12 of 1975

(12)

IN THE PRIVY COUNCIL No. 20 of 1974

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

B E T W E E N

MICHAEL DE FREITAS also called Michael Abdul Malik (Appellant)

AND

(1) GEORGE RAMOUTAR BENNY
(2) THE ATTORNEY GENERAL
(3) TOM ILES, Commissioner of Prisons (Respondents)

RECORD OF PROCEEDINGS

SIMONS MUIRHEAD & ALLAN,
40 BEDFORD STREET
LONDON WC2E 9EN

Solicitors for the Appellant

CHARLES RUSSELL & CO.
HALE COURT
LINCOLN'S INN
LONDON WC2 3UL

Solicitors for the Respondents

IN THE PRIVY COUNCIL No. 20 of 1974

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

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INDEX OF REFERENCE

EXHIBITS

NOTE: The Respondent's Solicitors objected to the inclusion of the documents and exhibits marked *

No. 20 of 1974

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD & TOBAGO

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No. 1

Amended Notice of Motion

In the High Court

No. 1

Amended Notice of Motion

20th December 1973

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 3290 of 1973

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962,

10 AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE

In the High Court

No. 1

Amended Notice of Motion

20th December 1973

(continued)

CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

TAKE NOTICE that his Honourable Court will be moved before the Honourable the Sitting Judge at the Court House, Port of Spain, on FRIDAY the 8th day of FEBRUARY, 1974, at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel can be heard on behalf of the above-named Applicant, for the following relief:-

1. A declaration that the passing of the judgment against the Applicant on the 21st day of August, 1972, that he be hanged by the neck until he be dead constitutes an imposition of and/or authority to impose cruel and unusual treatment and/or punishment of the Applicant and a contravention in relation to him of his right not to be so treated or punished guaranteed and protected by the authorities.

2. A declaration that the execution of the judgment given against the Applicant on the 21st day of August, 1972, that he be hanged by the neck until he be dead will constitute an imposition of and/or authority to impose cruel and unusual treatment and/or punishment of the Applicant and a contravention in relation to him of his right not to be so treated or punished and protected by the Constitution.

3. A declaration that execution of the judgment passed on the Applicant on the 21st August, 1972, that he be hanged by the neck until he be dead, would amount to a deprivation of his life other than by due process of law in contravention of the Constitution.

4. A declaration that the said judgment is wrong in law in that it contravenes the common law principle that a person convicted on the evidence of an accomplice ought to be recommended to mercy.

5. A declaration that the said judgment is wrong in law in that it authorises the infliction of a cruel and unusual punishment contrary to the Statute 1 W & M commonly known as the Bill of Rights.

6. An Order:-

(a) setting aside the judgment referred to in paragraph 1 above;

(b) directing that no warrant for the execution of the Applicant or for his delivery for such execution do issue;

(c) restraining the Respondents their servants and/or agents and each of them from taking delivery of and/or delivery the Applicant unto his or their custody for the purpose of executing the said judgment;

(d) restraining the Respondents their servants and/or agents from carrying into execution any warrant for the execution of the Applicant;

(e) that a less severe form of punishment be substituted. AND that such order as to the costs of and incidental to this application may be made as the Court shall think fit.

AND FURTHER TAKE NOTICE that the grounds of this application are as follows:-

1. That on the 21st day of August, 1972, the Applicant having been convicted of the offence that he, together with others, sometime between the 7th and 22nd days of February, 1972, did murder one Joseph Skerrit, was sentenced to suffer the penalty of death.

2. That consequent upon the said conviction and sentence the Applicant appealed to the Court of Appeal and sought leave to appeal to Her Majesty's Privy Council against the said conviction and sentence. The appeal to the Court of Appeal was dismissed and leave to appeal to the Privy Council was refused on the 26th November, 1973.

3. Since the 21st day of August, 1972 the Applicant has been and is still in custody at the Royal Gaol and no warrant for the execution of the Applicant has been issued.

4. In accordance with Section 59 of the Criminal Procedure Ordinance Ch.4 No.3 and sections 70,

In the High Court

No. 1

Amended Notice of Motion

20th December 1973

(continued)

71 and 72 of the Constitution the Governor General respite the execution of the Applicant for an indefinite period or substitute a less severe form of punishment.

Dated this 20th day of December, 1973.

Wong & Sanguinette

Applicant's Solicitors.

This Notice of Motion was taken out by Messrs. Wong & Sanguinette, of No.28 St. Vincent Street, Port of Spain, Solicitors for the Applicant. 10

To: GEORGE R. BENNY,
Registrar of the Supreme Court of Judicature,
Registrar & Marshal of the Supreme Court,
Registry,
Port of Spain.

and to THE ATTORNEY GENERAL,
Red House,
Port of Spain.

and to: TOM ILES,
Commissioner of Prisons, 20
Frederick Street,
Port of Spain.

No. 2

Affidavit of Michael Abdul Malik

31st January 1974

No. 2

Affidavit of Michael Abdul Malik

For hearing on Friday 8th February, 1974

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 3290 of 1973.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962 30

AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

I, Michael Abdul Malik at present a condemned prisoner at the Royal Gaol, Port of Spain, make oath and say as follows:-

1. I am the applicant herein.

2. On the 21st day of August, 1972, I was condemned to be hanged for the alleged murder of one Joseph Skerritt and for the past 17 months I have been living in a state of uncertainty about my eventual fate.

3. An appeal to the Court of Appeal of Trinidad and Tobago was dismissed and an application for special leave to appeal to Her Majesty's Privy Council was disallowed on the 26th November, 1973.

4. Since the 21st day of August, 1972, I have been incarcerated in a condemned cell at the Royal Gaol aforesaid.

5. The cell is approximately 8 feet 4 inches by 5 feet 10 inches wide of concrete floor and equipped with a bed. I am under constant observation; the light in my cell is never switched off.

6. Since I have been in the condemned cell there have been 5 executions the last of which was on the 25th September 1973.

7. On Thursdays (and this is well known to the condemned men) between the hours of 2 and 4 p.m. a Senior Prison Officer would enter through a door (which is kept closed at all times) and pace up and down along the passageway and then at sometime stop at the cell of the person who is to be executed on the following Tuesday. He starts with the words "Greetings", then reads the execution warrant and concludes by offering the condemned

In the High Court

Appellant's Evidence

No. 2

Affidavit of Michael Abdul Malik

31st January 1974

(continued)

man the food of his choice. If the terrified man does not order at the very moment this last indulgence is withdrawn. A guard is placed outside the man's cell to watch him 24 hours a day.

8. The condemned man chant hymns throughout Thursday night and by Monday night all the prisoners join in the "wake" for their short lived brother.

9. On Friday i.e. the next day, the condemned man is measured and weighed and thereafter this exercise takes place every day until he is hanged.

10. On the Monday morning following between the hours of 9 and 12 noon his relatives are admitted to say goodbye but he cannot be touched or his hands shaken or even kissed by his wife or mother or close relatives. There is great weeping and screaming and at times these relatives have to be carried away, being overcome with grief.

11. At 5.30 the next morning - the morning of execution the other condemned men are removed further away from the gallows but the prisoner is kept in a cell nearby. He is bathed, dressed in white shirt and white ¾ trousers, his hands are strapped behind his back and his feet also strapped. A strange white hood is placed over his head which gives him the appearance of being a member of the Ku Klux Klan. At 7 o'clock he is then executed and the flying of the trap is distinctly heard by the other men (we have heard it being greased every day since the reading of the warrant).

12. At around 9 a.m. the other condemned men are returned to their cells. It is a cruel and unusual treatment and punishment and contrary to the Constitution and the Bill of Rights. It is also a degrading punishment contrary to the Universal Declaration of Human Rights.

SWORN to at The Royal Gaol, Port of Spain, this 31st day of January 1974.) Michael Abdul Malik

Before me

M. A. Mohammed

Commissioner of Affidavits.

Filed on behalf of the Applicant herein.

No. 3

In the High Court

No. 3

Affidavit of Conrad Joseph Sanguinette

5th February 1974

Affidavit of Conrad Joseph Sanguinette

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 3290 of 1973

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962,

AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN SECTIONS OF 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

I, CONRAD JOSEPH SANGUINETTE, of No. 28 St. Vincent Street, in the City of Port of Spain, in Trinidad, Solicitor, make oath and say as follows:

1. I am a partner in the firm of Wong & Sanguinette, solicitors for the Applicant herein and I have the conduct of this matter.

2. Acting on the advice of Counsel for the Applicant a letter (a true copy of which is hereto annexed and marked with the letter "A") was delivered on the date it bears at the office of the Minister of National Security.

3. At the time of swearing to this affidavit, my firm has not had an acknowledgment or reply to the said letter.

4. I am informed by the Applicant, and I verily believe the same to be true, that since his conviction on the 21st August, 1972, apart from the usual routine examination by the Prison Doctors as to his physical condition, that is, by Drs. Massiah

In the High Court

No. 3

Affidavit of Conrad Joseph Sanguinette

5th February 1974

(continued)

and James, he has never been examined by a psychiatrist or any other specialist in psychological medicine as to the applicant's mental condition.

SWORN to at No. 28 St. Vincent Street, Port of Spain, this 5th day of February, 1974.) C.J. Sanguinette

Before me

M. A. Mohammed

Commissioner of Affidavits. 10

Filed on behalf of the Applicant herein.

EXHIBITS

Exhibits

"A" - Appellant's Exhibit. Letter, Appellant's Solicitor to The Hon. The Minister of National Security

"A"

Letter, Appellant's Solicitors to The Hon. The Minister of National Security

25th January 1974

This is the letter marked "A" referred to in the affidavit of CONRAD JOSEPH SANGUINETTE sworn to before me this 5th day of February, 1974.

Commissioner of Affidavits.

25th January, 1974.

The Honourable,
The Minister of National Security,
Ministry of National Security,
Knox Street,
Port of Spain.

Sir,

Re: Michael de Freitas also called Abdul Malik

We act on behalf of the above named Michael de Freitas also called Michael Abdul Malik, a condemned prisoner at the Royal Gaol, Frederick Street, Port of Spain.

There is now before our Supreme Court a Motion which seeks to have an order substituting a less form of punishment for the death penalty and it is fixed for hearing on the 8th February next.

We have been advised by Counsel that it is necessary to have a psychiatric report on our client and to this end we are asking your permission that he may be examined by a psychiatrist subject to your terms and conditions. It seems difficult to obtain the services of a local person and so it may become necessary to have such a person come from abroad either from the Caribbean or England.

In the circumstances, bearing in mind the date 8th February, we shall be grateful to hear from you at your very early convenience.

Yours faithfully,

CJS/mv. Wong & Sanguinette.

In the High Court

No. 4

Affidavit of Conrad Joseph Sanguinette

6th February 1974

No. 4

Affidavit of Conrad Joseph Sanguinette

HEARING: FRIDAY 8TH FEBRUARY, 1974

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 3290 of 1973

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962,

AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

I, CONRAD JOSEPH SANGUINETTE, of No. 28 St. Vincent Street, in the City of Port of Spain, in Trinidad, Solicitor, make oath and say as follows:-

1. I am a partner in the firm of Wong & Sanguinette, Solicitors for the Applicant herein and I have the conduct of this matter.

2. I have obtained from the official records, and verily believe the same to be true and correct, a list of the names of the condemned men now at the Royal Gaol as shown in the Schedule hereto attached and marked "G".

3. Further to my affidavit sworn to on the 5th day of February, 1974 a letter, a true copy of which is also hereto attached and marked with the letter "H" was received from the Ministry of National Security.

Sworn to at No.28 St. Vincent Street Port-of-Spain this 6th day of February, 1974.

C.J. Sanguinette

Before me

M. A. Mohammed

Commissioner of Affidavits.

Filed on behalf of the Applicant herein.

In the High Court

No. 4

Affidavit of Conrad Joseph Sanguinette

6th February 1974

(continued)

Exhibits

"G"

Schedule of Condemned Men in the Royal Gaol Port-of-Spain Trinidad

6th February 1974

"G" - Appellant's Exhibit. Schedule of Condemned Men in the Royal Gaol, Port-of-Spain, Trinidad

"G"

This is the Schedule referred to in the prefixed affidavit of Conrad Joseph Sanguinette sworn to at No.28 St. Vincent Street, Port-of-Spain, this 6th day of February, 1974.

Sgd. M.E. Mohammed

Commissioner of Affidavits.

NOS.	NAMES	DATE OF CONVICTION	COURT OF APPEAL
1.	Francis Cleghorn	26.10.1970	Dismissed 29.3.1971
2.	Isaac Phillip	26.10.1970	" 29.3.1971
(a)3.	Ivan Prince	22. 7.1971	" 1.2.1972
4.	Albert Thomas	3. 1.1972	" 31.5.1972
5.	George Torpee	18. 5.1972	" 1.5.1973
(b)6.	Michael Abdul Malik	21. 8.1972	" 17.4.1973
7.	Anthony Williams	19.10.1972	Appeal not yet heard
8.	Kitson Bromche	17.11.1972	" " "
9.	Balkeran Ragoonanan	22.11.1972	" " "
10.	John Jacob	13. 1.1973	" " "
11.	John Patrick	29. 1.1973	Dismissed 29.5.1973
12.	Ambrose Fermin	19. 2.1973	Appeal not yet heard
13.	Ramlogan Rattan	1. 3.1973	Dismissed 30.1.1974
14.	Zaid Ali	14. 6.1973	" date unknown
15.	Harry Charran	6. 7.1973	Appeal not yet heard
16.	Edward Chadee	15. 7.1973	" " "
17.	Stanley Abbott	15. 7.1973	" " "
18.	Vernon Paul	16. 7.1973	" " "
19.	Galvin Jeremy	16. 1.1974	" " "

(a) Leave to Privy Council refused - Date unknown
(b) Leave to Privy Council refused on 26.11.1973.

"H" - Appellant's Exhibit. Letter, The Permanent Secretary, Ministry of National Security to Appellant's Solicitor

Exhibits

"H"

Letter. The Permanent Secretary, The Ministry of National Security to Appellant's Solicitor

5th February 1974

This is the letter marked "H" referred to in the affidavit of Conrad Joseph Sanguinette sworn to before me this 6th day of February, 1974.

Sgd. M.E. Mohammed

Commissioner of Affidavits.

MINISTRY OF NATIONAL SECURITY,
KNOX STREET,
PORT-OF-SPAIN,
TRINIDAD AND TOBAGO.

5th February, 1974

Dear Sirs,

I am directed to refer to your letter on the above subject, dated 25th January, 1974, and addressed to the Honourable Minister of National Security.

I have to inform you that the Minister has not granted the permission sought in the third paragraph of your letter. Indeed, Prison medical records show that condemned prisoner Michael de Freitas is in good mental and physical health.

Yours faithfully,

E.F.H. Nunez,

Permanent Secretary,
Ministry of National Security.

Messrs. Wong & Sanguinette,
Solicitors etc.,
28 St. Vincent Street,
PORT OF SPAIN.

In the High Court

No. 5

Affidavit of Pascall James Tiernan

7th February 1974

No. 5

Affidavit of Pascall James Tiernan

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 3290 of 1973

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

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IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

I, PASCHAL JAMES TIERNAN, formerly of Trinidad but now stationed in Barbados, West Indies, make oath and say as follows:-

1. I am a Clerk in Holy Orders now attached to the Roman Catholic Church of Barbados.

2. There is now shown to me and marked "P.J.T.1" a statement prepared by me in connection with the above application.

3. The facts and opinions stated therein are to the best of my information knowledge and belief true and correct.

SWORN to at No.34 Belmont Circular Road, Port of Spain, this 7th day of February, 1974.) P.J. Tiernan

Before me,

M. A. Mohammed

Commissioner of Affidavits.

Filed on behalf of the Applicant herein.

"PJT.1" - Appellant's Exhibit. Statement on Capital Punishment as Applied in Trinidad and Tobago

Exhibits

"P.J.T.1"

Statement on Capital Punishment As Applied in Trinidad and Tobago

7th February 1974

This is the Statement marked "PJT" referred to in the affidavit of Paschal James Tiernan sworn to before me the 7th day of February 1974.

M.A. Mohammed

Commissioner of Affidavits.

10 STATEMENT ON CAPITAL PUNISHMENT AS APPLIED IN TRINIDAD & TOBAGO.

Rev. Father P.J. Tiernan, former Chaplain.

Introduction:

1.1 I became Prison Chaplain to H.M.Prison, Carrera in December, 1956. The following May (1957) I assumed the added duties of Chaplain to H.M. Prison, Royal Gaol, Frederick Street, Port-of-Spain. I continued in these posts until 31st May, 1972.

20 1.2 During my fifteen years association with Royal Gaol as Chaplain I assisted at approximately eighty (80) executions. I was very close to the men executed and in some cases met with their families on several occasions.

1.3 In this statement I should like to express my views on Capital Punishment in general, on the means of its execution in Trinidad and Tobago, and the effect it had on those taking part or involved in one capacity or another.

30 Capital Punishment:

2.1 Every act of murder which comes from a deliberate and free choice of the murdered has its origin in his personality. In addition it is an opposition of one person to another.

There is a strict unity between the person who commits the act and the act which he commits, and this unit has different aspects. It is related to

Exhibits

"PJT.1"

Statement on Capital Punishment As Applied in Trinidad and Tobago

7th February 1974

(continued)

the psychological, juridical, ethical and religious fields. These aspects are intimately inter-related and while a murderer may be examined under one of these aspects to the exclusion of the others it is impossible to form a valid concept of the murderer, his crime and its punishment without considering all four aspects together. In other words, the juridical aspect alone is not sufficient to enable a proper concept to be formed of murderer, crime or punishment.

2.2 The proper function of law and justice is to preserve the harmonious balance between duty, on the one hand, and law, on the other hand, and to re-establish this harmony where it has been disturbed.

2.3 Punishment does not directly affect the criminal act of murder, but the perpetrator of this act, namely the murderer who deliberately and freely performed the act. In its true and proper sense it can have no other meaning or purpose but to return the transgressor to the path of duty which he has deserted.

2.4 The crime of murder also clashes with the well-being of the social order. The element in the murderer which damaged this well-being must be removed so that the social order is restored and safeguarded.

The process of removing this offending element may be compared to the intervention of a doctor in the case of bodily illness. The doctor is concerned not merely with the symptoms but especially with the cause of the malady. He does his utmost to restore the body to full health. By working on the causes, and not merely the symptoms, he heals the ailing member. Only when the whole body is in danger of collapsing does he go to the extreme of cutting off the ailing member.

The murderer's own good, as is also the case with any criminal, and the common good of society demands that he, the ailing member, be made sound again. The symptoms are but indications of hidden causes which require therapy adapted to the illness, a cautious prognosis and a suitable preventive treatment. Only when it becomes

absolutely certain that society will continue to rot and decay and eventually crumble should the competent authority consider drastic remedies. What these are in practice must be determined by a society which is fully aware of the total problem, its causes and possible cures.

2.5 I disagree with views such as expressed by Sir John Anderson in the House of Commons debate, 1948 when he said, "I think ..... that the justification for the capital sentence ..... must be sought in the protection of the society and that alone ...." A transgressor is a member of society and society is responsible for his well-being. Only when all other efforts fail can society remove from its midst a hardened and unrepentent criminal whose aim is the destruction of society. It does not follow that this automatically permits the death penalty. There are other methods of removing a member from society.

2.6 There is need for vindictive punishment on occasion for certain crimes and offences. Judgement must be passed that the punishment fits the crime and is for the good of the perpetrator of the crime. There is an established order of what is good and righteous which must be safeguarded and respected. This norm requires, among other things, that, as in the case of the normal relations of men with one another, so also in the application of penal power, there be considered not only strict law but justice but also equity, goodness and mercy. Otherwise there is the danger that respect for law and justice is converted into the service of injustice. It is precisely because of this thought that remission of both medicinal and vindictive penalties be taken into consideration when there is moral certainty that the purpose of the punishment has been obtained and that there is a serious guarantee of its lasting character.

2.7 Human nature reacts spontaneously to punishment. This reaction fixed the perpetrator's mind on his crime, the cause of his punishment. This, in turn, generates a second reaction which is deliberately and freely willed. It may, be a voluntary acceptance of his punishment; it may be a passive resignation; it may be a deep bitterness which is total internal collapse; it may be a savage, though impotent, revolt. These last two

Exhibits

"PJT.1"

Statement on Capital Punishment As Applied in Trinidad and Tobago

7th February 1974

(continued)

psychological reaction generally stem from the idea that the punishment is harsh and unwarranted. It has the effect of preventing the punishment achieve its purpose, namely to return the transgressor, in this case a murderer, to the path of duty which he has deserted.

3.1 The above thoughts may be supplemented by the more common considerations expressed in various ways but which may be summarised as follows:

i) By taking life society disrespects life, the very opposite of the aim expected from the death penalty.

ii) Man's inhumanity to man is perpetrated.

iii) Society admits it has no other solution to a cause which it does not fully examine. It admits its despair, rejecting all hope of repentance, reform and rehabilitation, even before trying these most human sentiments. Not that these are sentimental values; they are a positive human recognition that there is good in the worst of men. It admits it has no other interest in the murderer than his death.

iv) Violence begets violence; the murderer's standard of barbarity becomes society's standard.

v) All life is sacred. Life is acknowledged by all as the basis of man's fundamental human rights. Nowhere is it stated that a State has the right to take life; this assumption cannot be proven with certainty. Therefore, to kill even those who kill is wrong.

vi) People react to mercy and kindness more than to justice and cruelty. Society should at least try to show a murderer the enormity of his crime and offer him the opportunity to reform.

vii) It cannot be established that capital punishment has any deterrent effect on other members of society.

viii) Innocent people are made to suffer for generations, namely the family and children of the executed man, who are stigmatised and, very often, accused of all crimes committed in their environment in later years.

Executions in Trinidad and Tobago:

4.1 One of the greatest injustices in Trinidad and Tobago is the length of time that evolves between the act of murder and the final decision of the courts. During this period the accused, who may or may not be guilty, is confined in most uncomfortable surroundings, made associate with persons who are known criminals, debarred of many rights such as freedom of movement, the enjoyment of family life etc. Those who are found guilty at the Assizes have to undergo a long period of mental cruelty in the Condemned Cells while they await final decision from higher courts and higher authorities.

4.2 In 1950 there were nineteen executions in England and Wales. In seven of these cases the length of time in the Condemned Cells was just under three weeks, in the other twelve just over six weeks, due to appeal.

4.3 Prior to Independence in 1962 the normal period spent in the Condemned Cells in Trinidad and Tobago was about five months. Since 1962 or thereabouts the length has increased so that now it is not abnormal for a condemned prisoner to spend two years, in several cases more than three years, awaiting decisions.

5.1 The environment of incarceration in the Condemned Cells is not fit and proper for modern-day standards of living. The Cells is not fit and proper for modern-day standards of living. The cells are small and claustrophobic; they have no furniture apart from a mattress on the concrete floor. There is little exercise offered, very often only one hour per week, and at one period absolutely none for almost six weeks. (This was due to abnormal circumstances, but, nevertheless, the circumstances of the condemned are also abnormal). There is a most boring monotony, the only relief being a Rediffusion Box. There are many cockroaches, though the cell division is clean. The smell from

Exhibits

"PJT.1"

Statement on Capital Punishment as applied in Trinidad and Tobago

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(continued)

the toilet and the pans which the men use in their cells is often revolting.

5.2 While the courts may pass sentence in all justice those to whose care they commit the murderer are not well selected, not well trained and serve only as custodians of the prisoners. The standard of education of prison officers is low. This has no good effect on a prisoner; in many cases it can have an adverse effect as he may try to take his revenge as a representative of society which has inflicted on him a harsh punishment.

5.3 There have been several cases of attempted suicide, due largely to the long delay and its subsequent mental anguish on the prisoner.

6.1 Prisoners are allowed two visits per week in the Condemned Cell Block. Each is permitted a total of fifteen minutes per visit. Only one person may visit at a time so that if two or more come the time is divided between those visiting. The visits take place within the hearing of other Condemned Prisoners and under the close supervision of two or more prison officers. This visit has the added and cruel embarrassment and agony of being conducted through a close-mesh wire grill put in place specially for the visit. It was quite a common occurrence for the prison officer in charge of the visitors to hasten the period of the visit.

7.1 The Commissioner of Prisons is informed by the Attorney-General's department that the Governor-General has signed the warrant and a date is decided upon for the execution. Executions always take place at 7.00 a.m. on a Tuesday morning. The prisoner is not informed until the Thursday afternoon prior to execution. The warrant is read almost always on a Thursday afternoon but on one or two occasions it was read on a Friday morning. This procedure causes intense mental anguish in each prisoner each week, normally commencing about Tuesday in anticipation and continuing until Friday. The thought is never out of his mind at any time during the week. This, in my opinion, is the most severe and unwarranted punishment inflicted in the Condemned Cells.

8.1 The mentality of the prisoner on the day of execution depends, in my view, on the prison chaplain who has prepared him for death and who accompanies him to the gallows. Nevertheless, this does not mean that death is easy for the prisoner. When the prison chaplain cannot prepare the prisoner, either because of his own or the prisoner's personality, death is more cruel.

8.2 The peace of the prisoner is often upset by nervousness on the part of those present in or outside his cell in the period before the execution, normally about ninety minutes. If the prison officers are nervous or restless, if they shuffle and move slightly, the effect is passed on to the prisoner. If the chaplain is not solid and strengthening, if he cannot convice the prisoner of the mercy of God the prisoner can lose hope. If the hangmen fumble when buckling the leather straps on the prisoner's hands and feet he can also become more upset. This last mentioned action takes place in the seconds immediately preceding the act of execution.

9.1 Each and every execution has its effect on many people.

i) The eye-witnesses are never left unmoved. They, more than others, realise what has taken place, namely that a man's life has been taken and in some special way they have been part of this act. There is often the gnawing fear that an innocent man may have been killed.

ii) Other prisoners suffer undue and unnecessary strain. They are aware that an execution is taking place. They are confined to their cells until after 8.00 a.m. on the morning of execution. This tension in them can cause harshness and hatred against a society which has inflicted this penalty on a fellow prisoner. Due to the long period he spent in the Remand Yard many would have known him personally.

iii) The other condemned prisoners suffer unduly and unnecessary in the punishment of the person to be executed. They share in this before, during and after the actual execution. It brings the immensity of the punishment they are to endure before them and not with salutary effects.

Exhibits

"PJT.1"

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iv) The relatives, in a small country such as this, are made the object of curiosity of hundreds of people. When a 'celebrity' is executed they are pictured in the newspapers and become well known in a manner which is unjust and cruel. As said in 3.1 above, they are made to suffer for generations.

v) A morbid and unhealthy curiosity is aroused in many members of society. It was because of this that in August 1957 a decision was taken to perform the post mortem on an executed man inside the prison. On that occasion thousands of persons had crowded the General Hospital (Colonial Hospital, as it was then named) to get a glimpse of the corpse. When it was known that there had been an execution many people awaited the corpse at the "Paupers' Graveyard" in St. James. This no longer is the burying ground and all executed prisoners are buried in Golden Grove Prison compound.

vi) The Mass Media often display an inordinate interest in certain condemned prisoners and I was frequently approached for information regarding the prisons in general about the condemned men and their last moments in particular. On one occasion about 1963 I was approached by the television authorities to use my influence to have them film an execution.

10.1 A prisoner knows when he loses his appeal in the Supreme Court. However, he is not informed when his appeal to Privy Council is turned down. Nor is the decision of the Mercy Committee relayed to him. This, again, is cruel. It means that should he wish to make some further effort he is not able because he knows the decision of these two courts of appeal only when his death warrant is read to him on the Thursday prior to execution. Admittedly there seems to be no loop-hole left but the prisoner is not fully aware of this and he wants to fight for his life.

10.2 Almost all prisoners doubt the impartiality of the Mercy Committee. The number of cases which they have reprieved would seem to be small and in certain cases there were circumstances which might indicate that the Mercy Committee might have been influenced by persons outside its rank.

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11.1 There are certain considerations about the condemned prisoners which are of importance.

i) In my fifteen years I cannot recall a single well-educated man in the condemned cells. The standard of education was below average and a very large percentage of the condemned men could not read or write with any expertise, several, indeed, being able to do no more than write their names. This would indicate, perhaps, that had they been more educated they either would not have perpetrated the crime would have been able to get off the death sentence. Education can and should make men law abiding. Were these condemned men subjected to an intensive educational programme they could be transformed, reformed and rehabilitated.

(ii) Not once did I meet a man of any religious affiliation who practised his religion anyway regularly outside prison.

(iii) The impression I had was that a large number had been to previous institutions such as Orphanages or the Youth Training Centre. Obviously sufficient had not been done for them there and these institutions could be looked into with a view to modernising their methods and staffs.

(iv) Prisoners, generally, in the condemned cells held a deep bitterness against society at large and the judge who sentenced them. They always felt that a grave injustice had been done to them.

12.1 Society normally acts through its legal authorities. In the past while these were competent in many fields they were not competent in all fields of life. Nor are they supported by modern knowledge and science. In many areas advancing knowledge, while sought after by the competent authorities in many of its responsibilities, was ignored or omitted in certain departments. This is true in Trinidad and Tobago with regard to punishment and rehabilitation. While other countries have updated penalties this nation has done little or nothing. Indeed, it would appear that neither society in general nor the authorities in particular are interested in doing anything about updating their attitudes towards punishment and rehabilitation. The general impression would

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appear to be to take the easiest way out by leaving the methods of punishment of the past alone.

12.2 In spite of assertions by both Prison Authorities and Government there is absolutely no serious attempt to reform prisoners of any class in Trinidad and Tobago. Nor is there any competence in the Prison Service to do this. These remarks also apply to those suffering humiliation and mental torture in the Condemned Cells.

12.3 As the chaplain I was never approached to express my views when a man's case was under review. I take this as an indication that punishment is regarded as purely vindictive in our Society and that the possibility of reform and rehabilitation is not seriously entertained. There have been prisoners who certainly could have been reformed but who were executed.

12.4 There were several prisoners who caused a certain amount of trouble in the condemned cells. This was to be expected in an environment where all hope had been taken away, where mental torture was forced on them and where they could express themselves in no other meaningful manner than by being troublesome and vindictive.

13.1 It has been my impression that the authorities have retained the death penalty for no other reason than that of convenience. It is easier for them to execute and forget than to remit and commit to incarceration with the subsequent problems of sufficient staff and added financial burdens. With regard to staff numbers I am quite sure that less numbers would be required to oversee all those who have been executed in the past seventeen years than are required now to oversee two blocks of condemned cells twenty-four hours per day. If the financial aspect has played any part in delaying the abolition of capital punishment then our society could not be more rotten.

No. 6

In the High Court

No. 6

Affidavit of George Ramoutar Benny

7th February 1974

Affidavit of George Ramoutar Benny

TRINIDAD AND TOBAGO For hearing on the 8th February, 1974

In The High Court of Justice

No. 3290 of 1973

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN SECTIONS OF 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

I, GEORGE RAMOUTAR BENNY, of 48 Real Spring Avenue, Valsayn, in the Ward of Tacarigua, in the Island of Trinidad make oath and say as follows:-

1. I am the Registrar and Marshal of the Supreme Court of Trinidad and Tobago. As Marshall of the Supreme Court of Trinidad and Tobago, every warrant for the execution of any prisoner sentenced to death is directed to me, and I have the duty and responsibility of carrying the said warrant into execution.

2. When a convicted felon is ordered to suffer death by hanging, every effort is made to ensure that the execution is carried out without suffering. Everything is done to ensure that death results from dislocation or fracture of the cervical vertebrae with instantaneous loss of consciousness.

3. The condemned prisoner, before execution, is weighed and measured to ensure that on execution death will be instantaneous on the drop.

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(continued)

4. In the case of every execution which I have attended, death according to the medical report has in fact been caused by dislocation or fracture of the cervical vertebrae without any pain or suffering.

SWORN at the Red House, Port-of-Spain on the 7th day of February, 1974.) George R. Benny

Before me

R.L. Bynoe

Commissioner of Affidavits

Filed on behalf of the Respondent, George Benny

No. 7

Formal Order of Braithwaite J.

8th February 1974

No. 7

Formal Order of Braithwaite J.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 3290 of 1973

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

Dated and Entered the 8th day of February, 1974

In the High Court

No. 7

Formal Order of Braithwaite J.

8th February 1974

(Continued)

Before The Honourable Mr. Justice Braithwaite

Upon Motion this day made unto this Court by Counsel for the applicant

And Upon Reading the Notice of Motion dated 20th December, 1973, the affidavit of the Applicant filed on 31st January, 1974, the affidavits of Conrad Sanguinette both filed herein on 6th February, 1974, together with their attached exhibits, the affidavit of George R. Benny filed on the 7th February, 1974 and the affidavit of Paschal James Tiernan filed on the 7th February, 1974 together with the exhibit attached thereto.

And Upon Hearing Counsel for the Applicant, the Solicitor-General for the 1st and 2nd named Respondents and the Deputy-Solicitor General for the 3rd Respondent

This Court Doth Order that the said Notice of Motion be and the same is hereby dismissed with no order as to costs.

G.A. Edoo

Deputy Registrar.

No. 8

Judgment of Braithwaite J.

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TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 3290 of 1973

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

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(continued)

1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

Louis Blom-Cooper, Q.C., and with him Allan Alexander and Frank Solomon, for the applicant.

Alcalde Warner, Q.C., for the Attorney General, and Clebert Brooks with him.

Clinton Bernard for the Commissioner of Prisons, and the Registrar of the Supreme Court.

Before the Honourable

Mr. Justice John A. Braithwaite

JUDGMENT

I heard arguments on this motion on the 8th of February, 1974 and at the close of these arguments I dismissed the motion and promised to deliver a written judgment on the 15th of February. This I now do.

This is a motion in which the applicant is seeking redress under section 6(1) of the Constitution of Trinidad and Tobago. This subsection reads as follows:-

> "6.(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing sections or section 7 of this Constitution has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress."

But for the provisions of this subsection, I would have had little hesitation in deeming the applicant's motion an abuse of the process of this Court. As it is, I think that the subsection gives the applicant the right (in addition to any other rights he may have under the law) to come to the High Court for the vindication of his

human rights and fundamental freedoms, however unreal or imagined they may eventually turn out to be.

Why I say this is because of the provisions of section 3(1) of the Constitution. This is how that subsection reads:-

> "3.(1) Sections 1 and 2 of this Constitution shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of this Constitution."

The Constitution commenced on the 31st of August, 1962. On the 3rd day of April, 1925, an Ordinance came into force in Trinidad and Tobago, the short title to which is thus cited:

> "1. This Ordinance may be cited as the Offences Against the Persons Ordinance."

Section 4(1) of this Ordinance provides that "Every person convicted of murder shall suffer death as a felon."

If my arithmetic is right, the 3rd of April, 1925 is a date before the commencement of the Constitution, that is to say, the 31st of August, 1962.

I therefore think it safe to state, subject to what I shall set out later, that the law as it was on the 3rd of April, 1925, relating to capital punishment, is the law today.

I turn now briefly to the provisions of section 59 of the Criminal Procedure Ordinance, Ch.4, No.3, which came into force on the 2nd of June, 1925 (again, assuming my mathematics are in order, a date well before the 31st of August, 1962). This section provides thus:-

> "59. Every warrant for the execution of any prisoner under sentence of death shall be under the Public Seal of Trinidad and Tobago and the hand of the Governor-General, and shall be directed to the Marshal, and shall be carried into execution by such Marshal or his assistant at such time and place as shall be

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mentioned in such warrant; and such warrant shall be in the form A in the Third Schedule hereto, and there shall issue in every such case a warrant for the delivery of such prisoner by the Keeper of the Royal Gaol to the said Marshal for the purpose of such execution, and such last-mentioned warrant shall be under the Public Seal of Trinidad and Tobago and the hand of the Governor-General, and shall be in the form A in the Third Schedule.

The form of warrant is set out in Form A of the Third Schedule and reads thus:

"THIRD SCHEDULE

FORM A

TRINIDAD AND TOBAGO

GEORGE the Sixth by the Grace of God of Great Britain, Northern Ireland and the British Dominions beyond the Seas King, Defender of the Faith.

To the Marshal.

GREETING:

Whereas (A.B.), late of ..... has been indicated for felony and murder by him done and committed, and the said (A.B.) having been thereupon arraigned before the Supreme Court of Trinidad and Tobago at its Session held on the ..... day of ..... in the year of our Lord one thousand nine hundred and ..... and having upon such arraignment pleaded NOT GUILTY (or GUILTY, as the case may be), the said (A.B.) has before the said Court in its aforesaid Session been tried and in due form of law convicted thereof: And whereas judgment has been given by the said Court, that the said (A.B.) be hanged by the neck until he be dead, the execution of which judgment yet remains to be done, I, ... Governor-General of Trinidad and Tobago, do by these presents require and strictly command you that upon ..... the .....day of .....in the year of our Lord one thousand nine hundred and ..... between

the hours of six in the forenoon and twleve at noon of the same day, him the said (A.B.) at the Royal Gaol to you to be delivered, as by another writ to the Keeper of the said Royal Gaol is commanded, into your custody, you then and there receive, and him in your custody so being cause execution to be done upon the said (A.B.) in your custody so being in all things according to the same judgment: And this you are by no means to omit at your peril."

As I see it, this is the law and the procedure applicable to the execution of a prisoner convicted of murder. Moreover, I find that section 3(1) of the Constitution plainly and unequivocally preserves both the substantive law and the procedures laid down in the Ordinances to which I have referred. And this law, these procedures, and the penalty under section 4(1) of the Offences Against the Persons Ordinance (herein referred to "the existing law",) have been usual since 1925. What is more is that the very clear and mandatory provisions of section 3(1) of the Constitution specifically exclude the operation of sections 1 and 2 thereof from affecting the operation of law passed before the 31st of August, 1962. This is why I thought Senior Counsel's comparison of these two sections together with section 6 with the 8th and 14th amendments to the Constitution of the United States and his reference to several dicta of the Judges of the Supreme Court of the United States in the case of Thurman vs. The State of Georgia wholly inapplicable in the instant application. This is, to my mind, so because there is no exclusive provision in the U.S. Constitution similar to that in section 3(1) of the Constitution of Trinidad and Tobago. To put it another way, the doctrine (if I may call it that) of "cruel and unusual treatment or punishment" as contemplated by the Constitution of the United States has no application to the execution of penalties provided for by laws which came into force before the commencement of the Constitution. In fact, not even section 2 of the Trinidad and Tobago Constitution where the term "cruel and unusual treatment or punishment" occurs has any application to the existing law.

The validity of existing law has not been questioned in any respect either in this country or in the United Kingdom to which we still look for judicial guidance. This is what the Privy Council

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said about a similar case which, if anything, seemed to merit judicial interference much more than the instant one. I refer to the case of Runyowa v. Reginam (1966) 1 All E.R. p.633 at p.634 where Lord Morris of Borth-y-Gest says this (inter alia):

> "A legislature may have to consider questions of policy in regard to punishment for crime. For a particular offence a legislature may merely decree the maximum punishment and may invest the Courts with a complete discretion as to what sentence to impose - subject only to a fixed maximum. There may be cases, however, where a legislature deems it necessary to decree that for a particular offence a fixed sentence is to follow. As an example a legislature might decide that on conviction for murder a sentence of death is to be imposed. A legislature might decide that on conviction of some other offence some other fixed sentence is to follow. A legislature must assess the situation which have arisen or which may arise, and must form a judgment as to what laws are necessary and desirable for the purposes of maintaining peace, order and good government. It can hardly be for the courts, unless clearly so empowered or directed, to rule as to the necessity or propriety of particular legislation. Nor can it be for the courts, without possessing the evidence on which a decision of the legislature has been based, to over-rule and nullify the decision. As QUENET, A.C.J., said (in Gundu's case (9)), if once laws are validly enacted it is not for the courts to adjudicate on their wisdom, their appropriateness or the necessity for their existence. The provision contained in s.60 of the Constitution enables the court to adjudicate whether some form or type or description of punishment, newly devised after the appointed day or not previously recognised, is inhuman or degrading, but it does not enable the court to declare an enactment imposing a punishment to be ultra vires on the ground that the court considers that the punishment laid down by the enactment is inappropriate or excessive for the mandatory death sentence (and may so compel even where aiding or

> abetting or assisting is by acts with, though proximate to an offence, are relatively trivial) it can be remembered that there are provisions (e.g. s.364 of the Criminal Procedure and Evidence Act in Southern Rhodesia) which ensure that further consideration is given to a case."

Notwithstanding the efforts of Senior Counsel for the applicant to distinguish this authority from the instant application (and he made these efforts only en passant) I considered the learned Judge's dictum most appropriate to the present application. To put it as concisely as I can, a Judge cannot and should not interfere with a penalty for a crime which has been fixed by the legislature, if the Law (Act or Ordinance) has been properly passed by the legislature. There is no question that the Offences Against the Persons Ordinance or the other Ordinances referred to have not been properly passed. What happens after the sentence of the Court is passed, and confirmed by the appellate Courts, that is to say, the Court of Appeal of Trinidad and Tobago and the Judicial Committee of Privy Council, clearly cannot be challenged in the High Court of Trinidad and Tobago. In this context may I say this:

The applicant was properly tried by Mr. Justice Evan Rees and ajury. The jury found him guilty of murder and he was sentenced to death. The applicant appealed to the Court of Appeal of Trinidad and Tobago. His appeal was dismissed and his conviction and sentence confirmed. Thereafter the applicant appealed to the Judicial Committee of the Privy Council and again his appeal was dismissed. The applicant's Counsel referred me to the ancient authority of Hawkins Pleas of the Crown Vol.11 at page 603, Sec.92, which reads as follows:

> "it hath also been determined, that a prisoner may be legally convicted on the evidence of an accomplice, though unconfirmed by any other evidence. But it seems to be the general opinion, that unless some fair and unpolluted evidence corroborate and give verisimilitude to the testimony, a person convicted under such circumstances ought to be recommended to mercy,"

and I got the impression that he was saying that

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this Court was vested with powers under the Constitution to make a recommendation of mercy on behalf of the applicant. It is my view that this Court, and for that matter none of the appellate Courts, are vested with that power by the Constitution or any other law. The only judicial authority who has any constitutional position in the exercise of the prerogative of pardon is the trial judge himself and his function in this connection is restricted to furnishing a report to the Advisory Committee on the Prerogative of Mercy. This is specifically provided for by section 72(1) of the Constitution which reads as follows:

> "72.(1) Where an offender has been sentenced to death by any Court for an offence against the law of Trinidad and Tobago, the Minister shall cause a written report from the trial Judge, together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee."

I now refer to section 70(1) of the Constitution which reads as follows:

> "70.(1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf -
>
> (a) grant to any person convicted of any offence against the law of Trinidad and Tobago a pardon, either free or subject to lawful conditions;
>
> (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence;
>
> (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
>
> (d) remit the whole or any part of any sentence passed for such an offence or

any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

The only comment I wish to make on this subsection at this stage is that in his prayer for redress the applicant is seeking the same reliefs as are specially by the subsection in the grant of the Governor-General acting in Her Majesty's name and on her behalf. I shall deal with this aspect more fully below.

I now set out the provisions of section 71 of the Constitution:

> "71. There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of -
>
> (a) the Minister referred to in subsection (2) of section 70 of this Constitution, who shall be Chairman;
>
> (b) the Attorney-General; and
>
> (c) not more than four other members appointed by the Governor-General, acting in accordance with the advice of the Prime Minister."

Among other things, Counsel for the applicant took great exception to the composition of the Advisory Committee. He thought for example, that the Attorney-General, who he opined was the country's chief prosecutor, should not be on this Committee. He thought further that there was no evidence that this Committee operated judicially or, as he put it, even-handedly. In a word, he suggested that this provision of the Constitution was wrong, according to what standards, he did not say.

This Counsel did agree that the Advisory Committee on the Prerogative of Mercy (herein referred to as "the Committee") was a direct descendant of the person vested with advising on the exercise of the Queen's prerogative of mercy, but then he argued that the Committee, composed as it is, is capable of acts of discrimination thereby depriving one person of his life and

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allowing another person to live, albeit in prison, for an indeterminate time. I thought that this particular argument was, to say the least, unfortunate. I did not think, however, that Counsel intended to insult the Constitution but he certainly did arouse the ire of the Solicitor-General - and understandably so. After all, no Counsel in Her Majesty's Courts in the United Kingdom, would dare, in open Court or for that matter elsewhere, to criticise adversely the integrity and impartiality of decisions of the Home Secretary in those days when that official and his advisers were vested with the power of advising the Sovereign on the prerogative of mercy in cases where the death penalty had been imposed. I do not see why it should be done here.

What, perhaps, senior counsel did not appreciate was that section 72(3) provides that "the Minister shall not be obliged in any case to act in accordance with the advice of the Advisory Committee." So that it really does not lie with the Committee to have the final say in any case. The power given to the Minister is a purely ministerial and certainly not a judicial one. It is not intended by the Constitution so to be, and until this provision of the Constitution is changed, it cannot be challenged as being constitutionally wrong.

May I say one word here. The question of "due process" has been gone into in great detail by Phillips, (then acting C.J.) in LaSalle v. The Attorney-General (Appeal No.2 of 1971). I mention it because it was discussed at some length before me. The only thing I would like to say on this point is that the "due process of law" is completed when the Courts of Law have finished their respective tasks. I do not think that the Court is required personally to supervise the operation of the prisons, their executioners or their staff. I do not think that this Court is required to oversee the Ministry of National Security or its subsidiary departments. If, of course, any wrong is committed in the prisons (civil or criminal) or any constitutional right is infringed, the Court will take cognizance of the act; but the Court cannot be burdened with the day to day problems or administration of a prison. The work of the Courts is done when a

convicted prisoner is delivered into the hands of the Commissioner of Prisons. By convicted prisoner I mean a prisoner who has run the full gamut of the appellate procedure and whose appeals have been universally rejected.

One of the things the applicant is inviting me to do is to impose a penalty lesser than the penalty of death. How can I accept this invitation! I am a Judge of the High Court and I have no power whatever, either under the Constitution or the Law, to change or vary a sentence which is fixed by the law. I go further and say that neither the Court of Appeal of Trinidad and Tobago nor the Judicial Committee of the Privy Council is vested with the power to reduce the penalty of death for a murder committed in Trinidad and Tobago.

Senior Counsel also suggested that I was empowered to grant a reprieve or a respite of execution to the applicant. Counsel referred me to the case of Taitt v. The Queen (1963) V.R.532, and (1963) 36 A.L.J.R. 330. Taitt was a man whose mental health became bad after he was sentenced to death. A superior Court decided that he should not be executed until he regained his sanity.

While I am not over-familiar with the Constitution of Australia and in particular with the powers and functions of Australian Judges, I think, in all humility, that I am on fairly well acquainted terms with the Constitution of Trinidad and Tobago and with the powers and functions of Judges in Trinidad and Tobago. There can be little doubt that Section 6 of the Constitution gives the Judges of the Supreme Court of Judicature almost unlimited power to deal with matters falling within the scope of the section. I quote subsection (2) of the section:

> "(2) The High Court shall have original jurisdiction -
>
> (a) to hear and determine any application made by any person in pursuance of sub-section (1) of this section;
>
> (b) to determine any question arising in the case of any person which is referred to it in pursuance of section (3) thereof,

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and may make such orders, and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the said foregoing sections or section 7 to the protection of which the person concerned is entitled."

Subsection (4) gives a person aggrieved by any determination of the High Court a right to appeal to the Court of Appeal.

Like any other legal or legislative document, the Constitution has to be construed as a whole, and however wide and unlimited may be the powers of the Court, sitting in its constitutional jurisdiction (if I may coin a phrase), it is my view that these wide and unlimited powers are checked by the provisions of sections 70 - 72 of the Constitution, so far as the execution of the death penalty is concerned.

And rightly so. From time immemorial the prerogative of mercy rested with the Executive arm of Government. Originally in the United Kingdom this prerogative was exercised by the sovereign, and more recently by the Home Secretary who advised the sovereign in the matter. In Trinidad and Tobago, prior to the commencement of the Constitution, the prerogative of mercy was vested in the Governor of Trinidad and Tobago acting as the sovereign's representative in this country.

After the 31st of August, 1962, the prerogative of mercy or pardon in Trinidad and Tobago was transferred to the Governor-General who exercises that Prerogative in the name of the Sovereign in accordance with the advice of a Minister designated by him acting in accordance with the advice of the Prime Minister.

This is a prerogative, the exercise of which has always vested in the Sovereign or his duly appointed representative. It has never been vested in the Courts and, in my view, should never be. As it is put at p.321 of the Eighth Edition of Wade & Phillips on Constitutional Law: "The prerogative of pardon is essentially an executive act and should not involve judicial issues."

The only function, as I have said above, which a Judge is enabled to carry out in relation to the exercise of the prerogative of pardon is that set out in section 72(1) of the Constitution, that is to say, to supply the Minister with a written report of the case.

I am satisfied that this Court has no power or jurisdiction to do any of the things set out and sought in the applicant's notice of motion. To hold otherwise would seem to me to be contrary to both the spirit and letter of the Constitution and would amount to a serious trespass by the Courts on the time-honoured and well established constitutional preserve of the Executive arm of Government.

What Counsel for the Applicant was asking me to hold, as he finally summarised it, was that the death penalty as imposed and executed in Trinidad and Tobago was unconstitutional. This I could not do. In addition to all the matters to which I have adverted above, section 72 of the Constitution by the clearest possible implication recognises the existence, validity and constitutionality of that sentence.

In a word, I found no substance nor merit whatever in the legal arguments of the applicant's Counsel.

Counsel for the applicant did raise at great length a number of matters which, though I found not relevant to main issues in the application seem important enough for me to give them some attention in this judgment. Before I go into these matters, may I say that I was satisfied by the affidavit of the Registrar and Marshal of the Supreme Court that weighing and measurement of the condemned prisoner is necessary in his own interest, and that the actual execution is painless and that death is instantaneous. What seems to me to be the most substantial complaint of Counsel is contained in the affidavits of Fr. Tiernan, the applicant himself, and the applicant's Solicitor. No affidavits were filed in reply thereto, so I have to regard the contents of these affidavits as being true and correct. At least, for the purpose of this application. These

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Judgment

15th February 1974

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documents speak for themselves and illustrate, among other things, the delay in carrying out executions and the mental anguish caused to the condemned man by the several acts preparatory to his execution.

Among other authorities to which I was referred by Senior Counsel for the applicant was the Report of the Royal Commission on the abolition of Capital Punishment in the United Kingdom. It is my own view that all these matters should be aired before such a Commission or, for that matter, should be brought to the attention of the Advisory Committee on the Prerogative of Mercy, as well as the Minister designated under section 70(2) of the Constitution.

In the circumstances, I am left with no other alternative but to dismiss the application. There will be no order as to costs.

Dated the 15th day of February, 1974

John A. Braithwaite,

Judge.

NOTE:- After delivering this judgment one of the junior counsel for the applicant applied for a stay of the execution of my order dismissing the application. I, after some consideration, refused the application and suggested that he move the Court of Appeal for a stay of execution of the Order.

John A. Braithwaite,

Judge.

In the Court of Appeal

No. 9

Notice of Appeal

15th February 1974

No. 9

Notice of Appeal

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No.13 of 1974.
High Court Action No. 3290 of 1973

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

TAKE NOTICE that the Appellant/Applicant being dissatisfied with the judgment more particularly stated in paragraph 2 hereof of the High Court sitting in Port-of-Spain contained in the judgment of the Honourable Mr. Justice Braithwaite, dated the 8th day of February, 1974, doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek relief as set out in paragraph 4.

AND the Appellant further states that the names and addresses, including his own, of the parties directly affected by the Appeal are set out in paragraph 5.

2. The Appellant further complains of the whole of the judgment of the Honourable Mr. Justice Braithwaite dated the 8th day of February, 1974, to wit: - "that the Motion be dismissed".

3. GROUNDS OF APPEAL:

1. The judgment of the learned Trial Judge is

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15th February 1974

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unreasonable and cannot be supported having regard to the evidence.

2. The learned Trial Judge erred in law in holding that the Court had no jurisdiction to hear and determine the application of the several reliefs claimed.

3. The learned Trial Judge was wrong in law in holding that the death penalty as at present administered does not constitute a cruel and unusual punishment and consequently unconstitutional.

4. The learned Trial Judge was wrong in law in holding that the proceedings at the "Mercy Committee" are not discriminatory and offend against requirement of due process of law as guaranteed by the Constitution.

4. That the judgment of the learned Trial Judge of the 8th February, 1974, be set aside and that judgment be entered for the Appellant in terms of the Notice of Motion with costs of this Appeal and in the Court below.

5. PARTIES DIRECTLY AFFECTED BY THIS APPEAL:

1.	MICHAEL DE FREITAS also called MICHAEL ABDUL MALIK	Condemned Prisoner at the Royal Gaol, Port of Spain.
2.	GEORGE R. BENNY	c/o The Crown Solicitor
3.	THE ATTORNEY GENERAL	c/o The Crown Solicitor
4.	TOM ILES	c/o The Crown Solicitor

Dated this 15th day of February, 1974.

Filed by Messrs Wong & Sanguinette, of No. 28 St. Vincent Street, Port of Spain, Solicitors for the Appellant/Applicant.

(Sgd.) Wong & Sanguinette
Solicitors.

To the Registrar of the High Court of Justice:
and to The Crown Solicitor,
7 St. Vincent Street,
Port of Spain.
Respondents' Solicitor.

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Judgment of Sir Isaac Hyatali, Chief Justice

In the Court of Appeal

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30th April 1974

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 13 of 1974

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

BETWEEN

MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK

Appellant

AND

GEORGE R. BENNY, Registrar of the Supreme Court
THE ATTORNEY GENERAL
TOM ILES, Commissioner of Prisons

Respondents

Coram: Sir Isaac Hyatali, C.J.
C.E. Phillips, J.A.
M.A. Corbin J.A.

April 30, 1974

L. Blom-Cooper, Q.C. and Allan Alexander, for the Appellant.

Alcalde Warner, Q.C., Solicitor General, and C.Brooks,

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State Counsel, for the Registrar, Supreme Court and the Attorney General.

C. Bernard, Deputy Solicitor General, for the Commissioner of Prisons.

JUDGMENT

Delivered by Sir Isaac Hyatali, C.J.:

The appellant Michael de Freitas also called Michael Abdul Malik was tried before Rees, J. and a jury at the Port-of-Spain Assizes for the murder of Joseph Skerritt sometime between 7 February and 22 February 1972. He was found guilty on 21 August 1972 and in compliance with section 4(1) of the Offences Against the Person Ordinance (hereinafter called the first Ordinance) he was sentenced to suffer death as a felon. He lodged an appeal thereafter against his conviction but it was dismissed by this Court on 17 April 1973. He then petitioned for special leave to appeal to the Judicial Committee of the Privy Council but on 26 November 1973 his petition was refused. He next filed a notice of motion in the High Court on 20 December 1973 in which he applied for declarations that -

1. "the passing of the judgment against [him] on the 21st day of August, 1972, that he be hanged by the neck until he be dead constitutes an imposition of and/or authority to impose cruel and unusual treatment and/or punishment of [him] and a contravention in relation to him of his right not to be so treated or punished guaranteed and protected by the Constitution";

2. "the execution of the judgment against [him] on the 21st day of August, 1972, that he be hanged by the neck until he be dead will constitute an imposition of and/or authority to impose cruel and unusual treatment and/or punishment of [him] and a contravention in relation to him of his right not to be so treated or punished and protected by the Constitution";

3. "the execution of the judgment against /him/ on the 21st August 1972, that he be hanged by the neck until he be dead, would amount to a deprivation of his life other than by due process of law in contravention of the Constitution";

4. "the said judgment is wrong in law in that it contravenes the common law principle that a person convicted on the evidence of an accomplice ought to be recommended to mercy";

5. "the said judgment is wrong in law in that it authorises the infliction of cruel and unusual punishment contrary to the Statute 1 W & M commonly known as the Bill of Rights";

and prayed for orders -

"(a) setting aside the judgment referred to in paragraph 1 above;

(b) directing that no warrant for /his/ execution ..... or for his delivery for such execution do issue;

(c) restraining the respondents their servants and/or agents and each of them from taking delivery of and/or /delivering him/ unto his or their custody for the purpose of executing the said judgment;

(d) restraining the respondents their servants and/or agents from carrying into execution any warrant for /his/ execution .....;

(e) that a less severe form of punishment be substituted. AND that such order as to the costs of and incidental to this application may be made as the Court shall think fit."

The appellant's application was made under Section 6 of the Constitution which conferred on him the right to seek redress in the High Court if he alleged that any of the provisions of sections 1 to 5 inclusive and section 7 thereof "/had/ been /was/ being or /was/ likely to be contravened in relation to him." The sections of the Constitution

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relevant for present purposes however are these:

Section 1. "It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely ,

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law.

(b) the right of the individual to equality before the law and the protection of the law .....

. . . . . .

(d) the right of the individual to equality of treatment from any public authority in the exercise of any public functions."

Section 2. "Subject to the provisions of sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall

. . . . . .

(b) impose or authorise the imposition of cruel and unusual treatment or punishment;

. . . . . .

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations."

Section 3(1) "Sections 1 and 2 of this Constitution shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of this Constitution."

Section 70(1) "The Governor-General may, in Her Majesty's name and on Her Majesty's behalf -

(a) grant to any person convicted of any offence against the law of Trinidad and Tobago a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence;

(c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or

(d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) The powers of the Governor-General under sub-section (1) of this section shall be exercised by him in accordance with the advice of a Minister designated by him, acting in accordance with the advice of the Prime Minister."

Section 71 "There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of -

(a) the Minister referred to in sub-section (2) of section 70 of this Constitution, who shall be Chairman;

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(b) the Attorney-General; and

(c) not more than four other members appointed by the Governor-General, acting in accordance with the advice of the Prime Minister."

Section 72(1) "Where an offender has been sentenced to death by any court for an offence against the law of Trinidad and Tobago, the Minister shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee.

(2) The Minister may consult with the Advisory Committee before tendering any advice to the Governor-General under subsection (2) of section 70 of this Constitution in any case not falling within subsection (1) of this section.

(3) The Minister shall not be obliged in any case to act in accordance with the advice of the Advisory Committee.

(4) The Advisory Committee may regulate its own procedure.

(5) In this section 'the Minister' means the Minister referred to in sub-section (2) of section 70 of this Constitution."

Braithwaite, J. heard the motion on 8 February 1974. He dismissed it on the same date on the ground that he had no jurisdiction to grant any of the several reliefs claimed therein. His reasons for so holding were set out in a written judgment delivered on 15 February 1974. They were, inter alia, as follows:-

(1) the first Ordinance and the Criminal Procedure Ordinance Ch.4 No.3 (hereinafter called the

second Ordinance) under which the death penalty and the execution thereof were respectively prescribed were laws in force at the commencement of the Constitution and were consequently outside the purview of sections 1(a) and 2(b) of the Constitution on which the appellant's application for redress was founded;

(2) the Court could not interfere with a penalty for a crime if that penalty was fixed by a subsisting law which was properly enacted by the legislature;

(3) the "due process of law" referred to in section 1 of the Constitution was completed when the Courts of Law /had/ finished their respective tasks; and save for any wrong done to anyone incarcerated in the prisons or for the infringement of any constitutional right in relation to him the Court could not take cognisance of the operations of the prisons, their executioners or their staff or be burdened with the day to day problems or administration of a prison;

(4) the prerogative of mercy or pardon fell within "the time honoured and well established preserve of the Executive arm of Government" and the Court would be guilty of a "serious trespass" if it interfered with its exercise;

(5) Section 72 of the Constitution "by the clearest possible implication /recognised/ the existence, validity and constitutionality" of the death sentence;

(6) the decisions of the American Courts on "cruel and unusual treatment or punishment" as contemplated by the Constitution of the United States, and on which decisions counsel for the appellant relied, had no application to the execution of penalties provided for by laws which came into force in this country before the commencement of the Constitution.

Counsel for the appellant in the course of an attractive and interesting address to this Court attacked the conclusions of the learned judge on several grounds but in the final analysis he rested

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his case on the following propositions:

1. While section 3(1) of the Constitution prevents the first Ordinance and the second Ordinance from being impugned as unconstitutional, administrative actions which subjected the appellant to cruel and unusual treatment or punishment under the purported authority of the said Ordinances fell to be struck down as inconsistent with and contrary to the provisions of sections 1 and 2 of the Constitution.

2. The procedure prescribed by section 59 of the second Ordinance for carrying out the sentence of death was saved by section 3(1) of the Constitution but inordinate delays in executing that sentence fell outside the purview of that section and constituted the imposition on the appellant of cruel and unusual punishment contrary to sections 1 and 2 of the Constitution.

3. Death by hanging was per se cruel and unusual punishment and so was the treatment of condemned prisoners in the country. On the assumption that these contentions were accepted, the Bill of Rights 1689 which was preserved by section 3(1) as part of the common law in force at the commencement of the Constitution must be held to have rendered nugatory the provisions of section 4(1) of the first Ordinance which prescribed the penalty of death for murder and section 59 of the second Ordinance which authorised the due execution of that penalty. This was so, it was submitted, because of the stipulation in the Bill of Rights that -

> "excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

4. The reprieve procedure under the Constitution operated in an arbitrary and discriminatory fashion. It accordingly infringed the prescriptions in the Constitution against the deprivation of life except by due process of law - section 1(a), the guarantee of equality before the law - section 1(b), and

the guarantee of equality of treatment from any public authority in the exercise of any functions - section 1(d). Consequently, the appellant was entitled to relief from the operation of such a procedure. (The particular relief sought was an order by the Court substituting a sentence of life imprisonment for the sentence of death passed on the appellant.)

5. The procedure of the Advisory Committee on the Prerogative of Mercy under the chairmanship of the Minister concerned infringed the rules of natural justice, contravened the "due process" provision in section 1 of the Constitution and operated in such a manner as to deprive the appellant of a fair hearing before the said Committee in accordance with the principles of fundamental justice. The Minister's failure to comply with the rule of natural justice in respect of the appellant justified an order by the Court for an indefinite stay of execution of the death penalty.

6. The appellant has the right not to be deprived of his life if he is in fact insane. Consequently, if his submissions were rejected an order for an inquiry into the appellant's present mental condition should be made and a stay of execution granted in the meantime.

Before us, the claim made for the declaration that the passing of the sentence of death on the appellant constituted cruel and unusual treatment or punishment, contrary to the provisions of the Constitution was not pursued. Nor was the claim for a declaration that the judgment sentencing him to death contravened the common law principle that a person convicted on the evidence of an accomplice ought to be recommended to mercy. They seemed to me to be rather astonishing claims. However, as they were abandoned, it is unnecessary to say anything further about them.

I must at the outset confess, that I experienced much difficulty in grasping the precise ground of complaint that counsel for the appellant sought to advance under his first and second propositions.

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He conceded, and quite rightly in my view, that under section 3(1) of the Constitution, sections 1 and 2 thereof had no application to the first Ordinance nor to the second Ordinance, since they were in force "at the commencement of the Constitution". (This expression is, for convenience, referred to hereafter as "the relevant date".) Having done so, he could not maintain that the death penalty prescribed under the first Ordinance and the mandate given under the second Ordinance for executing it, contravened any of the provisions of sections 1 and 2 of the Constitution even if it could be argued that these two Ordinances were either inconsistent with or repugnant to sections 1 and 2 aforesaid. His first argument therefore was that while the death penalty provided for in the first Ordinance was not cruel and unusual punishment, the action of officials in carrying it out constituted punishment of that nature.

It was abundantly clear however that the action of officials in so doing is expressly authorised by two warrants issued under section 59 of the second Ordinance which when construed and adapted as provided for in section 4 of the Trinidad and Tobago (Constitution) Order in Council 1962 and the Existing Laws Amendment Order 1962 and the Existing Laws Amendment Order 1963 would read as follows:

> "59. Every warrant for the execution of any prisoner under sentence of death shall be under the Public Seal of /Trinidad and Tobago/ and the hand of the Governor /General/ and shall be directed to the Marshal, and shall be carried into execution by such Marshal or his assistant at such time and place as shall be mentioned in such warrant; and such warrant shall be in the form A in the Third Schedule hereto, and there shall issue in every such case a warrant for the delivery of such prisoner by the Keeper of the Royal Gaol to the said Marshal for the purpose of such execution, and such last mentioned warrant shall be under the Public Seal of /Trinidad and Tobago/ and the hand of the Governor /General/ and shall be in the form B in the Third Schedule:

Provided that it shall be lawful for the Governor /General/ by warrant under his hand and the Public Seal of /Trinidad and Tobago/ directed to the Marshal, to respite any such execution, and, by the same or any subsequent warrant, so sealed and signed, to order such execution to be carried into effect at such time and place as shall be appointed and specified in such warrant, in which case the execution shall be done at such time and place as shall be so appointed."

The material portions of the warrants addressed by the Governor-General to the Marshal and the Keeper of the Royal Gaol respectively are in these terms:

"To the Marshal.
GREETINGS:

Whereas (A.B.) late of has been indicated for felony and murder by him done and committed, and the said (A.B.) having been thereupon arraigned before the Supreme Court of /Trinidad and Tobago/ at its Session held on the day of in the year of our Lord one thousand nine hundred and ; and having upon such arraignment pleaded NOT GUILTY /or GUILTY, as the case may be/, the said (A.B.) has before the said Court in its aforesaid Session been tried and in due form of law convicted thereof: And whereas judgment has been given by the said Court, that the said (.AB.) be hanged by the neck until he be dead, the execution of which judgment yet remains to be done, I, /Governor General/ of Trinidad and Tobago, do by these presents require and strictly command you that upon the day of in the year of our Lord one thousand nine hundred and between the hours of six in the forenoon and twelve at noon of the same day, him the said (.AB.) at the Royal Gaol in /Trinidad and Tobago/ to you to be delivered, as by another writ to the Keeper of the said Royal Gaol is commanded, into your custody, you then and there receive, and him in your custody so being you forthwith convey to the usual place of execution and that you do then and there

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cause execution to be done upon the said (A.B.) in your custody so being in all things according to the said judgment: And this you are by no means to omit at your peril."

"To the Keeper of the Royal Gaol.
GREETING:

Whereas (A.B.), late of in /Trinidad and Tobago/ has been indicted for felony and murder by him done and committed; and the said (A.B.) having been thereupon arraigned before the Supreme Court of /Trinidad and Tobago/ at its Session held on the day of in the year of our Lord one thousand nine hundred and and having upon such arraignment pleaded NOT GUILTY /or GUILTY, as the case may be/, the said (A.B.) has before the said Court in its aforesaid Session been tried, and in due form of law convicted thereof: And whereas judgment has been given by the said Court that the said (A.B.) be hanged by the neck until he be dead, the execution of which judgment yet remains to be done, I /Governor General/ of Trinidad and Tobago, do therefore by these presents require and strictly command you that upon the day of in the year of our Lord one thousand nine hundred and between the hours of six and eleven in the forenoon of the same day him the said (.AB.) at the Royal Gaol aforesaid to the Marshal of /Trinidad and Tobago/ you then deliver, which said Marshal, by another writ to him directed, is commanded then and there to receive the said (.AB.) that execution of the aforesaid judgment may be done in manner and form as to the said Marshal is by the said other writ commanded: And this you are by no means to omit at your peril."

It is of importance to note that the warrant to the Keeper requires and strictly commands him to deliver the prisoner to the Marshal for executing the sentence of the Court, that the warrant to the Marshal requires and strictly commands him to receive the prisoner and cause execution to be done upon him in accordance with the sentence of the Court; and that both Keeper

and Marshall are in effect warned in the clearest language that if they fail to obey the respective commands addressed to them, they do so at their peril. Deriving their origin as they do from the express provisions of section 59 of the second Ordinance it is beyond question that these two warrants have not only the same force and authority as the statute itself but imbue the acts performed by these two officials, in compliance with the commands addressed to them with a like force and authority. With this obstacle exposed in the way of his submission counsel for the appellant shifted his position to argue that his complaint was not that the execution of the death penalty per se by officials was cruel and unusual punishment but that the inordinate delays which occurred in the execution of the penalty by officials constituted such punishment. This was so, it was submitted, because administrative actions to execute the penalty after inordinate delays fell outside the purview of the first Ordinance and the second Ordinance and as such they offended against the provisions of section 1(a) and section 2(b) of the Constitution.

When asked to give his interpretation of "inordinate delay" counsel for the appellant defined it as "more than five months". He conceded however that an execution carried out by officials within five months did not constitute cruel and unusual punishment. The submissions therefore came to this: Administrative acts performed to carry out the sentence of death within five months of its imposition did not constitute cruel and unusual punishment. Consequently they were to be regarded as falling within the authority of the first Ordinance and the second Ordinance and to be beyond impeachment as contraventions of sections 1 and 2 of the Constitution. The very same administrative acts, however, performed after five months, fell outside the purview of the first Ordinance and the second Ordinance. Accordingly, they constituted cruel and unusual punishment and were impeachable as contraventions of sections 1 and 2 of the Constitution. It made no difference, it was said, that the delay was caused by the pursuit of efforts by the appellant to exhaust his right of appeal against his conviction, or that section 51 of the Supreme Court of Judicature Act 1962, (a law in

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existence at the relevant date) prohibited, inter alia, the execution of the death sentence while an appeal was pending.

These submissions struck me as being both contradictory and fallacious for the fact is, that irrespective of whether the death sentence is executed before or after five months of its imposition, it is executed in both instances under the authority of warrants issued by the Governor General under section 59 of the second Ordinance to the Keeper and the Marshal. Unless it can be demonstrated therefore that there is no authority after the passage of five months to issue these warrants under section 59 aforesaid or if they are issued thereunder after this period, they have no validity, it cannot be maintained that the execution carried out in obedience thereto is an administrative act that is beyond the pale of their authority. As this was not and indeed could not be so demonstrated I reject the arguments as untenable.

But then it was also urged that the framers of the Constitution of this country did not intend to preserve from impugnment as unconstitutional, administrative actions performed at any time after the relevant date in purported pursuance of legislation subsisting at such date. Support for that proposition, it was contended, was to be found in the omission to insert in the Constitution a clause to the following effect:

> "Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of /the sections guaranteeing fundamental rights/ to the extent that the law in question is in force at the commencement of the Constitution."

Such a clause, it was pointed out, was inserted in the Constitutions of Southern Rhodesia and Guyana for the purpose and with the intention of preserving the validity of administrative acts done after the relevant date in pursuance of a law in force at such date. If this is a valid contention then it is inconsistent with the concession made by counsel for the appellant that

administrative acts performed to carry out within five months of its imposition the sentence of death authorised under the legislation preserved by section 3(1) did not contravene sections 1 and 2 of the Constitution.

But however that may be it was apparent from the outset that the whole object of the argument was to establish that administrative acts performed in pursuance of legislation in force at the relevant date were in fact not performed thereunder but had a wholly independent existence; and further that they fell to be struck down as unconstitutional if they contravened any of the provisions of sections 1 and 2 of the Constitution.

The case of Oliver v. Buttigieg (1967) 1 A.C. 115 and a passage in Professor S.A. de Smith's monograph entitled "The New Commonwealth and its Constitutions (1964) at p.191 were quoted to support the proposition that administative acts and orders were cognisable by the Courts if they infringed fundamental rights and freedoms guaranteed in Constitutions such as this country's. As a general proposition I have no doubt that it is unassailable but it is significant that no authority was quoted to support the proposition that administrative acts performed after the relevant date under a law which was similar to section 59 of the second Ordinance were to be regarded as not performed thereunder, but were to be examined on the footing that they had a wholly independent existence. What was relied on to support that submission was the omission to insert in the Constitution the saving clause that is to be found in the Constitutions of Southern Rhodesia and Guyana. It seems to me however that such a clause was inserted in these Constitutions ex abundanti cautela since its presence therein is not really necessary to give validity to acts performed after the relevant date in pursuance of and within the authority of legislation subsisting at the relevant date. By necessary implication such acts are perfectly valid. To hold otherwise would have the effect of either repealing the legislation that was intended to be preserved or at any rate of depriving it of efficacy. To adopt such a construction would defeat the clear intention of section 3(1). This, in my opinion, would be indefensible.

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(continued)

I therefore reject the contention that administrative acts performed after the relevant date in pursuance of the first Ordinance and the second Ordinance and within their authority are not preserved by section 3(1) of the Constitution. On the contrary I hold that they are. This is not to say however, that the conduct of officials outside the authority of the law is not cognisable by the Courts. Such conduct is undoubtedly so cognisable but on its manifestation it would raise, in my view, a question that is far removed and completely different from the question whether the death penalty and its execution under authority of laws preserved by the Constitution are in fact constitutional.

Another barrier which had to be surmounted to ensure the success of this contention was presented by the learned Solicitor General. It arose from this submission: If the administrative acts in question were not performed under the first Ordinance and the second Ordinance as was contended, then in order to succeed in establishing an infringement of section 2(b) of the Constitution it was essential to show that those acts were performed under a law or Act of Parliament which imposed or authorised the imposition of cruel and unusual treatment or punishment; and further that it was a law or Act passed after the relevant date as section 2 of the Constitution clearly contemplates. See in this connexion Director of Public Prosecutions v. Nasralla (1967) 10 W.I.R. 299, per Lord Devlin at p.303. It was of course impossible for counsel for the appellant to show this and in the result the barrier referred to prevailed against him.

The third proposition of counsel for the appellant was founded on the Bill of Rights 1689, and the prescription therein against cruel and unusual punishments. I do not propose to discuss in this judgment, because it is not relevant to do so for reasons that will appear presently, either the morality or the justification, of the death penalty for crimes of murder in our society. I have read the learned judgments on this question in the case of Furman v. Georgia delivered by the distinguished judges of the Supreme Court of the U.S.A. on 29 June 1972 with much interest and admiration but I would merely content myself by

saying at this stage that much can be said on both sides of this question.

The contention of counsel for the appellant however was that the Bill of Rights had rendered nugatory section 4(1) of the first Ordinance which prescribes the death penalty for murder and section 59 of the second Ordinance which authorises the execution of that penalty in the manner prescribed therein. The contention was based on the provisions of section 12 of the Supreme Court of Judicature Act, 1962, which repeats in somewhat, but for present purposes immaterially different language, the provisions of section 19 of the Judicature Ordinance Ch.3 No.1 which that Act repealed. It provides that:

> "12. Subject to the provisions of any enactment in operation on the 1st of March, 1848, and to any enactment passed after that date, the Common Law, Doctrines of Equity, and Statutes of general application of the Imperial Parliament that were in force in England on that date shall be deemed to have been enacted and to have been in force in Trinidad as from that date and in Tobago as from the 1st of January, 1889."

It was submitted that the Bill of Rights enacted on 16 December 1689 was part of the Common Law on 1 March 1848 but I would prefer to regard it as a statute of general application of the Imperial Parliament within the meaning of section 12 and that it was in force at the commencement of the Constitution; but even so the argument of counsel for the appellant in my judgment is not maintainable. Both the first Ordinance and the second Ordinance were enactments passed after 1st March 1848 and consequently they must in accordance with the plain language of section 12 aforesaid be taken and read as having repealed or rendered nugatory any provisions of the Bill of Rights which was inconsistent with or repugnant to them or conversely the Bill of Rights must be read subject to any provisions to the contrary in the first Ordinance and the second Ordinance. While therefore the argument as formulated by counsel for the appellant cannot be supported the converse of it is perfectly sound. From this, it follows that if the death penalty and its execution constituted cruel

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and unusual punishment under the Bill of Rights - a proposition to which I do not subscribe, then it ceased to be so after the enactment of the first Ordinance on 3 April 1925 and a fortiori after the enactment of the second Ordinance on 2 June 1925. For these reasons and those to be given by Phillips, J.A. in the judgment he is about to deliver, which I have had the advantage of reading and which I endorse and support, I am unable to accept the submission of counsel for the appellant.

I turn next to the attack made on the reprieve procedure. The argument on this question was founded on the allegation that this procedure operated in an arbitrary and discriminatory fashion, and fell within the mischief which Mr. Justice Douglas condemned and Mr. Justice Stewart supported in Furman v. George (supra).

At p.17 of his judgment Mr. Justice Douglas stated:

> "these discretionary statutes are unconstitutional in their operation. They are pregnant with discrimination, and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on 'cruel and unusual' punishments. Any law which is non-discriminating on its face may be applied in such a way as to violate the Equal Protection Clause of the Fourteenth Amendment. Yick Wo v. Hopkins 118 U.S. 356. Such conceivably might be the fate of a mandatory death penalty where equal or lesser sentences were imposed on the elite, a harsher one on the minorities or members of the lower castes. Whether a mandatory death penalty would otherwise be constitutional is a question I do not reach."

And at p.5 of his judgment Mr. Justice Stewart said:

> "These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the petitioners are among a

> capriciously selected random handful upon whom the sentence of death has in fact been imposed. My concurring Brothers have demonstrated that, if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race. See McLaughlin v. Florida, 379 U.S. 184. But racial discrimination has not been proved, and I put it to one side. I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed."

There are two points to be noticed here. Firstly, the death penalty considered in Furman v. Georgia (supra) was not one fixed by law for murder as it is in this country under a law that is expressly preserved by its Constitution. And secondly, the question which the U.S. Supreme Court dealt with in that case was quite different from the one under examination in this case. In the U.S. the death penalty was imposed by judges or juries in their discretion for the offences of murder and rape. The question which arose in those circumstances was whether the imposition of the death penalty under this discretionary system was offensive and contrary to the Eighth and Fourteenth Amendment of the American Constitution. As put by Mr. Justice Douglas at p.14 of his judgment the U.S. Supreme Court was dealing there -

> "with a system of law and of justice that leaves to the uncontrolled discretion of judges or juries the determination whether defendants committing these crimes should die or be imprisoned. Under these laws no standards govern the selection of the penalty. People live or die dependent on the whim of one man or of 12."

Furman v. Georgia is not binding on this Court but even if it were or even if I were willing to yield to the persuasive impact of the erudite opinions of the majority of the learned judges in that historic case, I would hold it to be wholly inapplicable to the instant case on account of the two fundamental points of difference to which I

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have drawn attention. The reprieve procedure in this country is essentially a procedure for the exercise of mercy or extending pardons to convicted criminals already sentenced and it cannot in my judgment be successfully attacked as a system of law and justice which invests those concerned in operating it with a discretion to impose the sentence of death on persons convicted for the crime of murder. I am satisfied that the charges made against the reprieve procedure are unfounded and further that it derives no support from the case of Furman v. Georgia (supra) on which counsel for the appellant heavily relied. I think it would be appropriate to observe here before passing on, that if the proposition advanced on this point were accepted then this Court would have been called upon to substitute a term of life imprisonment for the death penalty imposed by law on the appellant. For the Court to accede to that call however, it would have had to abrogate unto itself the power to amend or repeal a subsisting law - a function that belongs exclusively under the Constitution to Parliament. This manifestly, it could not possibly have attempted to do. In this connection the judgment of Lord Morris of Borth-y-Gest in Runyowa v. Reg.(1966) 1 All E.R. 633 on the respective roles of the Court and the legislature are worth repeating. Speaking for the Privy Council he said at p.643 ibid:

> "A legislature may have to consider questions of policy in regard to punishment for crime. For a particular offence a legislature may merely decree the maximum punishment and may invest the courts with a complete discretion as to what sentence to impose - subject only to the fixed maximum. There may be cases however where a legislature deems it necessary to decree that for a particular offence a fixed sentence is to follow. As an example a legislature might decide that on conviction for murder a sentence of death is to be imposed. A legislature might decide that on conviction of some other offence some other fixed sentence is to follow. A legislature must assess the situations which have arisen or which may arise, and must form a

judgment as to what laws are necessary and desirable for the purposes of maintaining peace, order and good government. It can hardly be for the courts, unless clearly so empowered or directed, to rule as to the necessity or propriety of particular legislation. Nor can it be for the courts, without possessing the evidence on which a decision of the legislature has been based, to over-rule and nullify the decision. As QUENET, A.C.J., said /in Gundu v. A.G. of Southern Rhodesia (1965) unreported/ if once laws are validly enacted it is not for the courts to adjudicate on their wisdom, their appropriateness or the necessity for their existence."

The next contention of counsel for the appellant was for an order granting an indefinite stay of execution of the death penalty on him on the ground that the proceedings of the Advisory Committee on the Prerogative of Mercy established under section 71 of the Constitution infringe the right of the appellant not to be deprived of his life except by due process of law. His complaint here was not directed against any infringement of the due process of law in relation to his trial or his conviction or the sentence imposed on him or the dismissal of his appeal against conviction. It was focused in another direction. His objections were firstly, that the presence of the Minister and the Attorney General on the Committee as two of its members tainted its proceedings with an appearance of bias; and secondly, that contrary to one of the fundamental rules of natural justice the appellant was given no opportunity of being heard before the Committee.

These contentions were founded on the supposition that the proceedings of the Committee were either judicial or quasi-judicial or that the Committee sat as a statutory body to exercise a discretion. If this supposition were correct then it would be open to the Court to review the decision of this Committee if it were shown that it acted in bad faith, acted unfairly, acted contrary to the rules of natural justice, or even though it acted in good faith it was influenced by extraneous considerations which it ought not to have taken into account. See Padfield v. Minister of Agriculture, Fisheries and Food (1968) 1 All E.R.

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694 which was described by Ld Denning, M.R. in Breen v Amalgamated Engineering Union (1971) 1 All E.R.1148 at p.1154 as a landmark in modern administration law. But the supposition made was erroneous in every respect. The Committee does no more than advise. It has no power to deprive any person of his life. It exercises no prerogative. Section 70 of the Constitution makes it clear that the Prerogative of Mercy resides exclusively in Her Majesty and that its exercise is an act of Her Majesty in whom the executive authority of Trinidad And Tobago is vested by section 56 of the Constitution.

The exercise of mercy is consequently an absolute executive act which is not subject to review or control by the courts. And it makes no difference to this proposition, in my judgment, that the Constitution expressly refers to this prerogative and permits the Governor General to exercise it in accordance with the advice of Her Majesty's Minister. The fact is that both this prerogative and the procedure for its exercise always existed prior to the relevant date and that the Governor General, like his predecessors, exercised it in the name and on behalf of Her Majesty. See in this connexion sections 74 and 75 of the second Ordinance. Section 1(a) of the Constitution relating to "due process" does not therefore apply to the proceedings of the Committee nor do the rules of natural justice. The contention of Counsel for the appellant to the contrary accordingly fails.

The last proposition advanced on behalf of the appellant was that the Court should, if his application for the several reliefs claimed is denied, issue an order to have him medically examined to determine whether he is sane since he has a right not to be hanged if he is insane. The Australian case of Re Taitt (1963) V.R. 550 was quoted in support of that proposition. It seemed to me however that in the circumstances of this case this proposition was not one of law but fell to be taken as a plea of desperation for some respite. I found it impossible to take it seriously notwithstanding the assurance of counsel from the Bar table that he was not proposing it lightly, whatever that meant. There is absolutely no evidence before the Court to show that the appellant is insane or has manifested any signs

indicating that he is or might be inflicted with a disease of the mind. The plea is founded on the refusal of a request made to the prison authorities after the motion herein was filed to have a psychiatrist from abroad and possibly of the appellant's choice examine him. The prison authorities however have given the assurance in a written document exhibited in these proceedings that the prison medical records show that the appellant is in good mental and physical health. Nothing was said or appears in the record to controvert that statement. On the contrary, this satisfactory state of his mental and physical health derives support from his own affidavit sworn on 31 January 1974 and filed in these proceedings. It reveals, in my view, the keen observations and apprehensions of a sane, coherent and intelligent man in surroundings which evidently give him good cause to be gravely concerned about his future. This however is no ground for entertaining his request. I would therefore reject it.

For these reasons I would dismiss the appeal but because of the nature of the application and the issues raised thereby I would make no order as to costs.

Isaac E. Hyatali

Chief Justice

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TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No.13 of 1974

In the Matter of the Constitution of Trinidad and Tobago, Being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

AND

In the Matter of the Application of Michael de Freitas also called Michael Abdul Malik (A person alleging that certain Provisions of Sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in relation to him) for Redress in Accordance with Section 6 of the said Constitution

BETWEEN

MICHAEL DE FREITAS also called MICHAEL ABDUL MALIK — Appellant

AND

GEORGE R. BENNY, REGISTRAR OF THE SUPREME COURT
THE ATTORNEY GENERAL
TOM ILES, COMMISSIONER OF PRISONS — Respondents

Coram: Sir Isaac Hyatali, C.J.
C.E.G. Phillips, J.A.
M.A. Corbin, J.A.

April 30, 1974

Louis Blom-Cooper, Q.C. (Allan Alexander with him) for the appellant.
Alcalde Warner, Q.C., Solicitor General and C.Brooks, State Counsel - for the Registrar,

Supreme Court and the Attorney General.
C. Bernard, Deputy Solicitor General - for the Commissioner of Prisons.

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J U D G M E N T

This appeal raises the question of the constitutional validity of the sentence of death passed upon the appellant by a Judge of the High Court on August 21, 1972 pursuant to the provisions of s.4(1) of the Offences Against the Person Ordinance, Ch.4 No.9, after the appellant was duly tried and convicted by a Jury for the murder of one Joseph Skerritt. The appellant contends that this sentence is unconstitutional as being "the imposition of cruel and unusual treatment or punishment" within the meaning of s.2(b) of the Constitution of Trinidad and Tobago, which is to the following effect:

> 2. Subject to the provisions of sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall
>
> . . . . . .
>
> (b) impose or authorise the imposition of cruel and unusual treatment or punishment.

In addition to this, the main contentions of the appellant, as set out in his motion before Braithwaite J. are that:

> (a) the said judgement [i.e. sentence] is wrong in law in that it authorises the infliction of a cruel and unusual punishment contrary to the Statute 1 W. & M., commonly known as the Bill of Rights,
>
> (b) the execution of judgment of death on the appellant would amount to a deprivation of his life other than by due process of law in contravention of s.1(a) of the Constitution.

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The human right which is at issue in this appeal is to be found in s.1(a) of the Constitution and reads as follows:

> 1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms,namely,
>
> (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law.

This is the first of eleven human rights and fundamental freedoms which are sought to be protected by the provisions of s.2 of the Constitution. It is to be noted that the wording of para.b of s.2 is in almost identical terms with the corresponding words contained in that provision of the Bill of Rights, 1689, which declared that:

> "excessive bail ought not to be required nor excessive fines imposed, nor cruel and unusual punishments inflicted"

Reliance is sought to be placed on the Bill of Rights by virtue of s.12 of the Supreme Court of Judicature Act,1962 which provides that:

> "12. Subject to the provisions of any enactment in operation on the 1st of March, 1848, and to any enactment passed after that date, the Common Law, Doctrines of Equity and Statutes of general application of the Imperial Parliament that were in force in England on that date shall be deemed to have been enacted and to have been in force in Trinidad as from that date and in Tobago as from the 1st of January, 1889."

The basic reply of the respondents is to be found in s.3(1) of the Constitution which stipulates that:

> "Sections 1 and 2 of this Constitution shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of this Constitution [31st August,1962]."

The imposition of the penalty of death upon the appellant was by virtue of s.4 of the Offences Against the Person Ordinance, Ch.4 No.9, which came into force on April 3, 1925 and enacts that "Every person convicted of murder shall suffer death as a felon." This enactment may be traced back to s.2 of the Ordinance No.10 of 1842, which (so far as material for present purposes) reads as follows:

> "And be it enacted, that from and after the promulgation of this Ordinance, every person convicted of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; . . . . . ."

Moreover, it was argued that specific provision for the execution of the sentence is made by s.59 of the Criminal Procedure Ordinance, Ch.4 No.3, which came into operation on June 2, 1925.

The section (as amended) is as follows:

> "59. Every warrant for the execution of any prisoner under sentence of death shall be under the Public Seal of Trinidad and Tobago and the hand of the Governor-General, and shall be directed to the Marshal, and shall be carried into execution by such Marshal or his assistant at such time and place as shall be mentioned in such warrant; and such warrant shall be in the form A in the Third Schedule hereto, and there shall issue in every such case a warrant for the delivery of such prisoner by the Keeper of the Royal Gaol to the said Marshal for the purpose of such execution, and such last mentioned warrant shall be under the Public Seal of Trinidad and Tobago and the hand of the Governor-General, and shall be in the Form B in the Third Schedule:
>
> Provided that it shall be lawful for the Governor-General, by warrant under his hand and the Public Seal of Trinidad and Tobago directed to the Marshall, to respite any such execution, and, by the same or any subsequent warrant, so sealed and signed, to order such execution to be carried into effect at such time and place as shall be appointed

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and specified in such warrant, in which case the execution shall be done at such time and place as shall be so appointed."

The form of warrant as set out in Form A of the Third Schedule reads as follows:

"TRINIDAD AND TOBAGO

GEORGE the Sixth by the Grace of God of Great Britain, Northern Ireland and the British Dominions beyond the Seas King, Defender of the Faith

To the Marshal

GREETING:

Whereas (A.B.) late of ..... has been indicted for felony and murder by him done and committed, and the said (A.B.) having been thereupon arraigned before the Supreme Court of Trinidad and Tobago at its Session held on the ..... day of ..... in the year of our Lord one thousand nine hundred and ..... and having upon such arraignment pleaded NOT GUILTY (OR GUILTY, as the case may be), the said (.AB.) has before the said Court in its aforesaid Session been tried and in due form of law convicted thereof: And whereas judgment has been given by the said Court, that the said (A.B.) be hanged by the neck until he be dead, the execution of which judgment yet remains to be done, I ..... Governor-General of Trinidad and Tobago, do by these presents require and strictly command you that upon .....day the .....day of ..... in the year of our Lord one thousand nine hundred and ..... between the hours of six in the forenoon and twelve at noon of the same day, him the said (.AB.) at the Royal Gaol to you to be delivered, as by another writ to the Keeper of the said Royal Gaol is commanded, into your custody, you then and there receive, and him in your custody so being you forthwith convey to the usual place of execution and that you do then and there cause execution to be done upon the

said (A.B.) in your custody so being in all things according to the said judment; And this you are by no means to omit at your peril."

The respondents contend that in effect the prohibitions contained in s.2 which are intended for the protection of the fundamental rights and freedoms recognised and declared by s.1 of the Constitution are expressly intended by s.3 to apply to laws passed after its coming into force (31st August 1962), and accordingly have no application either to the Bill of Rights, 1689, or the above-mentioned provisions of the Offences Against the Person Ordinance and the Criminal Procedure Ordinance, which latter, it is submitted, are laws providing for the imposition of the sentence of death by hanging on convicted murderers.

As far as the argument based upon the Bill of Rights is concerned, it seems clear that the Constitution, which recognizes the continuing validity of existing laws, by enacting in s.2(b) that no future law shall do what is already forbidden by the Bill of Rights, has by implication recognized that death by hanging as a result of a judicial order is neither cruel nor unusual. In this connection it is interesting to observe that in England not only did the death penalty exist as the punishment for murder for nearly three centuries after the coming into force of the Bill of Rights, but that in that country it still exists as the penalty for the offences of high treason and piracy with violence.

It was submitted by counsel for the appellant that while the mandatory passing of the death sentence on a convicted murderer was saved by s.3 of the Constitution, s.59 of the Offences against the Person Ordinance related only to the form of the death warrant issued to the Marshal and conferred on him no authority to perform the "purely administrative" act of carrying out any penalty that was cruel and unusual. Much reliance was placed on the recent majority (5-4) decision of the U.S. Supreme Court (delivered on June 29, 1972) declaring the death penalty unconstitutional on the ground of its cruelty in the case of Furman v. Georgia and two other cases.

It is interesting to quote the opening words of the majority decision of Mr. Justice Douglas in order to show that the question for consideration in those cases was merely whether the penalties therein imposed was contrary to the Eighth and Fourteenth Amendments of the U.S. Constitution, unlike the case under consideration in which s.3 of the Constitution of Trinidad and Tobago expressly exempts laws existing at its commencement from the operation of sections 1 and 2. It may be noted that the Eighth Amendment is in almost identical terms with the corresponding provision of the Bill of Rights. It reads as follows:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The relevant portion of the Fourteenth Amendment is to the following effect:

> "(Section 1.) . . . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

It is in this context that Mr. Justice Douglas commenced his opinion by stating at (p.3):

> "In these three cases the death penalty was imposed, one of them for murder, and two for rape. In each the determination of whether the penalty should be death or a lighter punishment was left by the State to the discretion of the judge or of the jury. In each of the three cases the trial was to a jury. They are here on petitions for certiorari which we granted limited to the question whether the imposition and execution of the death penalty constitutes 'cruel and unusual punishments' within the meaning of the Eighth Amendment as applied to the States by the Fourteenth. I vote to vacate each judgment, believing that the exaction of the (sic) penalty does violate the Eighth and Fourteenth Amendments.
>
> That the requirements of due process ban cruel and unusual punishments is now settled. Francis v. Resweber, 329 U.S.459,

463, 473-474, Robinson v. California, 370 U.S. 660, 667. It is also settled that the prescription of cruel and unusual punishments forbids the judicial imposition of them as well as their prescription by the legislature. Weems v. United States, 217 U.S. 349, 378-382.

> Congressman Bingham in proposing the Fourteenth Amendment, maintained that 'the privileges or immunities of citizens of the United States' as protected by the Fourteenth Amendment included protection against 'cruel and unusual punishments.' . . . . . .
> . . . . . .
>
> Whether the Privileges and Immunities route is followed or the due process route, the result is the same . . . . . ."

Counsel's main submission was that the execution of the appellant would be a purely administrative act and accordingly would not, if held to be cruel and unusual, be saved by the provisions of s.3 of the Constitution which has reference only to laws. By s.105(1) the definition of "law" includes "any instrument having the force of law and any unwritten rule of law." In my opinion, a warrant for the execution of the appellant duly issued by the Governor-General under the provisions of s.59 of the Criminal Procedure Ordinance is an instrument having "the force of law" and as such would not be caught by the provisions of s.2(b) of the Constitution. Counsel stressed what he described as the inordinate delay with which the death penalty appears at the present time to be carried out in Trinidad and Tobago and urged that the fact that some of that delay might be due to the pursuit by convicted persons of all the legal remedies open to them is quite irrelevant. I do not consider it necessary to consider such questions except to state that, in my view, it is essential to have regard to the fact of delay being caused by the pursuit of legal remedies by the prisoner himself. For these reasons I have no hesitation in rejecting these submissions.

The final submission urged on behalf of the appellant was that:

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"The execution of judgment of death on the appellant would amount to a deprivation of his life other than by due process of law in contravention of s.1(a) of the Constitution."

This argument was founded upon an allegation that the procedure for the exercise of what would formerly have been the prerogative of mercy laid down by ss.70-72 of the Constitution is illegal and contrary to the due process clause contained in s.1(a) of the Constitution. It was alleged that the Advisory Committee on the Prerogative of Mercy established by s.71 offends against the basic rules of natural justice in that:

(a) the 'audi alteram partem' rule is infringed seeing that the condemned prisoner is given no opportunity of appearing before the Committee;

(b) there is always the possibility of bias, seeing that both the Chairman, who is normally the Minister of National Security, and the Attorney General are members of the Committee.

It was contended that because the Mercy Committee had the power of advising in which cases the death sentence should be carried out, its proceedings were caught by the provisions of s.1(a) of the Constitution relating to the "due process of law".

I am unable to accept this submission, having regard to the fact that the exercise of mercy is a purely executive act and can by no means be equated with judicial proceedings. Whereas the due process clause (s.1(a)) confers a human right which is duly entrenched by the Constitution, the constitutional provisions relating to the exercise of the prerogative of mercy (ss.70-72) do not confer any right on the individual, and there is no provision for the application of any remedy if mercy is not shown to the appellant. In my opinion the situation is analogous to the position that exists when the Home Secretary in England advises Her Majesty as to the exercise of her prerogative. This, in my judgment, is a purely executive act which is properly exercisable in the manner provided for

by the Constitution and as such is not open to challenge in the Courts. As is stated in Hood Phillips, Constitutional and Administrative Law, (4th edn.) p.245:

> "A royal prerogative may be expressly abolished by Act of Parliament, as when the Crown Proceedings Act 1947 abolished the immunity of the Crown (though not of the Sovereign personally) from being sued in contract and tort."

See also Wade and Phillips, Constitutional Law, (8th edn.), p.321, where the following statement appears:

> "The prerogative of pardon is essentially an executive act and should not involve judicial issues."

For the foregoing reasons I am of opinion that this appeal should be dismissed and I would make no order as to costs.

C.E.G. Phillips
Justice of Appeal

No. 12

Judgment of Corbin J.A.

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No.13 of 1974

In the Matter of the Constitution of Trinidad and Tobago, Being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

AND

In the Matter of the Application of Michael De Freitas also called Michael Abdul Malik (A person Alleging that certain Provisions of Sections 1, 2, 3,

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30th April 1974

(continued)

4, 5 and 7 of the said Constitution have been, are being or likely to be contravened in Relation to him) for redress in accordance with Section 6 of the said Constitution.

BETWEEN

MICHAEL DE FREITAS also called MICHAEL ABDUL MALIK — Appellant

AND

GEORGE R. BENNY, REGISTRAR OF THE SUPREME COURT
THE ATTORNEY GENERAL
TOM ILES, COMMISSIONER OF PRISONS — Respondents

Coram: Sir Isaac E. Hyatali, C.J.
C.E.G. Phillips, J.A.
M.A. Corbin, J.A.

April 30, 1974.

Louis Blom-Cooper, Q.C. (Allan Alexander with him) for the appellant.
Alcalde Warner, Q.C., Solicitor General and C.Brooks, State Counsel - for the Registrar, Supreme Court and the Attorney General.
C. Bernard, Deputy Solicitor General - for the Commissioner of Prisons.

J U D G M E N T

This is an appeal from the judgment of Braithwaite, J. delivered on 12th February, 1974 refusing the appellant's application for relief under section 6 of the Constitution of Trinidad and Tobago on the ground that his rights under sections 1 and 2 of the Constitution had been or are likely to be contravened.

The appellant had been found guilty on 21st August, 1972 of the murder of one Joseph Skerritt. His appeal to the Court of Appeal of Trinidad and Tobago was dismissed and, on 26th November 1973, his petition to the Judicial Committee of the Privy Council for special leave to appeal was refused.

He then filed a notice of motion in the High Court in which he sought declarations that the passing of the sentence of death on him and the carrying out of the sentence constituted the imposition on him of cruel and unusual punishment contrary to the common law principles enshrined in the Bill of Rights 1689 and in the Constitution of Trinidad and Tobago. The rejection of that motion gives rise to this appeal.

I shall endeavour in my judgment to confine myself to the legal principles involved and to express no view whatever as to the need for or desirability of the death penalty because in the view that I take that question is irrelevant to this appeal.

Section 1 of the Constitution of Trinidad and Tobago recognises and prescribes the rights and liberties which exist, while section 2 preserves them against abrogation, abridgment or infringement by any law, and declares, in particular, that no Act of Parliament shall impose or authorise the imposition of cruel and unusual punishment.

Section 3(1) reads as follows:

> "Sections 1 and 2 of this Constitution shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of this Constituion."

The Offences Against the Person Ordinance Ch.4 No.9 which was passed on 3rd April, 1925 by section 4, enacts that every person convicted of murder shall suffer death as a felon. The Criminal Procedure Ordinance Ch.4 No.3 passed on 2nd June, 1925 by section 59 provides the manner in which this penalty shall be carried out.

It was contended by counsel for the appellant that the execution of the judgment of death on the appellant would amount to a deprivation of life other than by due process of law in contravention of section 1(a) of the Constitution. He submitted that it is cruel and unusual punishment and as such infringed the Bill of Rights which was preserved by section 3(1) of the Constitution and by section 12 of the Supreme Court of Judicature Act 1962 which

In the Court of Appeal

No.12

Judgment of Corbin J.A.

30th April 1974

(continued)

provides as follows:

> "12. Subject to the provisions of any enactment in operation on the 1st of March, 1848, and to any enactment passed after that date, the Common Law Doctrines of Equity, and Statutes of general application of the Imperial Parliament that were in force in England on that date shall be deemed to have been enacted and to have been in force in Trinidad as from that date and in Tobago as from the 1st day of January, 1889."

Moreover, he argued, the Bills of Rights would render nugatory the provisions of the relevant sections in the two Ordinances referred to.

It seems to me that there are two answers to this contention. Firstly, the two Ordinances were passed in 1925 which is after 1848 and they would, therefore, prevail over any law or enactment introduced or enacted by reason of section 12. Secondly, section 3(1) of the Constitution makes it clear that sections 1 and 2 shall not apply to laws already in force so they cannot affect the Ordinances which already existed.

It should be noted too on the question of whether or not the death penalty is cruel and unusual punishment that it existed side by side with the Bill of Rights as a permissible and unobjectionable punishment for murder for more than two and a half centuries.

Nor can it be argued that carrying out of the penalty infringes any rights since this is done under the provisions of section 59 of Ch.4 No.3 and by the authority of warrants under the public seal which in my view are instruments having the force of law and falling within the definition of "law" in section 105(1) of the Constitution.

Another submission by counsel was that the carrying out of the death penalty could become cruel and unusual as a result of inordinate delay even if it was not so before. In my view, that consideration does not arise since it has not been demonstrated that there has been any inordinate delay in relation to the appellant. The same

comments apply to the contention that he should be mentally examined since it has not been shown that there exists any need for such an examination.

The last submission made by counsel was that the procedure of the Advisory Committee infringes the common law rules of natural justice and the due process of law guaranteed by section 1 of the Constitution. It was contended that it infringed the guarantee in that there was no fair and public hearing and that the appellant could not be heard.

We were referred to the case of Furman v. Georgia decided in the United States Supreme Court but, in my view, this case can be distinguished in that both the Court and the jury there had a discretion as to whether or not they would order the death penalty. In our jurisdiction the death penalty is mandatory and the function of the Mercy Committee is simply to advise whether mercy should be extended to a condemned person or not. The exercise of the prerogative of mercy is purely an executive act of Her Majesty performed by the Governor-General in Her name and on Her behalf. The Committee does not perform any judicial or quasi-judicial function and the proceedings do not call for observance of any provision relating to due process of law. The appellant's position cannot be worsened by any decision of the Committee.

I agree with the judgments and conclusions of the President and my learned brother. I too dismiss the appeal and I agree there should be no order as to costs.

M.A. Corbin
Justice of Appeal

In the Court of Appeal

No.13

Formal Order of Court of Appeal

30th April 1974

No. 13

Formal Order of Court of Appeal

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 13 of 74

High Court Action No. 3290 of 73

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

And

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

BETWEEN

MICHAEL DE FREITAS also called MICHAEL ABDUL MALIK APPELLANT

AND

GEORGE R. BENNY, REGISTRAR OF THE SUPREME COURT, THE ATTORNEY GENERAL AND TOM ILES COMMISSIONER OF PRISONS RESPONDENTS

ENTERED AND DATED the 30th day of April 1974

BEFORE THE HONOURABLES SIR ISAAC HYATALI, CHIEF JUSTICE (PRESIDENT)
MR. JUSTICE CLEMENT PHILLIPS
MR. JUSTICE MAURICE CORBIN

UPON READING the Notice of Appeal filed herein on behalf of the above named Appellant dated the 15th day of February, 1974, and the judgment hereinafter mentioned

In the Court of Appeal

No.13

Formal Order of Court of Appeal

30th April 1974

(continued)

UPON READING the record filed herein

UPON HEARING Counsel for the Appellant and Counsel for the Respondents

AND MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED

(i) that this appeal be dismissed

(ii) that the judgment of the Honourable Mr. Justice Braithwaite dated the 8th day of February, 1974, be affirmed

(iii) that there be no order as to costs

W. S. Punnett,
Asst. Registrar.

No. 14

No.14

Order granting Conditional Leave to Appeal to Her Majesty in Council

22nd May 1974

Order granting Conditional Leave to Appeal to Her Majesty in Council

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 13 of 1974

High Court Action No. 3290 of 1973

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

And

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

In the Court of Appeal

No.14

Order granting Conditional Leave to Appeal to Her Majesty in Council

22nd May 1974

(continued)

Dated and Entered the 22nd May 1974

Before the Honourable Mr. Justice Corbin

UPON READING the Summons filed on behalf of the above-named applicant/appellant, dated 3rd May 1974 and the Judgment hereinafter mentioned and the affidavit of Conrad Joseph Sanguinette sworn on 3rd May 1974 both filed herein.

AND UPON HEARING Counsel for the applicant/appellant and Counsel for the Attorney General and Counsel for the Commissioner of Prisons

THIS COURT DOTH ORDER

that leave to appeal to Her Majesty in Her Majesty's Privy Council against the Judgment of the Court of Appeal delivered the 30th day of April, 1974, be and the same is hereby granted to the appellant.

AND THIS COURT DOTH FURTHER ORDER

that the appellant do within 42 days from the date of this order in due course take out all appointments that may be necessary for settling the transcript record in such appeal to enable the Registrar of the Supreme Court of Judicature to certify that the said transcript record has been settled and that the provisions of this order on the part of the appellant have been complied with

AND THIS COURT DOTH FURTHER ORDER

that the appellant be at liberty to apply at any time within 90 days from the date of this order for final leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of the Supreme Court of Judicature of due compliance on his part with conditions of this order.

George R. Benny

Registrar.

No. 15

Order granting Final Leave to Appeal to Her Majesty in Council

In the Court of Appeal

No.15

Order granting Final Leave to Appeal to Her Majesty in Council

16th October 1974

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No.13 of 74
High Court No. 3290 of 73

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO, BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

And

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION.

In Chambers

Entered the day of 19

Dated the 16th day of October, 1974

Before the Honourable Mr. Justice M. Corbin

UPON READING the Summons filed herein on behalf of the above named Applicant/Appellant dated the 31st day of July, 1974, the affidavit of Conrad Sanguinette sworn to on the 31st day of July, 1974, and the Registrar's Certificate thereto attached and marked 'A'

AND UPON HEARING Solicitor for the Applicant/Appellant and Counsel for the Attorney General

IT IS ORDERED that final leave be and the same is hereby granted to the Applicant/Appellant to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of the Court of Appeal dated the 30th day of April, 1974.

Wendy Sandra Punnett
Asst. Registrar.

IN THE PRIVY COUNCIL No. 20 of 1974

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962

AND

IN THE MATTER OF THE APPLICATION OF MICHAEL DE FREITAS ALSO CALLED MICHAEL ABDUL MALIK (A PERSON ALLEGING THAT CERTAIN PROVISIONS OF SECTIONS 1, 2, 3, 4, 5 and 7 OF THE SAID CONSTITUTION HAVE BEEN, ARE BEING OR LIKELY TO BE CONTRAVENED IN RELATION TO HIM) FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE SAID CONSTITUTION

BETWEEN

MICHAEL DE FREITAS also called Michael Abdul Malik (Appellant)

AND

(1) GEORGE RAMOUTAR BENNY
(2) THE ATTORNEY GENERAL
(3) TOM ILES, Commissioner of Prisons (Respondents)

RECORD OF PROCEEDINGS

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Solicitors for the Respondents