IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Application No BBCR2023/003
BB Criminal Appeal No 11 of 2020

BETWEEN

SHAWN ANDRE WEEKES **APPELLANT**

AND

THE STATE **RESPONDENT**

Before: **Mr Justice Saunders, President**
Mr Justice Anderson
Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mr Justice Burgess

Date of Judgment: **17 October 2024**

Appearances

Mr Andrew Owen Grant Pilgrim KC and Mr Martie Ramon Mohan Garnes for the Appellant

Mr Neville Watson, Principal State Counsel and Mr Romario Straker, Senior State Counsel (Acting) for the Respondent

Criminal law —Manslaughter — Appeal — Delay — Fair trial — Culpepper inquiry — Whether trial judge has duty to stay trial or conduct an inquiry into the impact of the delay — Constitution of Barbados — Criminal Appeal Act, Cap 113A.

Criminal law — Trial — Directions to jury – Circumstantial evidence — Intermediate facts — Whether judge's summation was inadequate — Whether full direction would have confused the jury.

Criminal law — Sentencing — Mitigating and aggravating factors — Application of Pierre Lorde guidelines — Whether sentence was wrong in principle or manifestly excessive — Prevalence of crime — Gun violence — Whether judge was correct in taking judicial notice of gun violence in the jurisdiction.

SUMMARY

On 29 October 2000, Leo Callender ('the deceased') was murdered. Shortly after the incident, Shawn Weekes ('the appellant') left Barbados, travelling first to Saint Lucia, then to Canada, and finally to the United States of America ('USA') where he remained until his return to Barbados in 2011. It is unclear whether he was deported or extradited from the USA. He was promptly arrested at the airport upon his return on 20 October 2011 and charged with murder two days later. The appellant was indicted for the murder of the deceased on 21 July 2016. The trial commenced before Greaves J on 8 October 2020.

The main witness for the State was Ms Juanna Craigg who owned a small shop which stood adjacent to her home at Crane, St Phillip, where the incident took place. Ms Craigg was at home plaiting her daughter's hair when she heard a commotion. When she looked outside, she saw the deceased trying to crawl up the stairs leading to her shop. She saw the appellant standing over the deceased with a gun in his hand. She called out to the appellant, whom she knew since he was born, saying, 'why yuh doh behave yourself? What are you doing' She then saw the appellant raise the gun, which caused her to pull back in her door. Thereafter, she heard about three gunshots, and she saw some men chasing after the appellant.

Three other witnesses placed the appellant at the shop at the time of the incident. All three witnesses testified that they observed an object in the appellant's hand. The appellant elected to give an unsworn statement from the dock. The appellant related that he was in the company of four other men, 'liming on the block' at Crane, when the deceased and another man walked past them. The deceased was brandishing an orange-handled scissors and made a comment to the effect that he was coming for them just now. The appellant and his associates cursed at the deceased, and took up some rocks, bottles and pieces of wood, and followed the deceased to the shop. On seeing them approach, the deceased pulled the scissors. The appellant threw a bottle which struck the deceased. Everyone then rushed the deceased. Mr John Bennett came up with 'a collins'. On seeing this everyone started running, including the appellant who stated that he ran in the direction of the block. While running he heard explosions coming from the direction of the shop.

On 16 October 2020, the appellant was convicted of the murder of the deceased. On 28 May 2021, he was sentenced to life imprisonment and ordered to serve a minimum term of 28 years less 9 years for the time spent in custody, leaving a term of 19 years before becoming eligible for release. The appellant appealed both his conviction and sentence to the Court of Appeal of Barbados. On 8 August 2023, the Court of Appeal substituted the conviction of murder with manslaughter pursuant to s 5 of the Criminal Appeal Act, Cap 113A on the basis that the trial judge should have left the issue of provocation to the jury. The Court of Appeal also resentenced the appellant to nine years imprisonment to run from 28 May 2021.

Special leave to appeal to the Caribbean Court of Justice ('the Court') was granted by order dated 19 December 2023. The appellant filed his Notice of Appeal on 29 December 2023 relying on seven grounds of appeal. These grounds asserted that the Court of Appeal erred in law: i) when it found that a detailed direction on circumstantial evidence was unnecessary and would have confused the jury; ii) when it held that the appellant did not suffer prejudice due to delay; iii) when the Justices of Appeal failed to consider that the trial judge should have conducted a *Culpepper* enquiry prior to commencement of the trial; iv) when the Justices of Appeal found that 24 years was an appropriate starting point and so the resulting sentence was wrong in principle; v) when they refused, failed and/or neglected to determine one of the appellant's grounds of appeal; and vi) that they erred in law in their reasoning on the applicability of *R v Bondzie* in Barbados.

The appellant argued that in the circumstances of this case, and in the light of (a) the unreasonable delay in bringing the case to trial and (b) defence counsel's response to the question of whether she intended to call any witnesses, the trial judge was under a duty, on the court's own motion, to have embarked on an inquiry to ascertain the impact on the delay on the defendant's ability to present his defence and to receive a fair trial. Accordingly, it was argued, the failure of the trial judge to conduct such an enquiry amounted to an unfair trial.

Rajnauth-Lee J, who authored the lead judgment of the Court, referred to the Court's decision in *Gibson v Attorney General* where the Court considered the reasonable time guarantee contained in s 18 of the Constitution of Barbados. The Court noted that it was

clear from s 13(3) of the Constitution of Barbados that breach of the reasonable time guarantee did not prevent a valid trial from being held. Additionally, in *Gibson* the Court noted that the competing interests of the public and those of the accused must be weighed and the principles of proportionality applied. In carrying out that balancing of interests, the Court in the instant case bore in mind that the appellant had been found guilty of an extremely serious crime committed in a most callous manner.

In addition, Rajnauth-Lee J considered the case of *Culpepper v The State* where the Privy Council held that a delay of over 6 years between the arrest and trial of the appellant during which time certain evidence retrieved from the scene had been lost, had not prejudiced the appellant so as to render his conviction unsafe.

The Court thus held that the approaches of the Court of Appeal and trial judge could not be faulted. At trial, no application was made by defence counsel for a stay of proceedings owing to unreasonable delay at any stage of the trial and no representations were made by the accused that he was prejudiced by the delay. Additionally, defence counsel never conveyed to the trial judge that the appellant had suffered any particular prejudice beyond indicating that she did not intend to call any witnesses because the persons the appellant would have called as witnesses were deceased, except for one person, who was 'in a vegetative state'. The Court was therefore not of the view that the trial judge ought to have embarked upon the inquiry urged by Counsel for the appellant. Further, the Court found that the trial judge's direction on delay was accurate, balanced and fair to the appellant. Accordingly, this ground of appeal failed.

On the issue of circumstantial evidence, Rajnauth-Lee J agreed with the Court of Appeal that the trial judge's direction on circumstantial evidence was adequate in the circumstances of the case. The Court noted that this was not a 'links in a chain' type of case which may have required a full direction on intermediate facts. The instant case was likened to the case of *August v R* where the cogency of evidence was based on the cumulative strength of the strands of circumstantial evidence. This ground of appeal, therefore, also failed.

On the issue of sentencing, noting that the Court of Appeal considered the issue of provocation and substituted the conviction of murder with manslaughter, the Court was of

the view that the mitigating factors raised by Counsel for the appellant were not of such weight as to cause the Court to revisit the sentence of the Court of Appeal. The Court expressed the view that the Court of Appeal did not apply any wrong principles of law and that the sentence imposed by the Court of Appeal was not manifestly excessive.

In addressing the appellant's submissions on the correctness of the trial judge's approach to the impact of the prevalence of gun violence on the sentence, Rajnauth-Lee J pointed out that this was now an academic exercise given that the Court of Appeal did not take into account the prevalence of gun crimes in Barbados in arriving at the precise number of years of the sentence to be imposed on the appellant.

In closing, the Court addressed two important issues. The Court lamented the fact that the criminal justice system in Barbados continues to be plagued by inordinate delay. The Court, echoing the sentiments expressed in *Gibson*, looked forward to a brighter day when delay will be substantially reduced, if not eradicated, in Barbados. In addition, the Court noted the desirability of establishing in Barbados a modern parole board to review the eligibility of prisoners to be released on parole in circumstances where the accused is sentenced to life imprisonment with a minimum period of incarceration to be served. The Court expressed the hope that the Legislature of Barbados would undertake the necessary amendments to create a modern parole system to enable the criminal justice system to function effectively and justly.

The appeal was dismissed, and the sentence imposed by the Court of Appeal was upheld.

Cases referred to:

A-G of Trinidad and Tobago v FR (TT CA, 22 July 2024); *Alleyne v R* [2019] CCJ 6 (AJ) (BB), (2019) 95 WIR 126; *August v R* [2018] CCJ 7 (AJ) (BZ), [2018] 3 LRC 552*; Barker v Wingo* 407 US 514 (1972); *Bridgelall v Hariprashad* [2017] CCJ 8 (AJ) (GY), (2017) 90 WIR 300; *Chamberlain v R (No 2)* (1984) 153 CLR 521; *Culpepper v The State* (2000) 58 WIR 420 (TT PC); *Gibson v A-G* [2010] CCJ 3 (AJ) (BB), (2010) 76 WIR 137; *Greaves v R* (BB CA, 19 March 2021); *Greaves v The State* [2022] CCJ 9 (AJ) BB; *Persaud v R* [2018] CCJ 10 (AJ) (BB), (2018) 93 WIR 132; *Peters v The State* TT 2010 CA 5 (CARILAW), (26 February 2010); *R v Bondzie* [2016] 1 WLR 3004; *R v Hillier* (2007) 233 ALR 63; *Shepherd v R* [1991] LRC (Crim) 332; *Singh v Harrychan* [2016] CCJ 12 (AJ) (GY), (2016) 88 WIR 362; *Weekes v The State* (BB CA, 27 July 2023).

Legislation referred to:

Barbados - Constitution of Barbados 1966, Criminal Appeal Act, Cap 113A; **Guyana -** Constitution of the Co-operative Republic of Guyana, Cap 1:01; **Trinidad and Tobago -** Constitution of the Republic of Trinidad and Tobago Act, Chap 1:01.

Other sources referred to:

Byron D, President of the Caribbean Court of Justice, 'Re-engineering the Criminal Justice System' (Dana Saroop Seetahal Symposium, University of the West Indies, Trinidad and Tobago, 14 June 2014); 'Needham's Point Declaration on Criminal Justice Reform in the Caribbean: Achieving A Modern Criminal Justice System' (CCJ Academy for Law Seventh Biennial Conference, Bridgetown Barbados, 20 October 2023); Paray R, 'Right to Speedy Trials is a Must' *Trinidad and Tobago Newsday* (Port of Spain, 27 July 2024); Wit J, 'Address' (Public Lecture on 'Rethinking Criminal Justice', Georgetown, Guyana, 24 June 2023); Wit J, Judge of the Caribbean Court of Justice, 'Address' (Regional Symposium Addressing Crime and Violence as a Public Health Issue, Port of Spain, Trinidad and Tobago, 17-18 April 2023).

JUDGMENT

Reasons for Judgment:

RAJNAUTH-LEE J:

Introduction

[1] This appeal raises, among other things, the important issue of delay in the criminal justice system of Barbados. In particular, the appeal asks the question: does a trial judge, having regard to the delay in bringing the matter to trial, have a duty to conduct an inquiry to ascertain the impact of the delay on the defendant's ability to present his defence and to receive a fair trial, even where neither an application so

to do or for a stay of the proceedings pending the outcome of such application has been made?

[2] On 16 October 2020, the appellant, Shawn Andre Weekes, ('the appellant') was convicted of the murder of Leo Callender ('the deceased') after a trial before a judge and jury. On 28 May 2021, he was sentenced to life imprisonment and ordered to serve a minimum term of 28 years less 9 years for the time spent in custody, leaving a term of 19 years to be served before becoming eligible for release. The appellant appealed both his conviction and sentence to the Court of Appeal of Barbados. On 8 August 2023, the Court of Appeal substituted the conviction of murder with manslaughter pursuant to s 5 of the Criminal Appeal Act[1] on the basis that the trial judge should have left the issue of provocation with the jury. The Court of Appeal also resentenced the appellant to nine years imprisonment to run from 28 May 2021.

[3] The appellant appeals both his conviction and sentence to the Caribbean Court of Justice ('the Court'). Having considered the judgment of the Court of Appeal, and the written and oral submissions of the parties, the Court is satisfied that there is no merit in the grounds of appeal, and that the appeal must be dismissed.

The Background and the Proceedings Before the Trial Judge

[4] The deceased was murdered on 29 October 2000. Shortly after that incident, the appellant left Barbados, and travelled to Saint Lucia, Canada, and then to the United States of America ('USA') where he remained until his return to Barbados in 2011. It is unclear whether he was extradited or deported from the USA, but he was arrested on his return at the airport on 20 October 2011 and charged with murder two days later. The appellant was indicted on 21 July 2016 for the murder of the deceased, and on 8 October 2020, his trial commenced before Greaves J.

[1] Cap 113A.

[5] The main witness for the State was Juanna Craigg, the owner of a small shop at Crane, St Philip, where the incident took place. Ms Craigg was at her home, which was a board structure built at the side of the shop. She was plaiting her daughter's hair when she heard a commotion. She got up and looked outside. She saw the deceased trying to crawl up the steps that led to the shop. She saw the appellant standing over him with a gun in his hand. She called out to the appellant, saying 'why yuh doh behave yourself? What are you doing?' She then saw the appellant raise the gun, which caused her to pull back in her door. She then heard about three gunshots and then saw some men chasing after the appellant.

[6] Ms Craigg also testified that she knew the appellant since he was born. She stood about 4 to 6 feet from the appellant when she saw him standing over the deceased with the gun in his hand. The incident took place around 5 pm and it was not dark.

[7] Three other witnesses, John Bennett, Juanson Greenidge, and Andrew Rowe, placed the appellant at the shop at the time of the incident. Mr Bennett testified that he saw something in the appellant's hand, but he could not say what it was. Mr Greenidge also saw an object in the appellant's hand. It appeared to be a gun, but he could not say for sure what it was. Mr Rowe testified that he saw the appellant with a stick or a piece of wood.

[8] The appellant elected to give an unsworn statement from the dock. The appellant related that he, Michael Davis, Lawrence Waterman, Anton Harte and another man, were 'liming on the block' at Crane, when the deceased and one Godfrey Rowe walked past them. The deceased was brandishing a pair of orange-handled scissors and made a comment to the effect that he was coming for them just now. The appellant and his associates cursed at the deceased, and took up some rocks, bottles and pieces of wood, and followed the deceased to the shop. On seeing them approach, the deceased pulled the scissors. Anton Harte rushed forward and hit the deceased with a piece of wood. The deceased blocked the blow with his hand. The appellant threw a bottle which struck the deceased. Everyone then rushed the

deceased. Then John Bennett came up with 'a collins'. On seeing this everyone started running. The appellant stated that he ran in the direction of the block. While running he heard explosions coming from down by the shop.

The Proceedings Before the Court of Appeal

[9] The Court of Appeal (Narine, Belle, and Cumberbatch JJA) considered that the appellant's unsworn statement narrowed the issues in the case considerably. Since the appellant had placed himself on the scene, the Court of Appeal noted that the issues for determination became:

> (1) whether the appellant was armed with a firearm – an issue of fact for the jury; and
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> (2) whether from the finding of fact, the jury could safely draw the inference that it was the appellant who fired the shots that caused the death of the deceased.[2]

The Court of Appeal also considered the impact of delay on the fairness of the trial, the correctness of the trial judge's directions on delay and circumstantial evidence, and the appropriate sentence to be served in this case.

[10] Having considered the 10 grounds of appeal filed by the appellant against his conviction and sentence, the Court of Appeal allowed the appeal and set aside the conviction and the sentence. A verdict of not guilty of murder but guilty of manslaughter was substituted, as mentioned earlier, and the appellant was ordered to serve a sentence of nine years imprisonment to run from 28 May 2021.

[11] On the issue of delay, first, the Court of Appeal considered that the trial judge had given an adequate direction on the issue of delay, highlighting for the jury the potential prejudice that the delay may have caused the appellant in putting forward his defence, and directing the jury to take this into account in favour of the appellant

[2] *Weekes v The State* (BB CA, 27 July 2023) at [6].

in deciding whether the prosecution had satisfied the burden of proving his guilt beyond reasonable doubt.

[12] Second, the Court of Appeal accepted that the delay experienced by the appellant was egregious. Narine JA noted that the appellant was 17 years old at the time of the offence. He was 37 years old when the trial started. Narine JA therefore expressed the view that the delay of nine years was not acceptable for a society that has proper respect for the constitutional rights of a citizen who is guaranteed a fair hearing within a reasonable time, pursuant to s 18 of the Constitution of Barbados. Having regard to the inordinate delay in bringing the appellant to trial, the Court of Appeal considered that a further reduction of five years was appropriate, leaving a final sentence of nine years imprisonment to run from 28 May 2021.

The Proceedings Before the Caribbean Court of Justice

[13] This Court by order dated 19 December 2023 granted special leave to appeal. Pursuant to this order, the appellant filed his Notice of Appeal on 29 December 2023.

[14] The grounds of appeal are as follows:

(1) Whether the Justices of Appeal erred in law when they found that it was not necessary for the trial judge to give a detailed direction on circumstantial evidence.

(2) Whether the Justices of Appeal further erred in law and/or principle when they assumed that a detailed direction on circumstantial evidence would confuse the jury.

(3) Whether the Justices of Appeal erred in law and/or in principle when they found that the appellant did not suffer any prejudice as a result of the delay due to the trial judge's directions on delay.

(4) Whether the Justices of Appeal erred in law and/or in principle when they failed to consider and/or find that the trial judge had a duty to conduct a *Culpepper* inquiry prior to the commencement of the trial.

(5) Whether the Justices of Appeal erred in principle and/or in law when they found 24 years to be the appropriate starting point and whether the resulting sentence was wrong in principle.

(6) Whether the Justices of Appeal erred in principle when they refused, failed and/or neglected to determine one of the appellant's grounds of appeal.

(7) Whether the Justices of Appeal erred in principle and/or in law in their previous reasoning on the applicability of *R v Bondzie* [2016] 1 WLR 3004 in Barbados.

Grounds III and IV - Delay and Prejudice

[15] As noted earlier, the deceased was murdered on 29 October 2000. Shortly after, the appellant left Barbados, travelled to Saint Lucia, Canada, and then to the USA where he remained until his return to Barbados in 2011. He was arrested on his return at the airport on 20 October 2011 and charged with murder two days later. Mr Pilgrim indicated to the Court that the preliminary inquiry began in 2014. The appellant was indicted on 21 July 2016 for the murder of the deceased. He was incarcerated from the time he returned to Barbados until he applied for and was admitted to bail in February 2017. The Court of Appeal noted that he was arraigned in the Assizes on 13 August 2020, just two months short of 20 years after the incident.

[16] This Court sought to ascertain the circumstances under which the appellant returned to Barbados. According to Mr Pilgrim, the appellant's instructions to him were that

he returned from the USA in the custody of officers after complications with the Immigration Department in the USA. Mr Pilgrim was adamant that the appellant was not returned as a result of any order of extradition concerning this matter. The Court of Appeal of Barbados had formed the view that the appellant had been extradited from the USA.[3] Mr Pilgrim indicated to the Court in his brief oral reply that in the transcript of the proceedings before the trial judge, it is noted that the appellant told the trial judge that he had been extradited.[4]

[17] As mentioned earlier, the appellant gave an unsworn statement from the dock. Following that statement, the trial judge asked defence counsel whether she intended to call any witnesses. Defence counsel replied that the persons the appellant would have called as witnesses were deceased, except for one person, who was 'in a vegetative state'.

[18] The Court of Appeal observed that there had been no application by either party for a stay of the trial on the ground that the inordinate delay between the incident and the trial caused prejudice to the appellant. The Court of Appeal further observed that before closing addresses, the trial judge invited counsel to indicate any directions of law that should be included in the summing up. The trial judge indicated at this stage that he intended to give a direction on delay.

[19] The trial judge gave the following directions on delay:[5]

> … You have heard and you can see the Indictment for yourself, this is an old case. This offence allegedly occurred on 29 October, year 2000, and interesting enough, we are now trying it in October again 2020, 20 years later. You have heard evidence in this – so you can see that it is a substantial delay. You have heard evidence in this case that the defendant left the jurisdiction very shortly after the alleged incident and went overseas and remained over there for 11 years until 2011….
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> … Those are factors that you are entitled to take into account and because of that I must give you a direction about how to deal with the issue

[3] ibid at [46].
[4] Transcript of proceedings, *R v Weekes* (Supreme Court of Barbados, Indictment No 124/2016, 13 August 2020) 6.
[5] ibid 363 – 366.

> of delay… You must appreciate that because of this there may be a danger of real prejudice to an accused man. This possibility must be in your mind when you decide whether the prosecution has made you sure of the defendant's guilt. You are entitled to consider why these matters did not come to trial sooner. Is that a reflection on the reliability of the police and the prosecution, or does it arise from the conduct of the defendant? As I have explained to you already, the defendant, from the evidence you have heard himself, left the jurisdiction …. The prosecution's case is that he fled and he fled for guilty reasons.
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> The defence case is that he did not. He went away because he wanted to go away. He was a free man, he wasn't charged by anybody, any police or anything like that, he was free to leave ….
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> All right. So you should make allowances for the fact that with the passage of time, memories fade, witnesses, whoever they may be cannot be expected to remember with crystal clarity, events which occurred many years ago and sometimes the passage of time may even play tricks on memories. You should also make allowances for the fact that from the defendant's point of view, the longer the time since an alleged incident, the more difficult it may be for him to answer it. For example, has the passage of time deprived him of the opportunity to put forward an alibi and/or defence evidence in support of it? I think you heard a comment by defence counsel, though it is not evidence, that the witnesses he would have called are now either all dead or mostly dead, so those are factors that, I don't know, that is really not evidence… It has not been asserted, however, that he wanted to call any of them if they were alive. In any event he is under no duty to call any evidence or to prove or disprove anything and you must remember that ….
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> … You only have to imagine what it would be like to have to answer questions about events which are said to have taken place 20 years ago to appreciate the problems which may be caused by delay. Even if you believe that the delay in this case is understandable, if you decide that because of this the defendant has been placed at a real disadvantage in putting forward his case, take that into account in his favour when deciding if the prosecution has made you feel sure of his guilt.

[20] The appellant argues that in the circumstances of this case, and in the light of (a) the unreasonable delay in bringing the case to trial and (b) defence counsel's response to the question of whether she intended to call any witnesses, the trial judge was under a duty, on the court's own motion, to have embarked on an inquiry to ascertain the impact on the delay on the defendant's ability to present his defence

and to receive a fair trial. Accordingly, the failure of the trial judge to conduct such an inquiry amounted to an unfair trial. Quite simply, it is argued, the appellant ought not to have been tried.

[21] The issue of delay in the criminal justice system has been a thorny and complex one, with which many jurisdictions throughout the Commonwealth Caribbean have been grappling over many years. The Court draws attention to the *Needham's Point Declaration on Criminal Justice Reform: Achieving a Modern Criminal Justice System* adopted at the CCJ Academy for Law Seventh Biennial Conference on 20 October 2023 in Bridgetown, Barbados. The main objective of the Declaration is the creation of modern, efficient, just, and effective, criminal justice systems in the Commonwealth Caribbean. One of the central issues of the Declaration is the eradication of delay in the criminal justice system. The Declaration observes that there are intolerable delays in the administration of criminal justice including unreasonably long periods spent on remand.[6]

[22] The Constitutions of some Commonwealth Caribbean countries contain a constitutional guarantee that persons charged with a criminal offence are entitled to the right to a fair hearing within a reasonable time (the reasonable time guarantee).[7] Section 18(1) of the Constitution of Barbados provides such a guarantee.

[23] This Court in the joint judgment of Saunders J (as he then was) and Wit J in the Barbadian case of *Gibson v Attorney General*[8] considered important issues regarding the interpretation of s 18(1). Gibson was charged with murder on 23 January 2002. The preliminary inquiry commenced sometime in June 2004, and he

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[6] See Sir Dennis Byron, President of the Caribbean Court of Justice, 'Re-engineering the Criminal Justice System' (Dana Saroop Seetahal Symposium, University of the West Indies, Trinidad and Tobago, 14 June 2014) ; Jacob Wit, Judge of the Caribbean Court of Justice, 'Address' (Regional Symposium Addressing Crime and Violence as a Public Health Issue, Port of Spain, Trinidad and Tobago, 17-18 April 2023); Jacob Wit, 'Address' (Public Lecture on 'Rethinking Criminal Justice', Georgetown, Guyana, 24 June 2023). See also Rushton Paray, 'Right to Speedy Trials is a Must' *Trinidad and Tobago Newsday* (Port of Spain, 27 July 2024) after the decision of the Court of Appeal of Trinidad and Tobago in *A-G of Trinidad and Tobago v F R* (TT CA, 22 July 2024). The Court of Appeal overturned the decision of the High Court which found that the respondent's fundamental rights under s 4(b) of the Constitution of the Republic of Trinidad and Tobago had been violated by significant delays and adjournments of the State in prosecuting the accused, whom she alleged, sexually assaulted her when she was 16 years old.

[7] See for example, Constitution of the Co-operative Republic of Guyana, Cap 1:01, art 144(1) and the Guyanese cases of *Singh v Harrychan* [2016] CCJ 12 (AJ) (GY), (2016) 88 WIR 362; *Bridgelall v Hariprashad* [2017] CCJ 8 (AJ) (GY), (2017) 90 WIR 300.

[8] [2010] CCJ 3 (AJ) (BB), (2010) 76 WIR 137.

was eventually committed to stand trial in March 2005. A trial date was set for July 2005, but after objections by defence counsel to having a witness deemed an expert, the trial judge stopped the trial and traversed the case to the October 2005 Assizes, when it was further traversed to the February 2006 Assizes. Gibson filed a constitutional application in which he complained of breaches of his fundamental rights. Among the issues for determination by Blackman J in the High Court was whether the 29-month period between his being charged and the commencement of the preliminary inquiry into that charge constituted excessive delay amounting to a breach of the reasonable time guarantee in s 18(1). It is not necessary to recite all the issues that arose in *Gibson* or the decisions of the High Court and the Court of Appeal. It suffices to say that in *Gibson* this Court considered the issue of unreasonable delay.

[24] At [48] and [49] the Court made these important observations on the impact of delay on the criminal justice system:[9]

> [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.
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> [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

[9] Ibid (footnotes omitted).

> 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.

[25] Importantly, the Court in *Gibson* considered s 13(3) of the Barbados Constitution. The Court noted that that subsection gave a clear indication that a trial held after an unreasonable time was not necessarily fatally compromised merely on account of delay, at least certainly not in relation to a person who was in custody. Section 13(3) provides that if the accused is in custody and 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…'* thus clearly suggesting that breach of the reasonable time guarantee does not necessarily prevent a valid trial being held.

[26] In *Gibson* both courts below were of the view that the 29-month period before the commencement of the preliminary inquiry constituted unreasonable delay in bringing the accused to trial. This Court in *Gibson* explored the remedies that ought to be considered when there was a breach of the reasonable time guarantee. The Court noted that a court must weigh the competing interests of the public and those of the accused and apply principles of proportionality. The Court further observed that it is for a court to devise an appropriate remedy, and in so doing, consider all the circumstances of the particular case, especially the stage of the proceedings at which it is determined that there is 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 Powell J in *Barker v Wingo*[10] delay is not an uncommon defence tactic.

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[10] 407 US 514 (1972).

[27] This is an appropriate stage to consider whether any part of the delay can be attributed to the appellant. Mr Pilgrim submitted, and it is undisputed, that at the time the appellant left Barbados, shortly after the incident, no warrant for this offence had been issued against him. However, the fact remains that the appellant took a rather circuitous route to the USA. Whatever the appellant's intent in leaving Barbados when he did, it cannot be lost on the Court that the appellant, who admitted to having been involved in a fracas that ultimately ended with a man being murdered, left Barbados shortly after the murder and remained outside of the jurisdiction until his return in October 2011, when he was immediately taken into custody and charged with the offence two days later. Nothing has been suggested that the State was at fault in not proceeding against the appellant during the 11 years he spent outside the jurisdiction. It was not alleged, for example, that the State was aware of his whereabouts prior to his return in 2011. It would therefore be appropriate not to count that period of 11 years in any assessment of delay or prejudice.

[28] Although the appellant relied on the Trinidad and Tobago case of *Culpepper v The State*[11], it is noteworthy that *Culpepper* did not impose a duty on the trial judge to stay the trial or even to conduct an inquiry. In that case, the Privy Council considered whether a delay of over six years between the appellant's arrest and the trial, prejudiced the appellant so as to render the conviction unsafe. During the delay, certain evidence retrieved from the scene of the murder was lost during a fire at the police station. However, it was noted that no application was made before the trial began or at the beginning of the trial for a stay of proceedings on the ground of abuse of process owing to delay. There was no complaint that the appellant was prejudiced in his defence by the passage of time or the destruction of evidence. It was held that for a trial to be stayed by the trial judge, the circumstances must be exceptional, and the accused must show on a balance of probabilities that he will suffer serious prejudice on account of the delay to the extent that no fair trial can be held or that the continuation of the trial would amount to a misuse of the process

[11] (2000) 58 WIR 420 (TT PC).

of the court[12]. The Privy Council observed that that condition had not been met in *Culpepper*. However, where the trial judge does not grant a stay, but there is potential prejudice to the accused as a result of the delay, the trial judge may give an appropriate warning tailored to suit the circumstances of the case. In the instant case, the Court of Appeal noted that in *Culpepper*, no such direction was given. Yet the Privy Council refused to grant a stay and dismissed the appeal. In the opinion of the Privy Council, the lapse of time, even coupled with the loss of certain evidence[13], did not render the appellant's trial unfair or the verdict unsafe.

[29] In the instant case, the Court of Appeal held that the delay of nine years in bringing the appellant to trial (from the date of his return to Barbados in 2011) was 'quite extraordinary', 'inordinate' and a breach of the reasonable time guarantee in s 18(1) of the Constitution. In the words of Narine JA at [77] in the judgment of the Court of Appeal, the delay of nine years in putting the appellant upon his trial was not acceptable for a society that has proper respect for the constitutional rights of a citizen who is guaranteed a fair hearing within a reasonable time. The Court of Appeal took all of this into account and was of the view that the appropriate remedy was to reduce the appellant's sentence by a further five years because of that inordinate delay. Mr Pilgrim's argument before the Court is that the trial judge ought to have gone further, in the circumstances where it must have been obvious to the trial judge, that it was necessary to conduct an inquiry to ascertain the fairness of the trial.

[30] We do not think that in the circumstances of this case either the approach of the Court of Appeal or that of the trial judge can be faulted. It is clear that no application was made by defence counsel for a stay of the proceedings owing to unreasonable delay at any stage of the proceedings before the trial judge. No representation was made on the part of the accused that he was prejudiced by the delay. Additionally, defence counsel never conveyed to the trial judge that the appellant had suffered

[12] ibid at 424.
[13] ibid at 426b (Evidence being the samples and the glasses). The Court notes that the Constitution of Trinidad and Tobago does not contain a reasonable time guarantee. See *Peters v The State* TT 2010 CA 5 (CARILAW), (26 February 2010).

any particular prejudice beyond indicating that she did not intend to call any witnesses because the persons the appellant would have called as witnesses were deceased, except for one person, who was 'in a vegetative state'. In these circumstances, the Court is not of the view that the trial judge ought to have embarked upon the inquiry urged by Mr Pilgrim.

[31] It is also instructive to note at [62] of *Gibson*, that this Court was of the view that 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. Furthermore, at [68] of *Gibson*, this Court took into account that while the overall delay was serious, it must be balanced by the fact that Gibson was accused of an extremely serious crime committed in a particularly gruesome manner. We also bear in mind in this case that the appellant has been found guilty of an extremely serious crime (reduced from murder to manslaughter by the Court of Appeal) committed in a most callous manner.

[32] In addition, Mr Pilgrim argues that the trial judge's directions on delay caused prejudice to the appellant since the directions provided an inaccurate account of defence counsel's response to the trial judge's question as to whether defence counsel intended to call any witnesses. The Court of Appeal observed that this exchange took place in the presence and hearing of the jury.

[33] The Court of Appeal noted that the trial judge in the course of giving his direction on delay during his summation stated:[14]

> You should make allowances for the fact that from the defendant's point of view, the longer the time since an alleged incident, the more difficult it may be for him to answer it. For example, has the passage of time deprived him of the opportunity to put forward an alibi and/or other defence evidence in support of it? I think you heard a comment by defence counsel, though it is

[14] *Weekes* (n 2) at [54].

> not evidence, that the witnesses he would have called are now either all dead or mostly dead, so those are factors that, I don't know, that is really not evidence… It has not been asserted, however, that he wanted to call any of them if they were alive. In any event, he is under no duty to call any evidence or to prove or disprove anything and you must remember that.

[34] The Court of Appeal indicated that the trial judge accurately set out defence counsel's use of the words 'would have called'. The court observed that the trial judge then pointed out that there was no evidence that the potential witnesses had in fact died or that one was in a vegetative state. The trial judge went on to state that 'It has not been asserted, however, that he wanted to call any of them if they were alive.'[15] He then reminded the jury that in any case, the appellant was under no duty to call any evidence or to prove or disprove anything.

[35] The Court of Appeal was of the view that the trial judge did not give an inaccurate account of the exchange between himself and defence counsel. The court noted that the trial judge quoted the same language that was used by defence counsel. We agree with the conclusion arrived at by the Court of Appeal that no prejudice was caused to the appellant by the trial judge's direction on delay. In our view, the trial judge's direction on the issue of delay was accurate, balanced and fair to the appellant. Accordingly, these grounds of appeal must fail.

Grounds I and II – Circumstantial Evidence

[36] Mr Pilgrim submitted that it was necessary for the trial judge to have given a more detailed direction on circumstantial evidence since the case against the appellant was largely circumstantial and relied upon circumstances known as 'intermediate facts', there being no direct evidence that the appellant shot the deceased. Accordingly, it was argued, the trial judge's direction was deficient since he failed to identify the intermediate facts, and to instruct the jury that they can only draw the ultimate inference if they are satisfied beyond a reasonable doubt that the fact existed or did occur. On the other hand, the respondent relied on the dicta in

[15] ibid.

Shepherd v R[16] in so far as there were numerous separate facts of varying degrees of probative force which represented 'strands in a cable' as opposed to 'links in a chain' from which the jury could have drawn the reasonable inference that it was the appellant who shot the deceased.

[37] The trial judge gave the following direction on circumstantial evidence:[17]

> … the prosecution relies upon what is known as circumstantial evidence to prove guilt. In addition to what direct evidence there is in this case, the prosecution is relying upon circumstantial evidence against the defendant to prove the guilt of the accused. That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the defendant, which the prosecution says when taken together, will lead to the sure conclusion that it was the defendant who committed the crime.
>
> It is not necessary for the evidence to provide an answer to all the questions raised in a case. You may think it would be an unusual case indeed in which a jury can say: We now know everything there is to know about this case. But the evidence must lead you to the sure conclusion that the charge which the defendant faces is proved against him. Circumstantial evidence can be powerful evidence, but it is important that you examine it with care and consider whether the evidence upon which the prosecution relies in proof of its case is reliable, and whether it does prove guilt.
>
> Furthermore, before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution's case.
>
> Finally, you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence and mere speculation. Speculating in a case amounts to no more than guessing or making up theories without good evidence to support them and neither the prosecution, the defence nor you should do that.

[38] There were 17 witnesses in total who gave evidence for the prosecution. The most critical evidence was given by Ms Craigg. As mentioned earlier, she lived in the

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[16] [1991] LRC (Crim) 332.
[17] Transcript of proceedings, *R v Weekes* (n 4) 347-348.

community where the crime was committed and owned a shop which was attached to her home. It was in the shop that the murder was said to have taken place. Her evidence was that (i) she saw the appellant with a gun in his hand standing over the deceased, (ii) she saw the appellant raise the gun which caused her to pull back in her door, (iii) she heard shots immediately after, and (iv) she saw some men chasing after the appellant. She also stated that she had known the appellant since he was a boy. She did not know the deceased as well as she knew the appellant, but she had known the deceased's mother well.

[39] Inspector Dennis Small, who was a police sergeant at the time of the incident, testified that in September 2001, he executed a search warrant on the residence of Jason Weekes, where to his knowledge the appellant was living at that time, and found a revolver which was taken into evidence.

[40] Three witnesses, John Bennett, Juanson Greenidge and Andrew Rowe, gave evidence that they had been at the shop owned by Ms Craigg, having a drink at the time of the incident. They all gave evidence that they were at the shop with the deceased when a group of men including the appellant came into the shop armed with a piece of wood and bottles and began to attack the deceased. At some point, each of the witnesses left the shop, all heard explosions, but did not see what had taken place. Mr Greenidge indicated that he observed that the appellant had an object in his hand but could not say for sure if it was a gun.

[41] On the issue of the directions that a trial judge should give where the prosecution relies on circumstantial evidence, the case of *Shepherd v R*[18] is instructive. In *Shepherd*, the High Court of Australia considered whether the trial judge erred in failing to direct the jury that, in so far as the prosecution's case rested upon circumstantial evidence, they might only infer the applicant's guilt where each fact upon which the inference was based was proven beyond reasonable doubt. The High Court noted that a direction in those terms had apparently come to be known

[18] ibid.

as a 'Chamberlain direction'.[19] The following dicta of Dawson J in *Shepherd* is particularly helpful in the instant case:[20]

> Circumstantial evidence is evidence of a basic fact or facts from which the jury is asked to infer a further fact or facts. It is traditionally contrasted with direct or testimonial evidence, which is the evidence of a person who witnessed the event sought to be proved. The inference which the jury may actually be asked to make in a case turning upon circumstantial evidence may simply be that of the guilt of the accused. However, in most, if not all, cases, that ultimate inference must be drawn from some intermediate factual conclusion, whether identified expressly or not. Proof of an intermediate fact will depend upon the evidence, usually a body of individual items of evidence, and it may itself be a matter of inference. More than one intermediate fact may be identifiable; indeed the number will depend to some extent upon how minutely the elements of the crime in question are dissected, bearing in mind that the ultimate burden which lies upon the prosecution is the proof of those elements. For example, with most crimes it is a necessary fact that the accused was present when the crime was committed. But it may be possible for a jury to conclude that the accused was guilty as a matter of inference beyond reasonable doubt from evidence of opportunity, capacity and motive without expressly identifying the intermediate fact that the accused was present when the crime was committed.
>
> On the other hand, it may sometimes be necessary or desirable to identify those intermediate facts which constitute indispensable links in a chain of reasoning towards an inference of guilt. Not every possible intermediate conclusion of fact will be of that character. If it is appropriate to identify an intermediate fact as indispensable it may well be appropriate to tell the jury that that fact must be found beyond reasonable doubt before the ultimate inference can be drawn. But where…the evidence consists of strands in a cable rather than links in a chain, it will not be appropriate to give such a warning. *It should not be given in any event where it would be unnecessary or confusing to do so*. *It will generally be sufficient to tell the jury that the guilt of the accused must be established beyond reasonable doubt and, where it is helpful to do so, to tell them that they must entertain such a doubt where any other inference consistent with innocence is reasonably open on the evidence* (emphasis added).

[19] Chamberlain v R (No 2) (1984) 153 CLR 521.
[20] *Shepherd* (n 16) 337.

[42] Dawson J went on to state that the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. Dawson J added that that did not mean that every fact – every piece of evidence – relied upon to prove an element by inference must itself be proved beyond reasonable doubt. Dawson J observed that the jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Dawson J was clear that the judgment in *Chamberlain* did not support that proposition that, in a case resting upon circumstantial evidence, the jury may only properly draw an inference of guilt upon facts – individual items of evidence – proved beyond reasonable doubt. Dawson J further expressed the view that the judgment in *Chamberlain* did not establish that a direction in those terms should be given to a jury.

[43] Dawson J also considered the circumstances in which it was desirable for a trial judge to identify an intermediate conclusion of fact in his direction to the jury in order to instruct them that it must be proved beyond reasonable doubt. He held that this would depend upon the particular case. He was of the view that such an instruction would only be possible where the conclusion was a necessary link in a chain of reasoning.

[44] In *August v R*,[21] an appeal to this Court in a murder case from Belize, the evidence against *August* was circumstantial, no one having witnessed the murder. Citing *Shepherd*, and *R v Hillier*[22] as to the importance of not considering circumstantial evidence piecemeal, Byron P and Rajnauth-Lee J in *August* expressed the view at [38] that:

> A case built on circumstantial evidence often amounts to an accumulation of what might otherwise be dismissed as happenstance. The nature of

[21] [2018] CCJ 7 (AJ) (BZ), [2018] 3 LRC 552.
[22] (2007) 233 ALR 634 at [48] (Gleeson CJ).

> circumstantial evidence is such that while no single strand of evidence would be sufficient to prove the defendant's guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendant's guilt is proved beyond reasonable doubt. There was therefore a serious misdirection wholly in August's favour when the trial judge directed the jury that each strand of the circumstantial evidence required its own proof of August's guilt beyond reasonable doubt. It is not the individual strand that required proof beyond reasonable doubt, but the whole. The cogency of the inference of guilt therefore was built not on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence.

[45] The Court of Appeal, relying on the helpful guidance in *Shepherd*, formed the view that in the instant case, it was not necessary for the trial judge to give a detailed direction on circumstantial evidence, including the standard of proof to be applied to intermediate facts, as opposed to other less significant items of circumstantial evidence. The Court was of the view that such a direction might have confused the jury.

[46] In addition, the Court of Appeal at [41] examined the circumstantial evidence that was placed before the jury. The court noted that the jury had before them the evidence of the ongoing violent attack upon the deceased by a group of men, including the appellant, who was armed with a gun. While the witness Ms Craigg did not see him discharge the gun, she saw the appellant just before and just after hearing the gunshots. She also saw the appellant fleeing the scene with some men in pursuit. Other witnesses placed him at the scene. The appellant also placed himself at the scene. It was therefore, a matter for the jury to draw the reasonable inference that it was the appellant who fired the shots, causing the death of the deceased.

[47] We agree with the Court of Appeal that the trial judge's direction on circumstantial evidence was adequate in the circumstances of this case. It is clear that this was not 'a links in a chain' type of case, which may have required a full direction as to intermediate facts. Indeed, it was quite unnecessary for the trial judge to have given the full direction as to intermediate facts. As was the case in *August*, the cogency

of the inference of guilt against the appellant was not built on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence. These grounds of appeal therefore fail.

Grounds V, VI and VII - Sentencing

[48] It is argued on behalf of the appellant that the Court of Appeal erred in finding that 24 years was the appropriate starting point since they failed to consider certain factors which were previously identified by this Court as mitigating factors of the offence. These factors, it was submitted, were that (i) no one else was injured in the accident, (ii) the firearm was recovered, (iii) there was an element of provocation from the deceased, and (iv) there was no pre-planning of the offence.

[49] In *Greaves v R*[23] the Court of Appeal of Barbados expressed the view that the *Pierre Lorde* guidelines could not co-exist with the new approach to sentencing handed down by this Court in *Persaud v R*[24]. The Court of Appeal therefore suggested the following revised guidelines:[25]

> (1) For offences of manslaughter where the circumstances of the offence are particularly heinous or demonstrate aggravating features of exceptional brutality or depravity or involves multiple victims, the starting point should be within the range of 25-35 years, or in a proper case, a life sentence with a recommended minimum in the range of 25-35 years before the offender should be eligible for release.
>
> (2) For offences of manslaughter where the aggravating circumstances of the offence are grave but do not rise to the level of exceptional brutality or depravity, the starting point should be 15-25 years.
>
> (3) For offences of manslaughter, where the aggravating circumstances of the offence outweigh the mitigating circumstances, the starting point should be 10-15 years.

[23] (BB CA, 19 March 2021) at [71].
[24] [2018] CCJ 10 (AJ) (BB), (2018) 93 WIR 132.
[25] *Greaves* (n 23).

> (4) For offences of manslaughter, where there are strong mitigating circumstances of the offence for example an absence of pre-meditation, no use of a firearm or other offensive weapon, or the presence of serious provocative words or other actions, the starting point should be 5-10 years.

[50] On appeal, this Court in *Greaves v The State*[26] noted that the revised guidelines were consistent with a modern sentencing methodology. The Court further observed that the *Pierre Lorde* guidelines on sentencing in manslaughter continued to be of seminal importance to the revised guidelines. The Court stated that violence by the gun is a continuing and very serious menace of modern times and does great harm to society. The gun is a primary instrument for violating the sanctity of life. The use of a firearm or other dangerous weapon will always be an aggravating factor of the offence and will almost invariably lead to a starting point toward or at the very top of the range in the revised guidelines. This Court accepted the revised Pierre Lorde guidelines, in principle.

[51] The Court of Appeal considered that the circumstances of the offence were sufficiently grave so as to bring it within the second guideline of the revised guidelines in *Greaves* which recommended a range of 15-25 years. In determining the starting point, the Court of Appeal in accordance with the principles established by this Court in *Persaud* considered the aggravating and mitigating factors of the offence, noting that this was a brutal killing committed with a firearm in a public place potentially placing other persons at risk of harm. The Court of Appeal found no mitigating factors. The starting point was therefore determined at 24 years.

[52] The Court of Appeal then considered the aggravating and mitigating factors vis-a-vis the offender and took into consideration the immaturity and age of the appellant who was just 17 years old with a previously clean record. He was assessed as posing a low risk of reoffending, and by all accounts during the period 2017-2020, the date of his trial, he showed himself to be an exemplary citizen being gainfully employed in a small business in which he was regarded as a valuable asset. In addition, the

[26] [2022] CCJ 9 (AJ) BB.

appellant had taken upon himself the responsibility of mentoring the young men in his village to lead positive and productive lives and to avoid criminal conduct. In addition, during his incarceration he had taken advantage of opportunities to improve himself pursuing studies in architecture and completing various courses. He appeared to have taken significant steps toward self-rehabilitation. In the circumstances, the Court of Appeal considered it appropriate to adjust the starting point down to 20. The time spent in custody, rounded out to 6 years, was deducted, arriving at a sentence of 14 years. The Court of Appeal considered that a further reduction of 5 years was appropriate having regard to the inordinate delay in bringing the appellant to trial. A sentence of 9 years imprisonment to run from 28 May 2021 was imposed.

[53] In *Alleyne v R,*[27] Barrow J noted that sentencing can be notoriously difficult because it is so much a matter of discretion. There is no objectively correct sentence. The law is settled that an appellate court must only interfere with the sentencing judge's discretion if the sentence was wrong in principle or manifestly excessive. As to the mitigating factors that, it has been submitted ought to have been taken into account in the instant case so as to cause a downward adjustment to the starting point, we do not consider these factors to be of such weight as to cause us to re-visit the sentence of the Court of Appeal. We note that the Court of Appeal took into account the issue of provocation and substituted the conviction of murder with manslaughter. In addition, the trial judge found that there was a level of pre-meditation in the murder. In the circumstances, we do not think that the Court of Appeal applied any wrong principles of law or that the sentence was manifestly excessive.

[54] As to Mr Pilgrim's submissions on the correctness of the trial judge's approach to the impact of the prevalence of gun violence on the sentencing exercise in the instant case, it must be recognised that this is now an academic exercise since, in arriving at the precise number of years the appellant should be sentenced to, the

[27] [2019] CCJ 6 (AJ) (BB), (2019) 95 WIR 126 at [87].

Court of Appeal did not take into account the prevalence of gun crimes in Barbados. We recognise the importance of judges being familiar with the jurisdictions that they serve. That familiarity causes them to be sensitive to the special societal needs, challenges and events. Nevertheless, judges cannot simply make decisions regarding sentencing due to their off-the-cuff feeling that there is too much gun violence in society. However, we do not think it necessary to examine this issue further. Accordingly, these grounds of appeal fail.

Closing Observations

[55] We were heartened to learn from Mr Pilgrim that the courts in Barbados were looking seriously at the level of delay in the criminal justice system and were becoming alert to the negative impact of delay on the system. We wish to reiterate the dicta of this Court at [52] of *Gibson*:

> [52] It is not of course for this Court to prescribe for Barbados the specific measures that it must take adequately to overcome the problem of delays in its criminal justice system. But we feel in duty bound to draw to the attention of the relevant authorities the urgent need to address it in a thorough and comprehensive manner if it is not already being so addressed. As the apex court responsible for interpreting and applying the rights set out in the Barbados Constitution, this Court cannot remain oblivious of well-founded concerns that breaches of the right to trial within a reasonable time are systemic in nature. If on the other hand it is apparent that prompt measures are being taken to address this problem in a decisive manner then a court is likely to take cognizance of such measures when it has to assess the reasonableness of lapses of time or the remedies that should be applied (footnote omitted).

Despite the passage of time since the judgment of this Court in *Gibson*, the criminal justice system in Barbados continues to be plagued by inordinate delay. We look forward to a brighter day when delay has been substantially reduced if not eradicated.

[56] We also wish to point out that in *Alleyne*[28], Anderson J, some five years ago, recommended that the Legislature of Barbados may wish to undertake certain relevant amendments to their prison laws in the broader context of legislating for a modern parole system. Where, as in Alleyne, the accused is sentenced to life imprisonment with a minimum period of incarceration to be served, in many Caribbean jurisdictions it is a parole board which reviews the case of the prisoner and makes the decision on whether the prisoner ought to be released. We were told by Mr Pilgrim that judges in Barbados were sentencing convicted persons to life imprisonment with a minimum sentence to be served before being eligible for release. It is therefore our hope that the Legislature in Barbados will undertake such amendments and thus create a modern parole system which will enable the criminal justice system to function effectively and justly.

Disposition

[57] The appeal is dismissed, and the conviction and sentence imposed by the Court of Appeal are upheld.

/s/ A Saunders

Mr Justice Saunders (President)

/s/ W Anderson

Mr Justice Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ A Burgess

Mr Justice Burgess

[28] ibid at [66].