

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**CRIMINAL DIVISION**  
**29A/3/2008**

**REGINA**

**Applicant**

**V**

**RENALDO ARMBRISTER,**  
**RENALDO BONABY &**  
**KEVIN HARVEY**  
**Respondents**

**BEFORE:** His Lordship The Honourable  
Mr Justice K Neville Adderley

**APPEARANCES:** Ms Jillian Williams, Ms Erica Kemp with her,  
for the Applicant  
Mr Murrio Ducille for the First Respondent  
Mr Carlson Shurland for the Second Respondent  
Mrs Donna Dorsett-Major, Abigail Farrington with her  
for the Third Respondent

**8, 10 and 23 June 2010**

**DECISION ON SENTENCES**

## Adderley J

1. The respondents were convicted pursuant to the provisions of the Penal Code on 7 December 2009. The first and second respondents were convicted of the murder of Philip Gaitor Jr (“Lil Phil”) (s.290), kidnapping (s.282), and attempted extortion of \$100,000 from Philip Gaitor Sr (s.83 and 346). The third respondent was convicted of kidnapping and attempted extortion.
2. The crown has given due notice that it seeks the death penalty in respect of the first and second respondents.
3. A sentencing hearing pursuant to section 185 of the Criminal Procedure Code, Chapter 91, Statute Laws of The Bahamas was held on 10 June 2010.
4. Since the decision of the Privy Council in ***Forrester Bowe and Trono Davis v Regina*** [Privy Council Appeal No. 44 of 2005] in which it decided that on the true construction of the constitution the sentence of death was discretionary and not mandatory for a person convicted of murder in The Bahamas there has been a steady advance of principles to guide Judges when imposing the appropriate sentence on persons convicted of murder.

## THE LAW

5. A pioneering decision was that of Allen Sr J in ***Regina v Maxo Tido*** [20 April 2006] where using *inter alia* principles set forth in ***Patrick Reyes v Regina*** (Privy Council Appeal No. 64 of 2001) on appeal from Belize, she imposed the death penalty on Maxo Tido. This sentence was upheld by the Court of Appeal in ***Maxo Tido v Regina*** (SC Cr App No. 12 of 2006) after the Court reviewed ***Reyes***, the relevant statutes of Grenada, Montserrat, British Virgin Islands, the English Homicide Act 1957, the Murder (Abolition of the Death Penalty) Act 1965, as well as authorities from the United States of America. Its decision also pointed

out that in the various jurisdictions there were statutory guidelines, not yet in The Bahamas, for determining the degrees of murder. The Court of Appeal then based its decision on the specific items of mitigation and aggravation that had evolved from the practice of sentencing over the years in The Bahamas and on the facts of that case, found that it had been rightly decided.

6. Since ***Maxo Tido***, the law relating to sentencing in the case of murder has been further elucidated.

7. The most recent authority drawn to the attention of the court by the applicant is ***Trimmingham v The Queen*** [Privy Council Appeal No. 67 of 2007] an appeal from St Vincent and the Grenadines. This was a case where the appellant had been sentenced to death for the murder of a 68 year old man during the course of a robbery. The appellant had requested money at gunpoint from the man who said he had given his last \$900.00 to his daughter, but that the appellant could take some of his goats. The appellant then sawed the man's throat with a cutlass which he had taken from him. After the victim had bled for about five minutes and the blood stopped running, he then sawed his neck from the back until the cutlass hit the bone and then chopped off his head. He then took off the deceased's pants and wrapped his head in it and handled his penis making a remark about it. He then positioned him in a ditch and slit open his stomach to stop the body from swelling. When his accomplice told Trimmingham to leave the man alone, before he killed him, the appellant indicated that if he did not kill him he would cause him to be locked up.

8. The primary Judge sentenced Trimmingham to death and it was upheld by the Court of Appeal (Alleyne, Gordon and Barrow JJA), Brian Alleyne delivering the judgment for the whole court. The Privy Council set aside the death penalty and substituted life imprisonment on the basis that it agreed with a submission by counsel that the murder was not the "worst of the worst".

9. Lord Carswell delivering the judgment for the full court [Lord Phillips of Worth Matravers, Lord Rodger of Earlsferry, Lord Walker of Gestingthorpe, Lord Carswell and Lord Mance] set out the principles upon which the death penalty should be applied at [20] and [21] as follows:

“20 Judges in the Caribbean courts have in the past few years set out the approach which a sentencing judge should follow in a case where the imposition of the death sentence is discretionary. This approach received the approval of the Board in *Pipersburgh v The Queen* [2008] UKPC 11, and should be regarded as established law.

21. It can be expressed in two basic principles. The first has been expressed in several different formulations, but they all carry the same message, that the death penalty should be imposed only in cases which on the facts of the offence are the most extreme and exceptional, “the worst of the worst” or “the rarest of the rare”. In considering whether a particular case falls into that category, the judge should of course compare it with other murder cases and not with ordinary civilised behaviour. The second principle is that there must be no reasonable prospect of reform of the offender and that the object of punishment could not be achieved by any means other than the ultimate sentence of death. The character of the offender and any other relevant circumstances are to be taken into account in so far as they may operate in his favour by way of mitigation and are not to weigh in the scales against him. Before it imposes a sentence of death the court must be properly satisfied that these two criteria have been fulfilled.

10. The cases from the Caribbean courts referred to were not cited in *Trimmingham* but some of them were referred to in *Pipersburgh*. They included *Mitcham v DPP* [Criminal appeals Nos. 10, 11 and 12 of 2002 from St Christopher and Nevis] where Sir Dennis Byron CJ set out a procedural guideline for the trial judge when fixing the sentencing hearing which has been adopted as the norm.

11. Furthermore, at [33] of *Pipersburgh* Lord Rodger quoted Rawlins J A Ag in *Moise v The Queen* 15 July 2005 from the Eastern Caribbean Court of Appeal who summarized the principles at para 17 of that judgment as follows:

“17. The cases mentioned in the foregoing paragraph establish that the first principle by which a sentencing judge is to be guided in these cases is that there is a presumption in favour of an unqualified right to life. The second consideration is that the death penalty should be imposed only in the most exceptional and extreme cases of murder. At the hearing, the convicted person must raise mitigating factors by adducing evidence, unless the mitigating factors are obvious from the evidence given at the trial. The burden to rebut the presumption then shifts to the Crown. The Crown must negative the presence of mitigating circumstances beyond a reasonable doubt. The duty of the sentencing judge is to weigh the mitigating and aggravating circumstances that might be present, in order to determine whether to impose a sentence of death or some lesser sentence.

18. It is a mandatory requirement in murder cases for a judge to take into account the personal and individual circumstances of the convicted person. The judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person. The death sentence should only be imposed in those exceptional cases where there is no reasonable prospect of reform and the object of punishment would not be achieved by any other means. The sentencing judge is fixed with a very onerous duty to pay due regard to all of these factors.

19. In summary, the sentencing judge is required to consider, fully, two fundamental factors. On the one hand, the judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the judge must consider the character and record of the convicted person. The judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case.”

12. It was Lord Rodger’s view in *Trimmingham* that it is the need to consider the personal and individual circumstances of the convicted person, and, in particular, the possibility of his reform and social re-adaptation which makes the social inquiry and psychiatric reports necessary for all such sentence hearings.

13. Mr Ducille cited a number of authorities from the Commonwealth which stated the same principles mentioned above including *Wilson v R* CR Appeal

No. 30 of 2004 and **Trimmingham v R** Criminal Appeal No. 32 of 2004 from St Vincent and the Grenadines; **Singh v State** of Punjab [1979] INSC 104 (4 May 1979); **S v NKwanyana and others** 1990 (4) SA 735 from South Africa; **Mitcham, et al v DPP** Criminal Appeals Nos. 10, 11 and 12 of 2002 from St Christopher and Nevis. These were adopted by the other defence counsel.

14. In **Attorney General v Francis** SCCR App. No. 2 2007 in The Bahamas Court of Appeal the accused had been convicted of two counts of murder on 23 July 2005 and sentenced to life imprisonment “for the rest of his natural life”. The short facts were that a witness watched as the convict raped his roommate’s girlfriend then placed a pillow on her chest and fired a shotgun at point blank range into her body. The convict then placed a pillow on his roommate’s back and shot him to death. Although the trial judge had concluded that the offence was of the gravest variety, he concluded that the prosecution had not negated beyond a reasonable doubt the mitigation factors which showed clear evidence of mental problems of the convict. The court dismissed the Crown’s appeal against sentence being too lenient but varied the sentence by the removal of the words “for the rest of his natural life” as being unconstitutional. That followed the Privy Council decision in **Coard v The Attorney General of Grenada** (Privy Council Appeal No.10 of 2006).

#### **APPLICATION OF THE LAW TO THE FACTS**

15. I have reviewed the evidence upon which the jury reached its verdict. In addition, Reports (“probation reports”) by the Department of Rehabilitative/Welfare Services, and by Dr Nelson A Clarke, Consultant Psychiatrist, were prepared for each respondent in January 2010 and May 2010 respectively. A second probation report pertaining to the second respondent was prepared in March 2010 partly from a second interview conducted at the request of the second respondent. These reports were tendered to the court without objection by counsel by the persons who conducted the personal interviews with

the respondents and they were subject to cross examination. No evidence was adduced by the respondents. I read and have taken into account each of those reports. In each of the reports, in addition to other persons making mitigating statements, Mrs Myrna Gaitor expressed her view that there is a need for retribution for the murder of her son.

#### **RENALDO BONABY**

16. I will start with Renaldo Bonaby, the second respondent, because it is clear from the evidence that he was the chief instigator and perpetrator and the others were subordinate executors. From the morning of the crime, 7 December 2006, he designed and saw to the execution of the plan to kidnap, demand a ransom and eventually murder Lil Phil later that evening.

17. With respect to the aspect of the degree of extremity of the murder, this case falls within the exceptionally extreme category and is distinguishable, for example, from the facts of *Trimmingham* where there was little pre-murder torture, trauma or humiliation, and by the time the victim's head was cut off, and his stomach cut open he was apparently already dead, thereby making them irrelevant to the issue of trauma or torture.

18. This murder took place during the commission of several offences namely kidnapping and attempted extortion. Prior to the murder the deceased was subjected to severe trauma at the hands of the respondents by way of being beaten with baseball bats and a wrench, and subject to humiliation having been tied up with a rope and gagged with duct tape and moved from place to place in the car with the other respondents. This happened intermittently for well over an hour.

19. Lil Phil was killed so that he would not be able to identify the respondents after the extortion plan had failed. When he pleaded with the second respondent

to find out why his good friend, the second respondent, was doing all this to him, the second respondent replied "Why you calling my name, you gatta dead".

20. The murder itself was particularly gruesome and heinous since the victim was burnt alive in heat that was more severe because of the material of which the car seat covering was made. The second respondent who had a certificate in health, first aid and fire from STWAS Maritime, caused the deceased to be placed in the rear seat of his own car, bound, and poured gasoline over him, inside and outside of the car, and ignited the car with a cigarette lighter. As the car burst into flames Lil Phil could be heard screaming. The second respondent walked away from the burning car laughing.

21. The body was burned beyond recognition. Essentially only the torso and the skull remained. His mouth was wide open. All the arms and legs had been burnt off and DNA testing was required to identify that the body was that of the child of Mr and Mrs Philip Gaitor Sr.

22. The psychiatric report revealed no dysfunctional or abnormal personality, and no evidence of mental impairment by use of mind altering drugs. According to the psychiatric report the second respondent is not suffering from a psychiatric illness.

23. Against those aggravating circumstances the mitigating circumstances in his favour were provided by his parents and several family members. He was known to be of good character. He is 22 years old. The court does not hold against him the comment made by his girlfriend that in his earlier years he was disrespectful to his parents and credits him with reportedly saying that he was trying to set a better example for his siblings.

24. However a further aggravating circumstance is that on the totality of the evidence the second respondent has no remorse. His confession admitted the offence. His unsworn statement in court denied any culpability. His first

probationary report of January 2010, denied culpability. His second probationary report of March 2010 admitted that he committed the offence and gave an account of events materially different from that in his confession. He later again denied culpability to Dr Clarke in the May 2010 psychiatric report. At his appearance in court at the sentencing hearing, he appeared to deny giving information to the probation officer to serve as the basis for the second probation report in which he admitted culpability, and in the absence of his counsel who had been excused early by the court, stated that his attorney had not represented him properly. Hope of rehabilitation must be based on a substratum of evidence. Under cross examination the probation officer felt that in his second interview he was as much remorseful for being in prison as for having committed the murder. Based on the prevarication of the second respondent there is no reliable evidence on which the court can conclude that there is a hope of rehabilitation.

25. The burden of proof is upon the applicant to prove beyond a reasonable doubt that the death penalty is appropriate. Based on the evidence before me I am satisfied beyond a reasonable doubt that there is no reasonable prospect of his reform and on the facts of this case the object of punishment [namely to reflect the abhorrence of the society] would not be achieved by any other means than by the death penalty. I am likewise satisfied that the aggravating circumstances far outweigh the mitigating factors in his case.

**RENALDO ARMBRISTER**

26. The first respondent played a supportive role in the murder and other crimes. He recruited the third respondent. He participated in the terrible beating of Lil Phil that took place before the murder and otherwise assisted. He actively assisted twice in calling Philip Gaitor Sr to demand the ransom of \$100,000 with the threat that if Mr Gaitor wanted to see Lil Phil alive again he must pay the ransom. However, at the time the car was set afire by the second respondent he

was sitting nearby in the third respondent's car in which they all eventually left the scene.

27. He is 23 years old. A number of persons gave statements for his probation report including his mother, his father two great-grand aunts, family and girlfriend and Mr Leslie Minus, the Principal of Alpha Omega Christian Academy which he attended from grades 7 – 12 in Freeport, Grand Bahama. He is of good character although Mr Minus observed that he had a “split personality-like behaviour” as he often vacillated between adult and childhood behaviour. Mr Minus was of the view that if the court imposed as lenient a sentence as possible, it would not regret the decision because the chance of re-occurrence of this type of crime is “slim to none”.

28. According to the psychiatric report, there was no evidence that he was suffering from major depressive disorder or a psychosis or other significant psychiatric illness at the time of his report. In weighing the mitigating and aggravating circumstances in relation to the first respondent, I am not satisfied beyond a reasonable doubt that the death sentence should be imposed.

#### **KEVIN HARVEY**

29. He took part by providing the transportation by car and also took part in the tying up of the deceased. He took some part in the beating but at one stage tried to prohibit the others from beating Lil Phil any further. On instructions from the second respondent, he also provided from his car trunk, the gasoline with which Lil Phil's car was doused before it was set afire by the second respondent. He showed remorse shortly after the incident by visiting Lil Phil's family and expressing his regrets. He was remorseful at the trial and appears to continue to be remorseful. He is 23 years old.

30. According to the psychiatric report, there is no evidence that the third respondent is currently mentally ill, but it is very possible that he is a potential candidate for mental illness. The report concludes that it is very important that he receives follow-up and re-evaluation, and that he is monitored carefully. Dr Clarke also reported that the third respondent had exhibited paranoid behavior while in prison and was treated there successfully for it.

31. Despite suggestions in cross examination by his counsel that one of his parents and his aunt had suffered from mental illness no evidence was led to this effect.

32. I have weighed the various factors and is of the view that there is a preponderance of mitigating circumstances in his case, which I take into account.

#### **SENTENCES**

33. For the foregoing reasons, I hereby sentence you as follows:

**Renaldo Bonaby:**

For the conviction of murder, I sentence you to suffer death in the manner authorized by law. For the conviction of attempted extortion you are sentenced to prison for five (5) years. For the conviction of kidnapping you are hereby sentenced to prison for seven (7) years.

**Renaldo Armbrister:**

For the conviction of murder, you are sentenced to life in prison. For the conviction of attempted extortion you are sentenced to prison for five (5) years, and for the conviction of kidnapping you are sentenced to prison for six (6) years.

**Kevin Harvey:**

For the conviction of attempted extortion, you are hereby sentenced to prison for three (3) years and for the conviction of kidnapping, prison for three (3) years, I also order that the recommendation of Dr Clarke with respect to you receiving follow up visits, re-evaluation, and regular monitoring while in prison be implemented.

For each of the respondents, time already spent in prison from the date of conviction is to be taken into account, sentences to run concurrently.

**Concluding Remarks**

34. I am constrained to make some concluding observations. The murder rate in The Bahamas is unacceptably high. Kidnapping for the purpose of extorting money from persons has become far too prevalent in some Caribbean countries, and indeed certain other parts of the world. It is caused by the greed of persons hoping to get free money from those who are perceived to have it, such as businessmen and persons perceived to be of means. The cases show that in kidnappings and extortion too often something goes wrong which leads to the hostage being killed. It must therefore be in the contemplation of kidnappers and extortionists that their enterprise may indeed end in murder of the victim. It is important that our society 'nips this crime in the bud' before it gains any sort of foothold in The Bahamas.

**K Neville Adderley**  
**Justice**