IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Application No. GYCR2016/003
GY Criminal Appeal No. 21 of 2009

BETWEEN

VISHNU BRIDGELALL **APPLICANT**

AND

HARDAT HARIPRASHAD
(Officer Customs Anti-Narcotics Unit) **RESPONDENT**

Before The Right Honourable **Sir Dennis Byron, President**
And The Honourables **Mr Justice Saunders**
Mr Justice Wit
Mr Justice Hayton
Mme Justice Rajnauth-Lee

Appearances

Mr Sanjeev Datadin and Mr Ryan C Crawford for the Applicant

Ms Sonia Joseph and Ms Dionne Mc Cammon for the Respondent

JUDGMENT
Of
The Right Honourable Sir Dennis Byron, President, and the Honourable Justices Saunders, Wit, Hayton and Rajnauth-Lee
Delivered by the Honourable Mr Justice Saunders
on the 4th day of May, 2017

Introduction

[1] Vishnu Bridgelall was arrested in May 2007 and faced two charges of being in possession of cocaine for the purpose of trafficking. One charge related to 86.5

kilograms found in a house at 185 Charlotte Street, Enterprise, East Coast Demerara and the other to 20 kilograms found, on the same day, in the yard of the house. He was charged jointly with three other men. One of the men, Chandrika Chattergoon (also known as "Chats"), pleaded guilty to the offences. Chats claimed sole responsibility for the drugs. Bridgelall and the other two men pleaded not guilty. They were tried before Magistrate Isaacs-Marcus. The other two men were acquitted but Bridgelall was convicted on both charges on November 23, 2007. The Magistrate sentenced him to 2 five-year prison terms which were made to run consecutively. He was also fined a total of GY $254,400,000.

[2] Bridgelall appealed his conviction to the Full Court. On December 4, 2009, the Full Court allowed his appeal and set aside the convictions and sentence. He was, accordingly, immediately released from the Georgetown Prison having served a total of 30 calendar months in custody, that is, 6 months while awaiting trial and 24 months following conviction.

[3] The Director of Public Prosecutions ("the DPP") was dissatisfied with the decision of the Full Court. On December 16, 2009 the DPP applied for leave to appeal to the Court of Appeal. Leave was not granted until some six months later. Bridgelall attempted to challenge before this Court the grant of leave to the DPP but, on October 11, 2010 we dismissed his application and the matter was referred back to the Court of Appeal for hearing of the appeal.

[4] While his case was pending before the Court of Appeal, Bridgelall suffered a haemorrhagic stroke. He was advised to seek medical treatment in Canada which he did some time in July 2016. According to his doctor, he is still undergoing treatment in Canada where he is awaiting eye surgery. He has been advised not to travel until his condition is improved and stable.

[5] On October 24, 2016, some 6 years after the grant of leave to appeal to the Court of Appeal, that court allowed the DPP's appeal and restored the Magistrate's decisions. Bridgelall applied to this Court for Special Leave to appeal the

restoration of his convictions and sentence. We granted him bail and ordered that the Court of Appeal's decision be stayed. We also decided to treat the hearing of his application for Special Leave as the hearing of the appeal itself in the event that we decided to grant Special Leave to appeal.

[6] In relation to the convictions, counsel's submissions raise issues regarding the appropriate inferences that should have been drawn by the trial court. The Full Court and the Court of Appeal took diametrically opposed positions on this issue. On the matter of his sentence, Bridgelall draws attention to matters of some constitutional significance. On the whole, we are satisfied that the requirements for Special Leave, as previously established by the Court's jurisprudence,[1] have been met. We agree therefore that Special Leave to appeal should be granted and, after considering all the submissions made, we find no reason to interfere with Bridgelall's convictions. We do not agree, however, that consecutive sentences should have been imposed on him. We have decided further that, given the circumstances of this case, particularly in light of the length of time it took for the DPP's appeal against his acquittal to be heard, his constitutional right to a fair hearing within a reasonable time was breached. In this particular case, the most appropriate relief for that breach is to impose an indefinite stay on any further proceedings against him with respect to enforcement of the remainder of the prison sentence. These are our reasons for these decisions.

The Facts

[7] There is little controversy about the facts of this case. Major differences have arisen, however, on the inferences that should be drawn from them. On February 15, 2007, under the assumed name of "John Bridgelall", and wearing a hat and dark shades, Bridgelall approached Ramnaresh Shivdeyal to rent from him a property located at 185 Charlotte Street, Enterprise on the East Coast of Demerara ("the premises"). The rent agreed was $10,000 per month, thereby indicating the creation of a

[1] See for example: *Lashley v Singh* [2014] CCJ 3 (AJ); *R v Doyle* [2011] CCJ 4 (AJ), (2011) 79 WIR 91; *Cadogan v R* (No 2) [2006] CCJ 4 (AJ), (2006) 69 WIR 249.

monthly periodic tenancy. Bridgelall indicated to Shivdeyal that he wanted the premises to conduct a fish glue business. The tenancy arrangement was recorded in a black book and signed by both men. Bridgelall paid Shivdeyal two months' rent and was given the key to the house, the key to the gate and three electricity bills covering a period between December 2006 and March 2007. The premises comprised a single storey wooden house on stilts. There were three rooms upstairs. The downstairs area was not enclosed. A wooden staircase led upstairs to the house. At the time it was rented, the house was without furnishing. The yard was completely fenced with a gate at the front. After handing over the property on the said February 15, 2007, Shivdeyal had no further dealings with Bridgelall or with anyone else in relation to the premises.

[8] On May 16, 2007, Officer Hardat Hariprashad and other officers from the Customs Anti-Narcotics Unit (CANU) went to the premises to carry out a search for narcotics. When they arrived, they found the gate locked. Bridgelall was seated under the house with Chattergoon and the two other men (who were subsequently acquitted by the Magistrate). Bridgelall rose and approached the officers at the gate. Officer Hariprashad identified himself and, upon his doing so, Bridgelall called out to Chattergoon and asked him for the keys to open the gate. Chattergoon removed a bunch of keys from his pocket and gave them to Bridgelall, who opened the gate and returned the keys to Chattergoon.

[9] The CANU officers carried out body searches on each of the men. During the search, they found a firearm on Bridgelall who revealed that he was a licensed holder. A copy of his firearm licence, driver's licence, the electricity bills for the premises referred to earlier, a black diary which appeared to contain a receipt for the rental of the premises, and a national identification card in the name of "John Bridgelall" were found in a black pouch that was on top of a table below the house.

[10] The men were escorted upstairs to the house. The door to it was secured with a padlock. It was opened by Chattergoon with one of the keys on the bunch he had earlier produced. Upon entering the house, the officers observed the three rooms.

The door to each room was also secured with a padlock. Chattergoon opened each door with keys from the bunch he had. All three rooms contained fish glue. In the middle room, the amount of dried fish glue was so great it measured as much as three feet in height. While searching through the glue, in the presence of the men, Officer Hariprashad observed four brown cardboard boxes, each of which consisted of rectangular parcels that contained a whitish powdered substance. This substance was later confirmed to be cocaine. There was as much as 86.5kg of it. Upon discovering the substance, Officer Hariprashad cautioned each of the four men. Save for Chats, the men said nothing. Chattergoon declared that the drugs were his and that he had gotten them from "Mike from Venezuela".

[11] The officers then led the men downstairs. There they observed a bench, a table, several pieces of PVC pipe, a freezer, some rolling pins, 4 pairs of scissors, bowls, a gas stove and a gas cylinder. The officers conducted a search of the yard where they observed more fish glue also containing packages of what turned out to be cocaine concealed in the glue. The weight of the drugs found in the yard was 20kg. The men were again cautioned. Once more they were all silent save for Chattergoon who said, "officer, this is the rest of the drugs".

[12] The four men were taken to CANU headquarters. Bridgelall and one of the other men, Thakoor Persaud, gave statements under caution. Persaud, in his statement, explained that the sole purpose for his being at the premises was because Bridgelall had hired him as a porter to "fetch some glue". He had arrived at the premises at about 11:30 am and had no knowledge of the cocaine found there. As for Bridgelall, he explained that he traded in fish glue and that having heard that "a man at Enterprise" was selling fish glue, he hired Persaud and another man to assist him in transporting the fish glue he intended to purchase. They arrived at the premises at about 11:30 am where they met Chats, "the fella who [was] selling the glue". It was while they were in the yard discussing the price of the glue that the CANU officers arrived.

The trial before the Magistrate

[13] At the trial, the facts set out above were established. In addition, Officer Omardat Persaud, one of the CANU officers, testified that he had known Bridgelall over the course of some 12 to 15 years. He said that, upon entering the premises, Bridgelall greeted him in the usual way by throwing his arm around his shoulder and then said, "You got me today, so be it". In writing up the reasons for her decision, the Magistrate must have overlooked this apparent admission on Bridgelall's part, or else she may have simply rejected it in light of a) the cross-examination that vigorously attacked its veracity and/or b) the fact that, despite its potency, it had not been disclosed to the defence before being given in evidence. Whatever the case, the Magistrate did not refer to and, it seems, did not rely on it and it is unnecessary for us to give it any weight.

[14] Bridgelall's sworn testimony echoed much of his written statement. He was a businessman who bought fish glue and shark fins for export to Hong Kong, China, Canada and the United States of America. The business being conducted on the premises was not his. In fact, he had abandoned the premises after two months in occupation as the fish glue business was not feasible. He intimated that Chats had taken over the tenancy from him after he had left and that he had given the keys to Chats. It was Chats who was in control of the premises at the material time. On the day in question, he had gone to purchase fish glue and had taken the other two men with him to assist him in fetching the glue. He did not examine or take possession of any of the fish glue from the time he had arrived at the premises to the time when the CANU officers came there, some 10 minutes after his arrival. Chats was not his employee. He did not have any investment in the premises.

[15] The Magistrate determined that the critical issue for consideration was whether the three defendants were in possession of the respective quantities of cocaine [86.5kg found upstairs and 20kg discovered in the yard] for the purpose of trafficking.[2] She

[2] Memorandum of Reasons, Record of Appeal, 475 at [25].

also considered the question of which party bore the burden of proof in cases of possession for the purpose of trafficking. She determined, correctly, that where a man is found in possession of more than one gram of cocaine, it is he who must show that he was in possession for a purpose other than trafficking. The Magistrate referred to and relied on section 5(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances (Control) Act, 1988[3] ("the Act") and a wide variety cases including ***R v Searle***[4], ***R v Strong; R v Berry***[5], ***R v Hartley and McCallum***[6], ***Warner v Metropolitan Police Commissioner***[7], ***R v Storey***[8], ***Barlow v Public Prosecutor and Chambers v Public Prosecutor***[9], ***R v Ashton-Rickardt***[10], ***R v Maragh***[11], and ***R v Grossett***[12], .

[16] The Magistrate believed the evidence of Shivdeyal, the landlord. She rejected Bridgelall's defence noting several inconsistencies which arose during his evidence in chief and cross-examination and also as between his caution statement and his testimony. The Magistrate concluded that Bridgelall was in possession of the drugs discovered on the premises and that he had not discharged the burden of proving that he was in possession of the cocaine for a purpose other than trafficking. In the circumstances the Magistrate found Bridgelall guilty of being in possession of the drugs found both upstairs and in the yard. She dismissed the charges against the other two men whom he admitted he had employed.

[17] The Magistrate noted that persons found in possession of "minor quantities" of cocaine for the purpose of trafficking were usually sentenced to at least three years' imprisonment. In light of the alarming quantity of cocaine found on the premises, she decided to sentence Bridgelall to the maximum period within her jurisdiction. He was sentenced to five years' imprisonment on each count, separate charges

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[3] CAP 10:10.
[4] [1971] Crim LR 592.
[5] (1989) Times, 26 January, CA.
[6] (1967) 63 WWR 174, [1968] 2 CCC 183.
[7] [1969] 2 AC 256.
[8] (1968) 52 Cr App Rep 334, 112 Sol Jo 417.
[9] [1986] LRC (Crim) 849.
[10] [1978] 1 All ER 173.
[11] (1964) 6 WIR 235.
[12] (1964) 6 WIR 350.

having been laid as to the 80.5 kgs of cocaine discovered in the house and the 20kgs found in the yard. The prison terms were made to run consecutively. In addition, he was fined GY $206.4 million in respect of the cocaine found in the house and GY $48 million in respect of the cocaine found in the yard, a total of GY $254.4 million. The Magistrate determined that these were appropriate sentences in the circumstances and that they would act as a deterrent. She derived guidance from section 5(1)(a)(i) of the Act, which sets out the parameters for imposition of the fines and years of imprisonment. She also relied on ***Perreira v Cummings***[13], a decision of the Full Court of Guyana, where that court had affirmed the 4-year term of imprisonment and fine imposed on an appellant who was found guilty of being in possession of 1kg, 18g of cocaine for the purpose of trafficking.

The Decisions of the Full Court and the Court of Appeal

[18] On December 4, 2009, the Full Court upheld Bridgelall's appeal against his convictions and sentence. The court disagreed with the Magistrate's treatment of Bridgelall's testimony. According to the Full Court, "…the Magistrate's rejection of [Bridgelall's] evidence did not turn on the inherent incredibility of his story but rather on a finding against his personal credibility or veracity. "[14] The Full Court also cast doubt on the inferences drawn by the Magistrate. Although agreeing with the Magistrate that Bridgelall exercised some control in determining whether to admit and in fact admitting entry to the officers, such a finding, according to the Full Court, did not automatically warrant a further finding that Bridgelall was in control of everything on the premises or that he was aware of the particular substance on the premises. The Full Court was content to conclude that Chattergoon's possession of the keys coupled with his claim that the cocaine was solely his, absolved everyone else of all responsibility for the drugs. The Full Court cited several cases, of which it found ***R v Conway and Burkes***[15] to be particularly instructive.

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[13] (1995) 54 WIR 233.
[14] *Bridgelall v Hariprashad* (Full Court, 4 December 2009) *per Chang CJ (Ag)*, Record of Appeal, 518.
[15] [1994] Crim LR 826.

[19] On the issue of the sentence imposed by the Magistrate, the Full Court held that despite the two separate charges laid by Officer Hariprashad, the circumstances did not point to two distinct acts of possession of the two sets of drugs discovered. In the view of the Full Court, a finding of guilt on both charges ought to have attracted concurrent, as opposed to consecutive, sentences[16]. The Full Court, taking the view that the case against Bridgelall consisted of "weak circumstantial evidence" and noting that Bridgelall had already been incarcerated for 30 calendar months, did not deem it appropriate to order a retrial. It thus allowed the appeal and set aside the convictions and sentences.

[20] The Court of Appeal reversed the Full Court and upheld the Magistrate's findings. In particular, the Court of Appeal agreed with the Magistrate that, in light of the evidence presented, the "inescapable" conclusion was that Bridgelall exercised control over the drugs found on the premises, of which he was the tenant, and that the cocaine was jointly possessed by himself and Chats. The court strengthened its conclusion by referencing Bridgelall's alleged statement to Officer Persaud at the premises to which the Magistrate had not at all alluded in her decision. The Court of Appeal stated that the Magistrate ought to have considered whether the statement was actually made as well as its significance. The court held, however, that there was sufficient evidence upon which the Magistrate could have properly grounded her findings despite her failure to allude to the statement.

[21] On the matter of the sentence, the Court of Appeal did not specifically interrogate the issue of the propriety of the consecutive sentences imposed on Bridgelall. Instead, at least by necessary implication, the court restored the Magistrate's decisions. The natural result of this is that Bridgelall would be required to return to Guyana to serve out the balance of the two consecutive five-year prison sentences handed down by the Magistrate, less the 30 months already served.

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[16] *DPP v Stewart* (1982) 35 WIR 296; *Ortiz v The Police* (1993) 45 WIR 118.

The Issues for determination

[22] The application before us essentially raises the following issues. Firstly, whether the convictions are safe and secondly, if they are, a) whether the Magistrate erred in sentencing Bridgelall to two consecutive terms of imprisonment as opposed to ordering that the sentences should run concurrently and b) whether Bridgelall's right to a fair hearing within a reasonable time was infringed and, if so, with what related consequences.

[23] Before we deal with these substantive issues, we pause here to address briefly a procedural point raised, with some amount of fervour, before us and in the court below. Counsel for Bridgelall contended that the DPP lacked standing to prosecute the present appeal and, even if she did not, there needed to be some overt indication, some proper process, to indicate that the DPP was taking over the matter from Officer Hariprashad who had initiated the proceedings in the Magistrate's court.

[24] The Constitution confers on the DPP wide powers in relation to criminal proceedings and Guyanese case law has discussed this.[17] The DPP's powers include the taking over of proceedings instituted by any other person or authority.[18] This power can be exercised in person or by someone else on the DPP's authority.[19] There is therefore no question that the DPP was entitled to take over the proceedings. As to whether the proper process was followed, in the absence of evidence to the contrary we would readily apply here the legal maxim, usually expressed by lawyers in Latin,[20] that "All things are presumed to have been done in due form." Accordingly, we dismiss this preliminary point.

[17] See for example: *Tappin v Lucas* (1973) 20 WIR 229.
[18] See The Constitution of the Co-operative Republic of Guyana, Article 187(1)(b).
[19] See The Constitution of the Co-operative Republic of Guyana, Article 187(2).
[20] *Omnia praesumuntur rite esse acta*.

Are the Convictions Safe?

[25] In our view, the Full Court failed to take a proper approach to the facts and wrongly interfered with the inferences reasonably drawn by the Magistrate. On the contrary, we agree with the Court of Appeal that it was open to the Magistrate to impute knowledge of the cocaine to Bridgelall. In a case of this kind, where a large quantity of drugs is discovered on premises and the accused is also found on the premises, the guilt of the accused does not necessarily depend upon whether he was in physical possession of any of the drugs or was caught handling the illegal substance or whether one of several persons on the premises claims ownership of the drugs. Nor would the mere presence of the accused at the premises be enough to link him to the crime. In cases such as these, the Prosecution is usually only able to proffer circumstantial evidence to establish the accused's possession of the drugs. When, in *Searle,* it is said that mere occupation of a dwelling house is insufficient to fix the occupant with possession of drugs found in it and that there must be something more, that "something more" need not amount to direct evidence of the accused's possession of the drugs. It could, as in this case, come from inferences reasonably drawn from facts that have been established.[21] The burden of proof is, of course, on the Prosecution, but if the facts and the reasonable inferences drawn from them are sufficiently cogent to warrant a conviction, then it would fall to the accused to adduce evidence that might create, at least, a reasonable doubt as to either his awareness of and exercise of control over the drugs or alternatively, his conscious participation, whether alone or with others, in possessing the drugs.

[26] The undisputed facts here were that it was Bridgelall who had rented the premises from Shivdeyal. He had never surrendered the monthly tenancy. The landlord never saw or rented the premises to Chattergoon or to anyone else. Bridgelall was the tenant. It was he who had, at the outset, freely volunteered to the landlord that the ostensible purpose for which the premises were to be used was the carrying on of fish glue work. Indeed, "fish glue work" was being carried on at the premises. But

[21] See *Bernal and Moore v R* , (1997) 51 WIR 241, 251.

this was not a legitimate business in fish glue. The whole enterprise had the appearance of being a cover for a major drug trafficking operation. Given the huge quantities of cocaine found in the fish glue and the way in which the cocaine was packaged it would have been artificial to distinguish the fish glue business from the drug trafficking operation. The clear evidence was that Bridgelall had employed two of the men to help him move the "fish glue" from the premises. The Magistrate's inference that Bridgelall was in a position of authority in relation to Chats, who had admitted guilt, was reasonably drawn. Of the four persons seated in the yard at the time CANU swooped down on the premises, Bridgelall was the one who rose to interface with the officers; who went to the gate to speak with them and who then instructed Chats to give him the key to permit them entry. The circumstantial evidence against Bridgelall was particularly strong, clearly indicating that he was engaged in a joint operation with Chats to trade in cocaine.

[27] Bridgelall's evidence did little to repel that conclusion. He presented himself to the Magistrate as a responsible businessman with a 10-year track record in the fish glue business. The Magistrate may have wondered whether such a businessman would, within the space of three months, rent premises to do fish glue work, embark upon the business and then cavalierly turn over the premises and the business to another without first communicating with his landlord. Bridgelall further stated that he had gone to the premises that day for the innocent purpose of purchasing fish glue, but it turned out that he had on him no money or other means to effect any such purchase. In his caution statement, he admitted that he had hired two of the men found on the premises, but when he testified in court he denied knowledge of one of the two. Further, in his caution statement, he disingenuously attempted to distance himself from Chattergoon whom he described in that statement as "a man from Enterprise" and "a fella selling fish glue". It emerged, however, that he had known Chats for many years. Given these and other inconsistencies the Magistrate was, in our view, entitled to disbelieve Bridgelall's evidence.

[28] In her written judgment, the Magistrate stated:

> "…[Bridgelall] had knowledge of the cocaine found both in the yard and in the house although the substances were concealed at the time. The court believes that [Bridgelall] continued in occupation of the premises for the purpose of conducting fish glue business which served as a guise for trafficking in narcotics based on the manner these substances were packaged and the quantity in which they were found – ready for delivery and/or distribution, for sale and/or exportation. Further, [Bridgelall] has not discharged the burden of proving that he was in possession of the cocaine for a purpose other than trafficking."[22]

As a court of review, our task is to determine whether Bridgelall's convictions were safe; whether there was a sufficient basis upon which the Magistrate could properly arrive at her conclusions bearing in mind that it was the Magistrate who saw and heard the witnesses. In our opinion, the Magistrate was perfectly entitled to find as she did. Based on the available evidence as considered by the Magistrate, Bridgelall was rightly convicted,

Should the Sentences run Consecutively or Concurrently?

[29] At [17] above, we noted that the Magistrate had imposed fines on Bridgelall in respect of each charge, ordered him to serve a five-year term of imprisonment for each of them and further ordered that these prison sentences should run consecutively. In justifying the Magistrate's decision, the DPP alluded to the societal ills caused by drugs, generally, and cocaine in particular. According to the DPP, the Explanatory Memorandum to the Act specifically speaks to protecting "society from the menace of narcotics and persons who deal in them". The DPP submitted that the consecutive sentences were within the confines of the law.

[22] Memorandum of Reasons, Record of Appeal, 476 at [33].

[30] We agree entirely that Bridgelall was deserving of a stiff sentence. But, under section 5(1)(a)(i) of the Act, the section under which he was charged, the sentencing options available to the Magistrate were a fine of, as much as, three times the market value of the narcotic, together with imprisonment for a term not less than three years but *not exceeding five years*. No complaint is made about the fines levied by the Magistrate. For each charge, the Magistrate imposed a prison sentence that represented the very outer limit of her jurisdiction. The issue is whether those sentences should have been made to run consecutively or concurrently.

[31] Generally speaking, a Magistrate has the power to impose consecutive sentences. In this case, however, having regard to the circumstances, it was a mistake for the Magistrate to order the five-year sentences to run consecutively. Barring special circumstances, where a person is convicted of multiple offences which arise out of the same set of facts or the same incident, it will be appropriate to impose concurrent, and not consecutive, sentences.[23] If, for example, a single incident of dangerous driving results in injuries or death to multiple victims, one would normally expect the court to impose concurrent sentences in respect of the separate charges related to each victim.[24]

[32] On the other hand, consecutive sentences may be given where the offences arise out of unrelated facts or incidents. If here, for example, Bridgelall's firearm had been un-licensed and he had been convicted on that offence as well, the Magistrate could have considered imposing on him, for the firearm offence, a sentence that was consecutive to those imposed for the drug offences. The Magistrate should have regarded the drug offences against Bridgelall as having arisen out of the same set of circumstances and so attracting concurrent sentences. There was here, as stated by the Full Court, a single act of possession of drugs found at one address albeit in two different places.

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[23] See *Kirk Mitchell v R* (Court of Appeal of Jamaica, 14 January 2011), [2011] JMCA Crim 1 at [34],
[24] See for example, *R v Noble* [2003] 1CAR(S) 312.

[33] Consecutive sentences may also be imposed where the offences are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.[25] In ordering consecutive sentences, the Magistrate may have intended recourse to this principle since the feature which appeared to have prompted her to derogate from the general sentencing principle of ordering concurrent sentences was the great quantity of cocaine that was found.

[34] The problem faced by the Magistrate was that, however large the quantity of cocaine, it did not entitle her to exceed or circumvent her sentencing jurisdiction. She was not justified in imposing, in effect, a ten-year sentence on Bridgelall when her sentencing limit was a prison term of only five years. If the State had considered that the quantity of drugs in issue here justified incarceration for a period in excess of five years (the limit of the Magistrate's sentencing jurisdiction), Bridgelall should have been charged indictably. Under section 5(1)(a)(ii) of the Act, conviction on indictment would have rendered him liable to a term of imprisonment for life. Given the Magistrate's sentencing limit of 5 years coupled with the single act of possession giving rise to the separate charges, the Magistrate ought to have made the sentences run concurrently.

Was there a Breach of the Reasonable Time Guarantee?

[35] Article 144(1) of the Constitution[26] provides that "If any person is charged with a criminal offence, then…the case shall be afforded a fair hearing ***within a reasonable time***…" (emphasis added). Bridgelall was convicted by the Magistrate on November 23, 2007. His appeal to the Full Court was heard almost 2 years after it was filed. The judgment of the Full Court rendered him a free man. The DPP applied for leave to appeal to the Court of Appeal on December 16, 2009. Although that application was granted on July 2, 2010, that court did not determine the appeal until October 24, 2016. This was some 6 years and 10 months after the Full Court set aside the convictions and some 8 years and 11 months after Bridgelall was tried

[25] *R v Jameson and Jameson* [2009] 2 CAR (S) 26.
[26] CAP 1:01.

and convicted. We heard this appeal on March 16, 2017. In all, this matter has been languishing in the judicial system for almost a decade.

[36] The DPP denies that Bridgelall's constitutional right to a fair hearing within a reasonable time has been infringed. In support of that argument, the DPP cites the supposed complexities of the case, the fact that Bridgelall would have suffered little prejudice as he was as at large after the Full Court's decision, Guyana's policy to give priority to the hearing of appeals by persons who are in custody, and the limited human resources available in the form of only three Court of Appeal Judges and a single typist. Reliance was also placed on several cases to support the position that the concept of 'reasonable time' is to be assessed against the background of a country's available resources and local conditions, and the conduct of the appellant regarding any objections made to the delay. These cases included ***R v Jordan***[27], ***DPP v Tokai***[28], ***Martin v Tauranga District Court***[29], ***R v Williams***[30], ***Mbugua v Republic***[31] and ***Tapper v DPP.***[32]

[37] We considered the reasonable time guarantee briefly in ***Singh v Harrychan***,[33] an appeal from Guyana which came before us by special leave. When we heard that appeal, almost 9 years had elapsed between the time of the incident leading to the charge and the date of the defendant's conviction. We stated then that the right afforded by Article 144(1) encompasses the appellate process[34] and that, "in doing justice, the extent and nature of the delay on the part of public officials…ought always to be of concern to an appellate court".[35] We also held that inordinate delays not only deny parties the access to justice to which they are entitled but they also undermine public confidence in the administration of justice. We stressed that the

[27] [2016] 4 LRC 469, [2016] 1 SCR 631, 2016 SCC 27.
[28] (1994) 48 WIR 376.
[29] [1995] 2 LRC 788.
[30] [2009] 5 LRC 693, [2009] NZSC 41.
[31] [2011] 2 LRC 1.
[32] [2012] UKPC 26.
[33] [2016] CCJ 12 (AJ), (2016) 88 WIR 362.
[34] *Singh* (n 33) at [29]; See also: *Dyer v Watson* [2004] 1 AC 379, [2002] UKPC D1, 3 WLR 1488; *Mills v HM Advocate* [2002] UKPC D2, 3 WLR 1597; *R v Marriner and another* [2002] EWCA Crim 2855 at [48]; and *Darmalingum v The State* [2000] 1 WLR 2303, 2310A.
[35] *Singh* (n 33) at [29].

judiciary has the responsibility to ensure that cases which come before it are dealt with in as timely a manner as possible.[36]

[38] We agree with the view[37] that in considering whether there has been a breach of the reasonable time guarantee it is appropriate first to consider the overall period of time that has elapsed. If, on its face, the period appears to be overly lengthy, then it would be appropriate for the court to interrogate all the relevant facts and circumstances with a view to determining whether the State has provided a satisfactory explanation or justification for any lapse of time which appears to be excessive.[38]

[39] The time which has elapsed between Bridgelall's conviction by the Magistrate and the date of the hearing of the DPP's appeal by the Court of Appeal (see: [35] above) raises a real concern. There is no doubt that the delay here is inordinate, excessive and unreasonable. The several justifications offered for the delay mirror the arguments which we rejected in ***Singh***. We disagree with the notion that, as Bridgelall was at large in the intervening period between the giving of the decisions of the Full Court and the Court of Appeal, he suffered no prejudice. It is entirely unacceptable that a person who is convicted and sentenced, but later declared a free man by a higher court, should have dangling over his head for over six years the possibility that he may have to return to prison to serve out his sentence. Moreover, prejudice, although a relevant factor to be considered, is not a prerequisite.[39] As we held in ***Singh***, and for the reasons there expressed, the inadequacy of the administrative staffing of the Court of Appeal also provides no acceptable excuse for clear breaches of the reasonable time guarantee.

[40] Neither are we impressed by the suggestion that the issues raised by the present appeal were "complex, involving voluminous submissions and copious amounts of

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[36] *Singh* (n 33) at [28]. See also *R v Jordan* (n 27) at [25]-[28].
[37] As expressed in *Dyer v Watson* [2004] 1 AC 379, [2002] UKPC D1, 3 WLR 1488.
[38] ibid at [52] per Lord Bingham of Cornhill.
[39] *Singh* (n 33) at [25]; *Tapper v DPP* [2012] UKPC 26 at [27] approving *Boolell v The State* [2006] UKPC 46 per Lord Caswell; and *Mills v HM Advocate* [2004] 1 AC 441 at [13].

research and preparation". The force of this argument is completely undermined by the fact that it required less than seven months to arrest, charge, try and convict Bridgelall in the Magistrate's court. The simple truth is that, as noted recently by the Supreme Court of Canada in relation to that country, excessive delays are tolerated because there is now "a culture of complacency within the system towards delay".[40] Indeed, judicial experience has shown that when apex courts evince a firm position of intolerance towards this culture, the necessary measures are invariably introduced to enable and facilitate the reduction, if not elimination, of unnecessary delay. In all the circumstances, we find here and declare that the State has breached Bridgelall's constitutional right to a fair hearing within a reasonable time.

What is the appropriate Redress for the Breach?

[41] The issue now is what redress do we consider appropriate to remedy this breach? Bridgelall has already served 30 months of concurrent five-year sentences. He would have been eligible for remission in respect of 24 of those months. He has already served, at the very least, one half of his sentence and has gotten on with his life. He is currently in Canada and, according to what we have been told, under doctor's orders that it is inadvisable for him to travel.

[42] The Constitution does not circumscribe the nature or extent of the redress the judiciary is entitled to afford a litigant whose fundamental rights have been breached. Instead, the court is required to "make such orders, issue such writs and give such directions as it may consider appropriate".[41] In criminal cases where a constitutional issue is raised, "courts make orders that span an impressive variety."[42] These have ranged from the setting aside of a conviction[43] to the quashing of a death sentence.[44] The court is principally concerned with fashioning a remedy that is *effective* given the unique features of the particular case. In this

[40] *R v Jordan* (n 27) at [4].
[41] See The Constitution of the Co-operative Republic of Guyana, Article 153(2).
[42] Robinson, Bulkan, Saunders, *Fundamentals of Caribbean Constitutional Law* (Sweet and Maxwell, 2015) at [5-015].
[43] See *Martin v AG* (High Court of Antigua and Barbuda High Court, 1 July 2004) per Ferdinand, J (Ag).
[44] *Pratt v AG* (1993) 43 WIR 340.

light, we consider that the appropriate remedy in this matter would be to stay any further action against Bridgelall with respect to the enforcement of the imposed prison sentence arising out of these proceedings and we so order. Bridgelall must pay his fines, if he has not already done so, but given the undue delay during the appeal process, he should not go back to prison however justified that would have been if no such delay had occurred.

Postscript

[43] Before disposing of this Application, we must address one final matter. On April 26, 2017, after judgment was already reserved, the DPP forwarded to the Court's Registry supplemental written submissions, without any request for permission. These submissions, in essence, repeated and developed arguments which were either already before us or ought to have been raised in the written submissions and oral advocacy at the hearing. We have declined to consider them.

[44] The Caribbean Court of Justice (Appellate Jurisdiction) Rules, 2017 ("the Rules") do not provide for submissions to be made after a matter is heard. While parties may be permitted to file limited submissions following the conclusion of a hearing, this is typically entertained under exceptional circumstances, such as a recent change in case or statute law or where a new point arises at the hearing and the parties are clearly unable to address at that time. Similarly, parties may be permitted to bring a case or statute of significance to the Court's attention, which was overlooked at the time of the hearing, on the basis that it assists in the final determination of the matter and furthers the overriding objective of the Rules.[45] However, as a matter of general procedural practice,[46] we are of the view that post-hearing submissions from parties ought not to be entertained by this Court in circumstances where the parties have been afforded sufficient opportunity to advance their cases at the time of hearing.

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[45] See Rule 1.3.

[46] See, for example, *Carr v Finance Corporation of Australia Limited (No 1)* [1981] HCA 20, (1981) 47 CLR 246; *Eastman v Director of Public Prosecutions (ACT)* [2003] HCA 28; and *Re Application by the Chief Commisioner of Police (Victoria)* (2005) 214 ALR 422, [2005] HCA 18.

Disposition

[45] In all the circumstances, the Court

(i) Grants Special Leave to Bridgelall to appeal the decision of the Court of Appeal delivered on October 24, 2016;

(ii) Affirms the conviction of Bridgelall on each of the two charges laid against him;

(iii) Adjusts the sentence of the Magistrate so that the respective five-year sentences imposed on Bridgelall would run concurrently and not consecutively;

(iv) Declares that Bridgelall's constitutional right to a fair hearing within a reasonable time has been breached;

(v) Stays any further action against Bridgelall arising out of these proceedings with respect to enforcement of the remainder of the prison sentences imposed by the Magistrate.

/s/ CMD Byron

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The Rt Hon Sir Dennis Byron, President

/s/ A. Saunders

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The Hon Mr Justice A Saunders

/s/ J. Wit

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The Hon Mr Justice J Wit

/s/ D. Hayton

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The Hon Mr Justice D Hayton

/s/ M. Rajnauth-Lee

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The Hon Mme Justice M Rajnauth-Lee