

**IN THE SENIOR COURTS OF BELIZE  
CENTRAL SESSION-BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE**

**INFERIOR APPEAL (CRIMINAL) NO.: IC20170022**

**BETWEEN**

**WILBUR GENTLE**

Appellant

and

**JAVIN CASSANOVA, CPL. 75**

Respondent

**Appearances:**

Mr. Aaron Tillett for the Appellant.

Ms. Sheiniza Smith, Senior Crown Counsel, for the Respondent.

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2024: April 10<sup>th</sup>.  
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**JUDGMENT**

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

[1] **PILGRIM J.:** Wilbur Gentle, (“the appellant”), was convicted and sentenced by the learned Magistrate (“TLM”) in the Belize Judicial District on 31<sup>st</sup> March 2017. He filed his notice of appeal on 3<sup>rd</sup> April 2017, well within the 21-day limit to lodge his appeal pursuant to **Order LXXIII Inferior Courts (Appeals)**<sup>1</sup> (“the Rules”). The law required that within 1 month<sup>2</sup> of that notice being filed that TLM prepared a statement of her reasons<sup>3</sup>.

[2] This matter became assigned to this Court in October 2023 and was first called on 12<sup>th</sup> December 2023, owing to this Court’s heavy docket. On perusal of this file the Court has observed that grounds of appeal have been filed but no statement of reasons have been filed or even notes of evidence. The Court has without success on several occasions sent process for the attendance of the appellant. The Rules do provide for substituted service<sup>4</sup> in the form of service by registered post or leaving at the last known address but on this file, there is no address for the appellant. The Court, in that regard, cannot exercise discretion to dismiss the appeal because the appellant has a right to 7 days’ notice of the hearing<sup>5</sup>. Nor can it be reasonably argued that there was any default in the prosecution of the appeal<sup>6</sup> by the appellant as the fault lay at the feet of the Magistracy for the failure in its statutory duty to provide reasons. Indeed, there is correspondence from the Office of the Chief Magistrate that this file cannot be found.

[3] This unfortunate saga raises in the Court’s mind, there being a delay of almost 7 years at the appellate level alone, the question of 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.

[4] The Court first turns to the **Constitution**. Section 6(2) provides as follows:

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

<sup>2</sup> Rule 5(2) of the Rules.

<sup>3</sup> Rule 5(1) of the Rules.

<sup>4</sup>See SCOJA: “124. *Any notice or other document required to be served or transmitted under this Act relating to appeals from inferior courts may be served or transmitted by registered post or may be served by delivering or leaving it at the last known place of abode of the party to be served.*”

<sup>5</sup> Rule 11(1) of the Rules.

<sup>6</sup> Rule 10(1) of the Rules.

*“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.”*

[5] 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**<sup>7</sup>. The significance of the guidance requires extensive quotation, per Saunders and Wit JCCJ, 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. Further, the more time it takes to bring a case to trial the more difficult it may be to convict a guilty person. For a variety of reasons witnesses may become unavailable or their memories may fade, sometimes seriously weakening the case of the prosecution which carries the burden of proof...Defendants released on bail for lengthy periods have an opportunity to commit other crimes if they are so disposed. The longer an accused is free awaiting trial, the more tempting becomes the opportunity to skip bail and avoid being tried. On the other hand, keeping remanded persons in custody for excessive periods increases prison populations and aggravates the evils associated with overcrowded jails. Moreover, there is a financial cost to the public in maintaining a person on remand.*

*[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*

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<sup>7</sup> [2010] 5 LRC 486.

*Constitution ascribed a significance to this right that too often is under-appreciated, if not misunderstood.*

...

*[53] ...First, we pose the question in a general sense. Is it appropriate for a Barbados court, in a fit case, to order a permanent stay or dismissal of a charge purely for breach of the right to be tried within a reasonable time?*

...

*[54] Section 18(1) gives three different and free-standing rights to any person who is charged with a criminal offence (see *Darmalingum v State of Mauritius* [2000] 5 LRC 522 and *Boolell v R* [2006] UKPC 46, [2007] 2 LRC 483, where the Judicial Committee construed similar provisions). These rights correspond to separate obligations imposed by the Constitution on the state. For every accused person whose charge has not been withdrawn the state is obliged to afford a hearing that is: (a) fair; (b) before an independent and impartial tribunal established by law, and (c) held within a reasonable time.*

*[55] The fulfilment by the state of each of these obligations is fundamental to the criminal justice system and the obligations referred to at (a) and (b) are irreducible. Thus, if a trial is not likely to be or has not been fair, then, as stated earlier, the breach vitiates the trial process. Similarly, a court will not sanction a trial before a tribunal whose characteristics threaten to or actually fall short of basic requirements of independence and impartiality. Redress for an infringement of either of these rights cannot be limited by any overriding public interest in part because, unless the charge is altogether withdrawn or dismissed, it will normally be possible to convene a new trial on conditions that are fair or to hold one before a proper tribunal as the case may be. It is possible, so to speak, to reset the clock so as to grant the accused the full measure of the right in question.*

*[56] This is not the case when the reasonable time guarantee has been breached. Once there has been excessive delay in trying an accused, a court may issue orders aimed at expediting the trial or provide some form of relief to the accused but there is nothing that the court can do to remedy the breach that has occurred in a way that will undo the past delay and its effects on the accused and the society. It is not possible to wipe the slate clean and revert to the status quo ante.*

*[57] Section 13(3) of the Constitution gives a clear indication that a trial held after an unreasonable time is not necessarily fatally compromised merely on account of the delay, at least certainly not in relation to a person who has been in custody. ...That subsection provides, inter alia, that if the accused is in custody and he has not been tried within a reasonable time he must be released either unconditionally or upon reasonable conditions 'to ensure that he appears at a later date for trial ...' The reasonable time guarantee therefore differs from the other two guarantees of s 18(1) in two important respects. Firstly, in the case of the other two guarantees, remedial action can be taken which will effectively cure the breach. This is not possible in the case of the reasonable time guarantee as one cannot turn the clock back. Secondly, while breach of the other two guarantees automatically vitiates the trial, the Constitution itself clearly suggests that breach of the reasonable time guarantee does not necessarily prevent a valid trial being held.*

*[58] A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case-by-case basis. It cannot be reached by applying a mathematical formula, although the mere lapse of an inordinate time will raise a presumption, rebuttable by the state, that there has been undue delay. Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the state. An accused who is the cause and not the victim of delay will understandably have some difficulty in establishing that his trial is not being heard within a reasonable time. One must not lose sight of the fact, however, that it is the responsibility of the state to bring an accused person to trial and to ensure that the justice system is not manipulated by the accused for his own ends. Even where an accused person causes or contributes to the delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused the overall delay has been too great to resist a finding that there has been a breach of the guarantee...*

*[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. In particular, the court should pay special attention to the steps, if any, taken by the accused to complain about the delay since, as was pointed out by Justice Powell in the US Supreme Court in *Barker v Wingo* (1972) 407 US 514, delay is not an uncommon defence tactic.

[62] A permanent stay or dismissal of the charge cannot be regarded as the inevitable or even the normal remedy for cases of unreasonable delay where a fair trial is still possible. Quite apart from prejudicing the operation of s 13(3), to so hold, as some other jurisdictions have done, would create too great a risk of unnecessarily placing trial courts in the uncomfortable position of having to choose between equally undesirable alternatives, namely: to permit a possibly dangerous criminal to avoid being tried or else to raise to an unacceptably high level the threshold for deeming unreasonable obviously inordinate delay. Having an inevitable permanent stay or dismissal of the charge as the single sanction for breach of the reasonable time guarantee may well reward the guilty, who escape being brought to justice, even as it does little or nothing for the innocent, who cannot regain the time they have lost suffering under a cloud of suspicion or worse, being remanded in custody. We accept the view of the Inter-American Court of Human Rights that 'the State's duty to wholly serve the purposes of justice prevails over the guarantee of reasonable time' (see *La Canlura v Peru* (Judgment 29 November 2006) Inter-Am Ct HR (Series C) No 162 at 149). **The fundamental objective of the reasonable time guarantee is not to permit accused persons to escape trial but to prevent them from remaining in limbo for a protracted period and to ensure that there is efficient disposition of pending charges.**

The guarantee is an incentive to the state to provide a criminal justice system where trials are heard in a timely manner.

[63] But equally, we do not agree that a mere breach of the reasonable time guarantee could never yield a permanent stay or dismissal of the charge and that instead such relief should

*be reserved only for instances where the trial will be unfair or the accused can show prejudice. As previously indicated at para [42] above, s 24(1) of the Constitution affords the court flexibility, power and a wide discretion in fashioning a remedy that is just and effective, taking into account the public interest and the rights and freedoms of others. No conceivable remedy, including a permanent stay or dismissal, ought to be removed from the range of measures at the disposal of the court if the relief in question will prove to be appropriate. Given the high level of public interest in the determination of very serious crimes, however, it will only be in exceptional circumstances that a person accused of such a crime will be able to obtain the remedy of a permanent stay or dismissal for the breach only of the reasonable time guarantee. Of course, such a remedy will be readily granted in cases where the delay has rendered it impossible to hold a fair trial.*

*[64] Where breach of the reasonable time guarantee is established before trial the court should consider issuing a suitable declaration denouncing the breach and making an order that expedites the hearing. If the accused is in custody then the court must have regard to s 13(3) of the Constitution which requires the release on bail of the accused. If at the trial there is a conviction then the trial judge should always consider a reduction in the severity of the sentence in light of the delay. In this context the question may arise as to whether the severity of a mandatory sentence can be reduced on this ground but this is a matter that is far too important for us to comment upon without receiving specific submissions on it from counsel.”*  
*(emphasis added)*

[6] 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)<sup>8</sup> and their enforcement provision to protect constitutional rights at their section 24(1) is our section 20(2).

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

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<sup>8</sup> “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.”

<sup>9</sup> [2018] 5 LRC 546.

“[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)

[8] The CCJ also further considered appellate delay in the Belizean case of **Solomon Marin Jr. v R**<sup>10</sup>, 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.

...

[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:

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<sup>10</sup> [2021] CCJ 6 (AJ) BZ.

... 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)

[9] In this case the Court has 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. The Court is not even aware of the offence charged or its date as the file from the magistrate's court is mislaid. There has been a delay of almost 7 years at the appellate level alone, and may be considerably greater in terms of the date of charge. 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 reasons<sup>11</sup>, 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.

[10] 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

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<sup>11</sup> Rule 5(2A) of the Rules.

the soundness of the conviction can be judged, with the file being lost, 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.

[11] The Court would like to raise two matters by way of concluding comments.

[12] The Court takes judicial notice of the **Needham's Point Declaration on Criminal Justice Reform: Achieving a Modern Criminal Justice System** which contained the aspirations of Caribbean judiciaries to eliminate the criminal case backlog and to provide trials within a definite prescribed time. The Court further takes judicial notice of the fact that in that regard the Senior Courts of Belize have actioned several initiatives to see these aspirations converted into concrete action such as the establishment of a Criminal Justice Board to address issues such as the elimination of that backlog and issues within the magistracy and hopefully prevent the debacle that occurred in this matter from recurring.

[13] The Court would also wish to note again the words of Jamadar JCCJ in *Marin*:

*"[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."*

## **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.

**Nigel C. Pilgrim**  
High Court Judge  
Criminal Division  
Central District  
Dated 10<sup>th</sup> April 2024