



## CARIBBEAN COURT OF JUSTICE

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### **CCJ SAYS NO TO MANDATORY LIFE SENTENCE FOR MURDERERS IN BELIZE**

**Port of Spain, Trinidad.** The Caribbean Court of Justice (CCJ) today decided that life sentences for murder in Belize are to be imposed at the discretion of the sentencing judge, and not as mandatory sentences. This was the interpretation given by the Court to the new legislation passed by the Government of Belize mere days before the consolidated appeals of Mr. Gregory August and Mr. Alwin Gabb were heard at the CCJ. The CCJ's decision not only concerned the two men who appealed, but also has serious implications for the several other prisoners currently serving life sentences for murder.

The appeals of Mr. August and Mr. Gabb to the CCJ initially challenged the constitutionality of the mandatory minimum life sentence imposed for murder on the basis that it was inhumane and violated their constitutional right to a fair hearing. This point was never before argued in the cases and so the CCJ invited the Court of Appeal of Belize to pronounce upon it. Mr. August also appealed against his conviction for murder and he challenged the fairness of his trial.

In his appeal against conviction, Mr. August contended that the trial judge did not adequately address the inconsistencies in the prosecution's case, the mishandling of the forensic evidence, or the allegation that the police had fabricated the evidence in an attempt to frame him for the brutal murder of a 73-year old man who was visually impaired and differently-abled, physically. It was also argued that the trial itself was not fair because the judge did not tell the jury that because of his good character (given the fact that he had a clean criminal record), Mr. August was not only to be believed, but was also unlikely to have committed this heinous crime. This latter point was also being raised for the first time and the Court also invited the Court of Appeal's views on it.

After considering these matters, the Court of Appeal found that the mandatory life sentence for murder was unconstitutional. That court consequently found that Mr. August's sentence was void

and imposed a 30-year sentence on him. In response to that decision, the Government passed the new laws repealing the section under which the appellants had been sentenced and replacing it with a provision which allowed for judges to order a minimum period of incarceration whenever a life sentence was handed down. A new system of parole for prisoners, including those serving life sentences for murder, was also established.

When the appeals came back to the CCJ, both Mr. August and Mr. Gabb claimed that because of significant alleged deficiencies in the Parole Act their life sentences were invalid.

Having analysed the circumstantial evidence presented at the trial, the CCJ concluded that the evidence was “sufficiently strong” so that the jury would have still convicted Mr. August even if the judge had not warned the jury about August’s good character . As such, the Court found that there was nothing improper about the conviction and the trial was fair. Contrary to what counsel in the cases assumed, the Court concluded that the new laws prescribed a maximum sentence of life imprisonment for non-capital murder and not a mandatory sentence. The life sentence was therefore discretionary. This conclusion was arrived at after an examination of the words used in the new laws, the overall penalty scheme in the Criminal Code of Belize and the Interpretation Act.

In disposing of the appeals, the CCJ, by a majority, affirmed Mr. August’s sentence and conviction of 30 years’ imprisonment, less the time he had already served. The Court ordered that Mr. Gabb’s case should go back to the Court of Appeal for re-sentencing, preferably before the judge before whom he was convicted. As for the several other prisoners serving mandatory life sentences, the CCJ voided those sentences and ordered that they each be re-sentenced, noting that the judge could sentence any of them to a life sentence if the situation called for such a sentence.

In a separate opinion, Mr. Justice Saunders observed that even if the new law had properly been interpreted as imposing a mandatory life sentence for murder, the separation of powers principle was implicated in mandatory sentences and it would not always be appropriate that in every case of murder where the death penalty was not imposed an automatic life sentence should be imposed. In his view, life sentences should be discretionary and not mandatory.

On the matter of August’s conviction of murder, Mr. Justice Wit disagreed with the Court’s majority and expressed the view that there were a “multitude of weaknesses” in the circumstantial evidence that lead to Mr. August’s conviction. In his view, the conviction should not stand.

Both appellants were permitted to pursue their appeals as poor persons, in keeping with the CCJ’s initiative to increase access to justice for all.

The appeals were heard on 31 March and 5 July 2017 by the Bench of the CCJ comprising the Right Honourable Sir Dennis Byron, President of the CCJ, and the Honourable Justices Saunders, Wit, Anderson and Rajnauth-Lee. The appellants were represented by Mr. Eamon H. Courtenay

SC and Ms. Iliana N. Swift, while the respondent was represented by Mrs. Cheryl-Lynn Vidal SC, Mrs. Portia Staine Ferguson, Ms. Alleyna Cheesman and Ms. Stevanni Duncan.

The full judgment of the Court, a judgment summary and a recording of the judgment can be accessed via the CCJ's website at [www.ccj.org](http://www.ccj.org).

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