



16 May 2022

PRESS SUMMARY

Jay Chandler (Appellant) v The State (Respondent) (No 2) (Trinidad and Tobago) **[2022] UKPC 19**

On appeal from the Court of Appeal of the Republic of Trinidad and Tobago

JUSTICES: Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lady Arden, Lord Sales, Lord Hamblen, Lord Stephens, Lord Hughes, Sir Nigel Davies

BACKGROUND TO THE APPEAL

This appeal concerns whether the mandatory death penalty for murder is contrary to the 1976 Constitution of Trinidad and Tobago.

On 17 August 2011 the appellant, Jay Chandler, was convicted of murder. He was sentenced to death by hanging, which is the mandatory sentence for murder in Trinidad and Tobago as laid down in section 4 of the Offences Against the Person Act 1925 (the “**1925 Act**”). His conviction and sentence was upheld on appeal by the Court of Appeal of Trinidad and Tobago and by the Board in a judgment of 12 March 2018. The appellant’s sentence has since been commuted to one of life imprisonment.

In this appeal, Mr Chandler mounts a constitutional challenge to the mandatory death penalty. The principal issue raised is the relationship between sections 4, 5 and 6 of the 1976 Constitution. Section 4 of the 1976 Constitution recognises and declares fundamental rights, including the right of the individual not to be deprived of life, liberty and security except by due process of law. Section 5 prohibits the imposition of cruel and unusual punishment which, it is not disputed, includes the mandatory death penalty. Section 6, the “savings clause”, provides that nothing in sections 4 or 5 shall invalidate an existing law, meaning a law that had effect as part of the law of Trinidad and Tobago immediately before the commencement of the Constitution. The mandatory death penalty is one such existing law.

The Board has considered the constitutional validity of a mandatory death sentence for murder before on several occasions. Most recently, the Board convened an enlarged panel of nine judges to rehear an appeal on the issue from Barbados in *Boyce v R* [2004] UKPC 32; [2005] 1 AC 400 (“**Boyce**”) and to hear a further appeal from Trinidad and Tobago in *Matthew v The State of Trinidad and Tobago* [2004] UKPC 33; [2005] 1 AC 43 (“**Matthew**”) along with an appeal from Jamaica in *Watson v The Queen* [2004] UKPC 34; [2005] 1 AC 472. That enlarged panel was convened in order to make a definitive ruling on the subject, as a result of doubts expressed as to the correctness of the decision in an earlier case, *Roodal v The State of Trinidad and Tobago* [2003] UKPC 78; [2005] 1 AC 328. In *Matthew*, the majority held that the savings clause in section

6 of the 1976 Constitution preserves the lawfulness of the mandatory death penalty despite its inconsistency with fundamental rights which that Constitution would otherwise protect.

The Board has granted permission to appeal in this case in order to review those prior decisions in the light of recent decisions of the Caribbean Court of Justice (“**the CCJ**”) in *Nervais v R* [2018] CCJ 19 (AJ) (“**Nervais**”), an appeal from Barbados, and *McEwan v Attorney General of Guyana* [2018] CCJ 30 (AJ) (“**McEwan**”), an appeal from Guyana, which departed from the Board’s decision in *Matthew*.

JUDGMENT

The Board unanimously dismisses the appeal. Lord Hodge delivers the judgment of the Board.

REASONS FOR THE JUDGMENT

The Board is not persuaded that it should depart from its decision in *Matthew*. In that appeal and in *Boyce* the Board convened a nine-member panel to give a definitive ruling in the face of judicial disagreement. The principle of legal certainty dictates that there must be very strong reasons before the Board will depart from such a ruling [56]. The principle of stare decisis, or standing by what has been decided, requires that the Board be satisfied that the decision was wrong and that it lacked a satisfactory foundation [57]. It is not enough that the Board as presently constituted might take a different view if considering the matter for the first time [58], [65].

The Board sets out the jurisprudence relevant to the principle of stare decisis [58-65]. Applying that jurisprudence to *Matthew*, the Board holds that there are several reasons why that decision should not be overruled. First, the interpretation of the savings clause affects all existing laws, not just the mandatory death penalty. To accept the appellant’s interpretation would be to alter the basis upon which the government and people of Trinidad and Tobago have conducted their affairs since 1962 and to introduce considerable uncertainty into the law [66]. Second, the Board has consistently adopted the approach to the interpretation of the savings clause upheld in *Matthew* [67]. Third, the Board recognises the right of the CCJ to develop its own jurisprudence, and does not question the outcome of the decisions in *Nervais* and *McEwan*, each of which could be distinguished from *Matthew* [68]. Nonetheless, the Board is not persuaded by the judgments of the CCJ in *Nervais* and *McEwan* that *Matthew* was wrongly decided or that the law went in a wrong direction in that decision [69-73].

The Board turns to the appellant’s second argument that the mandatory death penalty is contrary to the doctrine of the separation of powers [75]. In Trinidad and Tobago the separation of judicial power from legislative or executive power is found in the 1976 Constitution [78]. The separation of powers is not a free-standing, legally enforceable principle that exists independently of and above a constitution [81]. The Board holds there is nothing inconsistent with the separation of powers in the 1976 Constitution for the legislature to prescribe by legislation the penalty to be imposed for a particular offence [79, 82].

The appellant also argued that section 1 of the 1976 Constitution, declaring Trinidad and Tobago to be a “sovereign democratic State”, contains by implication a specific legal requirement that punishment should not be arbitrary and must fit the crime [84]. The Board notes that this argument has not been considered by the courts of Trinidad and Tobago, and that it would be concerned to adopt what would be a radical development of the interpretation of the 1976 Constitution without the assistance of the views of those courts. In any event, the Board does not consider that the argument based on section 1 of the 1976 Constitution can add anything to the

separation of powers argument which the appellant has advanced and which the Board has rejected [84-95].

The Board concludes by noting that the policy questions posed by the savings clause are not limited to the mandatory death penalty but apply also to other preserved laws which are inconsistent with the fundamental rights enshrined in the 1976 Constitution. The 1976 Constitution has allocated to the Parliament of Trinidad and Tobago, as the democratic organ of government, the task of reforming and updating the law, including such laws. Those laws will continue to exist only so long as Parliament chooses to retain them [97-98].

References in square brackets are to paragraphs in the judgment

NOTE: This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.uk/decided-cases/index.html