

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction
ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No CV 2 of 2005
BB Civil appeal No 29 of 2004

BETWEEN

**THE ATTORNEY GENERAL
SUPERINTENDENT OF PRISONS
CHIEF MARSHAL**

**FIRST APPELLANT
SECOND APPELLANT
THIRD APPELLANT**

AND

**JEFFREY JOSEPH
LENNOX RICHARD BOYCE**

**FIRST RESPONDENT
SECOND RESPONDENT**

*Before The Rt Honourable
And The Honourables*

*Mr Justice de la Bastide, President
Mr Justice Nelson
Mr Justice Pollard
Mr Justice Saunders
Madame Justice Bernard
Mr Justice Wit
Mr Justice Hayton*

SUMMARY

of the Joint Judgment of the President The Rt Honourable Mr Justice de la Bastide and the Honourable Mr Justice Saunders which was delivered on November 8th 2006

The joint judgment of de la Bastide P. and Saunders J. noted that counsel for the Crown had conceded that however the court decided the issues in dispute there was no question of the court re-imposing the death sentence on the respondents given that more than five years had elapsed since they were sentenced and therefore it would be inconsistent with

Pratt and Morgan to execute them now. The judgment nevertheless went on to rule on the issues which were in dispute.

The Judges noted that death is a unique punishment that differs from all other forms of criminal punishment, not in degree but in kind. The death penalty is a constitutionally sanctioned punishment for murder in Barbados and it falls within internationally accepted conduct on the part of civilised States. Courts have an obligation to respect this. While judges are entitled to their personal views on the death penalty, if a judge is so uncomfortable with imposing or sanctioning the imposition of a constitutionally permitted punishment that the judge cannot be dispassionate in resolving legal issues that bear on the subject, then the judicial function is compromised and public confidence in the administration of justice is undermined.

On the first issue in dispute, the Judges held that a condemned man has a right to the protection of the law. The power to confirm or commute a death sentence, particularly a mandatory one, is far too important to permit those in whom it is vested freedom to exercise that power without any possibility of judicial review even if they commit breaches of basic rules of procedural fairness. The exercise of the powers of the Barbados Privy Council (“the BPC”) under section 78 is subject to review, notwithstanding the ouster clause contained in section 77(4) of the Constitution, if there is an allegation that these powers had been exercised contrary to the rules of procedural fairness. In this regard the judgment endorsed the reversal of *de Freitas v Benny* by *Lewis v A G of Jamaica*.

On the second issue it was held that the respondents had a legitimate expectation that they would be allowed a reasonable time within which to complete the process which they initiated by petitioning the Inter-American Commission on Human Rights and make the report of that body available to the BPC in support of their case for commutation. For the State to attempt to execute the respondents without giving them that opportunity was a denial of their right to the protection of the law for which the court had an inherent remedy. The Judges therefore arrived at the same conclusion as was reached in *Thomas v*

Baptiste and in *Lewis* but by a different route and in fact disapproved the reasoning of the Judicial Committee in those cases.

The Judges recommended that the BPC should meet to consider the case of a person sentenced to death once only, that is, after the domestic appeals have been exhausted and an opportunity given for the initiation and completion of the process before international bodies to which there is by treaty a right of access. The Governor-General, however, was at liberty to convene the BPC at an earlier stage if the Governor-General believed that there were circumstances which made it likely that the BPC would reach a consensus in favour of a commutation.

The Judges dismissed the appeal with costs certified fit for two attorneys-at-law for each respondent.

This is a brief statement of the main points discussed in the judgment and is not intended to be a substitute for the full text as delivered by The Rt Hon Mr Justice de la Bastide and The Hon Mr Justice Saunders of the Caribbean Court of Justice on Wednesday 8th November 2006.

Issued by The Court Protocol and Information Officer
Caribbean Court of Justice
On November 8th 2006