now discretionary death penalty is not relevant in this sentencing exercise.

[36] The maximum penalty therefore which may be considered for this offence is a term of life imprisonment. Under the common law a sentence of life imprisonment means

imprisonment for the whole of the natural life of the prisoner, so much so that even if a prisoner is released on licence this sentence continues to remain on him until his death.[2]

[37] In deciding whether a sentence of life imprisonment or lesser fixed term is appropriate in this case in relation to each man, this Court, in the absence of any statutory scheme is guided by the common law principles or aims of punishment[3] including retribution, deterrence, prevention, rehabilitation as well as restoration. It is these principles, their individual weight in any case that will inform this Court's determination in its evaluative exercise considering both aggravating and mitigating factors, as to what is a commensurate and appropriate sentence in this matter.

[38] So, when is a term of life imprisonment appropriate in a case or murder? When is a lesser term appropriate? Guidance has surely provided as to the matters the court must consider. As Rawlins J.A. stated "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 Judge may accord greater importance to the circumstances, which relate to the commission of the offence.[4]

[39] In using these matters in finding its way to a life sentence, there is also no shortage of guidance by way of broad expressions of principles. Our court of appeal in David Roberts v R Criminal Appeal No. 8 of 2008 has stated that:

> *"It may well be that considering the matter in the round, including the individual circumstances of the offender and the offence, punishment and deterrent may well be served by the prisoner remaining in prison for life."*[5]

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[2] See R v Foy [1962] 2 All ER 246; R v Norton - [2001] All ER (D) 92 (May)

[3] Desmond Baptiste v R Criminal Appeal No. 8 of 2003

[4] Per Rawlins J.A. [Ag.] (as he then was) in Mervyn Moise v The Queen, Saint Lucia Criminal Appeal No. 8 of 2003 (delivered 15th July 2005, unreported) at paras. 18 and 19.

[5] There was a constitutional challenge to a sentence of life imprisonment imposed in St. Vincent and the Grenadines in this case. The Court of Appeal held inter alia that: "Under section 65(1) of the Constitution, the Governor General may grant a free or conditional pardon to a person sentenced to life imprisonment, grant a respite of the imprisonment imposed; substitute a lesser punishment or remit the punishment imposed. This indicates that there is a possibility of a

[40] Cases have made it clear that this has been one of the underlying themes of life imprisonment cases, namely that it is presumptively applicable for punishment and deterrence and for 'reserved for offences of utmost gravity'. In fact, Lord Bingham of Cornhill in his own inimical manner offered that there could be 'no reason, in principle, why a crime or crimes, if sufficiently heinous, should not be regarded as deserving lifelong incarceration for purposes of pure punishment.' *R v Wilkinson* [2010] 1 Cr. App. R(S) 100.

[41] So as I have noted in Harris and Joseph, it is then left to the experience of the law, and the individual court's own sense as to where a particular case falls in that sliding scale of bad cases, worse cases and those which are the worst of the worst. Judges must be mindful and must give due regards to other cases and make comparisons without being mechanistic.[6]

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

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future release by executive clemency of a prisoner serving a life sentence. A life sentence therefore would not be incompatible with section 5 of the Constitution."

[6] See Trimmingham [2010] 1 LRC 205

[43] As a matter of principle, in the context of the delay, this approach must give regard to whether the whole of the commensurate sentence or a portion thereof is grounded in retribution or deterrence. Where those elements of the sentence have been satisfied the court must go on to consider whether the defendant is sufficiently rehabilitated and there is no other public reason why he should not be released immediately. Where the court is of the view that one or the other of these elements have not been satisfied, but they be so satisfied by an extended period of incarceration, then the court ought to fix a review period to be conducted under the regime of section 3B of the Offences against the Person Act Cap 300.

[44] In any event, in arriving at an appropriate sentence, the court exercising its criminal jurisdiction is entitled to consider there has been a breach of the right against a fair trial and the constitutional guarantee against cruel and inhumane treatment. Where there has been any such breach of the defendant's constitutional rights, the court must then consider whether in the circumstances of this case, that and the delay will impact on the sentence. Breaches of the right to a fair trial and the guarantee against inhumane treatment and punishment may have the effect of mitigating the sentence in some cases but it has been recognized that having regards to the seriousness of the offence, such breaches may carry little weight.

[45] I now turn to consider the matters in this case.

The Aggravating Factors of this Case

[46] There are a number of aggravating matters in this case.

[47] This is a case of multiple murders even though charged as one offence. Three persons lost their lives that night.

[48] It is also aggravating that two of victims were still children being only 10 years and13 years old and had nothing to do with the ongoing domestic dispute between the defendant and their mother.

[49] As a separate and highly aggravating feature was the fact that the mother, was herself pregnant, nine months so, and the defendant knew this when he carried out his plan.

[50] These were premeditated killings. He told several witnesses that he would kill this lady and all her children.

[51] The manner of the execution of the killings was also an aggravating feature of this case. He was seen that night near the house watching at the house. He then waited until everyone was asleep and used an accelerant to burn the house so that no-one would escape alive.

[52] It is also aggravating when he did this gruesome act, he was already subjected to a court order not to go near the deceased Jacqueline.

[53] It is also aggravating that he has a long list of previous convictions ending in 1996 just one year before he committed this offence. Among these were rape for which he got 2 years in 1983. To mention a few relevant ones: in 1983 he was convicted of battery on a police officer and fined. That same year he was convicted of rape and sentenced to two years. In 1986, he was convicted of two separate charges of wounding with intent, and he was given 3 years and 7 years respectively. In 1989 he escaped lawful custody and given 18 months. That same year he was found guilty of wounding with intent and given 4 years to run consecutive with current sentence. In 1992 he was convicted of wounding and given 9 months. In 1995 among other minor offences, he was convicted of being armed with an offensive weapon. In 1996 this string of minor violent offences continued ending with being convicted in October 1996 with three minor offences including assault and being armed with an offensive weapon. He was given a few months on these. Prior this offence he was

sentenced to more than 15 years in prison. He committed this offence just about one year after this string of offences lasting between 1980 and 1996. There were others before. This court is very mindful that this sentencing exercise is taking place in 2016. These offences took place long ago in the past. They do have some relevance to this exercise, but little weight will be given in terms of aggravating the sentence. They were also helpful in assessing the defendant's personality having regards to his behavior in prison over the years.

Mitigation

[54] I turn to consider the mitigation in this case.

[55] This court found nothing which could operate as mitigating in this matter whether related to the offence or the defendant. To start with when he committed this offence he had a long list of previous offences.

[56] The defendant has never accepted his role in this crime. He has denied it at all times. He claims it was an accident. While he has stated that he is 'sorry' that the victims died that night. This court do not find any remorse. It does not aggravate the offence, but it equally does not provide any mitigation.

[57] There are no other matters in this case, (as this court is not satisfied that he is even rehabilitated) which in the normal way would go to mitigation except those extraneous matters being complained of. These include the unconstitutional sentence of death which had been imposed on him, and the fact that there has been a delay of some 19 years before a lawful sentence would be imposed on him for this crime.

[58] As noted before, this court would fix notional sentence without regards to these extraneous matters. Once such a notional term is fixed, the court would consider what effect those matters would have on the sentence in the circumstances of this case.

The Appropriate Sentence

[59] This was an indifferent, brutal and savage crime. It occurred days before Christmas in 1997. This man had been involved in a violent intimate relationship with the lady Jacqueline. She had attempted to end it and had filed domestic violence proceedings in court against him and had secured a restraining order.

[60] Even with all his many involvement with ladies in his time, he appeared to have been very affected by this and was very angry with her. In moments he wanted reconciliation and generally he was very vengeful and threatening. He spoke to a number of persons and told them that he would kill her and all her children.

[61] He planned the murders. He staked out the house where Jacqueline lived with her children. When they were asleep in this little wooden house, he used an accelerant and burned the house to the ground knowing that she was pregnant, knowing that all three children were there sleeping. This man wanted all of them dead. He was cold hearted and devoid of all humanity that night.

[62] This savage crime has brought to full glare man's capacity for evil. When he committed this offence he was already a hardened criminal having committed many previous offences involving violence and spending more than 15 years of his life in prison. This crime must have been the natural progression of his life to that point.

[63] I have examined carefully the progress if any he has made in prison. There is some, but even the prison official appear concerned about his risk of danger. To my mind having regards to all of this an appropriate punishment would be a sentence of life imprisonment without the possibility of release. This offence was among the worst of the worst.

[64] I have noted that even recently for very serious offences even the UK Court of Appeal have been prepared to approve whole life sentences for offences of extreme gravity. See

R v Adebolajo and another - [2014] All ER (D) 37 (Dec); Hutchinson v United Kingdom (App. No. 57592/08) - [2015] All ER (D) 17 (Feb

[65] I now turn to consider whether the extraneous matters would mitigate the sentence in this case.

The Unconstitutional Sentence and the Delay Factor – Extraneous Mitigating Features

[66] Mr. Fuller did not take any issue with the factual findings of the court, but have urged that this court should have regard to the fact that there was an unconstitutional sentence originally imposed on this offender and of the length of time this matter has taken before some certainty could be brought to this man's life.

[67] He pointed out that for all these years this man remained under a sentence of death and the conditions under which he was detained must be taken to mean that he has been punished over and above the time he has been actually been in prison. All of these matters have resulted in breaches of the defendant's right under the Constitution.

[68] The Prosecution, through the learned Director of Public Prosecution asked to address the Court on this matter, stated that these were matters to be considered but that in the circumstances of this case they should have little weight in the appropriate sentence to be fixed.

[69] There is no doubt as in the other matters that an unconstitutional sentence of death imposed on him in October of 1999. It was so unconstitutional because it had been imposed as a matter of course without the defendant being given an opportunity to be heard in mitigation. See Reyes v R [2002] UKPC 11. The right to a fair trial requires that the defendant must be given an opportunity to be heard not only in his trial but also at the sentencing phase. What further aggravates the breach in this case was the fact that this sentence remained on him throughout the time he has spent in prison; a period of 19 years

to date. This is notwithstanding that it had been declared unconstitutional in 2015 as the defendant was never given notice of that Order. That a man is to be properly sentenced more than 18 years after he is found guilty in an unreasonable delay in the trial process. This delay breaches of his right to be tried within a reasonable time in the circumstances of this case.

[70] These matters also affected and breach his right not be treated in an inhumane manner, a right given to him by section 7 of the Antigua and Barbuda Constitution. The fact that an unconstitutional sentence of death had been imposed on a man and that it remains on him for 17 years must give rise to a presumption that he has suffered as a result of having the hangman's noose dangling over him for all these years[7]. As Chief Justice Conteh of the Belize Court of Appeal in Harris v The AG of Belize Claim No. 339 of 2006 speaking of a man being prisoner being under an unlawful sentence of death. He said at paragraph 11, "*It is no leap of the imagination or creative thinking to conclude that to have the prospect of the hangman's noose over a person head for so long a period (over eleven years) is especially tortuous and inhuman punishment and treatment."*

[71] These matters and the length of the delay are serious breaches. For the purposes of this court, it must be considered whether it will have a mitigating effect on the sentence which was considered as a commensurate sentence in this case.

[72] Again, the learning in Rummun v The State of Mauritius [2013] UKPC becomes relevant. This makes that point which makes the point that a breach of the right to a fair trial may in some cases have the effect of mitigating the sentence in an appropriate case. The Board stated:

> *"A breach of that right will always be a factor to be considered in deciding upon the appropriate disposal. In some instances it may not be a factor of great weight and there may even be cases in which because of the strength of the*

[7] The AG of Trinidad and Tobago v Angela Ramdeen Civ. App. No. 6 of 2004; Para 32 of the judgment of the Court delivered by Sharma CJ

countervailing factors such as the gravity of the offence, it will be accorded no weight at all. But it will always be a factor to be considered."

[73] This court has actually decided that in other cases similar breaches, the notional commensurate sentence would be mitigated. There will be some mitigation in this case as well. The mitigating effect will be somewhat different having regards the particular gravity of this offence and the public interests. In the context of these breaches I have had regards to his age. He is now 64 years old. I have considered that the appropriate sentence will be mitigated so that the possibility of judicial release may exist for this defendant.

[74] This defendant will continue to remain in prison under an indeterminate life sentence. I consider that a robust and structured review programme coupled with an aggressive rehabilitative programme which is designed to address his rehabilitation and his dangerousness is necessary if he will ever get out of prison. But he will have something to look forward to and give him hope to be a better man. Whether he comes out of prison in his twilight years will depend on him.

[75] In the circumstances of these serious breaches of constitutional breaches, this sentencing court being concerned with an appropriate sentence for the offender, and having regards to the offence, the offender and the interests of the community, will reduce the punitive period of the indeterminate life sentence in this case. In all of the circumstances of this case, the sentence for this man will be a follows:

Attley Alexander, you being found guilty of a jury of your peers for the offence of murder, you are sentenced to an indeterminate term of life imprisonment. You shall serve a minimum term of 42 years. All the time spent on remand or in detention for this offence shall be taken into consideration in computing this minimum period of this sentence. At the expiration of the minimum period of 42 years you shall be reviewed in accordance with section 3B of the Offences against the Persons Act, Cap 300.

As long as you remain in prison, you shall be the beneficiary of any and all programmes designed to address your rehabilitation. The Prison Authorities shall provide you with counselling and other clinical treatment to address the issue of recidivism and make you ready for possible release. An initial evaluation is to be done within 30 days of this order as to what measures may be taken regarding reducing your risk of dangerousness. A report of that review is to be filed in court within these proceedings.

After the expiration of 42 years and the first review, if you are not ordered to be released you shall be reviewed at intervals of two years.

Should your release be allowed, that court should consider whether as a condition of your release, you should be required to continue your counselling sessions which shall be provided by the State.

[76] This is the sentence of this court.

[77] I will like to thank all counsel for the assistance in this matter.

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Darshan Ramdhani
High Court Judge (Ag.)