# COMMONWEALTH OF THE BAHAMAS

# IN THE SUPREME COURT

# CRIMINAL DIVISION

# CRI/CON/0002/2024

**IN THE MATTER** of The Constitution of The Commonwealth of The Bahamas

**AND**

**IN THE MATTER** of an Application for Judicial Review and Redress Pursuant to Articles 17, 20 and 28 of The Constitution of The Commonwealth of The Bahamas

**BETWEEN**

**ALEXANDER WILLIAMS & ROBERT GREENE** **APPLICANTS**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS** **RESPONDENT**

**Appearances:** The Applicants – Pro-Se

Royanne Forbes for the Respondent

**Hearing Dates:** 19th June 2024, 18th September 2024 and 13th November 2024.

## D E C I S I O N

[Constitutional Law –Challenge to imposition of "Whole life sentence" – Whether Abuse of Process - Jurisdiction]

1. Each of the Applicants in separate trials for separate incidents were convicted of Murder and sentenced to death. Subsequent to the decision in Bowe and Davis v. Regina (2006) UKPC 10, they were re-sentenced to Life Imprisonment in the Supreme Court. Each of the Applicants appealed their respective life sentences to the Court of Appeal and each of the appeals were dismissed and the life sentences affirmed.

2. In this joint constitutional application the Applicants submit that their respective life sentences are unconstitutional as being indeterminate. And/or that the sentence of life being now defined in Section 290 of the Penal Code as "for the rest of your natural life" infringes Articles 17 and 20 of the Constitution as being unfair, cruel and inhumane.

3. The Respondent opposes the application on the grounds that it is an abuse of the process of the court and relies on the provision to Article 28 (2) of the Constitution and the cases of Jaroo v The Attorney General of Trinidad and Tobago [2002] U.K. P.C. 5 and Terry Delancey v. Attorney General SCCr App No. 43 of 2006.

4. Before dealing with the Constitutional provisions and the case law I think it appropriate to set out in brief the decisions of the Court of Appeal dismissing their respective appeals of each of their life sentences.

    4(a). In Alexander Williams v. R. SCCr. App No. 155 of 2016 paragraphs 24, 35 and 36 reads.

"**24.** Suffice it to say that the life sentence is a valid sentence; and Parliament has seen fit to prescribe it as the maximum penalty for the commission of many criminal offenses, including murder, where the death penalty is not an option open to the sentencing judge in any particular case. Indeed, since the amendment of Section 290 of the Penal Code on 4th November 2011, life imprisonment is prescribed as the sentence where the person murdered is a police officer while in the execution of his duties, in cases where the option of the death sentence is not available. I am not of course suggesting that the amendment should be applied to the intended appellant; however it indicates the seriousness with which the murder of Police Officers is viewed by Parliament and by extension the community."

"**35.** In the circumstances of this intended appeal, and mindful of the principle stated by Lord Hewart LCJ in R.V. Gumbs (1972) 19 Cr. App. R. 74, that when considering the appropriateness of a sentence, an appellate court never interferes with the exercise of the discretion of the court below unless the sentencer committed an error in principle, I would not interfere with the sentence imposed in this case."

"**36.** I am satisfied that the trial judge took into account matters which he ought to have taken into account and did not consider matters which he ought not to; and that the life sentence in the circumstances of this case was the appropriate sentence. In the premises I do not find that the appeal has any prospect of success."

4(b). In Robert Green vs. Regina SCCr. App No.67 of 2009 the short oral judgement of the court reads as follows:

"We must dismiss this purported appeal against sentence.

The brief background facts are that the Appellant in this case, Mr. Green, had appealed to this Court in 2008. That appeal came before the Court and was heard by a Bench consisting of myself, Justice Ganpatsingh and Justice Osadebay. The Appellant appeared in person and Mr. Braithwaite was counsel for the Respondent.

The Appellant wanted a determinate sentence in terms of a sentence in years. We pointed out that he might in fact be worse off with a determinate sentence compared to his co-accused who was given a life sentence as well and who could, on what we had seen on the documents provided to us by the Attorney-General's Office, could have been released after 14 jail years. The Appellant was given time to think about it and when we came back to Court after the adjournment he stated that he would abandon his appeal. The appeal was dismissed on that basis.

He now comes before the Court asking us to reconsider that on the basis that his sentence is one the law does not contemplate in the sense that he is sentenced to life imprisonment, meaning "for the rest of his natural life." That particular sentence has been declared by the Privy Council in Coard and others v The Attorney-General of Grenada as being cruel and inhuman and therefore unconstitutional and so could not be upheld. However, we are not satisfied that we have jurisdiction, even in these circumstances, to hear a fresh appeal in relation to the same matter which was abandoned and dismissed; thus, we feel we have no choice but to dismiss the appeal that is before us.

We content ourselves with saying we do not think that our dismissal of the appeal prevents the Appellant, if he is so minded, from taking the matter further.

There must be an end to litigation and, as pointed out during the course of discussion, this Court is not a final Court with regard to these matters and therefore we are not in the position of the Privy Council and there is nothing in the rules or the statute that allows us to revisit a decision once rendered.

5. There have also been more recent cases where the Bahamas Court of Appeal have upheld the life sentence as a valid sentence.

**The Constitution**

6. The relevant provision of the Constitution are set out here:

**Article 17** states:

(1) No person shall be subjected to torture or inhuman or degrading treatments or punishment.

(2) Nothing contained in or done under the authority of any law shall be held inconsistent with or in contravention of this Article to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the Bahama Island immediately before 10th July 1973.

**Article 28** states:

28. (1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction-

(a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and

(b) to determine any question arising in the case of any person which referred to it in pursuance of paragraph (3) of this Article, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the Protection of which the person concerned is untitled;

Provided that the Supreme Court shall not exercise its power under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If, in any proceedings in any court established for The Bahamas other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the provisions of the said Articles 16 to 27 (inclusive), the court in which the question has arisen shall refer the question to the Supreme Court.

7. I have considered the Privy Council case of Thakur Persad Jaroo v. The Attorney General of Trinidad and Tobago [2002] UKPC 5 cited by counsel for the Respondent in support of their argument that the Applicant's application is an abuse of the process of the court and the statements made by Lord Hope of Craighead at paragraphs 38 and 39 are set out here:

> "**38.** Their Lordships do not accept this argument. The appropriate or otherwise of the use of the procedure afforded by Section 14(1) (equivalent of our Article 28(1)) must be capable of being tested at the outset when the person applies by way of originating motion to the High Court. All the court has before it at that stage is the allegation. The answer to the question whether or not the allegation can be established lies in the future. The point to which Lord Diplock drew attention was that the value of the important and valuable safeguard that is provided by Section 14(1) would be diminished if it were to be allowed to be used as a general substitute for the normal procedures in cases where those procedures are available. His warning of the need for vigilance would be deprived of much of its value if a decision as to whether resort to an originating motion was appropriate could not be made until the applicant had been afforded an opportunity to establish whether or not his human rights or fundamental freedoms had been breached.
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> **39.** Their Lordships respectfully agree with the Court of Appeal that, before he sorts to this procedure, the applicant must consider the true nature of the right allegedly contravened. He must also consider

whether, having regard to all the circumstances of the case, some other procedure either under common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of the process to resort to it. If, as in this case, it becomes clear after the motion has been filed that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued use in such circumstances will also be an abuse."

8. It is clear that the Court of Appeal in dismissing each of the Applicants' Appeals against sentence was of the view that the life sentences imposed were lawful.

9. In this court's view for the Applicant to now again challenge in this court the Life Sentence on the grounds of constitutional infringement (cruel and inhumane punishment or indeterminate sentence) would effectively amount to an appeal to the Supreme Court of a decision by the Court of Appeal and is an abuse of the process of the Court.

10. The relevant principles were set out by The Hon. Dame Sawyer then President of the Court of Appeal in the case of Terry Delancey v. The Attorney General S.C.Civ.App. No.43 of 2006 where at para: 82-85 she stated:

"**82.** In the present appeal, the learned judge in the Supreme Court was asked to rule that a constitutionally higher court had breached the fundamental rule of fairness of hearing both sides to a case by not

waiting until the transcript of the trial of the appellant in the magisterial court could be prepared again and sent to this court.

**83.** Assuming, but not deciding, that such a decision is possible in the Supreme Court since it is that court which is given original jurisdiction to hear and determine complaints about breaches of persons' fundamental rights, it is not quite clear how that court is to go about making such a decision without having even a judgement of this or any other higher court or any record of the hearing in this court to consider.

**84.** In my judgement, to do what counsel for the appellant sought to do in the application before Isaacs J, could only be for the purpose of undermining the rule of law and would almost certainly lead to an erosion of respect for the Judiciary as a whole. And, as was said by more learned and eloquent jurists than I, the respect of right thinking persons in a civilized society for a Judiciary whose independence and impartially is accepted by such right-thinking persons, is what underpins the independence of the Judiciary of that society and upholds the rule of Law.

**85.** Under the Constitution of The Bahamas, the court system in a hierarchical one with the Privy Council at the apex, this court next, the Supreme (High) Court next, magisterial courts and other tribunals next, and so on. It therefore follows that a decision of a lower court, while it will be accorded every respect by a higher court if it is not overruled, cannot bind a higher court or even a judicial officer of the same rank. To apply to the Supreme Court for redress against this

court's decision, therefore, was seeking to bind this court by a lower court's judgement or to indirectly appeal to a lower court from this court's decision. It certainly amounts to an abuse of the process of the court."

11. This application by the Applicants is seeking to challenge the constitutionality of the Life Sentence which has already been declared valid by the Court of Appeal. This is, without more, a clear abuse of the process of the court; and this court has no jurisdiction to entertain this application.

12. The Applicants may still be able to avail themselves of the relevant statutory provisions and appeal the respective Court of Appeal decisions to the Privy Council as an adequate alternate remedy for their challenge to the life sentences imposed on them.

13. The Applicants to their own detriment have chosen not to do so. The result is that this application is dismissed as an abuse to the process of the court.

**Dated this 29th day of January 2025.**