

News Release, 8 May 2012

“Eastern Caribbean Court of Appeal Rule on Right to Appeal in Capital Cases in St Kitts and Nevis and Order Acquittal for Death Row Prisoner and Quash Three Other Death Sentences ”

In a judgment delivered on 21st March 2012, the Eastern Caribbean Court of Appeal struck down as unconstitutional a statute providing time limits on the right to appeal in capital cases. In so doing, the Court of Appeal ordered the acquittal of **Sheldon Issac** upon finding that he is severely brain damaged and was unfit to stand trial and quashed the death sentences of the other Appellants, **Romeo Cannonier**, **Reudency Williams** and **Louis Gardener**. The Death Penalty Project (the DPP) assisted all four prisoners in their appeals.

Background

The first appeal concerned Romeo Cannonier, who was convicted of the murder of Delvin Nisbett, an off-duty police officer in January 2008, and sentenced to death. The four Appellants in the second appeal, namely, Romeo Cannonier, Sheldon Issac, Reudency Williams and Louis Gardener, were later tried for the murder of Gavin Gilbert, who was due to appear as a prosecution witness in Cannonier’s murder trial of Delvin Nisbett. All the Notices of Appeal were filed outside the fourteen-day time limit prescribed by the Eastern Caribbean Supreme Court Act (the Act). The Act did not permit the Court of Appeal to grant extensions of time in capital cases where appeals were filed late and the Court therefore rejected all four applications to extend time in these cases and the merits of the respective appeals were therefore never heard.

In January 2009, the Death Penalty Project agreed to assist the Appellants, who were then at imminent risk of execution. The Government of St Kitts had refused to provide an undertaking that they would not carry out their death sentences whilst their cases were still pending determination, and therefore the DPP filed emergency applications in the Privy Council. Stays of Execution were duly granted in February 2009.

As there were concerns about the mental health of the Appellants, the DPP instructed a clinical psychologist and a forensic psychiatrist to travel to St. Kitts to assess them. Subsequently, applications for permission to appeal and applications to introduce fresh evidence were filed in the Privy Council. The cases were heard by the Privy Council in May 2010, and both appeals were remitted back to the Court of Appeal for further hearing and the determination of all the issues, including whether the time limit in capital cases imposed by the Act was constitutional.

Judgment

The appeals were heard in St Kitts between 6th-7th July 2011 and the Court of Appeal delivered their judgment on 21st March 2012. Critically the Court found s52(2) of the Act to be unconstitutional as it imposed an arbitrary limitation on the Appellants' right of appeal. The Court held that the Act infringed upon the Appellants' right of access to the Court of Appeal and their right to have their convictions and death sentences reviewed by a higher tribunal. In order to comply with the Constitution, the Court ruled that the Act should be interpreted in such a way as to provide for a discretionary time limit in all cases, equally.

In relation to the individual appeals, the Court of Appeal allowed the appeal on conviction and sentence for Sheldon Issac, who was acquitted on fresh medical evidence which strongly demonstrated that he was severely brain damaged as a result of being shot in the head prior to his conviction. The Court concluded that he was unfit to stand trial in the first place, and naturally should never have been sentenced to death. The Court rejected the possibility of ordering a retrial as being "inappropriate and unnecessary". The Court of

Appeal then allowed the appeals on sentence for Romeo Cannonier, Reudency Williams and Louis Gardiner, resulting in their death sentences being set aside and sentences of life imprisonment substituted.

The ruling is of critical importance as it will ensure that prisoners facing the death penalty will be able to pursue all domestic appeals without facing arbitrary time limits. The right to appeal is of particular significance to prisoners facing the death penalty where the punishment is irrevocable. This judgment will impact other countries, where similar unjust time limits continue to exist in capital cases. This judgment also reaffirms the long held principle that the State cannot execute or condemn to death any person with significant mental impairment.

Romeo Cannonier and Louis Gardiner were represented by Edward Fitzgerald QC from Doughty Street Chambers. Mr. Issac and Mr. Williams were represented by Julian Knowles QC from Matrix Chambers. Angela Innis, an attorney in St. Kitts, appeared alongside English counsel in both appeals. Counsel were instructed, *pro bono*, by The Death Penalty Project at Simons Muirhead & Burton.

Professor Nigel Eastman and Dr. Tim Green, were instructed, *pro bono*, by The Death Penalty Project, to carry out psychiatric and psychological assessments respectively on the Appellants and to provide medical reports. Professor Eastman and Dr Green were called to give expert medical evidence at the appeal hearing.

Saul Lehrfreund and Parvais Jabbar, Executive Directors, The Death Penalty Project.