

HUMAN RIGHTS COMMITTEE

Jones v. Jamaica

Communication No. 585/1994

13 October 1995

CCPR/C/55/D/585/1994*

ADMISSIBILITY

Submitted by: Tony Jones [represented by counsel]

Alleged victim: The author

State party: Jamaica

Date of communication: 12 January 1994 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the State party on 23 August 1994 (not issued in document form)

Date of present decision: 13 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 of admissibility

1. The author of the communication is Tony Jones, a Jamaican citizen, at the time of the submission of the communication awaiting execution at the St. Catherine District Prison, Jamaica. The author claims to be the victim of a violation by Jamaica of articles 6, 7, 9, 10, 14, paragraphs 1, 2, and 3(a), (b), (c), (d) and (e), and 17 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author

2.1 The author was arrested on 1 September 1984, and charged on 9 November 1984 with having, on 6 March 1984, murdered Rudolph Foster. On 6 March 1985, the author and his co-accused, McCordie Morrisson, were convicted of murder and sentenced to death in the St. Elizabeth Circuit

Court, Jamaica. The Court of Appeal of Jamaica refused the author's application for leave to appeal on 6 July 1987. His application for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 22 July 1991. With this, it is submitted, all available domestic remedies have been exhausted. On 16 May 1995, the author's death sentence was commuted to one of life imprisonment.

2.2 At trial, the case for the prosecution rested mainly on the identification evidence of one Canute Thompson. He testified that, in the late evening of 6 March 1984, he had seen the author and two men attack the deceased. This witness stated that he had heard the author say to the deceased "Stand up, or else a kill you blood clat", and that he had seen the author fire three out of a total of four shots at the deceased, who was running towards the witness. Furthermore, the witness testified that, during the assault, he had seen the author's face on more than one occasion: he firstly saw the author's side and then saw him full faced for a period of 5 to 30 seconds. The witness stated that a bright street light had permitted him to recognise the author's face and that he had also recognised the author's voice. Thompson indicated that he had known the author for roughly 16 or 17 years, but conceded that the last time he had seen the author had been two years before.

2.3 At the trial, the defence challenged the credibility of the testimony of Thompson, on the ground that he had held a grudge against the author. The reason for the hostility was a dispute over some political issue which had resulted in a fight between Thompson on the one hand, and Morrisson and the author on the other hand. The author claimed that subsequently, Thompson had informed the foreman at the work site where they all worked, and that he and Morrisson had subsequently been dismissed from their employment. It was alleged that after this incident, Thompson had threatened the author. The latter made an unsworn statement from the dock denying any knowledge of the murder.

The complaint

3.1 Counsel alleges a violation of article 9, paragraphs 2, 3 and 4, of the Covenant. He notes that the author was arrested on 1 September 1984 by the Denham Town Police in Kingston, was then transferred to Santa Cruz Police Station for about two weeks and then again transferred to Black River Police Station. The author claims that during all this time in detention he did not know what charges he faced and that every time he asked a police officer he was ignored. It was only on about 9 November 1984 that he was informed that he was charged with murder and that he was cautioned 1/. It is thus submitted that the author was detained for two months before being formally cautioned. Counsel adds that the author spent more than 6 months in police detention before his trial. The author moreover states that after his arrest, he was detained in handcuffs night and day for at least two weeks, until he showed his handcuffs to a Police Superintendent, who removed them.

3.2 Counsel further submits that there were serious weaknesses in the identification evidence, namely, that identification occurred at night under insufficient lighting conditions and that Canute Thompson had only a limited opportunity to get a front view of the assailant. Counsel further submits that the witness observed the deceased and the three attackers from a distance of one and three-quarter chains, although when he purported to recognise the author, he was at a distance of about a chain from him, and that the periods of sightings of the author's face were respectively 5 seconds, 3 seconds and 30 seconds.

3.3 Counsel notes that the author was not placed on an identification parade; he submits that in a case in which the prosecution relies solely upon identification evidence, an identification parade must be held.

3.4 As to the trial, counsel submits that the trial judge failed to direct the jury properly about the dangers of convicting on identification evidence alone, especially when the witness only had had a limited opportunity to observe the assailant and when no corroborative or supporting element for the identification had been adduced. The identification issue was before the Judicial Committee of the Privy Council, which, however, refused to give leave to appeal; counsel argues that, in view of the fact that the Privy Council limits the hearing of appeals in criminal cases to cases where, in its opinion, some matter of constitutional importance has arisen or where a “substantial injustice” has occurred, its jurisdiction is far more restricted than that of the Human Rights Committee.

3.5 Counsel further claims that the trial judge violated his obligation of impartiality in the method by which he dealt with the evidence of a possible grudge held by the witness. In this context, counsel alleges that the judge misdirected the jury in that he said that it had not been suggested to Thompson in cross-examination that he bore malice towards the author.

3.6 It is further submitted that the trial judge should have discharged the initial jury, since during the course of the trial one juror was seen talking to a member of the deceased’s family. Counsel adds that the trial judge questioned this juror in the presence of the entire jury; the juror denied that the conversation had taken place, but, as a result of the questioning, the jury appeared to show signs of annoyance and hostility towards the author.

3.7 Counsel submits that the author did not receive adequate legal representation. In this context, he alleges that prior to the start of the trial, the author had only one brief interview of 15 to 20 minutes with his legal aid attorney, approximately ten weeks after his arrest. During the trial, the author was represented by a new defence counsel, with whom he had no previous interview.

3.8 Counsel further claims that the author was threatened by police officers that if any witnesses came forward to give evidence on his behalf, they would also be imprisoned. It is stated that, as a result, no witnesses were traced or called by the author’s attorney.

3.9 It is further submitted that the author did not have adequate time for the preparation of his defence, nor was his defence properly prepared. In this context, counsel points out that Thompson made reference to a potential witness for the defence. Counsel indicates that this potential witness might have been prepared to give evidence on the point that Thompson and the author had been involved in a fight and that for this reason Thompson had a grudge against the author.

3.10 With regard to the preparation of the appeal, counsel also contends that the author was denied adequate time and facilities, because he had not met his representative for the appeal at any time before the application for leave to appeal was made.

3.11 Counsel claims that the author was not given a fair and public hearing by the Court of Appeal, because, as stated in a letter from appeal counsel to the author, his case, in particular on the grounds of identification, was not fully argued in the Court of Appeal on 6 July 1987. Counsel indicates that

the author's case was heard prior to two leading cases 2/.

3.12 It is also submitted that the author's case was not reviewed without undue delay by the Court of Appeal. In this context, counsel points out that the lapse of time between 11 March 1985, when the author's trial attorney filed the grounds of appeal, and 6 July 1987, when the appeal was heard, was nearly 26 months.

3.13 It is argued that the facts mentioned above constitute a violation of article 14, paragraphs 1, 2, 3(a), (b), (c), (d) and (e), of the Covenant. In view of the above, it is also submitted that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have been violated, constitutes a violation of article 6, paragraph 2, of the Covenant.

3.14 Counsel further claims a violation of article 10, paragraphs 1 and 2(a), of the Covenant. It is stated that after his arrest, the author was not permitted to speak to any member of his family for approximately five weeks and that he was badly beaten by police officers while in police custody. It is also claimed that during the period of over six months before trial, the author was not segregated from convicted prisoners, nor was he given separate treatment appropriate to his status as an unconvicted person. Moreover, it is submitted that physical violence was used against the author after his conviction on 19 March 1986 and that he was frequently threatened with physical violence and death. Counsel adds that, although the author has developed arthritis whilst in prison, "no treatment" has been administered.

3.15 Counsel alleges a violation of article 17, paragraph 1, of the Covenant, on the grounds that the author's correspondence has repeatedly and unlawfully been interfered with by the prison guards and that letters sent to the prison office by the author have not reached the appropriate addressee.

3.16 Counsel finally claims a violation of article 7 of the Covenant. Counsel states that the author has been detained on death row for over 10 years and argues, while referring to a judgment of the Judicial Committee of the Privy Council 3/, to a Zimbabwe Supreme Court judgment 4/, as well as to a decision of the European Court of Human Rights 5/, that the time spent on death row constitutes cruel, inhuman and degrading treatment or punishment. To support his claim, counsel refers to a report on the conditions in St. Catherine District Prison prepared by a non-governmental organization 6/.

3.17 It is stated that the same matter has not been submitted to another instance of international investigation or settlement.

The State party's observations and author's comments thereon

4.1 By submission of 22 February 1995, the State party also offers comments on the merits, in order to expedite the examination of the communication.

4.2 The State party submits that the author's claim under article 9, paragraphs 2, 3, and 4, of the Covenant, is inadmissible under article 5, paragraph 2(b), of the Optional Protocol. The State party argues that there exists a remedy for the alleged violation by way of action for false imprisonment and that, until the author has sought redress for the alleged violation, this allegation should not be

examined by the Committee.

4.3 With respect to the alleged violations of article 14, paragraph 1, of the Covenant, because of the trial judge's alleged failure to display impartiality, the State party states that these issues relate to matters of facts and evidence which ought to be left to the appellate courts.

4.4 As regards the claim that the author was inadequately represented because his legal aid lawyer only conducted one brief interview with him prior to the trial and as regards the claim about the preparation of the author's defence, the State party emphasizes that it cannot be held responsible for the representation provided by a legal aid counsel once it has appointed a competent lawyer and not obstructed him in the performance of his duties. To hold otherwise would mean that the State has a greater responsibility in relation to legal aid lawyers than exists with respect to privately retained counsel.

4.5 With respect to the author's claim under article 14, paragraph 3(e), of the Covenant, the State party notes that there is no evidence that police officers threatened potential defence witnesses. It further argues that the fact that the potential witness for the defence was not called to give evidence, is not a matter which can be attributed to the State.

4.6 As to the author's complaints about his representation on appeal, the State party reiterates its view that it is not responsible for the failure of a legal aid lawyer to prepare an appeal adequately, if there has been no obstruction on the part of the State.

4.7 The State party further submits that it will investigate the allegation that the author's case, in particular on the grounds of identification, was not fully argued before the Court of Appeal. It however notes that the Judicial Committee of the Privy Council did examine the question of identification and thus rejects the allegation that there has been a breach of article 14, paragraph 5.

4.8 The State party rejects the argument that a period of nearly 26 months from the date when the appeal is filed to the hearing of the appeal constitutes undue delay.

4.9 As regards the author's claim that he was not permitted to speak to family members after his arrest for five weeks, the State party does not accept this assertion, nor does it accept the allegation that the author was not segregated from convicted prisoners prior to his trial. It however submits that the allegations of physical violence against the author since his conviction will be investigated and that inquiries will be made as to whether or not the author has received medical treatment for his arthritis.

4.10 The State party further asserts that there is no evidence that there has been a breach of article 17.

4.11 The State party finally denies that the author's detention on death row for the denounced period of time automatically amounts to cruel and inhuman treatment.

5.1 In his comments, dated 18 April 1995, on the State party's submission counsel for the author states the he wishes to have the issues of admissibility and the merits of the communication dealt

with separately.

5.2 As regards the claim under article 9, counsel submits that the author was never informed by either his Jamaican lawyer or by the Ministry of Justice that a remedy of an action of false imprisonment was available to him. Counsel states that it is unclear whether any action would now be barred as falling outside the limitation period and, if not, whether legal aid would be made available to the author to pursue this remedy. Counsel contends that, if an action for false imprisonment were not now open to the author and if legal aid were not made available to him, his claim under article 9 should be declared admissible. If the Committee were to decide that a domestic remedy is still available to the author and that his claim is therefore inadmissible, counsel requests the State party to make an undertaking to the author through the Committee that his application will not be met by a defence of limitation and that he will be granted legal aid.

5.3 With regard to his claim under article 14, the author repeats that he only met with his legal aid attorney for 20 minutes, on one occasion, 10 weeks after his arrest. It is submitted that the State party is to be held accountable for the representation provided to the author.

5.4 The author also repeats that he was threatened by police officers that if anyone came forward to give evidence on his behalf, he would also be imprisoned. In addition, the author reiterates that he wanted one potential witness to give evidence on his behalf, but the latter was not called at the trial. It is alleged that it is common practice in Jamaica to pay witnesses to give evidence and that the author was unable to provide the necessary funds. In this respect, it is submitted that the State party is responsible for a judicial system which condones the payment of defence witnesses by defendants prior to them being prepared to give evidence.

5.5 With regard to the author's representation on appeal, counsel points out that the author met with his lawyer only once, that he was not informed of the grounds of appeal until after the appeal had been dismissed and was therefore not able to have any personal input into the appeal. The only contact the author had with his counsel after the appeal was a single undated letter informing him, inter alia, that there was "nothing further (that) can reasonably (be done)" save for petitioning for mercy.

5.6 Counsel points out that the abovementioned letter also indicated that there was no merit in the author's appeal, since the issue was one of identification and the witness said that he had clearly identified the author, which was a matter for the jury to decide. Counsel contends that it is thus implicit from this letter that neither the issue of identification, nor a potentially arguable part of law, was fully or properly argued before the Court of Appeal.

5.7 As to the claim of undue delay, counsel refers to the decision of the Privy Council in Pratt and Morgan v. Jamaica, where it was held that "the aim should be to hear a capital appeal within 12 months of conviction".

5.8 With regard to the author's allegation that he had no contact with any member of his family for five weeks after his arrest, it is stated that he was moved twice during the first two months of his incarceration, and that his family was uncertain of his whereabouts and did not visit him.

5.9 Counsel argues that the State party has been well aware of incidents of physical violence perpetrated against the author throughout his incarceration. In this context, counsel refers to a letter from the Parliamentary Ombudsman, dated 9 November 1989. It is submitted that in respect of the particular assault complained of at that particular time 7/, the author did not receive any medical attention and no action was taken against the perpetrator. It is also submitted that the author did not receive any medical treatment for his arthritis despite numerous requests and despite a letter dated 16 October 1994, by which the Parliamentary Ombudsman directed the Superintendent of St. Catherine District Prison to ensure that the author would receive medical attention. It was understood that the Superintendent would provide medical attention, but not such treatment has been administered as yet.

5.10 As to the author's claim under article 17, it is added that the author, when cleaning out an unused cell, was informed by other prisoners that there were letters addressed to him in that cell. It is alleged that these letters were never delivered to him and that they were apparently destroyed thereafter. Subsequently, the author was so concerned that his mail would be interfered with that he used unofficial channels to ensure that his letters reached his English lawyers.

5.11 Counsel maintains that the judgment of the Privy Council in Pratt and Morgan v. Jamaica is a strong authority for the contention that the author's detention on death row for more than 10 years creates a very strong presumption that he has been subjected to cruel and inhuman treatment. It is submitted that there are no grounds on which the presumption could be rebutted, as it has not been contended that the delay was due entirely to the fault of the author and as no reason is put out by the State party as to why the delay does not amount to cruel and inhuman treatment. In this context, counsel refers inter alia to a recent judgment of the Privy Council 8/. Further or alternatively, counsel relies upon a "Report on Conditions and Treatment in Jamaican prisons", in order to provide an alternative or supportive ground that article 7 has been violated.

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 rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With respect to the author's claim under article 9, the Committee notes that the State party argues that this claim is inadmissible, because the author has failed to bring an action for false imprisonment. The Committee notes, however, that the author has claimed that the guarantees of article 9 were not complied with, and, in particular that he was not charged or brought before a judge until after two months. The Committee considers that the State party has failed to indicate details of how the remedy would have been available to the author in the specific circumstances of his case. The Committee is therefore not precluded by article 5, paragraph 2(b), from considering this part of the communication.

6.4 With respect to the author's claims that he was not permitted to speak to any member of his family for five weeks after his arrest, that he was beaten while in police custody and that he was not segregated from convicted prisoners prior to his trial, the Committee notes that the author has failed to show what steps, if any, he has taken to bring these matters to the attention of the Jamaican authorities. In this respect, therefore, the Committee considers that the requirements of article 5, paragraph 2(b), of the Optional Protocol, have not been met.

6.5 The Committee further notes that part of the author's allegations relate to the instructions given by the judge to the jury. The Committee refers to its prior jurisprudence and reiterates that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. Similarly, it is not for the Committee to review specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The material before the Committee does not show that the trial judge's instructions or the conduct of the trial 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.

6.6 The Committee considers that the author has failed to substantiate, for purposes of admissibility, his claim that he was denied a fair hearing because the trial judge failed to discharge the initial jury after one juror had been seen talking with a member of the deceased's family. In this respect, the Committee notes that the author has indicated that the judge in fact examined the matter and that the trial documents do not reveal any information which might corroborate the author's claim. Consequently, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers that the author has failed to substantiate, for purposes of admissibility, his claim that he did not have adequate time and facilities for the preparation of his defence. The information before the Committee reveals that the author actually was represented at trial by the same attorney who had already represented him at the preliminary inquiry and was thus not represented by a new defence counsel during trial. Further, there is no indication that the author or his counsel ever complained to the judge that they needed more time to prepare the defence. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.8 The Committee considers that the author has failed to substantiate, for purpose of admissibility, his claim that he could not obtain the attendance of witnesses on his behalf, in particular, that he was threatened by police officers that potential defence witnesses would also be imprisoned. Furthermore, with regard to the author's allegation that one potential witness was prepared to give evidence on his behalf, the Committee, after having examined the court documents, notes that the defence in fact expressly renounced calling this witness. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.9 As to the author's claim that his case was not reviewed without undue delay by the Court of Appeal, the Committee considers that the author has failed to substantiate, for purposes of admissibility, any circumstances which would render the period of time between the filing of the grounds for appeal and the hearing of the appeal unduly long in the author's case. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.10 The Committee considers that the claim that the author's representation on appeal was inadequate may raise issues under article 14, paragraph 3(b), of the Covenant.

6.11 With regard to the claim that the interference with the mail in the St. Catherine District Prison violated the author's rights under article 17 of the Covenant, the Committee considers that counsel has failed to show what steps were taken to bring this complaint to the attention of the authorities in Jamaica. In this respect, the communication does not fulfil the requirement of exhaustion of domestic remedies set out in article 5, paragraph 2(b), of the Optional Protocol.

6.12 With regard to the author's claim of ill-treatment after his conviction, and denial of medical treatment, the Committee notes that the State party has merely informed the Committee that it would investigate the author's allegation. In the circumstances, the Committee finds that the author's claim has been sufficiently substantiated, for purposes of admissibility, and may raise issues under article 10 of the Covenant which need to be examined on the merits.

6.13 The Committee next turns to the author's claim that his prolonged detention on death row, from 6 March 1985 to 16 May 1995, amounts to a violation of article 7 of the Covenant. The jurisprudence of this Committee remains that detention for a specific period would not be a violation of article 7 of the Covenant in the absence of some further compelling circumstances 9/. The Committee observes that the author has not substantiated, for purposes of admissibility, any specific circumstances of his case that would raise an issue under article 7 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it appears to raise issues under articles 9, in respect of the claim that the author was not promptly informed of the reasons for his arrest and of the charge against him, nor brought before a judge, 10, paragraph 1, in respect of the alleged physical violence after conviction and denial of medical treatment, and 14, paragraph 3(b), 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. In particular, the State party is requested to provide the Committee with the results of its investigations into the author's allegations of ill-treatment and denial of medical treatment;

(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 Committee's rules of procedure, to the author and his counsel with the request that any comments that they may wish to submit thereon should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the day of the transmittal;

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

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

1/ The author states in correspondence addressed to his London counsel that he does not remember the exact date on which he was charged for murder and cautioned, but assesses it to be on about 9 November 1984. At the trial, however, a police officer gave evidence that he cautioned the author and executed the warrant for his arrest on 14 November 1984.

2/ Scott v. The Queen (1987) 2 WLR 924 and Reid (Junior) v. The Queen (1989) 3 WLR 771.

3/ Judgment in Pratt and Morgan v. The Attorney General for Jamaica et al. (1993) (Privy Council) Appeal No. 4 of 1993, Judgment delivered on 2 November 1993.

4/ Catholic Commission for Justice and Peace in Zimbabwe v. The Attorney General for Zimbabwe et al. (1993) Zimbabwe Supreme Court Judgment No. S.C. 73/93 delivered on 24 June 1993.

5/ Soering v. United Kingdom (1989) 11 EHRR 439.

6/ "Prison Conditions in Jamaica", May 1990, Human Rights Watch.

7/ No details are given of the assault.

8/ Bradshaw and Roberts v. Attorney General of Barbados and others, Privy Council appeal allowed on 23 February 1995.

9/ See the Committee's Views on communications Nos. 210/1986 and 225/1987 (Earl Prat and Ivan Morgan v. Jamaica), adopted on 6 April 1989, paragraph 12.6. See also, *inter alia*, the Committee's Views on communications Nos. 270/1988 and 271/1988 (Randolph Barrett and Clyde Sutcliffe v. Jamaica), adopted on 30 March 1992, and No. 470/1991 (Kindler v. Canada), adopted on 30 July 1993.