IN THE HIGH COURT OF JUSTICE

CRIMINAL DIVISION SAN FERNANDO

CR-HC-SDO-IND-93-2023-1

THE STATE

V.

KENRICK LONDON

REPRESENTATION:

Ms. Michelle Gonzalez appeared for the prisoner.

Ms. Charmaine Samuel and Ms. Kezia Gray-Birkette appeared for the State.

BEFORE THE HONOURABLE MADAME JUSTICE NALINI SINGH

Dated the 19th April 2024.

RESENTENCING

Introduction

[1] On the 15th of May 2002, the prisoner was convicted and sentenced to death for the murder of his sister-in-law Meena Sookoo. His conviction and sentence were affirmed by the Court of Appeal on the 29th of July 2004.

[2] The matter is now before this Court for the purpose of resentencing the prisoner, as a result of the Order made by Rahim J. on the 16th of February 2023 in keeping with the Privy Council ruling in the case of **Naresh Boodram v. The Attorney General of Trinidad and Tobago [2022] UKPC 20**.

Facts

[3] The facts upon which the prisoner was convicted are as follows. The deceased Meena, was on her way home on the evening of November 24, 1997. She was accompanied by a friend but they parted ways after disembarking from a taxi on Spike Road. Her route took her along a path that passed in front of the prisoner's home. She failed to arrive home that evening and was never again seen alive. Her body was found on November 27, 1997 in a pasture and a bottle, which tested positive for paraquat (gramoxone), was lying next to it.

[4] While there were no eye witnesses to the murder, the prosecution relied on a written statement that the prisoner gave to the police. In the statement, the prisoner stated that his wife Chandrouti persistently told him that she wanted him to help her get rid of Meena and "with Meena out of the way" her mother "would love her more". The prisoner promised that he would assist her and it is pursuant to this promise that Meena found herself in the prisoner's home on the evening of November 24, 1997. Meena never intended to go there that evening. Quite to the contrary; as the prisoner recounted in his statement to the police, he saw her coming along the path towards his house and made a grab at her as she passed, in an attempt to pull her into the house. She fell to the ground and it is then that he beckoned her into the house, promising not to harm her. As Meena entered the prisoner said that he called out to his wife, telling her that he brought Meena and she could do what she wanted with her.

[5] The statement continued – Chandrouti told the prisoner to tie Meena to the bed. He did so, using a bra and a lace to fasten her hands and feet to the bedposts. According to him, his wife was a lesbian and she began "making love" to Meena. When she was finished, the prisoner said that Chandrouti told him to help her carry Meena into the pasture at Windsor Park. He untied Meena and as they walked out of the house, he gave Meena the assurance that no harm would come to her. At the same time, the prisoner stated that he saw Chandrouti pick up a soft drink bottle containing paraquat. Accompanied by his wife, he took Meena to the pasture, some distance away.

[6] There, the prisoner said that he watched as Chandrouti gave Meena the bottle containing the paraquat and ordered her to drink it. Meena refused and Chandrouti picked up a stick and began beating her and threatening to kill her. Terrified, Meena immediately drank from the bottle but at once spat out the paraquat. The prisoner saw Chandrouti take off Meena's clothes and began to "make love" to her once again. She then burnt Meena on the leg with a match and forced the paraquat down her throat. She used her bodice to cover Meena's mouth and sat on her face, to prevent her spitting it out again. The prisoner observed that Meena was fighting up until she eventually succumbed and became still. It is at this point, according to the prisoner, that Chandrouti asked him to move the body from the pathway into the nearby bushes, a task he carried out immediately. The soft drink bottle was placed near the body and the bodice was thrown into the bush. Following this, the prisoner and his wife left the scene for home.

[7] The post mortem examination disclosed that the cause of death was respiratory failure due to mechanical and chemical asphyxia. There was evidence to the middle of the front chest of an oblique abrasion suggestive of a mechanical asphyxia caused by the prevention of the chest cavity from expanding during the act of breathing. Points of haemorrhage were found on the surface of the heart and lungs which amounted to positive proof of respiratory failure. Further, an examination of the stomach and liver contents revealed the presence of paraquat in both organs. This was consistent with death due to paraquat poisoning.

The Approach to Resentencing

[8] Having stated at paragraph 44 of **Naresh Boodram v. The Attorney General Civ. App. 177 of 2010** that a Court has a discretion to order either life imprisonment with a tariff, a specific term

of years or to be detained at the Court's pleasure with review at specified intervals, Archie CJ. stated at paragraph 50 that ultimately, "it is incumbent on [a] court when called upon to commute a sentence, to impose a sentence that is in accordance with the common law principles or aims of punishment." This was also the view of the Board in **Naresh Boodram v. The Attorney General of Trinidad and Tobago (2022) UKPC 20** as they explained what was required in the commutation of a death sentence when done by judicial resentencing. Their Lordships stated at paragraphs 30-31 that:

> "…Section 4 of the Offences against the Person Act lawfully prescribes the death penalty in all cases (Matthew; Chandler v The State (No 2)). The criminal court is required to impose that penalty, and there can therefore be no appeal against it. But where, as in this case, there has been long delay in carrying out the sentence, such that implementation of it has become unlawful and the death sentence must be commuted, section 4 imposes no obligation on the High Court, and provides no guidance, as to what substitute sentence should be imposed. In such circumstances, section 14 of the Constitution gives the High Court the power to provide a remedy for the constitutional wrong which has been suffered by the condemned person. That remedy certainly includes the vacating of the death penalty, but it necessarily also includes the imposition of such substitute sentence as may be appropriate in the circumstances of the case. With respect to the Attorney General's argument, it is semantic quibbling to seek to treat only the first part of the remedy as "constitutional" and to object to the second part as impermissible "resentencing": the remedy for the constitutional wrong is that the High Court vacates the death penalty and substitutes an appropriate sentence. Often, no doubt, the appropriate substitute sentence will be one of life imprisonment; but the High Court is not restricted to imposing such a sentence.
>
> 31. That conclusion follows, in our view, from the wording of section 14(2) of the Constitution, which gives the High Court the power to "make such orders … as it may consider appropriate". There is nothing in those words

> which prevents the High Court, in circumstances where there has been long delay in carrying out the mandatory sentence of death and that sentence can no longer be implemented, from reflecting the differing circumstances of individual cases. Nor, in such circumstances, does section 4 of the Offences against the Person Act require that all offenders be treated in the same way: that section imposes a mandatory requirement as to the sentence to be imposed by the criminal court on conviction, but it does not require the High Court, acting pursuant to section 14 of the Constitution, to ignore the circumstances of the offence and of the offender. We see no justification for overriding the clear words of section 14(2), and circumscribing the High Court's powers, by reference to a sentence which has not been implemented for several years and which can no longer be enforced." (emphasis mine)

[9] Against this backdrop, the Board then went on to consider the factors that would govern "an appropriate substitute sentence". At paragraph 43 in particular, the Board stated that:

> "The circumstances relevant to the decision as to what is an appropriate sentence in an individual case will include the overall aims of sentencing, including punishment; the circumstances, both aggravating and mitigating, relating to the offence and the offender; the length of time for which the offender has been detained in prison when the issue comes before the High Court; the extent to which the offender has been rehabilitated during that period; and whether his continued detention is necessary for the protection of the public."

[10] It follows that when a judge is tasked with resentencing, several factors should be carefully considered to determine the appropriate sentence in that particular case. Resentencing, as delineated in the case of *Naresh Boodram v. The Attorney General of Trinidad and Tobago (supra)*, is therefore a complex process governed by legal principles and considerations tailored to the specific circumstances of each case. At its core, resentencing arises from the need to rectify a constitutional wrong. The court is vested with discretionary powers to determine an appropriate

substitute sentence, guided by the overarching principles of sentencing and the specific factors relevant to the case at hand.

[11] When undertaking resentencing, the court must meticulously weigh multiple factors. These include the fundamental aims of sentencing, which encompass not only punishment but also deterrence, rehabilitation, and protection of the public. Additionally, the court must meticulously scrutinize the circumstances surrounding the offence and the individual characteristics of the prisoner. This entails examining both aggravating and mitigating factors to ascertain the appropriate level of punishment and any potential for rehabilitation.

[12] Of particular importance is the duration of the prisoner's detention prior to resentencing. This temporal element informs the assessment of the punishment already endured and provides insights into the prisoner's potential for rehabilitation. Moreover, the court must carefully evaluate evidence pertaining to the prisoner's rehabilitation efforts during their time in custody. This involves considering reports and other relevant information to gauge the extent of the prisoner's transformation and readiness for reintegration into society.

[13] Central to the resentencing process is the assessment of the prisoner's risk to society. As such, the court must diligently weigh whether the prisoner poses a continued threat to public safety or has sufficiently demonstrated a capacity for lawful behaviour upon release.

[14] Ultimately, the court exercises its judicial discretion in determining the substitute sentence. This decision is informed by a comprehensive analysis of the factors discussed above, as well as any other pertinent considerations that may emerge during the resentencing proceedings. Through this intricate process, the court strives to achieve a fair and just outcome that upholds the principles of the law while safeguarding the interests of justice and the welfare of society. Archie CJ. summed up the process succinctly at the final paragraph of *Naresh Boodram v. The Attorney General of Trinidad and Tobago* when his Lordship opined that:

> "A resentencing court must ascertain whether the punitive element of the sentence has been satisfied and also, whether the appellant has been rehabilitated and is safe for reintegration into society. To ascertain the

latter, the court has to be provided with evidence that would answer that question either in the affirmative or negative."

In attempting to determine this twofold question of whether the punitive element of the sentence has been satisfied and ultimately whether the prisoner has been rehabilitated to the extent that it is safe for him to be reintegrated into society, I have considered the following:

A. Overall Aims of Sentencing:

[15] With respect to this tier of resentencing, the primary aims of sentencing which include punishment, deterrence, rehabilitation, protection of the public, and the possibility of the offender's reintegration into society should be prioritized.

B. Circumstances of the Offence and the Offender:

[16] The specific circumstances surrounding both the offence and the individual offender should also be examined. In so doing, the objective is to consider any aggravating factors that may have increased the severity of the offence and mitigating factors that may lessen culpability.

C. Length of Detention:

[17] An account must also be taken of the duration of time the offender has already spent in prison. This is to assess whether the time served aligns with the gravity of the offence and if it contributes to the overall goals of sentencing.

D. Rehabilitation Efforts:

[18] The next order of business is to evaluate any efforts made by the offender towards rehabilitation during his time in prison. In this regard, consideration should be given to participation in rehabilitation programs, educational opportunities, or any positive changes in the behaviour of the prisoner that indicate a commitment to personal growth and reform.

E. Necessity for Continued Detention:

[19] What then follows is an assessment of whether the offender's continued detention is necessary for the protection of the public. In so doing it was recognised that consideration must be given to

factors such as the risk of recidivism, the nature of the crime, and the potential impact on public safety.

F. Discount for Constitutional Breaches:

[20] Another matter to consider is the issue of constitutional breach. There is clear authority that a violation of constitutional rights merits and justifies a reduction in sentence: in short, those who have suffered as a result of the violation of their constitutional rights are entitled to a reduction of sentence. This is evident from the approach taken by the Privy Council in **Boolell v. The State [2006] UKPC 46**. On the facts of this case which is one that dealt with violation of constitutional rights in the context of delay, the appellant was a Mauritius barrister. In February 1991, he made three statements under caution concerning the tendering by him, of several cheques which were not honoured. He was charged with swindling. The trial was originally fixed for March 1993. There was, however, a series of adjournments before evidence was first taken in May 1996. Further evidence was taken on three separate days in 1997. In January 1998, the prosecution entered a *nolle prosequi*, and on the same day, a new charge of swindling was filed against the appellant. The taking of evidence commenced in May 1999. In July 2000, the prosecution closed its case. The appellant made an unsuccessful application of no case to answer and unsuccessfully sought to challenge the validity of the trial. Evidence was then given by and on behalf of the appellant which stretched into January 2002. Further submissions were made over the next three months and there were then several adjournments. In March 2003, the appellant was convicted of swindling and sentenced to six months' imprisonment. He appealed to the Supreme Court on a number of grounds, one of which was delay, and all of which were rejected. The appellant appealed to the Privy Council.

[21] The appeal was on the ground of delay, and was based on section 10(1) of the Constitution of Mauritius 1968, which contained a guarantee that where a person was charged with a criminal offence, "the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law." The appeal was allowed. The Board felt that the overall time taken between February 1991 and March 2003 was prima facie unreasonable. Their Lordships acknowledged that the conduct of the appellant was altogether reprehensible and contributed very largely to the lapse of time. It was also accepted that the court lists in Mauritius were congested

and it was not easy or straightforward to arrange a speedy trial. This notwithstanding, it was the view of the Board that it was incumbent on the court to take such steps as it could to expedite matters and reach a conclusion. In the circumstances, it was concluded there was a breach of section 10(1) of the Constitution.

[22] In dealing with the question of relief, the Board turned to the approach adopted by the House of Lords in the **A-G's Reference (No 2 of 2001) [2004] 1 All ER 1049**. In that case, the appellants were charged with offences arising out of prison riots in 1998. When they came to trial in early 2001 the judge stayed the indictment on the ground that there had been a breach of their right under Article 6(1) of the Convention to have the charges heard within a reasonable time. The Attorney General referred to the Court of Appeal two questions, one of which was whether criminal proceedings could be stayed on the ground that there had been a violation of the reasonable time requirements in Article 6(1) in circumstances where the accused could not demonstrate any prejudice arising from the delay. Having given its opinion the Court of Appeal referred the same questions for determination by the House of Lords. The House sat in an Appellate Committee of nine members and decided by a majority that although through the lapse of time in itself there was a breach of Article 6(1), the appropriate remedy would not necessarily be a stay but would depend on all the circumstances of the case. Lord Bingham of Cornhill, who gave the leading opinion for the majority, stated in paragraph 22 that the threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. In summarizing his conclusions at paras 24 and 25, this is what was said:

> "24 If, through the action or inaction of a public authority, a criminal charge is not determined at a hearing within a reasonable time, there is necessarily a breach of the Defendant's Convention right under article 6(1). For such breach there must be afforded such remedy as may (section 8(1)) be just and appropriate or (in Convention terms) effective, just and proportionate. The appropriate remedy will depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach is established. If the breach is established before the hearing, the appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the

greatest extent practicable and perhaps, if the Defendant is in custody, his release on bail. It will not be appropriate to stay or dismiss the proceedings unless (a) there can no longer be a fair hearing or (b) it would otherwise be unfair to try the Defendant. The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances. The prosecutor and the court do not act incompatibly with the Defendant's Convention right in continuing to prosecute or entertain proceedings after a breach is established in a case where neither of conditions (a) or (b) is met, since the breach consists in the delay which has accrued and not in the prospective hearing. If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement of the breach, a reduction in the penalty imposed on a convicted Defendant or the payment of compensation to an acquitted Defendant. Unless (a) the hearing was unfair or (b) it was unfair to try the Defendant at all, it will not be appropriate to quash any conviction. Again, in any case where neither of conditions (a) or (b) applies, the prosecutor and the court do not act incompatibly with the Defendant's Convention right in prosecuting or entertaining the proceedings but only in failing to procure a hearing within a reasonable time.

25 The category of cases in which it may be unfair to try a Defendant of course includes cases of bad faith, unlawfulness and executive manipulation of the kind classically illustrated by R v Horseferry Road Magistrates' Court, ex parte Bennett [1994] 1 AC 42, but Mr Emmerson contended that the category should not be confined to such cases. That principle may be broadly accepted. There may well be cases (of which Darmalingum v The State [2000] 1 WLR 2303is an example) where the delay is of such an order, or where a prosecutor's breach of professional duty is such (Martin v Tauranga District Court [1995] 2 NZLR 419 may

> be an example), as to make it unfair that the proceedings against a Defendant should continue. It would be unwise to attempt to describe such cases in advance. They will be recognisable when they appear. Such cases will however be very exceptional, and a stay will never be an appropriate remedy if any lesser remedy would adequately vindicate the Defendant's Convention right." (emphasis mine)

[23] The Board in *Boolell v. The State* accordingly proceeded from the position that the trial was not unfair and the question of setting aside the conviction did not arise. On the other hand, their Lordships could not regard it as acceptable that the prison sentence imposed by the Intermediate Court should be put into operation some 15 years after the commission of the offence unless the public interest affirmatively required a custodial sentence, even at this stage. This was not viewed as such a case, and their Lordships set aside the prison sentence altogether and substituted for it a fine of Rs 10,000.

[24] The same approach was taken by the Privy Council in **Mills v. HM Advocate (2004) 1 AC 41** which is another case which pertained to delay. On the facts of this case in which there was an eventual reduction in sentence, the appellant was convicted of the theft of a motor car and of assaulting a police officer by driving a car at him, causing it to strike him and then driving it at an excessive speed to cause him to be thrown from the car against a wall. He was sentenced to detention in a young offender institution for eight years and six months. He appealed against his conviction on the basis of fresh evidence which showed that he was not the driver of the car. On the 23rd of February 1999, the court decided to allow the evidence of certain witnesses to be heard on a later date. A hearing to take the evidence was fixed for the 6th of May 1999 but at the commencement of that hearing, an application by the Crown for an adjournment to allow for further preparation was granted. The appellant, who by that stage had served just under three years of his sentence, was granted bail. The fresh evidence was heard on the 9th of May 2001 and the next day the court dismissed the appeal on the ground that the fresh evidence was not credible. The appellant then lodged a further appeal alleging that there had been a breach of his rights under Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as scheduled to the Human Rights Act 19981, because of the delay in hearing his appeal

against conviction. On the 1st of August 2001, the court held that the appellant had established that there had been an unreasonable delay in hearing his appeal and a consequent breach of Article 6(1) by the Lord Advocate which fell within section 57(2) of the Scotland Act 1998. The appeal was allowed and reduced the original sentence of detention by a period of nine months. The appellant appealed against the decision that a reduction in sentence was an adequate remedy for a breach of his right to a hearing within a reasonable time and was again granted bail.

[25] The Board dismissed the appeal holding that the decision to reduce the appellant's sentence was an appropriate and sufficient remedy stating specifically at paragraph 53 that:

> "the setting aside of the conviction would be regarded as unnecessary, because the effects of the delay can be recognised perfectly well by a reduction in the appellant's sentence. Here again we are on familiar ground, as delay in bringing the accused to justice is widely recognised as a mitigating factor that can be taken into account when he is being sentenced."

[26] To my mind, the resentencing process is therefore six-tiered. This six-tiered process is a comprehensive approach that considers legal, individual, and community factors to arrive at a fair and equitable decision. This method aims to ensure that the resentencing aligns with the principles of fairness. Ultimately it provides an answer to the questions of whether the punitive element of the sentence has been satisfied, and whether the prisoner has been rehabilitated to the extent that it is safe for him to be reintegrated into society

[27] I move now to a consideration of the factors at each of the six tiers listed above, to arrive at my sentence in this matter.

A. Overall Aims of Sentencing:

[28] I have reminded myself of the principal objects of sentencing. The five (5) principal objects of sentencing are set out in **Benjamin v. R (1964) 7 WIR 459**, per Wooding C.J., as:

i. The retributive or denunciatory, which is the same as the punitive;
ii. The deterrent vis-à-vis potential offenders;

iii. The deterrent vis-à-vis the particular offender then being sentenced;

iv. The preventative, which aims at preventing the particular offender from again offending by incarcerating him for a long period; and

v. The rehabilitative, which contemplates the rehabilitation of the particular offender so that he might resume his place as a law-abiding member of society.

B. Circumstances of the Offence and the Offender:

[29] I have also reminded myself to adopt the four-tiered sentencing methodology which was set out by the Court of Appeal in the case of **Aguillera and Others v. The State CA Crim 5–8 of 2015**. The learned Judges of the Court of Appeal postulated that the overall sentencing structure consists of the following matters:

i. The calculation of the starting point which takes into account the aggravating and mitigating factors of the offence only; these are the objective circumstances which relate to the gravity of the offence itself and which assist in gauging its seriousness, that is, the degree of harmfulness of the offence;

ii. An appropriate upward or downward adjustment of the starting point (or dependent on the circumstances, and if there is in effect, a cancelling out, no adjustment at all), which takes into account the aggravating and mitigating factors relative to the offender; these are the subjective circumstances of the offender which in turn inform the degree of the culpability of the particular offender;

iii. (Where appropriate), a discount for a guilty plea; any deviation from the usual discount requires particularly careful justification and an explanation which is clearly expressed; and

iv. Credit for the period of time spent in pre-trial custody.

[30] I therefore start with the aggravating factors vis-à-vis the offence, namely,

i. The seriousness of the offence;

ii. The prevalence of the offence;

iii. The prisoner acted in concert with another;

vi. The deceased had familial ties to her attacker (she was the prisoner's sister-in-law);

vii. Breach of trust as the prisoner was the sister-in-law of the deceased;

viii. This case involved an attempt to conceal the body;

ix. The deceased was subjected to sexual degradation before her death.

x. The prisoner falsely promised the deceased that she would not be harmed as he led her to her death.

xi. The paraquat was left by the body to make the death look like a suicide.

[31] I have found two mitigating factor vis-à-vis the offence. It is that there was no evidence of extensive planning by the prisoner. Additionally, the prisoner cooperated with the police.

[32] I move now to the starting point. In this regard, I have found the following cases to be helpful. Firstly, the case of **Gangadeen Tahaloo CR-HC-IND- 220-2023-1.** In this case, which the Court described as a ghastly murder, the prisoner confessed to the murder of the deceased and stated that the deceased, visited him at his place of work at Da Costa's. According to the prisoner, when he asked her what she was doing there so early, she said she wanted to finish selling early. She changed her clothes and he asked her why she had not done so at home. She returned at about 10.30 a.m. He asked her whether she had been sleeping out again. She told him, referring to their 8-year-old child Tasha, that the child was not his, and that the father of the child was around. There was some "hard talk" between them; he pushed her; she hit her head and started to tremble. He picked her up and carried her by the pipe and gave her water. He put her to sit down by the doorway. He took up a cutlass and gave her several chops. He then had a rest. When he awoke, he put the body "on the back." The evidence was that portions of the deceased's body - the head, upper and lower arms and her clothing were in fact found in the East Dry River. The judge in re-sentencing the prisoner, noted the following aggravating factors i. the seriousness of the murder, ii. the prevalence in society, iii. the murder was committed against someone with whom the prisoner was intimately involved with. iv. A cutlass was used in furtherance of the offence and the deceased was chopped as she sat in the doorway. v. The post-mortem report showed that there were twenty-nine (29) wounds. Additionally, he took a rest in between chopping and then resumed. vi. Not only was the deceased chopped, but her body was dismembered. Her head was found in

the East Dry River separate from her other remains which were found at his work place. Therefore, meaning there was an attempt at disposal or concealment. vii. The magnitude of dismemberment as the deceased body was contained in four (4) crocus bags. Having regard to the aforementioned aggravating factors and a comparison of the facts of the Bahamian case of R v. Hepburn, the judge imposed a starting point of 42 years, from which an upward adjustment of three years was made after considering the aggravating factors relative to the offender. There was then a considerable downward adjustment of twelve years after considering the mitigating factors relative to the prisoner and the steps he had taken towards rehabilitation. There was a further deduction of the time he spent in custody. As such he was sentenced to one year, three months and four days.

[33] Another case I have considered is **R v. Kimba Whattley No. SKBHCR 2022/0005.** In this case the prisoner Kimba Whattley was convicted by a jury after trial for the offence of murder, in February 2023. The facts were that on the day in question, Whattley visited the home of his ex-girlfriend and killed her current partner, Kassim Buchan. According to the pathologist report Buchanan had been stabbed 13 times: twice fatally in the neck among 5 neck wounds, 6 times to the face, and he had been slashed superficially to the chest and lower right leg. He also had two blunt trauma head injuries, being a broken nose, and a depressed pond skull fracture above his left eye. There were not defensive wounds. Beside the body was a heavy transformer whose corner fitted the pond fracture, and nearby was half a black knife-handle on which Whattley's DNA was later recovered, being from the missing knife. Blood was everywhere and the cause of death was exsanguination. The sentencing judge, after seeking guidance from the ECSC published guidelines on how to sentence for murder, supported by Practice Direction No.2 of 202, stated that the following were the aggravating factors: i. The murder involved a knife and a blunt object ii. There was astonishing planning and calculation iii. The prisoner broke into the house and waited with an intention to kill iv. He disrupted the sanctity of the deceased home v. The killing was a vicious and cold-blooded killing in that he knocked the deceased out and then stabbed him 6 times and then administered an additional two stabs to his neck which severed the carotid artery vi. The prisoner had the presence of mind thereafter to write a message to throw off the police in the deceased blood vii. The prisoner cleaned up and walked down the road with ease to the bus station viii. The deceased was defenceless at the time of the killing as he was knocked out. Having regard to the aforementioned aggravating factors, the judge imposed a starting point of 48 years, from

which he later deducted three years after consideration of the mitigating factors relative to the offence, sentencing the accused to 45 years imprisonment (minus time already spent in custody).

[34] Another case I have considered is **Maxo Tido v. AG of Bahamas BS 2015 CA 14**. The facts are as follows: On the night of the 30th of April 2002, a young woman called Donnell Conover attended a political rally with her family. She was sixteen years old. She and other members of the family returned home at about 12.15 am. Mrs Laverne Conover, Donnell's mother, went to bed shortly after that, leaving her daughter sitting at the dining room table reading a political manifesto that had been obtained at the rally. Mrs Conover woke the following morning at about 7.15 am. Donnell was missing. Her night dress was found on top of a freezer in the house. A cordless telephone was in the porch of the family home. Mrs Conover checked the telephone and noted from the caller identification system that a call had been received from Mandingo's Restaurant at about 1.20 am. This restaurant was in Nassau Village. Another call had been received at 1.45 am but this was recorded on the system as being from "out of area". The prosecution's case was that at about 1.20 am the prisoner telephoned Miss Conover from Mandingo's Restaurant and, after that telephone call, she left her family home went to meet him. Miss Conover's body was found later that day between 12.30 pm and 1 pm in a quarry pit next to a road known as Cowpen Road. She had suffered severe head injuries. Evidence was given that these could have been caused by her being struck by a hard object such as a rock or it could have been the result of a car being driven over her head. Her body had been set on fire, and when it was discovered, it was found to have been partially burnt. The prisoner was sentenced to 40 years minus the time already spent in prison.

Analysis

[35] There is no question that because of the level of brutality involved in the cases cited above, they must attract a higher starting point than usual. On the facts of the matter at hand, the manner of killing is less callous.

[36] On the other hand, there are some striking similarities between the present case and the case of *Maxo Tido v. AG of Bahamas* in that it involves the unsolicited death of a young woman by someone who she would have known and trusted. However, despite those similarities, there is a

divergence from the facts at bar when one considers the significant head injuries suffered by the deceased in the matter.

[37] I therefore fix 38 years as the starting point in this matter. This starting point has been agreed to by the counsel for the prisoner as well as the State.

[38] In line with the guidelines of *Lauren Aguillera (supra)*, consideration must now be given to the aggravating and mitigating factors in so far as it relates to the offender. I have found the following aggravating factors vis-à-vis the offender:

i. The prisoner was an adult at the time he committed the offence and was therefore expected to appreciate the consequences of his actions;

ii. The prisoner acted in concert with another person;

iii. The prisoner had one previous conviction for a sexual offence for which he was sentenced to two years. This was information which was volunteered by the prisoner;

With this in mind, I adjust upwards the sentence to 50 years.

[39] I come now to the mitigating factors vis-à-vis the offender:

i. There is evidence of lack of premeditation beyond that necessary to constitute the offence;

ii. The age of the prisoner who was born on the 6th of December 1962 (Uncertified).

iii. Medically, the prisoner has undergone at least three optical treatments and has complained of deterioration of his eyesight. He also has a medical history of shortness of breath and impaired memory and nerve functioning.

iv. The prisoner, though unable to finish secondary school due to financial constraints, became a skilled electrician, a skill taught to him by his father. He also before his incarceration did landscaping. He therefore has the capability of being a productive member of society upon release.

v. I have also considered the systemic factors of this prisoner specifically his lack of education, his exposure to the lack of a solid and stable familial background whilst growing up, introduction to alcohol consumption at a young age and poverty.

I therefore adjust the sentence of 50 years downwards to 45 years.

C. Length of Detention:

[40] The prisoner was received into custody on the 3rd December 1997. To date, this prisoner has been incarcerated for twenty six years 4 months and 16 days. I am not satisfied that the duration of time that the prisoner has already spent in prison, aligns with the gravity of the offence and the overarching goals of sentencing. The basis of this conclusion is set out in detail at paragraphs 42-44 infra.

D. Rehabilitation Efforts:

[41] The Court notes that the prisoner has taken advantage of several programs for rehabilitation. They are as follows:

i. The Vision on Mission Programme 2022;

ii. The Preparation for Release Programme;

iii. The Peace Education Programme 2018;

iv. The Anger Management Programme 2018;

v. The Journey Programme;

vi. The Red Cross First Aid Programme;

vii. The prisoner, with the help of other inmates and reading material provided by the prison, taught himself how to read and is now able to do so despite not formally enrolling in any ALTA classes;

viii. Over the years the prisoner has started attending religious services and was baptised by Pastor Wilma Kelly in March 2023. She has expressed a willingness to house the prisoner upon his release. Pastor Kelly is the lead pastor of Way Holiness church which has a restoration centre geared towards lending assistance to ex-inmates by assisting with their re-integration into society;

ix. Crucially, behaviour-wise, it is confirmed via perusal of the prisoner's Criminal Record that he has had no infringement of the Prison Rules and Regulations recorded against his name whilst in prison.

x. The prisoner reported that he was allowed to serve as an orderly in the prison assisting with tasks such as sweeping corridors and conveying water to prisoners before lock up.

These are positive indications that this prisoner has committed to personal growth. It demonstrates an increased self-awareness, empathy, and a willingness to adhere to ethical principles. To my

mind, this is an important indicator of the prisoner's receptiveness to rehabilitation efforts and his potential for successful reintegration into the community. This has earned the prisoner a further reduction from 45 years to 40 years.

E. Necessity for Continued Detention:

[42] It is evident that what is required at this juncture is a balancing exercise. In **Alexander Don Juan Nicholas and Others v. The State CA Crim 1–6/2013 at paragraph 36**, the Court of Appeal held that a life sentence was inappropriate where the balance is tipped in favour of the prisoner after a consideration of factors such as: the seriousness of the conduct of the prisoner, the expressions of remorse by the prisoner, probation reports to gauge whether the prisoner is fit for social re-adaptation; and the antecedents of the prisoner. In particular, the Court of Appeal in *Alexander Don Juan Nicholas and Others v. The State (supra) at paragraph 37* indicated that:

> "Apart from the circumstances of the offence, what must loom large in considering whether a life sentence is appropriate is the possibility or likelihood of the appellant being rehabilitated to the extent that he could be safely returned to society. Where there is evidence or information to suggest that this goal is achievable, a court must be slow to incarcerate an appellant for the rest of his natural life."

[43] Then, in **Alleyne v. R (2019) 95 WIR 126**, the Caribbean Court of Justice also considered the question of when a life sentence should be imposed after a conviction for murder. In *Alleyne v. R (supra)* the CCJ considered the Eastern Caribbean Supreme Court case of **Lewis v. R [2013] 2 LRC**. Anderson JCCJ giving the judgment of the CCJ observed at paragraph 43 that:

> "…Lewis v R concerned an accused sentenced to life imprisonment upon a guilty plea. On appeal the court found that the appellant had strong mitigating factors in his favour and the sentence of life imprisonment did not sufficiently take into account his personal circumstances leading up to the offence. The court re-emphasized the importance of rehabilitation relative to sentencing and stated that, '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.'

[44] This Court agrees that in imposing a life sentence the sentencing judge must have regard to the relevant statutory requirements and the principles of sentencing. Section 41(2) of the Penal System Reform Act requires that the 'rehabilitation of the offender is one of the aims of sentencing' which must be considered by the court in the sentencing process. In 2018, this was worded to require judicial consideration of 'the need for the rehabilitation of the offender, and the need to promote a sense of responsibility on the part of the offender for the harm done to the victim'. The classical principles of sentencing also require that consideration be had to retribution, deterrence, prevention and rehabilitation. It is the case, and regretfully so, that the learned trial Judge did not advert in any significant way to the issue of the rehabilitation of the Appellant. The word 'rehabilitation' does not appear anywhere in the sentencing remarks. The closest the Judge came to the concept is where she made it a condition of the Appellant's sentence that, during the period of incarceration, he be included in any treatment programmes that would address his cognitive deficiencies as identified by the Psychological Report. With respect, the possibilities for the rehabilitation of the Appellant ought to have been discussed more frontally and any factors identified as obstacles to rehabilitation identified and addressed.

[45] However, that cannot be the end of the matter. Rehabilitation is one of the aims of sentencing and a very important aim, but not the only one and in some circumstances, not the overriding one. The classical principles of sentencing reference three others: retribution, punishment, deterrence; a more modern formulation would be content only to reference punishment, deterrence and rehabilitation. Further, the Penal System Reform Act does

not state the weight to be accorded by the sentencing judge to any of the proper objectives of sentencing. The case of *Hodgson* outlined the circumstances in which a sentence of life imprisonment is merited. In this case the Court of Appeal of England stated that a sentence of life imprisonment is justified if the following criteria are satisfied:

'The offence must be grave enough to warrant a very long sentence; The nature of the offence or the defendant's history must show that he is unstable and likely to commit such offences in the future; and the consequences of the offences to others may be especially injurious, as in the case of sexual offences or crimes of violence.'"

[44] Although these principles emerged in the context of a court not automatically imposing a life sentence, I consider the approach to sentencing to be equally apt in this case. And so, applying these considerations to the facts of the case at hand, I have noted the following:

i. This was a sufficiently heinous crime;

ii. The offence has had long-lasting psychological effects on the family of the deceased. There is also some indication that even the prisoner's family are fearful of his influence on their family.

Having balanced these considerations as well as the aims of sentencing, the circumstances of the offence as well as the offender against the efforts of the prisoner to rehabilitate himself I conclude that the principles of punishment and deterrence override the rehabilitation factors in this case.

F. Discount for Constitutional Breaches:

[45] Dealing now with the last stage of analysis in this matter, I consider the discount for constitutional breaches. This prisoner was removed from death row by the imposition of a life sentence in 2008. As such he was entitled to a review in 2012, 2016 and 2020. Neither the prisoner's Bio-Social report nor his prison file reflects that any 4-year review was conducted. As a consequence, the prisoner was deprived of the opportunity to have his sentence reviewed and of the opportunity to be released on licence. This in turn has affected two of the prisoner's vested constitutional rights namely the right to liberty and not to be deprived of same except by due

process and the right to such procedural provisions that were needed to give effect to his right to liberty. The detention of the prisoner also became arbitrary because of the failure to hold reviews.

[46] Another aspect of constitutional breach was the imposition of a life sentence by Rajkumar J. (as he then was). This sentence was not focused on the individual circumstances of the prisoner. Further, there was no consideration of the objectives of sentencing and more particularly it was absent any consideration of whether the time already served had achieved the objectives of sentencing. Additionally, there was also no date given by which the prisoner might be released as Rajkumar J. held life imprisonment meant the natural life.

[47] The Court under section 14 of the Constitution has wide powers to fashion a remedy for a breach of any Constitutional right. In the context of sentencing, the Privy Council in **Hassen Eid-En Rummun v. The State of Mauritius [2013] UKPC 6** noted at **paragraph 20** that a sentence should be adjusted to reflect the violation of the prisoner's constitutional right. Because this prisoner has had several very clear and serious constitutional violations, I deduct five years from the sentence of 40 years.

Order

[48] Given the serious nature of the offence and the circumstances under which this murder was committed, the principles of denunciation and deterrence remain overriding.

[49] The order of the Court is that the prisoner is sentenced to serve a term of Thirty Five years imprisonment for the offence of murder. He is to be credited for the time that he has spent in custody.

Nalini Singh
Judge