

HUMAN RIGHTS COMMITTEE

Brown and Parish v. Jamaica

Communication N° 665/1995**

29 July 1999

CCPR/C/66/D/665/1995*

IEWS

Submitted by: Owen Brown and Burchell Parish (represented by Ms. Natalia Schiffrin of Interights in London)

Alleged victim: The authors

State party: Jamaica

Date of communication: 27 February 1995

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

Meeting on 29 July 1999

Having concluded its consideration of communication No. 665/1995 submitted to the Human Rights Committee by Messrs. Owen Brown and Burchell Parish 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, and the State party,

Adopts the following:

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

1. The authors of the communication are Owen Brown and Burchell Parish, Jamaican citizens, at the time of submission awaiting execution at St. Catherine District Prison, Jamaica. They both claim to be victims of violations by Jamaica of article 14, paragraphs 1, (3)(b), 3(c) and 3(d), and, consequently, article 6, paragraph 2, of the Covenant. They are

represented by Ms. Natalia Schiffrin of Interights in London. On 16 May 1995, their sentences were commuted to life imprisonment.

The facts as submitted by the authors

2.1 On 1 May 1985, the authors were convicted for the murder of Angela Simmonds on 1 October 1982, and sentenced to death. On 25 September 1987, the Court of Appeal dismissed their appeal, which had been based on lack of evidence to sustain a conviction and improper instructions by the judge to the jury. However, one of the judges, JA Rowe, had grave doubts as to the decision. He subsequently set out his observations in a letter dated 17 July 1989 sent to the authors' counsel who was preparing a petition for special leave to appeal to the Privy Council. Special leave to appeal to the Privy Council was refused in an oral judgment handed down by the Privy Council on 16 December 1991.

2.2 At trial, the case for the prosecution, which relied upon the evidence of six witnesses, was that the two accused were among three or four men who came to Regent Street in Kingston where the deceased lived, each of them allegedly armed with a gun, and that seven shots were fired down the centre of the street from west to east, fatally wounding Angela Simmonds and also wounding her brother Hamilton Simmonds.

2.3 Owen Brown gave sworn evidence to present an alibi. He said he was at home with his "babymother" that night. He denied the allegations made as to his complicity in the crime, and stated that he had turned himself in, on 4 October 1982, only after he had learned that the police was looking for him. Burchell Parish made an unsworn statement. He also set up an alibi, saying he had spent that night at his girlfriend's house. No witnesses were called to testify on the authors' behalf.

The complaint

3.1 The authors claim that their right to adequate and effective legal assistance was denied, in violation of article 14, paragraph 3 (b) and 3 (d). Owen Brown recalls that he only saw his (legal aid) lawyers for 5 or 10 minutes when he attended court for the trial date to be set. Subsequently he saw them for a further half hour and felt that the meeting was of very poor quality. He further states that he did not see his appeal lawyer till after his appeal hearing because he did not realise who was to represent him until his appeal was about to be heard. Similarly, Burchell Parish states that he did not see his lawyer at the appeal stage and only "heard" who he was represented by. He also complains that he has not seen or heard from his trial attorney since the day he was sentenced to death¹.

3.2 The authors further claim that they were not tried without undue delay. They were arrested on or about 4 October 1982. The trial was not held until May 1985, a pre-trial delay of some two years and seven months. The decision of the Court of Appeal was not given until September 1987, i. e. after an additional delay of some two years and four months². It is argued that this amounts to a violation of article 14, paragraph 3(c).

3.3 The authors further claim that the trial process as a whole was not conducted in a fair and

impartial manner, in violation of article 14, paragraph (1). They argue that the trial judge refused to provide the jury with an alternate instruction of manslaughter, though the evidence could clearly support such a verdict. Given the evidence that the bullet ricocheted more than once before injuring the victim, the absence of a post-mortem examination or medical evidence to assist the jury in determining exactly the cause of death, the lack of witnesses who could testify with any certainty as to the exact direction from which the shots were fired, the possibility that the shots were merely fired with the intent of scaring people and not of harming anyone, the fact that no one else was injured despite the number of people present and the number of shots fired, and the lack of evidence suggesting a motive for murder, it is submitted that the judge erred in failing to include a direction of manslaughter. In light of the fact that such a charge could have resulted in a sentence other than the death penalty, it is submitted that such a failure amounted to an arbitrary denial of justice.

3.4 The authors further alleged a violation of article 6, paragraph 2, because their sentence of death was imposed upon the conclusion of a trial in which the provisions of the Covenant have not been respected.

3.5 It is submitted that the same matter has not been submitted for examination under any other procedure of international investigation or settlement.

3.6 The authors contend that they have exhausted every possible domestic course of action which potentially might constitute a remedy. As regards the constitutional remedies which would be available to the authors under the Jamaican Constitution, it is submitted that in the absence of legal aid for filing a motion in the Jamaican Constitutional Court, recourse to the Jamaican Constitutional Court under section 25 of the Jamaican Constitution would not be a remedy available to the authors within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

State party's observations and counsel's comments thereon:

4.1 In its submission of 12 January 1996, the State party addresses the admissibility of the communication without explicitly contesting it. Instead, the State party denies that there is any merit in the authors' claims.

4.2 As to the alleged violation of article 14, paragraph 3(b) and 3(d), on the ground of lack of time with counsel to prepare an adequate defence, the State party submits that its duty is to provide persons with competent counsel to represent them, as was done here, and that it cannot be held responsible for the manner in which legal aid counsel conducts the case.

4.3 With regard to the alleged violation of article 14, paragraph 3(c), the State party notes that a preliminary hearing was held during the period of two years and seven months which lapsed from the authors' arrest until their trial, and it submits that neither this period nor the period of two years and four months which lapsed from their conviction to the date the appeal was decided can be considered as undue delay.

4.4 With respect to the alleged violation of the right to a fair trial, as provided for in article

14 of the Covenant, the State party submits that the trial judge's directions to the jury on the issues of identification and reasonable doubt, are matters which fall outside the Committee's jurisdiction. It is submitted that the exceptions to this principle, i.e. that the instructions were arbitrary or amounted to a denial of justice or that the judge otherwise violated his obligation of impartiality, are not applicable in this case.

5.1 In her submission of 22 February 1996, counsel did not agree to a combined examination of admissibility and merits. Counsel submits that the State party's assertion that it is not responsible for the manner in which legal aid counsel conducts the case is wrong in law. It is argued that while it is well settled that the Committee will not second-guess the professional judgement of assigned counsel, the Committee has made it clear that the State can and will be held liable for the ineffective conduct of counsel. Reference is made to the jurisprudence³ of the Committee.

5.2 As to the claim of undue delay in breach of article 14, paragraph 3(c), counsel points out that the authors were arrested three days after the murder took place, and, as such, that the State party was at the outset in possession of evidence of the alleged guilt of the applicants sufficient to warrant their arrest and detention. Counsel therefore asserts that without further explanation, the fact that a preliminary inquiry took place does not satisfactorily explain why a period of two years and seven months was required before trial. In this regard, counsel notes that the State party has not suggested that any specific problems arose during the preliminary inquiry that would warrant this delay. In conclusion, counsel submits, in light of the fact that all accused are to be considered innocent until proven guilty, that the delay of two years and seven months was excessive. Moreover, counsel notes that the aggregate of the periods of delay, from their conviction and sentencing in 1985 until the commutation of their sentences in 1995, resulted in 10 years on death row. Counsel submits that this delay is "undue" within the meaning of the Covenant.

5.3 As to the alleged violation of article 14, paragraph 1, counsel reiterates that the judge's refusal to leave the jury with the possibility of a manslaughter verdict amounts to a denial of justice which constitutes a violation of the Covenant.

Admissibility considerations:

6.1 During its 64th session, the Committee considered the admissibility of the communication.

6.2 With regard to the authors' allegation of a violation of article 14 on the ground of lack of instructions from the trial judge to the jury on the issues of manslaughter, the Committee reiterated that while article 14 guarantees the right to a fair trial, it is generally for the domestic courts to review the facts and evidence in a particular case. Similarly, it is for the appellate courts of States parties to review whether the judge's instructions to the jury and the conduct of the trial were in compliance with domestic law. The Committee can, when considering alleged breaches of article 14 in this regard, solely examine whether the judge's instructions to the jury were arbitrary or amounted to a denial of justice, or if the judge manifestly violated the obligation of impartiality. However, the trial transcripts made

available to the Committee did not reveal that the authors' trial suffered from any such defects. Accordingly, this part of the communication was inadmissible as the authors had failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.3 The Human Rights Committee therefore decided that the communication was admissible in so far as it may raise issues under article 14, paragraphs 3(b), 3(c) and 3(d), and consequently article 6, paragraph 2, and article 9, paragraph 3, of the Covenant.

Subsequent submissions from the parties:

7. In its Note of 14 April 1999, the State Party notifies the Committee that it has nothing to add to its previous submissions.

8. In her letter of 6 May 1999, counsel likewise states that she has no further comments to forward on behalf of the authors.

Issues and proceedings before the Committee:

9.1 The Human Rights Committee has considered the present communication in the light of all the information which has been made available to it, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 With regard to the authors' claim that in violation of article 14, paragraphs 3(b) and 3(d), they were denied adequate and effective legal representation in relation to the trial, the Committee recalls that sufficient time must be granted to the accused and their counsel to prepare the defence, but that the State party cannot be held accountable for lack of preparation or alleged errors made by defense lawyers unless it has denied the authors and their counsel time to prepare the defense or it should have been manifest to the court that the lawyers' conduct was incompatible with the interests of justice. The Committee notes that the authors' legal aid counsel were assigned in due time for the trial. Furthermore, neither counsel nor the authors actively requested an adjournment, and there is nothing else in the trial transcript which can suggest that the State party denied the authors and their counsel opportunities to prepare for the trial or that it should have been manifest to the court that the defence team was inadequately prepared. In the circumstances, the Committee finds that the facts before it do not show a violation of article 14 on this ground. Consequently, there has been no violation of article 6, paragraph 2, either.

9.3 Similarly, with regard to the alleged violation of the same provisions on the ground that the authors did not meet with their new counsel before the hearing of the appeal, the Committee notes that the new counsel in fact argued grounds of appeal on the authors' behalf before the Court of Appeal and that there is nothing in the file which suggests that the State party denied the authors and their counsel time to prepare the appeal or that it should have been manifest to the court that the lawyer's conduct was incompatible with the interests of justice. The Committee concludes, therefore, that there has been no violation of article 14, paragraphs 3(b) and 3(d), and, consequently, article 6, paragraph 2, on this ground either.

9.4 The authors have claimed to be victims of a violation of article 14, paragraph 3(c), both in regard of the trial and the appeal, as the trial was not held until 31 months after the arrest of the authors and the appeal was not decided until 28 months after the trial. With regard to the first period, the Committee found that it should be examined on the merits also under article 9, paragraph 3.

9.5 The Committee reiterates that all guarantees under article 14 of the Covenant should be strictly observed in any criminal procedure, and notes that the State party has merely argued that a preliminary hearing was held during the period which lapsed before the trial commenced and that neither this period nor the period before the appeal amounts to violations of the said provisions, without offering any further explanation. In the absence of any circumstances justifying these delays, the Committee finds that there has been a violation of articles 9, paragraph 3, and 14, paragraph 3(c), with regard to the first period, and article 14, paragraph 3(c), in conjunction with article 14, paragraph 5, with regard to the second period.

10. 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 disclose violations of article 9, paragraph 3, article 14, paragraph 3(c), and article 14, paragraph 3(c), in conjunction with article 14, paragraph 5.

11 In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide both Mr. Brown and Mr. Parish with an effective remedy, including compensation.

12. On becoming a State party to the Optional Protocol, Jamaica recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. This case was submitted for consideration before Jamaica's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12(2) of the Optional Protocol the communication is subject to the continued application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. The Committee wishes to receive from the State Party, within ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

** Pursuant to rule 85 of the Committee's rules of procedure, Mr. Rajsoomer Lallah did not

participate in the examination of the case.

1/ Reference is made to Communication No. 283/1988, Little v. Jamaica, Views adopted on 1 November 1991, paragraph 8.3; Communication No. 232/1987, Pinto v. Trinidad and Tobago, Views adopted on 20 July 1990, paragraph 12.5; Communication No. 272/1988, Thomas v. Jamaica, Views adopted on 31 March 1992.

2/ Reference is made to Communication No. 253/1988, Kelly v. Jamaica, Views adopted on 8 April 1992.

3/ Communication No. 353/1988, Lloyd Grant v. Jamaica, Views adopted on 31 March 1994; Communication No. 596/1994, Dennie Chaplin v. Jamaica, Views adopted on 2 November 1995; Communication No. 253/1987, Paul Kelly v. Jamaica, Views adopted on 8 April 1991; Communication No. 338/1988, Leroy Simmonds v. Jamaica, Views adopted on 23 October 1992; Communication No. 283/1988, Aston Little v. Jamaica, Views adopted on 1 November 1991.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]