

HUMAN RIGHTS COMMITTEE

Allen v. Jamaica

Communication No. 332/1988

31 March 1994

CCPR/C/50/D/332/1988

VIEWS

Submitted by: Devon Allen (represented by counsel)

Victim: The author

State party: Jamaica

Date of communication: 20 October 1988 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 31 March 1994,

Having concluded its consideration of communication No. 332/1988, submitted to the Human Rights Committee on behalf of Mr. Devon Allen under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, his counsel and the State party,

Adopts its

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Devon Allen, a Jamaican citizen born in 1962, currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 6, paragraph 5, 7, 9, paragraphs 2 and 3, 10, and 14, paragraphs 3 (b), (c), (d) and (e) of the International Covenant on Civil and Political Rights. He is represented by counsel. The crime of which the author was convicted has been classified as a capital offence under the

Offences Against the Person (Amendment) Act 1992.

The facts as submitted by the author

2.1 Devon Allen was arrested on 18 August 1982, while he was in hospital recovering from injuries sustained in a shooting incident. He was charged with the murder, on 26 September 1980, i.e., nearly two years earlier, of one W. H. He was tried in the Home Circuit Court of Kingston between 10 and 17 May 1983, found guilty as charged and sentenced to death. On 10 November 1983, the Court of Appeal of Jamaica dismissed his appeal. The Court of Appeal did not issue a reasoned judgement but merely a "Note of Oral Judgement", also dated 10 November 1983. A further application for special leave to appeal to the Judicial Committee of the Privy Council has not been filed.

2.2 The evidence presented against Mr. Allen was that on 26 September 1980 at about 1.30 a.m., two men went to W. H.'s house in Kingston, climbed onto a roof, jumped into the yard and approached the room where W. H. was sleeping. The wife of W. H. testified that one of the men shot her husband through the half-open window; both men then broke into the house, took the television set and ran off. This was reported to the police the following morning.

2.3 During the trial, W. H.'s wife and her son, who was eight years old when the crime was committed, testified as the prosecution's principal witnesses. Both identified the author as the man who had shot W. H. Mrs. H. testified that she had known the author for several years, but under his nickname "Dap-si-Do" only. She further contended that eight days after the crime, the author had returned to her house and that, subsequently, she had occasionally seen him walking around the area.

2.4 The author denied responsibility for the shooting of W. H., claiming that he was not in the neighbourhood on the night in question and that his nickname was not "Dap-si-Do" but "Windward". He notes that the arresting officer at the hospital asked him whether he was "George Green, known as Dap-si-Do". Counsel further encloses an affidavit signed in May 1988 by the author's brother, Steve Allen, in which he indicates that in his presence and that of a person investigating the circumstances of W. H.'s death, one B. N. admitted having shot W. H. on the night in question. This was brought to the attention of the Attorney-General's Office, but the case was not reopened, as B. N. had gone into hiding and could no longer be located by the police.

2.5 In respect of the requirement of exhaustion of domestic remedies, counsel contends that delays encountered in the case justify the conclusion that domestic remedies have been "unreasonably prolonged" within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. He contends that a petition for special leave to appeal to the Judicial Committee of the Privy Council based on the issue of delay would inevitably fail, because of the similarities between the author's case and that of another Jamaican citizen, Howard Martin, whose petition was dismissed by the Privy Council on 11 July 1988. a/ Besides, leading counsel has advised that there are no proper grounds to argue a petition for special leave to appeal to the Judicial Committee.

2.6 Still in the context of domestic remedies, counsel refers to the Privy Council's jurisprudence (judgement in the case of Riley et al. v. Attorney-General of Jamaica), which holds that whatever the reasons for, or length of, delays in executing a sentence of death lawfully imposed, such delays can afford no ground for holding the execution to be in contravention of section 17 of the Jamaican

Constitution. He observes that the Court of Appeal and the Supreme Constitutional Court of Jamaica would consider themselves to be bound by this jurisprudence, and that no decision in the case could be taken unless and until an appeal to the Judicial Committee of the Privy Council were allowed or made. According to counsel, the pursuit of remedies under the Jamaican Constitution and thereafter to the Judicial Committee would take many years.

The complaint

3.1 The author contends that he did not receive a fair and impartial trial. Thus, in relation to article 14, paragraph 3 (e), the trial transcript reveals that no witnesses were called on his behalf and no evidence was adduced against his claim that he was not known by the nickname "Dap-si-Do" but instead "Windward". Nor was there any evidence to rebut his statement that from 26 September 1980 until his arrest nearly two years later, he remained in the area working as a barman, without ever being questioned about W. H.'s death. Without further elaborating on his claim under article 14, paragraphs 3 (b) and (d), he submits that legal assistance available to individuals charged with criminal offences in Jamaica is such that witnesses are rarely traced and expert witnesses are hardly ever subpoenaed.

3.2 The author further alleges a violation of article 14, paragraph 3 (c) (and subsidiarily of article 9, paras. 2 and 3) because of the judicial and administrative delays in the case, and argues that a delay of five years b/ in the execution of the sentence constitutes "cruel and inhuman treatment" in violation of article 7 of the Covenant.

3.3 Finally, counsel argues that the State party may have violated article 6, paragraph 5, of the Covenant, since the author testified, during the trial in May 1983, that he was 20 years old. Accordingly, it may be that he was under the age of 18 when the offence was committed.

The State party's information and observations

4. In its submissions under rule 91 of the rules of procedure, the State party contended that the communication was inadmissible because of non-exhaustion of domestic remedies, since the author had failed to petition the Judicial Committee of the Privy Council for special leave to appeal, pursuant to section 110 of the Jamaican Constitution.

The Committee's decision on admissibility

5.1 During its 44th session, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, it noted that the Court of Appeal of Jamaica had not issued a reasoned judgement in the case but confined itself to delivering a "Note of Oral Judgement". While taking note of the State party's contention that the Judicial Committee may hear petitions for leave to appeal even in the absence of a written judgement of the Court of Appeal, the Committee considered, basing itself on its jurisprudence, c/ that the Judicial Committee could not, in its practice, entertain petitions for leave to appeal which are not corroborated by a reasoned judgement of the Court of Appeal of Jamaica. In the circumstances, the Committee found that a petition to the Judicial Committee did not constitute a remedy that was both available and effective within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.2 In respect of the author's claim under article 7, the Committee observed that the characterization of prolonged detention on death row as cruel, inhuman and degrading treatment had not been placed before the Jamaican courts and that, accordingly, domestic remedies had not been exhausted.

5.3 As to the author's allegations under articles 6, paragraph 5, and 14, paragraphs 3 (c) and (e), the Committee considered that they had been substantiated and that they deserved consideration on the merits. The author's remaining allegations were not considered substantiated, for purposes of admissibility.

5.4 On 20 March 1992, therefore, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 6, paragraph 5, and 14, paragraphs 3 (c) and (e), of the Covenant; it reserved the right to review its decision in respect of the author's claim under article 6, paragraph 5, of the Covenant.

The State party's further observations and request for review of admissibility and counsel's comments

6.1 In a submission dated 2 September 1992, the State party observes that there was no violation of article 6, paragraph 5, in the author's case: the birth certificate shows that the author was born on 21 June 1962 and that, accordingly, he was no longer a juvenile at the time of the commission of the offence (26 September 1980).

6.2 The State party reiterates that the communication is inadmissible on the ground of failure of exhaustion of domestic remedies, and that the author may petition the Judicial Committee of the Privy Council even in the absence of a written judgement of the Court of Appeal, under rules 3 and 4 of the rules of procedure of the Judicial Committee.

6.3 As to the claims under article 14, paragraphs 3 (c) and (e), the State party adds that it would further be open to the author to seek redress for an alleged breach of his rights under section 20 of the Jamaican Constitution, pursuant to section 25 thereof. The State party observes that the author has "in no way substantiated allegations [that] witnesses in his favour were not called and that the issue of whether he was correctly identified was not properly explored". In the State party's opinion, the issue of correct identification is one of evidence, the review of which is the function of an appellate court and not, save in exceptional circumstances, within the competence of the Committee.

7.1 In his comments, counsel concedes that Mr. Allen was an adult when the crime was committed.

7.2 Counsel affirms that the author does not have the means to instruct a lawyer to file a constitutional motion on the issue of delay and/or any other irregularity under the Jamaican Constitution. The Poor Prisoners' Defence Act does not provide for legal aid for this purpose, and no lawyer in Jamaica has been willing to file a motion on the author's behalf on a pro bono basis. Counsel reiterates that even if the author were in the position to file such a motion, Jamaican courts would consider themselves bound by the Riley precedent (see para. 2.6 above).

7.3 As to the availability of a petition for special leave to appeal to the Privy Council, counsel recalls

that the Privy Council does not act as a simple appellate court, and that it will only grant leave to appeal upon evidence that a substantial miscarriage of justice has occurred. Simple misdirections (to the jury) by a judge are not sufficient. It is therefore submitted that there are no grounds on which to petition the Judicial Committee (see para. 2.5 above).

7.4 Finally, counsel reiterates that the delays in the judicial proceedings did not arise as a consequence of the author exercising his rights of appeal, but solely as a result of "maladministration" by the State party.

Review of admissibility and consideration of the merits

8.1 The Committee has taken note of the State party's further arguments on admissibility and of counsel's further information regarding the availability of constitutional remedies in Mr. Allen's case.

8.2 With regard to the State party's contention that constitutional remedies are still open to Mr. Allen, the Committee recalls that domestic remedies within the meaning of the Optional Protocol must be both available and effective. The Committee considers that, in the absence of legal aid provided by the State party and given that the author has not been able to secure legal assistance for this purpose, a constitutional motion does not, in the circumstances of the instant case, constitute an available remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, which the author must exhaust. The Committee, therefore, finds no reason to revise its decision on admissibility.

8.3 The Committee has considered the claims raised in the communication in the light of all the written information provided by the parties. In respect of the allegation of a violation of article 6, paragraph 5, the Committee observes that the State party has conclusively shown, and counsel conceded, that Mr. Allen was an adult when the crime of which he was convicted was committed. Accordingly, the Committee concludes that there has been no violation of article 6, paragraph 5.

8.4 The author contends that he did not have a fair trial within the meaning of article 14 of the Covenant, although he does not claim that the court was not impartial or the jury biased. Thus, he claims that no evidence was adduced by the prosecution to rebut his claim that he was not known by the nickname "Dap-si-Do" but as "Windward". He further observes that no evidence was put forth to rebut his testimony that from 26 September 1980 until his arrest in August 1982, he remained in the area working as a barman, without ever being questioned about W. H.'s death. The Committee observes that these claims essentially relate to the evaluation of the evidence by the domestic court. In this respect, it reiterates that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in a particular case, unless it is clear that the judge's instructions to the jury were arbitrary or amounted to a denial of justice, or that the judge violated his obligation of impartiality. After careful consideration of the material before it, the Committee concludes that the trial did not suffer from such defects. Accordingly, there is no violation of article 14, paragraph 1, in this respect.

8.5 The author alleges that the preparation and presentation of his defence were deficient, in that no witnesses were called on his behalf. More generally, he contends that legal assistance available to

individuals charged with criminal offences in Jamaica is such that witnesses are rarely traced or subpoenaed (see para. 3.1 above). In respect of these claims, which were subsumed under article 14, paragraph 3 (e), in the admissibility decision of 20 March 1992, the Committee notes that the material before it does not disclose that either the author or his counsel complained to the judge that facilities for the preparation of the defence had been inadequate. Nor is there an indication that counsel decided not to call witnesses on Mr. Allen's behalf other than in the exercise of his professional judgement or that, if a request to call witnesses was made, the judge disallowed it or would have disallowed it. In the circumstances, the Committee finds no violation of article 14, paragraph 3 (e).

8.6 The analysis of the author's communication reveals that he has made two complaints in respect of the issue of delay. His initial complaint that a delay of five years in the execution of the sentence of death constitutes cruel, inhuman and degrading treatment within the meaning of article 7 of the Covenant was declared inadmissible in the Committee's admissibility decision of 20 March 1992. The author's subsequent claim, relating to administrative and judicial delays, was found admissible in respect of article 14, paragraph 3 (c). However, the substance of this claim has remained unclear, and no material in support of it has been placed before the Committee. In the circumstances, the Committee finds no violation of article 14, paragraph 3 (c).

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of any of the provisions of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version].

Notes

a/ On 24 March 1993, the Human Rights Committee adopted its views in respect of Mr. Martin's communication, finding no violations of the Covenant (see Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), annex XII.J. Although the Judicial Committee of the Privy Council also dismissed Mr. Martin's petition, it expressed concern about the judicial delays encountered in the case.

b/ That is, at the time of submission of the communication (October 1988).

c/ Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40 (A/46/10), annex XI.D, communication No. 253/1987 (Paul Kelly v. Jamaica), views adopted on 8 April 1991, paras. 4.1 and 5.3.