



Easter Term
[2022] UKPC 20
Privy Council Appeal No 0106 of 2018

JUDGMENT

**Naresh Boodram (Respondent/Cross-Appellant) v
Attorney General of Trinidad and Tobago
(Appellant/Cross-Respondent) (Trinidad and Tobago)**

**From the Court of Appeal of the Republic of Trinidad
and Tobago**

before

**Lord Lloyd-Jones
Lord Sales
Lord Hamblen
Lord Stephens
Sir Tim Holroyde**

**JUDGMENT GIVEN ON
16 May 2022**

Heard on 16 and 17 November 2021

Appellant

Howard Stevens QC

Tom Poole QC

(Instructed by Charles Russell Speechlys LLP (London))

Respondent

Mark Seepersad

Joe Middleton

Vishala Seepersad

(Instructed by Herbert Smith Freehills LLP (London))

LORD LLOYD-JONES AND SIR TIM HOLROYDE: (with whom Lord Sales, Lord Hamblen and Lord Stephens agree)

1. Section 4 of Trinidad and Tobago's Offences against the Person Act provides that every person convicted of murder "shall suffer death". Long delay in carrying out a sentence of death may, however, make it unlawful to implement that sentence. The High Court, acting pursuant to section 14 of the Constitution of Trinidad and Tobago, may then commute the sentence. The principal issue in this appeal is whether in such circumstances the High Court can lawfully impose a sentence other than life imprisonment.

2. On 27 November 1996, at the Chaguaramas assizes in the Republic of Trinidad and Tobago, Naresh Boodram ("Mr Boodram") was convicted of two offences of murder. He was sentenced to death. The death sentence was not carried out, and was subsequently commuted by the High Court to one of life imprisonment. Mr Boodram appealed to the Court of Appeal of the Republic of Trinidad and Tobago, where he successfully argued that his case should be remitted to the High Court for resentencing on the basis that the court should not be restricted to commuting the sentence to life imprisonment, and should instead have the power to impose any lawful penalty other than sentence of death. The Court of Appeal allowed his appeal and remitted his case to the High Court, making no order as to costs. The Attorney General of the Republic of Trinidad and Tobago ("the Attorney General") now appeals against that decision. Mr Boodram cross-appeals on the issue of costs.

3. For the purposes of this appeal, it is unnecessary to refer to the facts of the case in any detail. It suffices to note that, against a background of drug-dealing activity, Mr Boodram and another man murdered their two victims by shooting. The bodies were subsequently mutilated and buried in a field. Their appeals against conviction were dismissed by the Court of Appeal. No one can doubt the seriousness of the crimes.

4. It is also unnecessary, in order to resolve the issues raised by the appeal and cross-appeal, to examine in detail all that has happened in Mr Boodram's case, and in the cases of other prisoners sentenced to death in Trinidad and Tobago, during the 25 years which have elapsed since Mr Boodram was sentenced. It is however appropriate to outline some features of the history, and to refer to relevant provisions of the Constitution.

5. Following his conviction, Mr Boodram was placed on death row in prison, where he remained for a number of years: well beyond the period of five years which was held in *Pratt and Morgan v Attorney General for Jamaica* [1994] 2 AC 1 to provide

strong grounds for believing that the delay in execution was such as to constitute inhuman or degrading punishment or other treatment.

6. The President of the Republic of Trinidad and Tobago has not, in Mr Boodram's case, exercised the power of pardon vested in him by section 87 of the Constitution of Trinidad and Tobago, which (so far as material for present purposes) provides -

“(2) The President may -

(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 the State on account of such an offence.

(3) The power of the President under subsection (2) may 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.”

7. The Constitution is the supreme law of Trinidad and Tobago, and by section 2 any other law which is inconsistent with the Constitution is void to the extent of the inconsistency. Chapter 1 of the Constitution recognises and protects fundamental human rights and freedoms. The rights enshrined in that Chapter include, by section 4(a), the right to life. By section 5(2)(b) the Parliament of Trinidad and Tobago may not impose or authorise the imposition of cruel and unusual treatment or punishment.

Section 5 is, however, subject to certain qualifications, including (by section 6(1)) an exception for existing law.

8. Section 14 of the Constitution, so far as material for present purposes, provides:

“(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter 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 by way of originating motion.

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) ...

and may ... make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.

...

(5) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal and shall be entitled as of right to a stay of execution of the order and may in the discretion of the Court be granted bail.”

9. In 2004 the constitutionality of the mandatory death penalty was considered by the Judicial Committee of the Privy Council in *Matthew v State of Trinidad and Tobago* [2005] 1 AC 433. The Board held that section 4 of the Offences against the Person Act was an existing law for the purposes of section 6(1) of the Constitution and thus

preserved from constitutional challenge. Although the mandatory death penalty provided for by that section infringed the right to life, and was a cruel and unusual punishment, it could not be invalidated or rendered void under section 2 of the Constitution. The Board, departing from its decision in the earlier case of *Roodal v State of Trinidad and Tobago* [2005] 1 AC 328, accordingly held that the mandatory death penalty was lawful, a decision which has now been approved by the Judicial Committee of the Privy Council in *Jay Chandler v The State (No 2)* [2022] UKPC 19.

10. However, the decision in *Roodal's* case had given the appellant Mr Matthew an expectation of a judicial review of his sentence, additional to the possibility of presidential commutation. The Board held that in those circumstances, it would be unfair simply to leave the death sentence to be carried out, subject to the decision of the President. It accordingly exercised the power provided by section 14(2) of the Constitution by allowing the appeal, setting aside the sentence of death and imposing a sentence of life imprisonment: see the judgment of the majority, delivered by Lord Hoffmann, at para 32. Lord Hoffmann added, at para 33 -

“In their Lordships’ opinion, the same considerations apply to anyone else sentenced to death and awaiting execution at the date of this judgment.”

11. In proceedings in the High Court referred to for convenience as “the *Dottin* proceedings” (*Andrew Dottin v John Rougier, Evelyn Patterson and the Attorney General* HCA No 1412 of 2005) an interim order was made on 13 June 2005 protecting from execution all those prisoners in Trinidad and Tobago who had been sentenced to death before the judgment in *Matthew* was given on 7 July 2004. By a further interim order of 19 August 2008, the High Court commuted to life imprisonment the death sentences of the *Dottin* applicants, and more than 50 other prisoners on death row (including Mr Boodram), and ordered that they be removed from death row.

12. Mr Boodram had by that time issued his own proceedings against the Attorney General. On 3 December 2007, some 11 years after sentence of death had been pronounced, he commenced a claim in the High Court, seeking an order pursuant to section 14(1) of the Constitution that his death sentence be vacated, by reason of the long delay in carrying it out, and that he be brought before the High Court for resentencing to any lawful penalty other than the death sentence.

13. On 23 July 2010 the High Court (Rajkumar J) dismissed Mr Boodram’s claim. Mr Boodram appealed.

14. On 8 March 2018 the Court of Appeal (Archie CJ, Yorke-Soo-Hon and Mohammed JJA) allowed his appeal. Archie CJ, with whom the other judges agreed, noted in his judgment that since the decision in *Pratt and Morgan* the courts of Trinidad and Tobago had routinely commuted death sentences to sentences of life imprisonment without any tariff or minimum term to be served. The court then considered the nature of the exercise in which the High Court was engaged when asked to grant relief under section 14 of the Constitution. It concluded, at para 23, that the court in exercising its original jurisdiction under that section had a discretion to take into account normal sentencing factors on the vacating of the death sentence. The Chief Justice went on to say:

“23. ... To be clear, although the expression ‘judicial commutation’ has been used, the Court, in fashioning a remedy under section 14, is not engaged in the exercise of the prerogative of mercy. It is, in fact, re-sentencing the Applicant in recognition of the fact that he has already been partly punished by reason of having endured the mental anguish of being on death row for an inordinately long period. The Court must therefore ask itself what additional punishment, if any, would be appropriate in the particular circumstances.

24. There is no logical reason why the sentence of life imprisonment should be imposed *carte blanche* upon every person who has their sentence commuted. That is inherently arbitrary and potentially disproportionate. The circumstances of each murder are different and a Court properly seized of the relevant facts would be able to substitute the appropriate sentence.”

15. The Chief Justice considered a number of previous cases in which death sentences had been commuted to sentences of life imprisonment and found them to show an inconsistency of approach and a lack of clarity as to what life imprisonment meant in practice. He also considered case law from other jurisdictions. He concluded, at para 44 -

“... simply resorting to the imposition of ‘life imprisonment’ brings neither clarity, proportionality nor certainty to the exercise of fashioning an appropriate remedy under section 14 of the Constitution. The Court must be specific in articulating the punishment it intends to impose, and if it

wishes to leave open the possibility of some flexibility after further consideration at a later stage, should say so. For the reasons that are articulated in the paragraphs that follow next, we are fortified in our conclusion that the Court has a discretion to order either life imprisonment with a tariff, a specific term of years or to be detained at the Court's pleasure [with review at specified intervals]."

16. The Court of Appeal held that resentencing, following commutation of a death sentence, required consideration of whether the punitive element of the sentence had been satisfied, and of whether the offender had been rehabilitated and could safely be reintegrated into society. In Mr Boodram's case, it had no information as to the latter. It held that the matter must therefore be remitted to the High Court for consideration of the appropriate sentence.

17. The issue of costs was dealt with briefly. In essence, the Court of Appeal held that it could not yet be said that Mr Boodram had been successful in his appeal, as it remained to be seen what sentence would be imposed; and that in any event the appeal had been "more in the nature of an interpretation", giving guidance as to what was meant by life imprisonment, so that an order for costs was not appropriate.

18. The Court of Appeal accordingly ordered that the matter be remitted to the High Court with no order as to costs. It is against that order that the Attorney General appeals, and Mr Boodram cross-appeals.

19. We have been assisted by the submissions of counsel, to all of whom we are grateful. We can briefly summarise their detailed submissions on the appeal as follows.

20. For the Attorney General, it is submitted that the principle established by *Pratt and Morgan*, and confirmed by the Judicial Committee in *Thomas v Baptiste* [2000] 2 AC 1, is that it is the carrying out of a death sentence after prolonged delay, and not the prolonged detention prior to execution, which is capable of constituting cruel and unusual punishment. The Court of Appeal failed properly to apply that principle: the passage from para 23 of the judgment, which we have quoted at para 14 above, shows that the Court of Appeal fell into error in seeking to remedy the anguish suffered by Mr Boodram whilst on death row awaiting execution. It is submitted that the Court of Appeal further fell into error in misunderstanding the nature of the exercise to be carried out when granting relief under section 14 of the Constitution in circumstances such as these: the death sentence was lawfully passed, albeit that it subsequently

became unlawful to carry it out, and the High Court was engaged in granting a constitutional remedy, not in resentencing.

21. Further, it is submitted on behalf of the Attorney General that the appropriate remedy in circumstances such as these is to remove the threat of execution. If that is achieved by the granting of a Presidential pardon pursuant to section 87 of the Constitution, there will be no reason for the court to intervene. In the absence of a Presidential pardon, the court's power under section 14 of the Constitution is to make an appropriate order; and the only appropriate order in circumstances such as these is to commute the death sentence to one of life imprisonment, that being the next most serious penalty to reflect the gravity of an offence for which Parliament has lawfully prescribed a mandatory sentence of death. Although it is accepted that the crime of murder covers a wide range of circumstances, it is submitted that the effect of section 4 of the Offences against the Person Act (which, by virtue of section 6(1) of the Constitution, cannot be invalidated by anything in sections 4 and 5 of the Constitution) is that all murders must be treated as equally grave. It is submitted that the focus in circumstances such as these must be on remedying that which is unconstitutional - namely, the carrying out of the death sentence after unreasonable delay - and not on the facts of the particular crime.

22. Further, it is submitted on behalf of the Attorney General that a life sentence imposed in Trinidad and Tobago is reducible either by Presidential pardon under section 87 of the Constitution, or by periodic review pursuant to rule 281 of the Prison Rules, and that the Court of Appeal was therefore wrong to treat such a sentence as effectively irreducible.

23. Finally, it is submitted on behalf of the Attorney General that even if the High Court would in law have power under section 14 of the Constitution to impose a sentence other than life imprisonment, the circumstances of this brutal double murder were such that only a life sentence would be appropriate.

24. For Mr Boodram, it is submitted that section 14 of the Constitution gives the court a broad discretionary power to make such order as it considers appropriate, and the Court of Appeal was entitled to exercise its discretion as it did. It is accepted that the principle in *Pratt and Morgan* is that it is undue delay in carrying out a lawful sentence of death which may render it unlawful to implement that sentence. It is submitted, however, that neither *Pratt and Morgan* nor any subsequent case has restricted the court to substituting a sentence of life imprisonment in such circumstances. It is for the High Court to determine the appropriate substitute sentence in all the circumstances of this case, and the matter was rightly remitted to that court.

25. It is further submitted on behalf of Mr Boodram that the distinction suggested by the Attorney General, between granting constitutional relief and resentencing, is a false dichotomy: in circumstances such as these the court is doing both, and the constitutional remedy is, or includes, the crafting of an appropriate substitute sentence. The provision of constitutional relief is not limited to removing the threat of execution, and the court in resentencing is not constrained to impose a life sentence. The Court of Appeal did not fall into error in applying the principle in *Pratt and Morgan*. Nor did the Court of Appeal make the error of treating the life sentence as irreducible: on the contrary, the court's recognition that life imprisonment is reducible is implicit in the Chief Justice's analysis of the lack of consistency as to what life imprisonment means in practice.

26. The submissions on the cross-appeal can be very briefly summarised.

27. For Mr Boodram, it is submitted that his appeal was successful and that there was no ground on which the Court of Appeal could depart from the general rule in Trinidad and Tobago that costs follow the event.

28. For the Attorney General, it was submitted in writing that the decisions whether to make any, and if so what, order for costs were within the discretion of the Court of Appeal: that court was entitled to regard an award of costs as inappropriate in a case concerning an important constitutional issue, and there was no error of law or principle in its decision. At the hearing of this appeal, however, counsel indicated that if the Attorney General's appeal was dismissed, there was no opposition to an order that Mr Boodram be awarded his costs in the proceedings below. With regard to the costs of the appeal and cross-appeal to the Board in that event, however, he submitted that such costs should be awarded on a pro bono basis.

29. Having reflected on those submissions, our conclusions are as follows.

30. The crime of murder is, of course, always very serious; but some murders are even more serious than others. The circumstances of murder cases vary across a wide range, from the terrorist who aims to overthrow a state by killing as many of its citizens as possible to the devoted partner who commits a "mercy killing" in order to end the unbearable pain suffered by a loved one who is terminally ill. Section 4 of the Offences against the Person Act lawfully prescribes the death penalty in all cases (*Matthew; Chandler v The State (No 2)*). The criminal court is required to impose that penalty, and there can therefore be no appeal against it. But where, as in this case, there has been long delay in carrying out the sentence, such that implementation of it has become unlawful and the death sentence must be commuted, section 4 imposes

no obligation on the High Court, and provides no guidance, as to what substitute sentence should be imposed. In such circumstances, section 14 of the Constitution gives the High Court the power to provide a remedy for the constitutional wrong which has been suffered by the condemned person. That remedy certainly includes the vacating of the death penalty, but it necessarily also includes the imposition of such substitute sentence as may be appropriate in the circumstances of the case. With respect to the Attorney General's argument, it is semantic quibbling to seek to treat only the first part of the remedy as "constitutional" and to object to the second part as impermissible "resentencing": the remedy for the constitutional wrong is that the High Court vacates the death penalty and substitutes an appropriate sentence. Often, no doubt, the appropriate substitute sentence will be one of life imprisonment; but the High Court is not restricted to imposing such a sentence.

31. That conclusion follows, in our view, from the wording of section 14(2) of the Constitution, which gives the High Court the power to "make such orders ... as it may consider appropriate". There is nothing in those words which prevents the High Court, in circumstances where there has been long delay in carrying out the mandatory sentence of death and that sentence can no longer be implemented, from reflecting the differing circumstances of individual cases. Nor, in such circumstances, does section 4 of the Offences against the Person Act require that all offenders be treated in the same way: that section imposes a mandatory requirement as to the sentence to be imposed by the criminal court on conviction, but it does not require the High Court, acting pursuant to section 14 of the Constitution, to ignore the circumstances of the offence and of the offender. We see no justification for overriding the clear words of section 14(2), and circumscribing the High Court's powers, by reference to a sentence which has not been implemented for several years and which can no longer be enforced.

32. We have considered the cases relied on by the Attorney General in support of the submission that only a life sentence can be appropriate in circumstances such as these. We need not mention all of them.

33. In *Pratt and Morgan*, the Board was considering the corresponding provisions of the Constitution of Jamaica, which are in materially the same terms as section 14(2) of the Constitution of Trinidad and Tobago. The judgment of the Board was delivered by Lord Griffiths. It was held, at p 34A, that the width of the language used in the relevant provision enabled the court to substitute for the sentence of death such order as it considered appropriate. In the cases of the applicants Mr Pratt and Mr Morgan, the appropriate order was that the sentences of death should be commuted to life imprisonment.

34. The Board was conscious that there were many prisoners in Jamaica who were under sentence of death and awaiting the outcome of the appeal. It therefore made some general observations “in an attempt to assist the Jamaican authorities who may be faced with a large number of appeals”. In doing so, Lord Griffiths said this at p 35G-36A:

“These considerations lead their Lordships to the conclusion that in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute ‘inhuman or degrading punishment or other treatment’. If, therefore, rather than waiting for all those prisoners who have been in death row under sentence of death for five years or more to commence proceedings pursuant to section 25 of the Constitution, the Governor-General now refers all such cases to the JPC [Jamaican Privy Council] who, in accordance with the guidance contained in this advice, recommend commutation to life imprisonment, substantial justice will be achieved swiftly and without provoking a flood of applications to the Supreme Court for constitutional relief pursuant to section 17(1).”

35. We are unable to accept the Attorney General’s submission that in that passage the Board was indicating that it considered life imprisonment to be appropriate in all cases in which a death penalty could not be implemented by reason of delay. The Board was there simply indicating to the Jamaican authorities, in particular the Governor-General and the JPC - the executive, not the judiciary, - a pragmatic course which might be taken; but it did not say that the relevant provision of the Jamaican Constitution would not permit any substitute sentence other than life imprisonment. On the contrary, it made clear at p 34A that the court had power to substitute for the death sentence “such order as it considers appropriate”.

36. Nor does the sentencing decision in *Matthew* provide any support for the Attorney General’s argument: in that case the Board exercised its power under section 14(2) of the Constitution by commuting the death sentence to life imprisonment, but again it did not suggest any general rule requiring that the same substitute sentence be imposed in every case.

37. In *Lendore and others v Attorney General of Trinidad and Tobago* [2017] UKPC 25; [2017] 1 WLR 3369 the President had exercised his power of pardon under section 87 of the Constitution by commuting sentences of death to imprisonment for life or for

75 years. Those Presidential decisions had been made in respect of a number of prisoners at a time without distinction, and without giving the prisoners any opportunity to make representations. It was held that the power of pardon under section 87 extended to substituting a lesser sentence in a case in which it had become unlawful to carry out a death sentence due to unreasonable delay. The exercise of that power had relieved the appellants of the threat of unconstitutional execution, and they were not entitled to a judicial substitution of sentence. It was further held that the substitute sentences were not unlawful as being illegitimately irreducible, because there was a system in Trinidad and Tobago of four-yearly reviews of long prison sentences which meant that the sentences did not fail to offer any prospect of release. However, the appropriate substitute sentences would have to be reconsidered by the President on the basis that the prisoners were entitled to make individual representations “with a view to having their substitute sentences set in the light of circumstances as they then are” (at para 78).

38. In the course of its judgment, at paras 34 to 36, the Board considered the “very wide powers” given to the High Court by section 14 of the Constitution. Lord Hughes, who handed down the judgment, referred at para 35 to the decision in *Pratt and Morgan* and said this:

“35. ... The Board sees no reason to depart from the view which it expressed in *Pratt and Morgan*. The very wide words of section 14(2) of the Constitution of Trinidad and Tobago empower the High Court, if on a constitutional motion it finds that execution has become unlawful by reason of unreasonable delay, so to declare and to order commutation to an appropriate substitute sentence.

36. The occasion for the High Court to do so may be relatively rare, if the practice of issuing a presidential pardon after the passage of five years is followed, as presently it appears to be. But if for any reason there has been no pardon at the time when the High Court determines an application under section 14, the Board can see no reason why the court should feel constrained to confine itself to a declaration of unconstitutionality, together with any other relief, and should not proceed to substitute an alternative sentence. It is clear that the President has the power to substitute a sentence if he exercises his power of pardon, but this is a supplemental power and does not, for the reasons set out above, constitute him a sentencing organ within the criminal

justice system. Still less does it make him the sole re-sentencing organ.”

39. We are unable to accept the Attorney General’s submission that that passage can, and should, be distinguished from the present case. Although Lord Hughes’ words were, strictly, *obiter*, the Board had heard argument on the point, and in any event we respectfully adopt the passage quoted as a correct statement of the law.

40. We also note that later in his judgment, when reiterating that the President is not performing a sentencing function when exercising his power of pardon, Lord Hughes made clear at para 76 that sentencing by a court is an individual exercise which requires the court to consider all the facts of the case before it.

41. We do not find anything in the cases cited to us which undermines our conclusion that the High Court, acting under section 14 of the Constitution, is permitted, and indeed required, to consider all the facts and circumstances of an individual case when deciding what sentence should be substituted for a sentence of death which it has become unlawful to implement. This is because in such circumstances the saving for existing legislation in section 6 of the Constitution has ceased to be relevant, and the rights conferred by sections 4 and 5 must be observed. Often, life imprisonment will be appropriate; but it would be arbitrary, and would in some cases even amount to cruel and unusual punishment or other treatment, for the court to be constrained to impose the same substitute sentence in every case.

42. It was submitted on behalf of the Attorney General that the approach suggested in *Pratt and Morgan* has in practice been followed in many cases, and that no convicted murderer has previously advanced the argument now put forward on behalf of Mr Boodram. Even if that has been the position in all cases (a proposition doubted by counsel for Mr Boodram), it does not assist the Attorney General. There may be many reasons why others have not argued this point. In any event, if Mr Boodram’s argument be sound - as we are satisfied it is - it is irrelevant that others have not advanced it.

43. The circumstances relevant to the decision as to what is an appropriate sentence in an individual case will include the overall aims of sentencing, including punishment; the circumstances, both aggravating and mitigating, relating to the offence and the offender; the length of time for which the offender has been detained in prison when the issue comes before the High Court; the extent to which the offender has been rehabilitated during that period; and whether his continued detention is necessary for the protection of the public.

44. Two reflections on the practical consequences of the Attorney General's submissions further illustrate why we are unable to accept the approach for which he contends.

45. First, the submissions before the Board failed to provide a clear picture as to what exactly happens in practice to those sentenced to life imprisonment in Trinidad and Tobago. It appears, however, that the period of time spent in custody by those serving such sentences varies: an unsurprising feature which in itself indicates the weakness in the Attorney General's submissions, based as they are on the premise that all murderers must be treated alike. The date of release is determined by the executive. Once released, the offender is not subject to any licence conditions and his sentence is therefore at an end. As the Court of Appeal said in the present case, the width of the wording of section 14(2) of the Constitution permits the High Court in an appropriate case to substitute for the death penalty a sentence of life imprisonment with a recommended minimum period (or tariff) to be served before consideration of release. Yet on the Attorney General's argument, since all cases would have to be dealt with in the same way, the High Court would not be able to make any such recommendation and so would be unable to give any judicial indication of the gravity of a particular case. It would therefore be possible for a murderer to be released by executive action before the expiration of the period which the High Court would have recommended as the minimum term to be served by way of punishment.

46. Secondly, there will, as we have indicated, be many cases in which the High Court would in any event regard life imprisonment as the appropriate substitute sentence. The approach for which the Attorney General contends would therefore make a difference only in those cases in which the High Court, having considered all relevant facts and circumstances, concludes that life imprisonment would be disproportionate and unfair. In such cases, the Attorney General's submissions would require the court to impose that sentence regardless of its conclusion. We find it impossible to reconcile such an outcome with the express provision in section 14 of the Constitution that the High Court may make such order as it may consider appropriate for the purpose of enforcing the constitutional rights to which the offender concerned is entitled.

47. The review provisions to which the Board referred in *Lendore* (see para 37 above) are contained in rules 281 and 282 of the Prison Rules (Republic of Trinidad and Tobago Revised Ordinances 1950, Rules and Regulations, Chapter 11, No 7):

“281 - Review of Long Sentences

The case of every prisoner serving a life sentence shall be reviewed by the Governor in Council at the 4th, 8th, 12th, 16th, and 20th year of the sentence.

282 - Review of Long Sentences

The case of every prisoner serving a term of imprisonment exceeding four (4) years shall be reviewed by the Governor at intervals of four years or at shorter periods if deemed advisable.”

The effect of those provisions is that any offender serving life imprisonment is entitled to a review at not less than four-year intervals. There is an established system, considered in *Lendore* at para 46, for the operation of such reviews; and the process of review is subject to judicial review in a case of legal error or error in fairness: see *Lendore* at para 49. The existence of that review process does not preclude an exercise of the Presidential power of pardon. The Board anticipates, however, that the review process is likely in practice to be subject to any direction by the High Court as to the minimum term to be served before consideration of release from a sentence of life imprisonment.

48. Given the existence of the review process and given also that a prisoner is entitled to petition the President for a pardon, it is not clear why the Court of Appeal, at para 50 of its judgment in the present case, appeared to assume that no review mechanism was available. As was submitted on behalf of Mr Boodram, any such assumption would be inconsistent with the Court of Appeal’s observations as to the lack of consistency as to what life imprisonment entails in practice, which suggests (with respect) that para 50 was not intended to mean what it appears to say. It may be that the Court of Appeal was simply referring to a specific mechanism of review by a court of the sort which exists in Antigua and Barbuda, to which it had referred in para 49 of its judgment. In any event, any error which the Court of Appeal may have made in that regard does not vitiate its conclusion as to the extent of the High Court’s power under section 14(2). For the reasons given above, the Court of Appeal was correct to rule that the words of section 14 are to be given their ordinary and natural meaning and enable the court, in circumstances such as the present case, to substitute for the death penalty whatever sentence is appropriate in all the circumstances.

49. As to whether life imprisonment, with or without a recommendation as to the minimum period to be served, is the appropriate sentence in this case, the Court of Appeal was plainly correct to rule that it lacked the necessary information and that the

matter must be remitted to the High Court. A further reason for remitting the matter in that way is that by virtue of section 14(5) of the Constitution, there is a right of appeal against the decision of the High Court, which would have been lost if the Court of Appeal had determined the appropriate sentence itself. In any event, it would not be appropriate for the Board to provide any further guidance as to the circumstances or the manner in which the sentencing discretion should be exercised or to express any opinion as to the appropriate sentence in the case of Mr Boodram. Such matters and in particular the setting of any tariff level of sentence are pre-eminently matters for decision by judges sitting in the local courts who are “immersed in the standards of Trinidad and Tobago and who make their decisions informed by the realities of crime and punishment in that state” (*Lendore* per Lord Hughes at para 80).

50. The Attorney General’s challenge to the decisions of the Court of Appeal must therefore fail and the appeal must be dismissed.

51. Turning to the cross-appeal, we are satisfied that the Court of Appeal, with all respect to it, fell into error in declining to make any order as to costs. The general rule in Trinidad and Tobago is that the unsuccessful party will be ordered to pay the costs of the successful party: see rule 66.6 of the Civil Proceedings Rules 1998, and the observations of the Board in *Seepersad v Persad* [2004] UKPC 19, para 24:

“The award of costs in Trinidad and Tobago is in the discretion of the court, as is usual in most common law jurisdictions. The general rule which should be observed unless there is sufficient reason to the contrary is that costs will follow the event.”

52. Mr Boodram had appealed against the High Court’s dismissal of his claim, arguing as a matter of principle that the court had a discretion as to the appropriate substitute sentence. He was wholly successful in his appeal. The fact that the Court of Appeal was unable to determine the appropriate sentence, and that the decision in that regard was accordingly remitted to the High Court, does not detract from his success on the important point of principle which lay at the heart of his appeal. Moreover, the appeal was of great importance to Mr Boodram personally: it was not an academic exercise, even if the ultimate decision of the High Court may leave him in the same position as he was in when he issued his claim.

53. Where an individual challenges the state on an important point of constitutional law or principle, and is unsuccessful, there will generally be good reason not to make any order for costs against him: as was said in *Ahnee v Director of Public Prosecutions*

(Mauritius) [1999] 2 AC 294, 307G, “bona fide resort to rights under the Constitution ought not to be discouraged”. It would be particularly regrettable if such resort to constitutional rights were discouraged in circumstances where the applicant is under sentence of death, even if that sentence can no longer be implemented. But where the individual is successful, there will in general be no good reason to deny him his costs simply because the decision of the appellate court not only determines his case but also serves to provide valuable guidance for other litigants. The case law relied on by the Attorney General does not support the submission that there is a general practice not to award costs in such circumstances. Moreover, a general rule precluding individuals from recovering their costs despite having succeeded on an important point of principle would tend to have a chilling effect on public law challenges to unlawful action by the state. So too would a general rule that any award of costs in favour of the successful individual should be made on a pro bono basis, thus doing no more than reimbursing him for his out of pocket expenses.

54. We therefore conclude that there was no good or sufficient reason for the Court of Appeal to depart from the normal practice of ordering costs to follow the event. Nor would there be any good reason for awarding costs only on a pro bono basis (assuming that such an award could be made in principle). Having succeeded in his appeal, Mr Boodram should have been awarded his costs in the High Court and in the Court of Appeal. His cross-appeal must accordingly succeed.

55. It follows that the Attorney General must pay on the standard basis Mr Boodram’s costs of both the appeal and the cross-appeal, those costs to be assessed if not agreed.