IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE FULL COURT

CLAIM NO. 2008/HCV 05481

CORAM: THE HONOURABLE MRS. JUSTICE MARVA McINTOSH
THE HONORABLE MR. JUSTICE HORACE MARSH
THE HONOURABLE MR. JUSTICE LENNOX CAMPBELL

IN THE MATTER of section 5a of the Parole Act

BETWEEN	**NEVILLE WHYTE**	**APPLICANT**
AND	**THE ATTORNEY GENERAL**	**DEFENDANT**

Lord Anthony Gifford, Q.C. and Mrs. Helen Coley-Nicholson instructed by Gifford, Thompson and Bright for the claimant.

Mr. Curtis Cochrane instructed by the Director of State Proceedings for the respondent.

Heard: 26th May 2009 and 3rd June 2009

McIntosh, J.

I have read the draft judgment of Campbell, J. I agree with the reasoning and conclusion therein and I have nothing to add.

Marsh, J.

I have read the draft judgment of Campbell, J. and wish to add nothing.

Campbell, J.

Background

(1) On the 5th April 1990, the applicant was convicted of murder and sentenced to death. His death sentence was commuted to life imprisonment on the 2nd July 1997. He is presently an

inmate in the Saint Catherine Adult Correctional Centre. He applied for parole sometime in February 2005 and on the 16th February 2006, his application was refused. He would be eligible to re-apply after the expiration of one year. On the 19th February 2007, he submitted his further application, and did the necessary interviews, examinations which precede the Parole Board's consideration of an inmate's application. On the 21st September 2007, he was served with a notice of a decision of a single Judge of Appeal, dated 12th September 2003 which recorded a decision made on 17th December 2003. The notice advised that it had been determined that a period of 20 years should elapse before he became eligible for parole. That period would commence from the 2nd May 1990.

(2) On the 23rd November 2007, the Parole Board informed the inmate of their receipt of Justice Cooke's Order and advised him, that based on that Order, his eligibility for the grant of parole was 1st May 2010, therefore, his application would not be considered before that date. On the 25th October 2007, he applied for judicial review of the decision of the Honourable Justice Cooke, seeking certiorari to quash Justice Cooke's order of the 12th September 2003 and a Declaration that the said decision contravened the right of the claimant to a fair hearing within a reasonable time pursuant to section 20(2) of the Constitution of Jamaica and a Declaration that the claimant is entitled to have his application for parole heard and determined by the Parole Board.

(3) On the 24th October 2008, Straw, J. refused the inmate's application for judicial review. The Court was of the opinion that, although Justice Cooke, sitting alone, could not constitute, 'a Court of Jamaica' for the purposes of an appeal to the Privy Council, however, in determining issues of sentencing, the Judge is acting in a judicial capacity. If he is acting in a judicial capacity, then he is not subject to judicial review. The Court relied on **Millicent Forbes v The Attorney General of Jamaica SCCA No. 29/2005**. The Court held that the applicant also has a right to pursue constitutional relief at the Constitutional Court if he is alleging a breach of those rights. The Court was of the view that there was no bar to an appeal of Justice Cooke's Order. He therefore had an alternative remedy which he had not exhausted.

Constitutional Relief

(4) On the 18th November 2008, the applicant filed a Fixed Date Claim Form seeking relief under the Constitution of Jamaica, by way of redress pursuant to section 25 (1) for the violation of his right under section 20 (2) thereof, to be afforded a fair hearing within a reasonable time in relation to the determination of the period of imprisonment which he should serve before being eligible to apply for parole.

(5) The claimant contends that;

(a) He was not granted a fair hearing before the Honourable Mr. Justice Cooke, contrary to section 20(2) of the Constitution.

(b) The hearing of this matter was not concluded within a reasonable time contrary to the said section 20(2).

(c) No redress is available to him under any other law or procedure.

He seeks the following remedies,

(i) A Declaration that he was entitled to be heard and or make representations before a decision in his case was made by a Judge of the Court of Appeal pursuant to section 5a of the Parole Act.

(ii) A Declaration that the claimant was entitled to be notified of such a decision within a reasonable time.

(iv) A Declaration that the decision by the Honourable Justice Cooke on the 17th December 2003 and embodied in an order dated 12th September 2007, ordering that the claimant be not eligible for parole until 20 years had elapsed, time to commence on the 2nd may 1990, is null and void.

(v) A Declaration that the claimant is entitled to have his application to the Parole Board submitted on the 19th February 2007 and determined by the Parole Board.

(vi) Compensation for the breach of claimant's constitutional rights.

(vii) Such further or other relief as may be just.

(6) Section 25 of the Constitution provides;

> (1) *Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) 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 Supreme Court for redress.*

The claimant here complains of a contravention of section 20 (2) of the Constitution in relation to him. Mr. Cochrane, for the Crown, contends that no right of the applicant included in section 14 to 24 of the Jamaican Constitution has been contravened.

(7) Section 20 (2) provides;

> Any court or other authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial: and where proceedings for such determination are instituted by

any person before such court or other authority, the case shall be given a fair hearing within a reasonable time.

The Privy Council in **Sooriamurthy Darmalingum v The State** in considering the Mauritiuthian Constitution section 10 (1), interpreted it as if it were the same as Article VI of the European Convention, and as if it contained the words "in the determination of his civil rights and obligations." Lord Gifford submitted that this interpretation was on the reasoning of the Privy Council applicable to s 20(2) which includes all proceedings including proceedings in the appellate Court. He submitted that section 20 (2) which, in its plain words, concerns a determination of the citizen's civil rights, that although such a determination arises from a criminal matter, is not a determination of a criminal charge. He further submitted that civil rights is a broad phrase which could be applicable to proceedings after the determination of a criminal matter. Section 20 (1), although it protects the same rights as does 20 (2), that protection is guaranteed to any person who is "charged with a criminal offence." That is no longer the status of the claimant, he having been convicted and sentenced. It was submitted on behalf of the claimant that his complaint concerns the length of his sentence following his conviction and commutation.

(8) In **Huntley v The Attorney General and Anor. (1994) 46 WIR 218**, among the issues raised was whether section 20 of the Constitution has any application to the classification process contained in s 7 (2)(a) of the Offences Against the Person (Amendment) Act 1992 (1992 Act); if it did, there would be no compliance with at least section 20 (6). The appellant also raised the issue whether section 7 of the 1992 Act contravenes section 20 (7) of the Constitution. The Privy Council held that even giving section 20, a most generous interpretation, section 7 of the 1992 Act is not a section to which section 20 could apply. Lord Woolf, who delivered the judgment of the Board, says at page 228;

> *"The classification exercise which the judge is performing is not comparable to charging a person with a criminal offence" ... However, this exercise remains a wholly distinct exercise from that contemplated by section 20 of the Constitution. The review which section 7 requires does not involve the judge determining the guilt or innocence of the person who has previously been convicted of murder."*

The sub-sections of section 20, which the Court considered relevant for its determination of the issues were (1) (5) (6) (7) and (10), all of which are concerned with the criminal trial process. Huntley was afforded relief under the constitution. Section 20 (2) was not discussed.

(9) The decision in Huntley recognizes that a person who has been convicted and sentenced can make representations concerning the contravention of his section 20 rights. The issue was not debated in Huntley, because of the then recent decision concerning a prisoner who had received a mandatory life imprisonment. The case concerned the State's power to release him on licence. In **Doody v Secretary of State for the Home Department (1994) 1 AC 531**, the

House of Lords decided that the principles of fairness required the Secretary of State to afford a prisoner serving a mandatory life imprisonment the opportunity to make representations as to the period he should serve. It appears that the determination of such a person's right is amenable to constitutional redress pursuant to section 25 should those rights be contravened.

(10) Another hurdle in the claimant's path to the redress he sought was whether a judicial order, even if wrong, as the Crown has admitted Justice Cooke's Order was, could lead to a contravention of a person's human right. In the case of **Maharaj**, the Privy Council held that it would be "very rare event" that would lead to a judgment or order that is liable to be set aside on appeal contravening the fundamental freedoms enshrined in the Trinidad Constitution. Lord Diplock in **Maharaj v Attorney General (no.2)(1978) 30 WIR 310**, at page 321;

> "No human right or fundamental freedom recognized by Chapter 1 of the Constitution is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person serving a sentence of imprisonment. The remedy for errors of this kind is to appeal to a higher court. When there is no higher court to appeal to, then none can say there was an error. The fundamental human right is not to a system that is infallible but to one that is fair. It is only errors in procedure that are capable of constituting infringements of the rights protected by s 1(a), no mere irregularity in procedure is enough, even though it goes to jurisdiction, the error must amount to failure to observe one of the fundamental rules of natural justice. ...Even a failure by a judge to observe one of the fundamental rules of natural justice does not bring the case within s6, unless it has resulted, is resulting, or is likely to result in a person being deprived of life, liberty, security of person or enjoyment of property."

The Crown has maintained that Justice Cooke was acting as a judicial officer and conceded that the applicant had a right to a fair hearing before Cooke J.A, which had been contravened. The denial of a fair hearing is a procedural failure that constitutes an error that amounts to failure to observe one of the fundamental rules of Natural Justice, and is likely to further his deprival of liberty.

(11) Counsel for the claimant conceded that there was no challenge concerning the applicant's right under section 20(2), to an independent and impartial Court or authority. Counsel for the claimant formulated the complaints in this way. "The applicant complains of two violations of his rights (1) the failure to afford him a hearing or the opportunity to make representations in relation to the period to be served before parole; (2) the delay in notifying him of the decision.

Fair Hearing

(12) Crown Counsel quite properly conceded that a failure to give the applicant the opportunity to be heard before Justice Cooke was wrong. Lord Gifford contended he had a right of representation by his Counsel, not a personal appearance. In **Albert Huntley v Attorney General and Anor. (1994) 46 WIR 218**, the Privy Council was considering section 7 (2) (a) of the 1992 Act, the review and classification process, in relation to a person who had been convicted of murder, prior to the Act coming into force. The Court was considering the constitutional rights of a person charged with a criminal offence and the common law requirements of fairness. The procedure was two – staged, the first stage consisted of a single Judge who would make a determination as to the classification of the offence, into capital or non capital murder. The Judge would then be required to notify the person affected in writing of the classification and advise him of his rights to request a review by three Judges of the Court of Appeal and to appear or be represented by Counsel. The prisoner was then obliged to request the review and state his reasons in writing for a change of classification within twenty one days of the notification. The Court held that the determination by the single Judge was a mere "winnowining exercise" that would be later reviewed. Section 20 would not apply to that first stage. The Court viewed the two stages as being one transaction; the first stage allowing for a more expeditious final determination. This was a case where the need for expedition outweighed the advantage, if any, that would accrue to the claimant by being able to make representations at the first stage.

(13) The decision in **Huntley** further considered the circumstance in which the single Judge, having found that the murder was non-capital would be required to make the determination, under section 7 (2) (a), which was, "whether and to what extent a specified period would elapse before the grant of parole." The single Judge of Appeal had before him a determination under section 5(a) of the Parole Act, which provides;

> "Where, pursuant to section 90 of the Constitution, a sentence of death has been commuted to life imprisonment, the case of the person in respect of whom the sentence was so commuted shall be examined by a Judge of the Court of Appeal who shall determine whether the person should serve a period of more than seven years before becoming eligible for parole, and if so, shall specify the period so determined."

(14) The Court in **Huntley** commented on the fact that the parole aspect of the single Judge's determination would not be susceptible to review by the three Judges of appeal. This would deprive the inmate of an opportunity to make representation on an issue that could cause great detriment to him. The Court made reference to the case of **Doody** (supra), where there was a power to release on licence prisoners who had received mandatory life imprisonment. Lord Woolf said at page 230, letter 230;

"The House of Lords decided that the principles of fairness required the Secretary of State to afford to a prisoner serving a mandatory life sentence the opportunity to submit in writing representations as to the period that he should serve for the purposes of retribution and deterrence before the Secretary of State set the date of the first review and that the Secretary of State was required to give to the prisoner certain information to enable the prisoner to make representation."

They held that in relation to a person for whom a determination of a period should elapse before the eligibility of parole, such a person has the right to make representation before a period was specified. The decision in **Doody** and in **Huntley**, on this point was the reason for the concession by the learned Crown Counsel.

The delay in notifying the inmate of the decision

(15) The date of the impugned Order was the 17th December 2003. It was drawn up on the 12th September 2003. The applicant received the notification of the Order on the 21st September 2007, three years and some nine months after the learned Judge had made his decision. Lord Gifford, in his helpful submission, noted that there was no reason tendered by the relevant authorities for the delay, which Counsel described as being "plainly inordinate." The Court was referred to **Bell v Director of Public Prosecutions (1985) 2 ALL ER 585**; a case which dealt with pre-trial delay. In that case, the accused was arrested in May 1977, convicted on 20th October 1977. On 7th March 1979, the Court of Appeal quashed his conviction. He was not notified until 19th December 1979. Granted bail on 21st March 1980. On 10th November 1981, no evidence offered against the accused. On the 12th February 1982, the appellant was re-arrested, ordered to be re-tried on the 11th May 1982. The accused applied to the Supreme Court of Jamaica that his rights 'to a fair hearing within a reasonable time' has been infringed. Among the contentions of the Crown, it was submitted that no right to a speedy trial had been enjoyed before the coming into effect of the Constitution, and no new rights were conferred by the Constitution. Lord Templeman, who delivered the judgment of the Board, dealt with that submission in this way, at page 589, letter d;

"The common-law protection of the individual was not intended to be whittled away by the constitution."

...and at letter h;

"Their Lordships do not in any event accept the submission that prior to the Constitution, the Law of Jamaica, applying the common law of England, was powerless to provide a remedy against unreasonable delay, nor do they accept the alternative submission that a remedy could only be granted if the accused proved some specific prejudice, such as the supervening death of a witness."

(16) The applicant here is an inmate, his trial is long over, the appellate stages are also long at an end. Is he entitled to be notified within a reasonable time that a determination has been made in respect of his eligibility for parole? In **Huntley**, the Court was emphatic that a person in the position of the appellant (i.e. having exhausted trial, appellate processes, would have a right to make representations. If the notification of that right was 'plainly inordinately" delayed, could that delay amount to a breach of his fundamental rights. The dicta in the case of **Sooriamurthy** (supra), explains that the reach of the constitutional provisions in respect of "reasonable time" guarantee is wide. Lord Steyn says, "Moreover the independence of the reasonable time" guarantee is relevant to its reach. It may be applicable in any case were the delay has been inordinate and oppressive.

(17) In **Bell**, with pre-trial delay, the Privy Council obtained guidance from the dictum of Powell, J. In **Barker v Wingeo (1972) 407 U.S. 514**, a decision of the Supreme Court of the United States of America, the dictum is quoted with approval at page 590 of **Bell**;

> ... the right to a speedy trial is a more vague concept than other procedural rights. It is, for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate.

The Court identified four relevant factors to assist in the determination whether there had been unreasonable delay. (1) the length of the delay (2) the reasons given by the prosecution to justify the delay (3) the responsibility of the accused for asserting his rights and, (4) any prejudice to the accused. Powell, J. in **Barker v Wingeo**, had stated that "till there was delay that was presumptively prejudicial, there was no need for an inquiry into the other factors that go into the balance." As already pointed out, there was a delay of three years and nine months from the date of the order to its delivery. The instant applicant had suffered a delay of some two and a half years before he could apply. As a result of this, he was delayed in having the Judge's decision declared null and void. He had twice applied for parole under the belief there was no bar to his so doing. He was led to believe that he was eligible for parole, not having had a determination by the single Judge in respect of him.

(18) The Crown did not tender an explanation for what Counsel described as "a lamentable lapse" in notifying the applicant of the Order that affected him. There was no suggestion of any untoward conduct such as Powell, J. advised should militate heavily against the Crown when it occurs. The Court is left to presume negligence on the part of the relevant agency. The applicant never slept on his rights, he had made two applications for parole. The second of which was not considered because of the notification of the Order. He had done all the necessary social enquiry reports, psychiatric examinations, and correctional reports. He had engaged in certain rehabilitative programmes and had been permitted to have weekends outside the prison walls. He attests that he had a legitimate expectation that his application would be approved. His

application for judicial review and his application before this Court demonstrate his strong resolve to redress what he alleges are contraventions of his rights.

(19) Powell, J. was of the view, in relation to the relevant factor of prejudice, that it should be assessed in light of the interests of the right it was designed to protect. The delay would have kept the applicant in the dark in relation to a decision that had a great impact on his right to apply for parole. Lord Gifford had submitted that pursuant to section 6 (4) of the Parole Act, the applicant would have been entitled to believe that he had become eligible for parole as of the 2nd July 2004. That is a period of seven years from the date of the commutation of his death sentence. The Act provides for this when a determination is not done as to his eligibility for parole. If he had been notified in December 2003, argues Lord Gifford, he could have taken steps then to advance grounds as to his fitness for parole. Powell, J. identifies as relevant, the protection from prolonged pre-trial incarceration in the case of a prisoner awaiting parole; the interest would be to prevent any further incarceration than is necessary. We are unable to say what the likely outcome of his deferred parole application would be. The adjournment of his unsuccessful attempt for a year, indicates he would have been deprived of at least two attempts to re-apply. Powell, J. further advised that a relevant interest to be protected is the minimization of anxiety and concern in the inmate. The actions of the accused subsequent to his being notified, illustrate the importance and concern he had placed on the process of parole. He should expect that if an error is made in the process of determining his right it would be corrected in a reasonable time. Three years and nine months is not reasonable delay in the circumstances of a prisoner preparing himself for parole.

(20) In **Bell**, the Board was prepared to look at the prevailing system of legal administration and take into account the economic and social conditions in the country. This Court is acutely aware of economic constraints with which the country is confronted. However, the delay of which the applicant complains is not to our mind the result of economic constraints or of any lack of resource that the particular entity faces . . . . Lord Gifford has commented on the usual high level of efficiency he has come to expect from the Registry of the Court of Appeal.

The alternative remedy

(21) Despite agreeing that the applicant entitlement to fair hearing had been contravened, Counsel for the Attorney General denied that he was entitled to constitutional relief. He contended that there were alternative remedies available to the applicant. He argued that the Supreme Court was barred from giving such relief by the provision to section 25 of the Constitution, which reads;

> "The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and 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 the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled;

> Provided that the Supreme Court shall not exercise its powers under this section, *if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person* concerned under any other law." (Emphasis mine)

(22) This is a threshold consideration that has to be resolved before the ample powers of the constitutional Court are invoked. On the applicant's claim for judicial review, Counsel for the Crown had argued that the correct route for the applicant was via an appeal and not judicial review. Lord Gifford had argued that the single Judge, when he sits in the "winnowing process," was not exercising a judicial capacity, but was a "statutory authority exercising an administrative function. In those circumstances, Cooke, J.A. is not a Judge of Appeal, but an inferior tribunal, who would be susceptible to the supervisory review by the Supreme Court. Those submissions did not find favour with Straw, J. She founded her ruling on the basis that the decision of Cooke, J.A. was outwith his jurisdiction. She ruled that his decision was a mistake of law from which "there could be no bar to an appeal against the determination of length of sentence under these circumstances." She agreed that an appeal would lie from the decision of Justice Cooke. However, the learned Judge did direct Counsel, alternatively, to seek constitutional redress.

(23) Before this Court, Lord Gifford submitted that Justice Straw had fallen into error because there was no provision for any appeal or review by the Full Court of Appeal of the decision of the single Judge. He contrasted the position of a person who had his matter classified as non-capital, who could avail himself of the review by three Judges, whereas in the case of non-capital classification determination under the Parole Act section 5(a) there was no review available. He concluded that the decision of the single Judge in such cases was intended to be final, subject only to the Supreme Court's power to grant redress, if the Judge's decision constitutes a violation of the appellant's fundamental rights. Neither the Judicature (Appellate) Act nor the Rules of the Court of Appeal provide a procedure for the appeal of a decision of a single Judge under the Parole Act. He referred the Court to **Devon Smith v R 48 WIR 270**, for his submission that the "statutory power of review was vested not in the Court of Appeal, as such, but in Judges of the Court of Appeal." Lord Gifford further submitted that the time involved in the appellate process would be to the detriment of the applicant. He had come to the constitutional Court because any further delay was likely to make any declaration nugatory. It was contended for the applicant that it is not an adequate means of redress to pursue an appeal. It would be unduly onerous to go to the Court of Appeal and the Privy Council, when he could come to the Supreme Court. The Constitution does not speak of a hypothetical means of redress. The effect of Justice Cooke's Order was that the applicant would not be eligible for parole before 1st May 2010. The applicant had lost three years and nine months, by reason of the delay to challenge Justice Cooke's order. The closer it gets to 1st May 2010, the less he has to gain.

What constitutes an adequate means of redress

(24) In **Kemrajh Harrikisoon v Attorney General (1979) 31 WIR** 348, Lord Diplock, delivering the opinion of the Board of her Majesty Privy Council, in relation to the Trinidad Constitution, had cautioned against diminishing the value of the constitutional safeguards by allowing its misuse as a general substitute for normal procedure of invoking judicial control of administrative action, where there was no contravention of human right. In this case the applicant's fundamental rights have been breached. The strictures of **Harriksoon** is therefore not applicable to the inmate in this case.

(25) It is safe to say that, in this country, the value of constitutional redress has not been minimized by misuse. The present invocation cannot be said to be frivolous or vexatious. The applicant did institute judicial review proceeding, and had been directed by the Supreme Court, that the constitutional redress was available. The applicant's election of procedure has been brought about by the unreasonable delay in notifying the applicant and the prejudice that is likely to flow from further delay. In **Smithfield Foods Ltd. v Attorney General (1988) 40 WIR 61,** the appellant had informed the Court that he had not appealed against the original order of a Judge whom he complained, had made an order without jurisdiction. The reason given for not pursuing an appeal was that leave was required and the Court could require security of costs of the appeal. It was accepted both in the High Court and the Court of Appeal, "that the wrong which the appellant contends it had suffered as a result of the order for security of costs, could have been put right by the exercise of its rights of appeal to the Court of Appeal. Thus adequate means of redress have been available to the appellant." His proceedings for constitutional redress was dismissed in the High Court, as that Court was satisfied that an appeal "would provide the applicant with an adequate means of redress" (page 64, letter j).

(26) The applicant here had pursued the alternative remedy that he had envisaged was open to him, it was only when that door was slammed in his face by the ruling of Justice Straw, that he resorted to the Constitutional Court. An option the Supreme had offered him. In **Ram and Shyam Company v State of Haryana and Others (1958) INSC 132(8 May 19580),** the Supreme Court of India, in dealing with a constitutional motion, where there was an alternative means of redress said,

> "Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than a rule of law. At any rate it does not oust the jurisdiction of the court..... An appeal in all cases cannot be said to provide, in all situations, an alternative effective remedy, keeping aside the nice distinction between jurisdiction and merits."

I have already remarked on the inadequacy of a further appeal from Justice Straw's order based on the constraints of time the inordinate delay had occasioned for the applicant. The applicant seeks to quash Cooke, J.A. Order and a Declaration that he should have been notified in a reasonable time. He and essentially seeks to have his submission of 19th February 2007 heard and considered. We note that Counsel for the Crown whilst maintaining that , the appellate route is an available means of redress, has no opposition to declarations concerning the applicants right to a hearing and of his right to be notified . In **Minister of Home Affairs v Fisher (1979) 44 WIR 107,** Lord Wilberforce, speaking in particular of the Bermudian Constitution, Protection of Human Rights and Freedoms of Individuals, referred to the similarity of the new Caribbean and Nigerian Constitutions and of the influence that the International Human Rights Laws have had on these new constitutions and said;

> "These antecedents, and the form of Chapter 1 itself, call for a generous interpretation avoiding what has been called 'the austerity of tabulated legalism' suitable to give to individuals the full measure of the fundamental rights and freedoms referred to."

(27) That mere fact of the availability of another means of redress is certainly not the end of the examination the constitutional Court is required to do. It cannot be adequate to ask the applicant, in the face of the directions given by Straw, J., the prejudice that further delay entails, the concession of learned Crown Counsel, and the finding of this Court, that the fundamental right of the applicant has been breached, to now require him to go and explore what an appeal has in store. That alternative remedy is woefully inadequate.

Orders:

(1) A Declaration that the claimant was entitled to be heard and/or to make representations before a decision in his case was made by a Judge of the court of Appeal pursuant to section 5A of the Parole Act.

(2) A Declaration that the claimant was entitled to be notified of such a decision within a reasonable time.

(3) A Declaration that the decision made by the Honourable Mr. Justice Cooke on 17th December 2003 and embodied in an order dated 125h September 2007, ordering that the claimant be not eligible for parole until 20 years had elapsed, time to commence on 2nd May 1990, is null and void.

(4) A Declaration that the claimant is entitled to have his application to the Parole Board submitted on 19th February 2007 heard and determined by the Parole Board.

(5) Costs to the applicant to be agreed or taxed.

(6) Liberty to apply.