

HUMAN RIGHTS COMMITTEE

Leslie v. Jamaica

Communication No. 564/1993

12 October 1995

CCPR/C/55/D/564/1993*

ADMISSIBILITY

Submitted by: Junior Leslie (represented by counsel)

Alleged victim: The author

State party: Jamaica

Date of communication: 5 October 1993 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 3 December 1993 and Special Rapporteur's rule 86 decision, transmitted to State party on 8 February 1994 (not issued in document form)

Date of present decision: 12 October 1995

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Junior Leslie, a Jamaican citizen who, at the time of submission of his complaint, was awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7; 10, paragraph 1; and 14, paragraphs 1 and 3(a) to (e), of the International Covenant on Civil and Political Rights. He is represented by counsel. The author's death sentence was commuted to life imprisonment in early 1995.

The facts as submitted by the author

2.1 On 14 November 1987, the author was arrested by two policemen after a dispute concerning a bicycle. He was taken to the Hunts Bay Police Station and held in custody for five days. On 20

November 1987, he was taken to the Kingston Gun Court for a preliminary hearing; only then did he learn that he was charged, together with one Anthony Finn ^{1/} and one L.T., with the murders, on 8 November 1987, of one Merceline Morris and her son, Dalton Brown. On 4 April 1990, the author and Anthony Finn were found guilty as charged and sentenced to death by the Home Circuit Court in Kingston; L.T. was acquitted on the direction of the trial judge at the close of the prosecution's case. The author's appeal to the Court of Appeal was dismissed on 15 July 1991; a further petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 6 October 1992. With this, it is submitted, all domestic remedies have been exhausted. On 17 December 1992, the author's case was classified as a capital case under the Offences against the Person (Amendment) Act 1992.

2.2 The prosecution relied on the testimony of the deceased's daughter [respectively sister], Carol Brown, and grandson [respectively nephew], Orlando Campbell. Carol Brown testified that, on 8 November 1987 at about 8:00 p.m., her mother and Orlando Campbell were inside the house; she herself was sitting at the doorway and her brother, Dalton Brown, was in the yard with a friend, one C. The yard was lit up by a 100 watt light bulb on the exterior wall and by lights from within the house. Suddenly two armed men, whom she identified as Anthony Finn and the author, entered the yard. Immediately thereafter she heard explosions and she ran away. She stopped two houses further along, heard several more explosions, and saw C. running past her, followed by the author and Anthony Finn, who were still holding guns. Her mother, covered with blood, ran towards her, and told her that her brother had been shot. Her mother and brother died in hospital. Carol Brown testified that she had known Anthony Finn for about eight years. With respect to the author, she stated that she had first seen him one week prior to the incident, when he was pointed out to her as one of the persons involved in the beating and stabbing of her brother two weeks earlier. She only knew him by his nickname "Kentucky".

2.3 Orlando Campbell testified that, on the night of the incident, he was in bed when he saw his uncle, Dalton Brown, followed by Anthony Finn, running into the house. His uncle held on to his grandmother, who tried to block Anthony Finn. He then saw Anthony Finn shooting his grandmother. Having turned his face to the wall, he then heard Anthony Finn calling his uncle, followed by several explosions, and he heard his uncle begging for mercy. More shooting, from different directions, followed and he then heard Anthony Finn talking to another person. Orlando Campbell testified that he saw Anthony Finn, whom he knew, leaving through the gate, followed by a short stout person whose face he could not see, and by L.T., whom he also knew.

2.4 The medical evidence confirmed that the victims had been shot and died as a result of shotgun injuries.

2.5 No identification parade was held in the case; during the trial, i.e. 29 months after the murders, Carol Brown identified the author from the dock.

2.6 The author presented an alibi defence. He testified at the trial, that he had spent the evening watching a video show at a community centre near his home. He stated that he only spoke with one person that evening, but that he could not remember that person's name. He further stated that two other men in the area where he lived were known by the nickname "Kentucky".

The complaint

3.1 With regard to articles 7 and 10, paragraph 1, of the Covenant, counsel forwards a statement taken from the author at St. Catherine District Prison on 28 January 1993. This states that, on 15 November 1987, while held at the Hunts Bay Police Station, the author was hit on the chest by the investigating officer (name given). Furthermore, the author claims that, throughout his detention at Hunts Bay Police Station (from 14 to 20 November 1987), he was held in a cell measuring 2 by 4 metres together with five to six other persons. He was not allowed to wash himself and was only permitted to leave the cell in order to fetch drinking water. He was further denied recreational facilities.

3.2 On 20 November 1987, the author was transferred to the General Penitentiary, Kingston; upon arrival, he was allegedly hit on his left arm, near the wrist, by one of the warders. It is submitted that because he had previously broken his left wrist, this blow caused him great pain. He remained at the General Penitentiary until 4 April 1990; throughout this period, he had to share a cell of approximately 1.50 by 3 metres with four to five other prisoners. Furthermore, on an unspecified day, the author was stabbed in the face by an inmate which caused a deep cut of about 1 cm, stretching from his left ear down to his left cheek, and about 10 cm long. He immediately requested medical care but had to wait two hours before he was taken to a doctor. He received twenty stitches, but was denied follow up medical treatment. He submits that, during the following three days, he suffered much pain but that he was denied pain killers.

3.3 After his conviction on 4 April 1990, the author was transferred to the death row section at St. Catherine District Prison, where he has been detained since. The author explains that, at this prison, inmates are generally allowed to leave their cells sometime between 9:30 a.m. and 10:30 a.m. and are returned sometime between 12:00 p.m. and 12:20 p.m. They are again let out of their cells between 2:00 p.m. and 4:00 p.m. The author suffered several assaults while in prison:

- On 1 December 1991, for example, the prisoners were not allowed out of their cells in the morning. Shortly after 1:00 p.m., inmates were given a brief opportunity to slop up their cells. The two warders on duty in the block where the author was detained were Sergeant G. and a young man. The author states that, as the two warders opened the cells adjacent to his but not his own, he started to protest. They entered his cell and the young warder allegedly punched him in the left side of the head. Both warders then proceeded to kick and hit him with their batons on his back, chest, arms, legs and knees, for approximately two minutes. The author submits that he experienced extreme pain during this assault and that all his cries were disregarded. After the beating he was left without food or water, nor did he receive medical treatment.

- On 2 December 1991 at about 10:00 a.m., the author was given ten minutes to slop up. Sometime after 2:00 p.m. Sergeant G. came to his cell with six or seven other warders, and he was told to slop up once again. However, before he could do so, he was told to return to his cell. On his way back to the cell, Sergeant G. and another warder started to beat him. He fell to the floor and both warders hit him repeatedly with their batons on his arms, feet and back for about ninety seconds, while other warders watched. He was then thrown into his cell and left without food or water until the following morning. The author submits that he was denied access to a doctor or any sort of medical treatment.

3.4 The author reported these assaults to the Prison Authorities and repeatedly requested medical attention, to no avail. He then wrote to the Prison Ombudsman; as a result, he was finally taken to hospital in early 1992. The doctor who treated him prescribed pain killers. On the sequels of the beatings, the author notes that: “There is a specific pain in the left part of my back which has never completely disappeared. It feels as if there is a broken bone or that a bone is cracked. I experience the pain particularly badly in the morning when I wake up. All my requests to see a doctor again have been in vain and the warders simply give me pain tablets [...]”.

3.5 The author further states that on several occasions warders told him that there was no point in providing him with medical treatment, because he was about to be executed. He submits that this caused him “great embarrassment and depression”. Furthermore, on three occasions he was not allowed out of his for an entire day, and was given no food or water. Thus, he remained confined to his cell from around 4:00 p.m. until 10:00 a.m. two days later. The author characterizes the situation as “extremely discomfoting and humiliating”.

3.6 By letter of 9 June 1993, the author submits that, on 5 June 1993 at 12:28 p.m., he was harassed by a warder, one M., reportedly because he had complained to the Ombudsman and to “the Human Rights Office” about the treatment by warders. M. allegedly hit the author on his knee with a baton, and when the author held on the baton, M. drew a knife. He alleges that M. was about to use the knife but that it fell from his hand. The author then reported the incident to the officer-in-charge of the Section, who referred him to the Prison Superintendent; the latter allegedly refused to see him. The author further alleges that, on 4 May 1993, a warder stuck a finger in his eye and that he was kicked several times as he lay on the floor. The same warder subjected him to further physical and verbal abuse on 23, 24, 29 and 30 September 1993. On 30 September the author’s room was searched and 200 dollars removed, which have not been returned.

3.7 Counsel refers to the records of a meeting held on 25 January 1993 with the author’s local lawyer. This lawyer observed that Mr. Leslie displayed a number of new cuts and bruises on his face which he had not recalled from his first meeting in 1989. The lawyer suspected that this was the result of treatment in prison, which is not uncommon in Jamaica. Counsel submits that this lawyer’s observations corroborate all the allegations made by the author in his statement and letters. Counsel, on behalf of Mr. Leslie, has lodged formal complaints with the Prison Superintendent on 30 November 1993, and with the Jamaican Commissioner of Prisons on 14 March 1994.

3.8 Counsel adduces documentary evidence of the inhuman conditions of detention at the General Penitentiary and St. Catherine District Prison. It is submitted that the lack of recreational, rehabilitation and other facilities in these prisons clearly indicates that they fall far short of the U.N. Standard Minimum Rules for the Treatment of Prisoners, and that the lack of provision for the basic needs for Junior Leslie amounts to a violation of both articles 7 and 10, paragraph 1. He concludes that the lack of washing facilities in custody, the crowded conditions under which Mr. Leslie was detained, the long periods of confinement, the lack of medical treatment, the reasons given for the denial of such treatment, and the unprovoked assaults by the police officer and prison warders to which Mr. Leslie was subjected, amount to violations of articles 7 and 10, paragraph 1.

3.9 It is further alleged that the author did not have a fair trial. He complains that his legal aid counsel failed to adequately prepare the case. In this respect he claims that he met his lawyer for

the first time on one of the twelve occasions on which his trial was adjourned. Although the attorney visited him several times in prison, a policeman was always present, which afforded no privacy. Only the adjournment and new dates for the trial were discussed, never the defence arguments. This is said to violate article 14, paragraph 3(b).

3.10 In respect of the alleged violation of article 14, paragraphs 1 and 3 (e), it is submitted that due to lack of time and facilities for the preparation of the defence, a number of witnesses were not called to testify on the author's behalf. The author's defence was further prejudiced by the fact that junior counsel, who had been assigned to the author's attorney to assist him with the case and on whom the attorney relied for all the groundwork, fell ill shortly before the start of the trial, and could therefore not attend. Furthermore, the trial judge's alleged "obstructive behaviour" prevented the defence from adequately cross-examining the prosecution witnesses on the "short and stout" issue. 2/ Counsel concedes that, in principle, it is not for the Committee to review specific instructions given by the judge to the jury, unless it can be ascertained that these instructions were clearly arbitrary or amounted to a denial of justice. In this context, he refers to the summing-up and submits numerous examples of the judge's instructions which are said to amount to a denial of justice. 3/

3.11 As to the adequacy of the author's representation during the trial, it is submitted that prosecution witnesses were not adequately cross-examined, or at all. Counsel points out that the author's attorney arrived late at the afternoon session of the hearing of 3 April 1990, when the pathologist gave evidence in connection with the wounds suffered by the deceased. The attorney did not cross-examine this witness, whose evidence, according to counsel, could have undermined Carol Brown's evidence that her brother had been beaten and stabbed two weeks prior to his death. The lawyer's failure to question the pathologist is said to be particularly serious, in light of the fact that a friend of the deceased's family, who identified the bodies, testified in court that he was not aware that Dalton Brown had been beaten and stabbed.

3.12 Furthermore, counsel argues that Carol Brown's identification evidence, given to the police on the night of the incident, was uncorroborated, as Orlando Campbell did not identify Mr. Leslie and the third eye-witness, C., did not testify. 4/ Counsel notes that the author was never placed on an identification parade, and that it was only 29 months later that he was identified in court by Carol Brown. It is submitted that the delay of 29 months from arrest to trial amounts to a violation of article 14, paragraph 3(c), and that the judge, by allowing a dock identification and by failing to warn the jury about the effects the delay might have on the credibility and reliability of the prosecution witnesses, violated the author's right to a fair trial.

3.13 The author alleges that since he was assigned the same attorney for the appeal, his right to legal assistance of his own choosing was violated. He did not meet with the attorney prior to the hearing of the appeal, and was given no opportunity to discuss the grounds of appeal to be argued on his behalf. Furthermore, he claims that he was not asked whether he wished to attend the hearing and that he only learned from the prison authorities that his appeal had been dismissed.

The State party's information and observations on admissibility and the author's comments thereon

4. In its submission under rule 91, the State party argues that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol, because the author has failed to exhaust

domestic remedies. It notes that the author may still apply for constitutional redress; in this context, it notes that the rights invoked by the author and protected by article 14, paragraphs 1, 3(b) and (e) are coterminous with Sections 20 (1), 20 (6) (b) and 20 (6) (d) of the Jamaican Constitution. Pursuant to Section 25 of the Constitution, it is open to the author to seek redress for the alleged violations of his rights by way of a constitutional motion to the Supreme Court.

5. In his comments, dated 21 April 1995, counsel states that, since legal aid is not made available for constitutional motions, a constitutional motion does not constitute an effective remedy in the case.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee takes note of the State party's argument that the pursuit of a constitutional remedy is still open to the author. It observes that the Supreme Court of Jamaica has, in some cases, allowed applications for constitutional redress in respect of breaches of fundamental rights, after the criminal appeals in these cases had been dismissed. However, it also recalls that the State party has indicated on several occasions ^{5/} that no legal aid is made available for constitutional motions. The Committee considers that in the absence of legal aid, on which the author, who is indigent, must rely, a constitutional motion does not constitute a remedy which must be exhausted for the purposes of the Optional Protocol. The Committee therefore considers that it is not precluded by article 5, paragraph 2(b), from considering the communication.

6.3 As to the claims under articles 7 and 10 paragraph (1), the Committee notes that the author brought the repeated instances of ill-treatment to the attention of the prison authorities and the Commissioner of Prisons. As no reply or follow-up was given to his complaints, the Committee considers that, in this respect, the author has met the requirements of article 5, paragraph (2) (b), of the Optional Protocol. It finds that the author's claims about ill-treatment in prison and death row have been sufficiently substantiated and should be examined on the merits.

6.4 The Committee further considers that the author has sufficiently substantiated his claim, under article 14, paragraph 3 (c), that he was not tried without undue delay. This relates in particular to the State party's failure to place the author on an identification parade at the time of his arrest, combined with a lapse of time of two and a half years before a dock identification was made during the trial, by a single witness who was a close relative (daughter and sister respectively) of the two deceased. This allegation, accordingly should be examined on the merits.

6.5 The author's remaining allegations concern claims about irregularities in the court proceedings, improper instructions from the judge to the jury on the issue of identification, the late arrival in Court of the attorney and the lack of cross examination of the prosecution witnesses. The Committee reiterates that, while article 14 guarantees the right to a fair trial, it is not for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to denial of justice,

or that the judge manifestly violated his obligation of impartiality. The material before the Committee does not show that the judge's instructions suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in as much as it appears to raise issues under articles 7; 10 paragraph 1; and 14, paragraph 3(b) (c), (d) and (e), of the Covenant;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and to the author and to his counsel.

*/ All persons handing this document are requested to respect and observe its confidential nature.

1/ Mr. Finn's Communication No. 617/1995 is before the Human Rights Committee; it has not yet been considered on the question of admissibility.

2/ A close examination of the trial transcript reveals that there is no basis for this allegation.

3/ Most of the grounds of appeal relied on by counsel were dismissed by the Court of Appeal.

4/ This witness could not be located by the police.

5/ See e.g. communications No. 283/1988 (Austin Little v. Jamaica), Views adopted on 1 November 1991; No. 321/1988 (Maurice Thomas v. Jamaica), Views adopted on 19 October 1993; No. 352/1989 (Douglas, Gentles and Kerr v. Jamaica), Views adopted on 19 October 1993.