

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 44/98; Case 11.854
Session: Hundredth Regular Session (24 September – 13 October 1998)
Title/Style of Cause: Anderson Noel v. Trinidad and Tobago
Doc. Type: Decision
Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Helio Bicudo,
Henry Forde.
Dated: 25 September 1998
Citation: Noel v. Trinidad and Tobago, Case 11.854, Inter-Am. C.H.R., Report No.
44/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by: APPLICANT: Clive A. Woolf
Terms of Use: Your use of this document constitutes your consent to the Terms and
Conditions found at www.worldcourts.com/index/eng/terms.htm

I. BACKGROUND

1. By letter dated December 17, 1997, Mr. Clive A. Woolf of the London firm S. Rutter & Co. (now Collyer & Bristow) presented a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission") against the Republic of Trinidad and Tobago (hereinafter "the State" or "Trinidad") on behalf of Mr. Anderson Noel, presently under sentence of death at the State Prison in Port of Spain. The petition stated that the High Court of Trinidad at the Port of Spain Assizes, convicted the petitioner with his co-defendant, Mr. Christopher Bethel, of the murder of Mr. Anthony Rajgir on November 8, 1992 and sentenced them to death.

2. Simultaneous with the presentation of the complaint, the Applicant requested the Commission to issue precautionary measures, pursuant to Article 29(2) of its Regulations, and to seek a stay of execution pending the determination of the complaint by the Commission. On December 19, 1997, the Commission requested the State to stay Mr. Noel's execution "until such time as the Commission has had the opportunity to consider this case and issue its decision." The Commission requested "an immediate consent to the above request."

3. The State of Trinidad and Tobago did not respond to this request for precautionary measures. The Commission regrets that the State party was not prepared to grant the precautionary measures requested under article 29.2 of its Regulations, and to guarantee that the Petitioner would not be executed while his case was under examination. In fact, however, as of September 25, 1998, the petitioner has not been executed. The Commission observes that it is not for the State party, but for the Commission, to decide whether or not a complaint is admissible.

The Commission requests the State to cooperate fully with the Commission's examination of communications in the future.

II. PROCEEDINGS BEFORE THE COMMISSION

4. Mr. Noel's appeal to the Court of Appeal of the Republic of Trinidad and Tobago was dismissed on November 28, 1996 and the judgment is dated March 10, 1997. The appeal was based on the grounds that the learned trial Judge had been in error in directing the jury on the basis of the "Murder/Felony rule," now overruled following the case of *Moses v The State* (1996) 3 W.L.R. 534; Privy Council Appeal No 1 1995. The Court of Appeal allowed the appeal on this basis but applied the proviso contained in section 44(1) of the Supreme Court of Judicature Act.

5. Mr. Noel's appeal against his conviction for murder and the death sentence were dismissed by the Judicial Committee of the Privy Council on December 4, 1997.

6. The complaint alleges that the following articles of the American Convention were violated by the State of Trinidad and Tobago to the detriment of the Applicant: articles 4, 5, 7(5), and 81 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). Specifically the petitioner alleges that "the confirmation by the Court of Appeal of the imposition of the death sentence upon the conclusion of the trial in which Article 8 of the Convention has been breached constitutes a breach of Article 4 which provides that in countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with the law establishing such punishment, enacted prior to the commission of the crime." The petitioner alleges that he did not have a fair trial, in violation of article 8, because the trial Judge misdirected the jury on the felony/murder rule. Had the Judge correctly instructed the Jury the petitioner alleges that he would not have been convicted of murder. He had not intent to kill the deceased or cause him serious bodily harm.

7. The Inter-American Commission on Human Rights, at the request of the Government, held a meeting on February 20, 1998, during its 98th period of sessions, with Mr. Ralph Maraj, Minister of Foreign Affairs of the Republic of Trinidad and Tobago and Mr. Ramesh L. Maharaj, the Attorney General of that State. In his statement, the Attorney General argued that the "Commission has no power to challenge the implementation of a sentence of death imposed by a court of competent jurisdiction in Trinidad and Tobago." The argument of the State is as follows:

Under the Convention, the Commission has the power to make recommendations to the State Party, but in so far as those recommendations relate to a sentence imposed by the courts of the State Party it would be acting *ultra vires* if it attempted to alter by its recommendations the domestic law of the State in respect of sentencing. The Commission therefore has no power to challenge the implementation of a sentence of death imposed by a court of competent jurisdiction in Trinidad and Tobago.

The Constitution of Trinidad and Tobago mandates all arms of the State, including the Judicial arm, to uphold the law of Trinidad and Tobago. The State of Trinidad and Tobago therefore has

a mandatory obligation to ensure that its Constitution and laws are not undermined, subverted or frustrated in their operation. It was for this reason that the Government of Trinidad and Tobago, by its reservation entered when accepting the compulsory jurisdiction of the Inter- American Court of Human Rights, stated that the Court can only have jurisdiction to the extent that it is consistent with the Constitution of Trinidad and Tobago. The Commission therefore does not have jurisdiction either by its acts or omissions to prevent in any way a sentence, authorized by the Constitution and laws of Trinidad and Tobago and pronounced by a court of competent jurisdiction, from being carried into effect. It is therefore open for the Government of Trinidad and Tobago, whilst a petition is pending before the Commission, to carry out the sentence of death once the time stipulated in accordance with the Constitution and laws of Trinidad and Tobago has expired. The Commission may recommend the award of compensation to a victim. It may recommend that the State Party correct those matters which gave rise to a substantive breach so that others do not suffer the same violation in future. However it is submitted that the Commission, either directly or by its recommendation, has no power to alter the lawful sentence imposed by a court of a State Party. (Emphasis added).

8. As a result of this meeting, the Commission decided to request provisional measures from the Court in the instant case and four others. The Commission, during its 99th special meeting approved the text of this request. On May 22, 1998, the Commission formally requested provisional measures in the instant case and on behalf of four other persons condemned to death in Trinidad and Tobago.

9. An article published in the Trinidad Express on March 13, 1998 stated the Ministry of the Attorney General had issued a press release to the effect that "the six-month period in respect to their [Tony Briggs and Wenceslaus James] applications to the Inter-American Commission on Human Rights expires on June 11, 1998, and after this date the state will decide what action it will take in respect to the two condemned men." [FN1] This article gave the impression that Briggs and James would be the first two prisoners to be hanged by the State of Trinidad and Tobago. The same article also stated that "[F]ollowing Briggs and James there are three other Death Row inmates listed to be executed soon after. They are Anthony Garcia and Anderson Noel and Christopher Bethel."

[FN1] Ucill Cambridge, "Sledgehammer killers first to go on Death Row," Trinidad Express, March 13, 1998.

10. On May 27, 1998, the President of the Inter-American Court granted Provisional Measures in the cases of James, Briggs, Noel, Garcia and Bethel, and decided to require the Republic of Trinidad and Tobago "to take all measures necessary to preserve the lives of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia and Christopher Bethel, so that the Court may examine the pertinence of the provisional measures requested by the Inter-American Commission on Human Rights." On June 14, 1998, the Court, in plenary, ratified the President's action and ordered "Trinidad and Tobago to take all measures necessary to preserve the life and physical integrity of Wenceslaus James, Anthony Briggs, Anderson Noel, Anthony Garcia and Christopher Bethel, so as not to hinder the processing of their cases before the Inter-

American system." In this Order the Court summoned the Commission and the State to a hearing at the seat of the Court on August 28, 1998. The Commission appeared at this hearing but the State declined to appear. On August 29, 1998 the Court issued another Order, inter alia, requiring the State and the Commission to inform the Court of any significant developments concerning these cases.

11. The State of Trinidad and Tobago responded to the petition by Note POL:6/16/2 Vol. 6 of March 6, 1998. In this Note, the State informed the Commission that the "Instructions Relating to Applications from Persons under Sentence of Death issued by the Government of Trinidad and Tobago on 13 October 1997, are deemed to apply to the communication of Mr. Anderson Noel. Case No 11.854." In addition, the State pointed out that:

... in order for any recommendation by the Commission to be considered by the Minister of National Security when advising his Excellency the President of the exercise of the prerogative of mercy, the Government of Trinidad and Tobago respectfully requests the Commission to submit its determination in respect of the communication within a period of six months from the date of the despatch of the response by the State party.

In other words, the State requested that the Commission issue a decision on the merits in this case within a period of six months from March 6, 1998, or by September 6, 1998. According to the State, the decision of the Commission would be considered by the Minister of National Security when advising the President as to whether he should exercise the prerogative of mercy. Unlike other systems where the prerogative of mercy is considered part of the domestic process, in Trinidad and Tobago the international instance is used to inform the domestic process.

12. On September 25, 1998, the Commission was informed that on September 24, 1998 a Warrant of Execution was read to Mr. Anderson Noel. The Commission was also informed that a stay of execution had been issued on September 25, 1998 as a result of the filing of a constitutional motion on his behalf. The Commission, pursuant to the Order issued by the plenary Court on August 29, 1998 in re James et al. Cases, informed the Court of these events.

III. GENERAL CONSIDERATIONS

A. The Commission's Competence

13. Trinidad and Tobago is a State party to the American Convention, having ratified the treaty on May 28, 1991. The petition alleges violations of human rights set forth in the Convention which the Commission is competent to review.

B. Procedural Admissibility of the Petition

1. Exhaustion of Domestic Remedies

14. The Government of Trinidad and Tobago stated in its response dated March 6, 1998 that:

In the interests of expediency (...) notwithstanding the failure of the Applicant to first seek redress for his grievances by way of a Constitutional Motion before the domestic courts of Trinidad and Tobago, except as herein expressly provided, the State party raises no challenge to the admissibility of this communication based on the exhaustion of domestic remedies rule (...).

15. The jurisprudence of the Inter-American Commission and Court supports the view that a remedy needs to be effective and capable of producing the result for which it was designed, and that it is not sufficient for the remedy simply to be available. (Velásquez Rodríguez, Preliminary Objections. Judgment of June 26, 1987, para. 88). For an indigent prisoner, who has exhausted all judicial appeals including recourse to the Judicial Committee of the Privy Council in London, to be expected to file a constitutional motion, the burden of proof lies with the State to show that this remedy is effective and capable of producing the result which would make it worthwhile for the prisoner to pursue. In the opinion of the Commission, the State did not meet the burden of proof in this case and consequently the Commission finds this case admissible.

2. Timely filing

16. The petition was presented within six months of the final ruling of the appeal on conviction and sentence pursuant to Article 46(1)(b) of the Convention. Mr. Noel's appeal against conviction and sentence was dismissed by the Court of Appeal of Trinidad and Tobago on November 28, 1996. His application for leave to appeal his conviction was dismissed by the Judicial Committee of the Privy Council in London, on December 4, 1997. The petition was filed before the Commission on December 17, 1997.

3. No duplication of other international procedures

17. The petition satisfies the requirements of article 46(1)(c) in that it is not pending settlement in another international proceeding, nor does it duplicate a petition already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member.

IV. CONCLUSION

18. The Commission finds that the petition is admissible having satisfied the requirements of Article 46 of the American Convention.

19. Taking the foregoing considerations into account,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To place itself at the disposal of the parties with a view to seeking a friendly settlement of the matter based on the respect for human rights, as recognized in the American Convention.

3. To make public this report and to publish it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 25 day of the month of September in the year 1998. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman, First Vice Chairman, Jean Joseph Exumé, Second Vice Chairman, Commissioners Alvaro Tirado Mejía, Claudio Grossman and Hélio Bicudo and Henry Forde.