

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 88/98; Cases 11.846, 11.847
Title/Style of Cause: Milton Montique and Dalton Daley v. Jamaica
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: 3 November 1998
Citation: Montique v. Jamaica, Case 11.846, Inter-Am. C.H.R., Report No. 88/98,
OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by: APPLICANT: Saul Lehrfreund
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I. ALLEGED FACTS

1. By letter dated December 8, 1997, Saul Lehrfreund, Solicitor, (hereinafter referred to as "the Petitioner") of Messrs. Muirhead & Burton, Solicitors, in London, the United Kingdom, presented two petitions to the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission") against the State of Jamaica (hereinafter referred to as "the State") on behalf of Milton Montique, and Dalton Daley. The Petitioner stated that Mr. Montique, and Dalton Daley, Jamaican nationals were tried and convicted of three offences of capital murder on November 7, 1994, were sentenced to death, and are incarcerated on death row at St. Catherine District Prison, in Jamaica. The Petitioner stated that Mr. Montique and Mr. Daley appealed against their convictions, to the Court of Appeal in Jamaica, and their applications were dismissed on October 23, 1995 by the Court of Appeal. In addition, the Petitioner stated that on February 20, 1996, Mr. Montique and Mr. Daley filed petitions for Special Leave to Appeal as Poor Persons to the Judicial Committee of the Privy Council, ("the Privy Council") in London, and leave was granted on July 11, 1996, on the question whether both Mr. Montique and Mr. Daley should have been convicted of three counts of capital murder on a proper construction of the Offences Against the Person (Amendment) Act 1992, and whether there was any evidence to support their convictions of capital murder. Moreover, the Petitioner stated that on July 12, 1997, the appeals were heard, and Judgment was delivered on December 8, 1997.

2. The Petitioner stated that the Privy Council substituted their offences and dismissed their Appeals on December 8, 1997. The Privy Council held "that there were no grounds for saying that the jury were not entitled to convict Mr. Montique and Mr. Daley of committing murders in the course or furtherance of an act of terrorism under Section 2(2) of the Offences Against the

Person (Amendment) Act 1992." The Petitioner stated that the Privy Council held that on a proper construction of Section 2(2) Mr. Montique "ought not to have been found guilty of the capital murder of Juliet Martin and Andrew Drake, but only of non capital murder of each of them." In addition, the Petitioner stated that the Privy Council held that Mr. Daley "ought not to have been found guilty of the capital murders of Dolores Campbell but only of her non capital murder." Moreover, the Petitioner stated that Mr. Montique and Mr. Daley are both subject to the death penalty by virtue of Section 3(1)(A) of the Offences Against the Person Act.

3. The Offences Against the Person (Amendment) Act, 1992, (hereinafter referred to as the principal Act) and all amendments thereto defines "capital murder" and the circumstances in which the death penalty will be applied in the following sections:

2(1)(f) provides:

Any murder committed by a person in the course or furtherance of an act of terrorism, that is to say, any act involving the use of violence by that person which, by reason of its nature and extent, is calculated to create a state of fear in the public or any section of the public.

Section 2(2) provides:

If in the case of any murder referred to in subsection (1) (not being a murder referred to in paragraph (e) of that subsection), two or more persons are guilty of that murder, it shall be capital murder in the case of any of them who by his own act caused the death of, inflicted or attempted to inflict grievous bodily harm on, the person murdered, or who himself used violence on that person in the course or furtherance of an attack on that person; but the murder shall not be capital murder in the case of any other of the persons guilty of it.

Section 3(1A) provides:

Subject to subsection (5) of section 3B, a person who is convicted of non-capital murder shall be sentenced to death if before that conviction he has

- a. whether before or after the date of commencement of the Offences against the Person (Amendment) Act 1992, been convicted in Jamaica of another murder done on a different occasion;
- b. been convicted of another murder done on a different occasion.

4. The Petitioner alleges that if the Governor General's Instructions are implemented, they will effectively deny Mr. Montique and Mr. Daley effective recourse to the Commission to safeguard their American Convention rights, namely, Mr. Montique's and Mr. Daley's right to life of Article 4(1), right to humane treatment, Article 5(1) and right to judicial protection, as established by Article 25(1) of the American Convention if they are executed. The Petitioner also alleges that Mr. Montique's and Mr. Daley's right to a fair trial as established by Article 8 of the American Convention were violated, because the trial attorneys did not call alibi witnesses, and that Mr. Montique and Mr. Daley were in custody for three months, however, they did not have access to attorneys until after they had been in custody for two months. In addition, the Petitioner

alleges that Mr. Montique's and Mr. Daley's right to personal liberty and judicial protection, the right to be brought to trial within a reasonable time, and the right not to be sentenced to death as established by Article 7(5) 7(6), and Article 8(1), 8(2) of the American Convention, and Articles XXV and XXVI of the American Declaration, were violated, because they were held in custody for one month before they were brought before a judicial officer, and that to execute Mr. Montique and Mr. Daley under those conditions violate their right to life as established by Article 4(1) of the American Convention.

5. The Petitioner alleges violations of Articles 7(5), 8(1) of the American Convention and Articles XXV and XXVI of the American Declaration because Mr. Montique and Mr. Daley were arrested on April 1, 1992, and not brought to trial until October 31, 1994, nearly two and a half years later, and argues that this period was unreasonably protracted and their rights to a speedy trial were violated. The Petitioner alleges that Mr. Montique's and Mr. Daley's right to humane treatment including the conditions under which they are held at St. Catherine District Prison constitute a violation of their right to humane treatment, as established by Article 5 of the American Convention and XXVI of the American Declaration. Further, the Petitioner claims that the mandatory nature of the death penalty violates Mr. Montique's and Mr. Daley's right to life, Article 4(1) right to an effective remedy, right to recognition of their juridical personality and civil rights, their right to equality before the law, and their right to humane treatment as established under Articles 24, and 25 of the American Convention and Articles II, XVII, and XXVI of the American Declaration.

6. The Petitioner requests an investigation of the claims raised in the petition, and an on-site investigation to St. Catherine District Prison, in Jamaica, where Mr. Montique and Mr. Daley are detained. The Petitioner also requests an oral hearing before the Commission.

II. PROCEEDINGS BEFORE THE COMMISSION

7. The Commission received the petitions on December 8, 1997, and an accompanying letter, requesting that it acknowledge receipt of the petitions because the Governor General's Instructions mandate that the Governor General's Secretary be furnished proof by December 15, 1997, that the petitions have been filed before the Commission, and enclosed a copy of a letter dated December 8, 1997, signed by the Governor General's Secretary, Mr. Geoff Madden, confirming its request to the Commission.[FN1]

[FN1] The Governor General's Instructions were published in Vol. CXX, on Thursday, August 7, 1997, in "The Jamaica Gazette Extraordinary." The Governor General's Instructions were later amended and published in "The Jamaica Gazette Extraordinary," on Thursday, April 23, 1998. The Governor General's Instructions, inter alia states that when a petitioner submits a petition to the Commission for consideration, that petitioner must furnish proof to the Governor-General in Privy Council within 3 weeks that an application has been filed; the Commission must then request a response to the petition from the State, and also request a stay of execution of the victim, within one month of receipt of the petition; the Commission must make a decision on the petition within six months after the State responds to the petition; if the Commission make its decision within six months, such decision will be considered by the Jamaican Privy Council as to

whether or not the Prerogative of Mercy should be exercised in the victim's favor; and if the Commission does not issue its decision within six months of receipt of the State's response to the petition, the execution of the victim will not be further postponed.

8. The Commission acknowledged receipt of the petitions on December 9, 1997, opened a case, and forwarded the pertinent parts of the petitions to the State in accordance with Article 34 of its Regulations. It requested that the State supply the information in respect of the petitions, and any additional information which would enable it to determine whether the internal legal remedies and procedures have been exhausted in the cases as provided by Article 37 of its Regulations. The Commission also requested that the State stay the executions of Mr. Montique and Mr. Daley pending an investigation by it of the alleged facts.

9. The Commission has consolidated these two petitions pursuant to Article 40 of its Regulations, because they were presented by the same Petitioner, and the claims contained in these two petitions deal with the same facts and persons.

10. On January 15, 1998, the Commission received the State's Reply to the petitions. The State's Reply did not address the procedural admissibility of the petition, but stated that "in order to expedite examination of the cases by the Commission comments will also be offered on the merits." The State thereafter addressed the merits of the petition. The arguments of both parties on the merits of the petition will be included in the merits phase of the petition.

11. On September 11, 1998, the Commission received a letter from the Petitioner which was accompanied by a letter from Geoff Madden, the Governor General's Secretary from the State of Jamaica, which stated that "I can confirm that no action will be taken so long as a recommendation is made within the time stipulated under the Governor-General's Instructions. Our records indicate a deadline of September 24, 1998. Thereafter I will not be able to make that confirmation in the absence of a recommendation by the IACHR." The Petitioner stated that "Mr. Montique and Mr. Daley are exactly in the same position as the death row prisoners in Trinidad who were granted Provisional Measures by the Inter-American Court of Human Rights. In both Trinidad and Jamaica, the Governments have decided unilaterally, as a matter of policy, to fix a maximum time frame for the determination of applications from prisoners under sentence of death to international human rights bodies. In the circumstances it is respectfully requested that the Commission petition the Inter-American Court of Human Rights to request the Government of Jamaica to stay the executions of Mr. Montique and Mr. Daley until such time as the Commission has had the opportunity to examine and decide their cases pursuant to the Convention and the Commission's Regulations."

III. PARTIES' POSITIONS ON ADMISSIBILITY

A. Petitioner's position

12. The Petitioner argues that the petitions are admissible because Mr. Montique and Mr. Daley appealed to the Court of Appeal of Jamaica against their convictions, and the Court dismissed their appeals on October 23, 1995. Their appeals to the Privy Council were dismissed

on December 8, 1997. The Petitioner argues that the petitions are admissible because all effective domestic remedies have been exhausted by Mr. Montique and Mr. Daley. In addition, the Petitioner argues that the United Nations Human Rights Committee[FN2] have consistently rejected the Jamaican Government's contention that an applicant under the Optional Protocol must pursue a Constitutional Motion before the Supreme (Constitutional) Court of Jamaica in order to exhaust domestic remedies, and that because of Mr. Montique's and Mr. Daley's lack of private means and the unavailability of legal aid for such motions he is unable as a matter of practicality to pursue such a motion, and therefore the petitions are admissible pursuant to Articles 46(1) of the American Convention and Article 37(1) of the Commission's Regulations.

[FN2] See Little v. Jamaica, CCPR/C/43/D/283/1988; Reid v. Jamaica, CCPR/C/39/D/7250/1987; Collins v. Jamaica, CCPR/C/47/D/356/1989; Smith v. Jamaica, CCPR/C/47/D/282/1988; Campbell v. Jamaica, CCPR/C/44/D/248/1987; Kelly v. Jamaica, CCPR/C/41/D/253/1987.

B. The State's Position

13. The State did not address the procedurally admissibility of the petitions.

IV. GENERAL CONSIDERATIONS

A. Commission's Competence

14. The Commission is competent to examine these two petitions. It derives its authority from the Charter of the Organization of American States, its Statute, the American Convention on Human Rights and its Regulations.

B. Admissibility of petitions

1. Timeliness of petitions

15. The Commission received Mr. Montique's and Mr. Daley's petitions on December 8, 1997, on the same day that their appeals were dismissed by the Privy Council in London. The Commission notes that the State has not contested the issue of timeliness of the petitions, and thus, finds that these two petitions are timely filed pursuant to Article 46(1)(b) of the American Convention.

2. Duplication of procedures

16. The Commission notes that the State has not contested the issue of duplication of procedures. The Commission finds that these two petitions are not pending settlement in another international proceeding for settlement, pursuant to Article 46(1)(c) of the American Convention, nor are the petitions substantially the same as petitions previously studied by the Commission or

by another international organization as established by Article 47(d) of the American Convention.

3. Exhaustion of domestic remedies

17. The Petitioner claims that Mr. Montique and Mr. Daley have exhausted domestic remedies, and that both of them appealed to the Court of Appeal in Jamaica and the Judicial Committee of the Privy Council in London and their appeals were dismissed by the Courts on December 8, 1997. The Commission notes that the State of Jamaica has not contested the issue of exhaustion of domestic remedies. The Commission finds that domestic remedies have been exhausted in these two cases.

C. Petitioner's request to send cases to the Court

18. Pursuant to the Commission's mandate it is unable to accede to the Petitioner's request to send these cases to the Inter-American Court of Human Rights in order to seek Provisional Measures for Mr. Montique and Mr. Daley, because the State of Jamaica has not accepted the jurisdiction of the Inter-American Court of Human Rights.

V. CONCLUSION

19. The Commission finds that these petitions are admissible having satisfied the requirement of Article 46 of the American Convention. The Commission wishes to state that Article 4 of the American Convention places great emphasis on the protection of the right to life rather than the deprivation of the right to life. Article 4(1) of the American Convention provides that "every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No person shall be arbitrarily deprived of his life." However, Article 4(2) of the American Convention provides: "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 a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply."

20. The Petitioner claims that the State has violated Mr. Montique's and Mr. Daley's human rights as established by Articles 4(1), 4(6), 7(5), 7(6), 8, 5, 24 and 25(1) of the American Convention, and Articles II, XVII, and XXVI of the American Declaration. The Petitioner alleges violations of both the American Convention and the American Declaration. The State is a party to the American Convention, and since the same rights are found in both instruments, the Commission will examine and consider these petitions pursuant to the provisions of the American Convention.

21. The Commission finds that these two petitions raise a prima facie claim of a violation of a human right recognized in the American Convention. Without prejudging the merits of this petition and the allegations of human rights violations made by the Petitioner on behalf of Mr. Montique and Mr. Daley, the Commission will assess the validity of these claims in the merits phase of its decision.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare these two petitions admissible.
2. To transmit this Report to the State of Jamaica and the Petitioner.
3. To place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter.
4. To make public this report and to publish it in its Annual Report to the OAS General Assembly.

Done and signed by the Inter-American Commission on Human Rights, on the 3 day of the month of November 1998. (Signed): Carlos Ayala Corao, Chairman, Robert K. Goldman, First Vice Chairman; Jean Joseph Exume, Second Vice Chairman; Commissioners Alvaro Tirado Mejía, Claudio Grossman, Hélio Bicudo and Henry Forde.