

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INFERIOR APPEAL (CRIMINAL) NO.: IC20180004

BETWEEN

GLENN BLEASE

Appellant

and

POLICE/DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Appearances:

Appellant, Unrepresented

Ms. Portia Ferguson Crown Counsel for the Respondent.

2024: April 11

JUDGMENT

**INFERIOR APPEAL-POST-CONVICTION DELAY- RIGHT TO TRIAL WITHIN A
REASONABLE TIME- CONSTITUTION OF BELIZE**

- [1] **NANTON, J.:** Glenn Blease, (“the appellant”), was convicted and sentenced by the learned Magistrate (“TLM”) in the Cayo Judicial District on 14th March 2018.
- [2] On 20th March 2018 he filed his notice of appeal which was well within the 21-day limit to lodge his appeal pursuant to **Order LXXIII Inferior Courts (Appeals)**¹ (“the Rules”). He applied for and was granted a stay of execution of his sentence pending the outcome of this appeal.
- [3] This matter became assigned to this Court in October 2023 and was first called on 1st February, 2024 after efforts had been made to contact the Appellant of this hearing. The Appellant had been successfully contacted by the Court and has indicated that he was still very interested in pursuing his appeal.

Absence of reasons

- [4] On perusal of this file the Court has observed that grounds of appeal had been filed, but no statement of reasons have been filed or even notes of evidence. The law requires that within 1 month² of that notice being filed that TLM prepared a statement of her reasons³. To date the Magistracy has failed in its statutory duty to provide reasons. Indeed, there is correspondence from the Office of the Chief Magistrate that this file cannot be found.

The Right to a Trial within a Reasonable Time

- [5] There has now been a delay of 6 years at the appellate level alone. The question therefore, arises as to whether there has been a breach of the constitutional rights of the Appellant to a trial within a reasonable time in this case and if so what is an appropriate remedy.

¹ Rule 2(1)(b) made under the **Supreme Court of Judicature Act** Chapter 91 of the Substantive Laws of Belize, Revised Edition 2020 (“SCOJA”).

² Rule 5(2) of the Rules.

³ Rule 5(1) of the Rules.

[6] The **Constitution, Section 6(2)** provides as follows:

“6(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”

[7] This right was considered by the apex court, the Caribbean Court of Justice (“the CCJ”) with a similar constitutional provision from Barbados, **Section 18(1)** of their Constitution, in the case of **AG v Gibson**⁴, per Saunders and Wit JJ, as they then were:

“[48] The public have a profound interest in criminal trials being heard within a reasonable time. Delay creates and increases the backlog of cases clogging and tarnishing the image of the criminal justice system....

[49] Even more telling than the societal interests at stake are the consequences to an accused of a breach of the reasonable time guarantee. This is evident in the case of a defendant who is not guilty. That person is deprived of an early opportunity to have his name cleared and is confronted with the stigma, loss of privacy, anxiety and stress that accompany exposure to criminal proceedings. But a defendant facing conviction and punishment may also suffer, albeit to a lesser extent, as he is obliged to undergo the additional trauma of protracted delay with all the implications it may have for his health and family life...By deliberately elevating to the status of a constitutional imperative the right to a trial within a reasonable time, a right which already existed at common law, the framers of the Constitution ascribed a significance to this right that too often is under-appreciated, if not misunderstood.

...

[59]...The question therefore is what should the appropriate remedy be when there is a breach of the reasonable time guarantee?

*[60] In answering this question a court must weigh the competing interests of the public and those of the accused and apply principles of proportionality. One starts with the premise that the executive branch of government has a constitutional responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning. A governmental failure to allocate adequate resources, **or for that matter inefficiencies within the justice sector, could not excuse clear breaches of the guarantee ...***

[61] When devising an appropriate remedy a court must consider all the circumstances of the particular case, especially the stage of the proceedings at which it is determined that there has been a breach.

⁴ [2010] 5 LRC 486.

[8] It is to be noted that Belize has a similar constitutional terrain to Barbados. The equivalent of their Section 13(3) is our Section 5(5)⁵ and their enforcement provision to protect constitutional rights at their Section 24(1) is our Section 20(2).

[9] The CCJ adopted Gibson for this jurisdiction in the Belizean decision of R v Henry⁶. There the CCJ considered the position of the constitutional right to trial within a reasonable time in the appellate process, per Anderson JCCJ:

“[37]...The delay of five years in the hearing of the appeal was entirely unsatisfactory. It must be unsatisfactory for a convict to serve his entire sentence before his appeal is heard and decided. Such delay renders the right of appeal more an illusion than a right. As the appellate process is undoubtedly part of the trial, such a delay constitutes an infringement of the constitutional right to a fair trial within a reasonable time.

...

[41] ...not all infringements of the constitutional right to a fair trial within a reasonable time must necessarily result in the allowing of the appeal and the quashing of the conviction. Indeed, this remedy is, as we have said, ‘exceptional’; the emphasis is on fashioning a remedy, ‘that is effective given the unique features of the particular case’. Remedies for breach may be a declaration, an award of damages, stay of prosecution, quashing of conviction, or a combination of these or some other or others. Everything depends upon the circumstances.”
(emphasis added)

[10] Appellate delay was also considered by the CCJ in the Belizean case of Solomon Marin Jr. v R⁷, per Barrow JCCJ:

“[104] The grant of a remedy for breach of the right to a fair hearing within a reasonable time is very much a matter of discretion. This is established in the language of s 20(2) of the Belize Constitution, which provides that the Supreme Court, among other things, may make such declarations and orders “as it may consider appropriate” for the purpose of enforcing or securing the enforcement of any of the fundamental rights provisions of the Constitution. There is no right to any particular remedy.

...

⁵ “If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is released, be entitled to bail on reasonable conditions.”

⁶ [2018] 5 LRC 546.

⁷ [2021] CCJ 6 (AJ) BZ.

[110] *The element of discretion as to what is the appropriate remedy for a breach of the right to a fair trial within a reasonable time that was discussed in Gibson requires courts to consider the matter on a case-by-case basis, taking account of all the circumstances of the case. This was reflected in the judgment of this Court delivered by Byron PCCJ and Anderson JCCJ in Singh v Harrychan when they stated:*

... In some cases, the consequence of the delay may result in a reduction of the sentence, whereas this may not be an appropriate remedy in others.

[111] *The discussion in Gibson provides a helpful indication of relevant circumstances to consider in deciding what is an appropriate remedy. Thus, an accused person may have contributed substantially to delay and there may have been other factors contributing to delay including lack of legal representation or access to critical resources, such as a highly specialised expert. Wider considerations may also be included in the circumstances a court must consider, such as the nature of the crime and the impact on the society's sense of justice, when deciding on what is appropriate.*

[112] ***It is clear, therefore, that it is not the normal course that a convicted person whose constitutional right to a fair hearing has been breached will have their sentence reduced or suspended. When that happens, it is done on a principled basis of vindicating the right that has been breached. It is done to uphold the rule of law; to mark the value of the constitutional right; to meaningfully affirm that the administration of the legal and judicial system is as much subject to the law as everyone else. It is done for the good of the community and in the public interest.*** (emphasis added)

[11] In this case the Court has provided no statement of reasons or notes of evidence to make a determination of whether the conviction or sentence in this case is sound, and the notice of appeal filed is against both conviction and sentence. There has been a delay of 6 years at the appellate level alone. The Court is prepared to treat that delay as predominantly the fault of the State, to wit, the magistracy, as even though there was the ability of the Appellant to assert his rights and he could have applied to a judge on affidavit to force TLM to produce her statement of reasons⁸, the primary responsibility is on the magistracy to follow the law and meet its demands. There has been no justification for the delay and the Court notes that in **Gibson** the CCJ held that a 5-year delay was unsatisfactory.

[12] The Court echoes the words of Jamadar JCCJ in **Marin**:

⁸ Rule 5(2A) of the Rules.

“[1] In the delivery of justice, delay is anathema. Delay has a corrupting effect on the purity of justice. It renders its delivery increasingly valueless for parties and all too often even prejudicial. It undermines public trust and confidence in the justice sector. It corrodes the very fabric of society. Delay denies justice. Such is its toxicity. Indeed, it is constitutionally renounced in Belize.”

- [13] The Court is prepared to hold that the delay in this case is a breach of the Appellant’s rights under **Section 6(2) of the Constitution**. The Court also finds that in the absence of any information by which the soundness of the conviction can be judged, no notes being produced, that this is an exceptional case in which the Court should exercise its discretion to provide the remedy of quashing the conviction and sentence pursuant to **Section 20(2) of the Constitution**. A re-trial of the Appellant in circumstances in the Court’s view would be a further breach of his right to trial within a reasonable time.

Disposition

- [14] It is declared that the right of the Appellant under **Section 6(2) of the Belize Constitution** to a fair hearing within a reasonable time was breached by the excessive delay in the hearing of his appeal to the High Court.
- [15] The appeal is allowed, and the conviction and sentence are quashed. No retrial is ordered.
- [16] The Court orders each party to bear their own costs.
- [17] The Court further orders that a copy of this Judgment be sent to the learned Chief Magistrate and the Registrar of the Senior Courts, the Office of the Director of Public Prosecutions and the Appellant.

Candace Nanton

High Court Judge

Senior Courts of Belize

Dated: 11th April 2024