

IN THE HIGH COURT OF THE SUPREME COURT OF
JUDICATURE

CIVIL JURISDICTION

IN THE MATTER OF THE
CONSTITUTION OF THE
REPUBLIC OF GUYANA

-AND-

IN THE MATTER OF AN
APPLICATION BY CLAYTON
REMAN AND DEXTER REMAN
for redress under Article 153 of
the constitution for the
contravention of the Applicant's
fundamental rights guaranteed by
Articles 40, 139 and 144 of the
Constitution of the Republic of
Guyana.

1. CLAYTON REMAN
 2. DEXTER REMAN
- Applicants

-and-

THE ATTORNEY GENERAL

Respondent

Mr. Basil Williams for the Applicant

Mr. Harnanan for the Respondent

DECISION

The Applicant filed an Originating Notice of Motion seeking the following orders:

- (1) A declaration that the Applicant's right to a fair hearing within a reasonable time of the criminal charges brought against

them since the 14th day of May 2001, guaranteed under Article 144 of the Constitution, has been contravened.

(2) A declaration that the failure of the Director of Public Prosecutions to afford the applicants a fair hearing in a reasonable time of the criminal charges brought against them since the 14th day of May 2001 is an abuse of process of the Court, and a breach of Article 144 of the Constitution.

(3) An order staying permanently the criminal charges brought against the Applicants since the 14th day of May 2001.

(4) That this Honorable Court make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing and securing the enforcement of Articles 40, 139 and 144 of the Constitution.

(5) Such further or other relief as may be just.

Criminal charges were instituted against the Applicants on the 14th May 2001 at the Georgetown Magistrate's Court before his worship Magistrate Paul Fung-a-Fat, for the offence of murder, were refused bail, and the matter was adjourned to 6th November 2001. On the 14th May 2001 the first named applicant, who was a Lance Corporal in the Guyana Defense Force was interdicted from duty on half pay.

On the 6th November 2001 the preliminary inquiry was commenced and on the 20th August 2002 the inquiry was completed and the applicants were committed for the offence of manslaughter contrary to section 94 of the Criminal Law Offences Act Chapter 8:01, to stand trial at the next criminal sessions at the Demerara High Court and were admitted to bail pending trial in the sum of \$250,000.00.

Since that date to the time of filing this motion no indictment for the offence of manslaughter had been brought before the High Court since October 2002, a period of seven years.

In June 2009 the matter was fixed for hearing before His Honour Mr. Justice W. Ramlall and he was informed by the state prosecutor that the original depositions were lost and the DPP was unable to commence the case and the matter was adjourned to 23rd July 2009.

On the 23rd July 2009, the State Prosecutor again informed the Court that they were unable to proceed but will be ready to proceed on the next adjourned date and that they would be using a copy of the depositions.

The Honorable Judge adjourned the matter to the 6th August 2009 for the hearing to commence.

On the 4th August 2009, before the adjourned date for the commencement of the trial, the applicants filed this Notice of Motion.

Issues:

Whether there was a breach of the applicant's constitutional right to a fair hearing within a reasonable time.

Whether 7 years inordinate delay

What is the prevailing system of legal administration, resources available, public policy, back-log of cases, financial resources.

Whether this court has jurisdiction to stay the charge permanently or quash the charge.

Article 144 of the Guyana Constitution states that the case shall be afforded a fair hearing within a reasonable time.

In **Bell v Director of Public Prosecutions** (1985) 32 WIR 317 (Jamaica) the advice of the Board makes it clear that there are a number of factors to be taken into account – the length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant, - stating that the weight to be attached to each factor must, however, vary from jurisdiction to jurisdiction and from case to case.

This case also affirmed that the right of an accused to be tried within a reasonable time was not an absolute right and that breach of that constitutional right must be balanced against the public interest in the attainment of justice, and must be viewed within the context of the prevailing system of legal administration and the prevailing economic, social and cultural conditions, of that country.

In **Flowers (Alfred) v R** (2000) 57 WIR 310 the Privy Council declined to advise that the appellant's conviction should be quashed on the grounds of delay or of oppression or of abuse of process, and held that in this case the appellant had not only failed to assert his constitutional rights before the local courts, but some of the delay had been attributable to defense counsel, and the possibility of prejudice did not exist. In this case 6 years had elapsed between the time the appellant was charged and his final trial.

Bell v DPP also examined the issue as to whether a permanent stay of the proceedings should be granted by the Court and have come to the conclusion that a permanent stay **can be** granted on a finding that the constitutional right to a hearing within a reasonable time was infringed, but not that a permanent stay **must be** granted.

In **AG's Reference (No. 1 of 1990)** (1993) 2 ALL ER 493 Lord Lane stated:

“.....no stay should be imposed unless the defendant shows on a balance of probability that owing to the delay he will suffer serious prejudice to the extent that no fair trial can be held.”

In **R v Ogle** (1968) 11 WIR 439 the trial judge held that a three year delay was inordinate delay. However the circumstances of that case was that the prosecution sought to offer deposition evidence against the accused, since the material witnesses had left the jurisdiction, and the prosecution had not offered a satisfactory explanation as to the reasons for the delay. The trial judge considered that it would be prejudicial for the accused to be tried on deposition evidence three years after and therefore the accused would not be afforded a fair hearing within a reasonable time. Here the trial judge stressed the point of a fair hearing as against a hearing within a reasonable time and this was the deciding factor in the judge's decision, in that the delay was prejudicial to the accused.

In **Sandford v DPP** (1979) 28 WIR 152 Crane CJ held that there was unreasonable delay in the hearing of the preliminary inquiry into the charge of murder against the accused which was in contravention of the guaranteed right to a fair hearing within a reasonable time and ordered that the preliminary inquiry into the charge of murder must be commenced before a magistrate within 10 days. If the court had found that the delay would have rendered a fair trial unlikely then the proceedings might have been stayed as in **R v Ogle** (supra).

Applying the principles outlined in the authorities, I find that There was unreasonable delay in the hearing of the applicant's trial for manslaughter, and that the DPP did not produce any proper grounds or any grounds at all for the delay. The status of the evidence, that is, that the original depositions were lost are not good enough grounds for the delay.

The fact that the delay took eight years is by itself inordinate delay without more. The DPP claimed that the applicants were on bail and therefore there was no prejudice, but the fact that the original depositions were lost and the prosecution's case will now be based on copies of those depositions may, or may not, have prejudicial consequences for the applicants trial.

I cannot go into the evidence and determine the value of the evidence. It would be for the trial judge to determine whether or not the evidence would yield a conviction or not, or whether the evidence is so poor that the case should not be sent to the jury. The issue as to the sufficiency of the evidence is not before this Court.

The applicants also took seven years to assert their rights and only did so when the matter was set for trial in June 2009.

However, while the Court can find that there was an unreasonable delay, this by no means mean that the Court should stay the proceedings or quash the indictment. It is not because there is undue delay that the applicants are automatically entitled to have the charges stayed indefinitely.

Since the State was ready to proceed in July 2009, I find that the applicants would not be prejudiced in their trial commencing at this time. The issue of the use of copies of the depositions can be dealt with appropriately by the trial judge. As regards the state of the evidence the relevant applications and submissions can be made before the trial judge.

The public interest must be taken into account, the system of legal administration, economic and social conditions and security of financial resources, must be considered in coming to a decision as to whether the applicants should have their matters quashed.

In the circumstances, I find that there was unreasonable delay in the hearing of the applicants' trial for the offence of manslaughter which is a contravention of their guaranteed right to a fair hearing within a reasonable time, but I do not find that the applicants are entitled to a permanent stay or quashing of the charges against them, and hereby order that the trial of the applicants be

commenced at the next sitting of the Criminal Assizes in Demerara
failing which the applicants to be at liberty to return to Court for
the making of any further orders.

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Diana F. Insanally

29th April 2010