COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division
No. CRI/CON/00017/2016

IN THE MATTER OF THE Constitution of The Commonwealth of The Bahamas

AND

IN THE MATTER OF an application by Chad Goodman for redress pursuant to Arcticles 2, 17, 20(1) and 28 of The Constitution of The Bahamas

BETWEEN

CHAD GOODMAN

APPLICANT

AND

THE ATTORNEY GENERAL

RESPONDENT

Before: Her Ladyship, The Honourable
Madam Justice Guillimina Archer-Minns (Acting)

Appearances: Applicant – Pro se'
Mr. Kevin Farrington for the Respondent

Hearing Date: 8th June 2016

RULING

Archer-Minns J

(1) Chad Goodman (hereinafter referred to as the Applicant) submitted to the Supreme Court for and on his own behalf an epistolary Constitutional Motion seeking relief pursuant to Articles 2, 17, 20(1) and 28 of The Constitution of The Bahamas.

(2) Background Facts:

(i) The Applicant was charged with one count of Murder, two counts of Kidnapping, one count of Armed Robbery and one count of Possession of an Unlicensed Firearm. The charges were preferred against him on the 6th May 1993.

(ii) In November 1996, the Applicant was found guilty and convicted on all counts. He was subsequently sentenced to the mandatory death penalty on the conviction of Murder, ten years on each of the two counts of Kidnapping, twenty-five years for Armed Robbery and seven years for Possession of an Unlicensed Firearm.

(iii) An appeal, to the Court of Appeal on the conviction and sentence for the Murder was dismissed on the 25th July 1997.

(iv) Consequent upon the Privy Council Decision in the matter of Forrester Bowe and Trono Davis in March 2006 in which the mandatory death penalty was found to be unlawful and unconstitutional, in August 2007, the Applicant was re-sentenced on the conviction for Murder. Isaacs J, (as he then

was), re-sentenced the Applicant to a term of twenty years imprisonment.

(v) The twenty year term of imprisonment was appealed by the Attorney General to the Court of Appeal in October 2007. On the 23rd October 2008, the appeal was allowed and the twenty year term removed and replaced with a term of fifty years.

(3) The Applicant took issue with the re-sentencing process and the fifty (50) year term of imprisonment imposed by the Court of Appeal, alleging breaches of his fundamental rights as safe guarded by the Constitution of The Bahamas thus the Constitutional Motion now before the court.

(4) The Applicant's specified breaches were as follows:

(i) the Court of Appeal's reference to his bad character that is, previous convictions was improper and irrelevent to the gravity of his conviction for Murder

(ii) the evidence was incorrectly stated.

(iii) the Applicant was not afforded the opportunity to be heard during the re-sentencing phase particularly when the court was minded to increase the sentence.

(iv) lack of a Psychiatric/Psychological report during the sentencing phase.

(v) the disparity of sentences for Murder convictions.

(5) The Applicant contended that given the aforementioned, his fundamental rights pursuant to Articles 2, 17, 20(1) and 28 of the Constitution had been infringed. He therefore seeks remedial action and relief to arrest the stated grave breaches of his constitutional rights.

Objection in limine:

(6) Mr. Kevin Farrington, Counsel for the Respondent raised a preliminary objection to the application, submitting inter alia,

(i) that the Applicant was approaching the Supreme Court with respect to a Court of Appeal decision, which in and of itself was an abuse of process.

(ii) the Applicant is aggrieved by a sentence imposed by the Court of Appeal, as such, the Applicant ought properly to appeal to the Privy Council. The Court of Appeal increased the sentence of a lower court, the Supreme Court.

In all the circumstances, the Supreme Court is not the proper forum therefore, the Applicant ought properly to exhaust the proper avenue of appeal.

(7) In essence, Counsel for the Respondent was seeking to rely on the provisions of Article 28(2) of the Constitution as being the proper redress for the Applicant given the issues raised.

(8) The Applicant alleges breaches of his fundamental rights as provided under the Constitution. This court accepts and agrees that Article 28 of the Constitution provides an avenue of approach to the Supreme Court for redress when there are allegations of

breaches of fundamental human rights which have occurred or threatened to occur.

(9) Article 28 of the Constitution provides inter alia,
"If any person alleges that any of the provisions of Article 16 to 27 (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.

(2) The Supreme Court shall have original jurisdiction

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

(b) to determine any question arising, in the case of any person which is referred to it in pursuance of Paragraph (3) of this Article 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 the said Article 16 – 27 (inclusive) to the protection of which the person concerned is entitled.

Provided that the Supreme Court shall not exercise it powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law." (emphasis mine)

(10) One of the more significant breaches advanced by the Applicant was that the Court of Appeal did not afford him an opportunity to be heard prior to the re-sentencing. In this connection, the court

had regard to the decision of Dominique Moss 2013 UKPC 0021/10 in which on appeal, the Court of Appeal quashed the conviction for Murder and substituted a conviction for Manslaughter. The Court went on to re-sentence the Defendant for Manslaughter and imposed a sentence of twenty-five (25) years. It did so however without giving the Defendant an opportunity to make submissions as to the length of sentence. Lord Hughes who delivered the judgment stated therein, "An omission to hear a Defendant before passing sentence is a serious breach of procedural fairness."

(11) In the case of Francis v. The Queen SCCR/App 133/2009 referenced in Dominique Moss, the Board of the Privy Council accepted the view as expressed by Newman JA, as entirely correct with respect to the court being obliged to afford Counsel the opportunity to address it on sentence for the newly substituted conviction in order to avoid a denial of justice and a breach of the obligation to hear both parties.

(12) At paragraph 11 of the Dominique Moss decision, the court notes the finding of the Board, "for these reasons the Board will humbly advise Her Majesty that the appeal against sentence ought to be allowed and the presently imposed sentence of twenty-five (25) years must be quashed. Although Newman JA adverted in passing in Francis to possible remission to the trial Judge, there appears to be no power in the Court of Appeal and therefore in the Board to do so. The case must be remitted to the Court of Appeal of The Bahamas to hear Counsel on both sides as to the sentence and to determine what that sentence should be."

(13) The question therefore, is whether given the allegations advanced by the Applicant herein and what was stated by the Law Lords in Dominique Moss and Francis v. The Queen (Supra), the constitutional route which the Applicant has taken is the appropriate course of action.

(14) The court gave further consideration to the decision of Thakur Persuad Jaroo v. The Attorney General of Trinidad and Tobago P.C. Appeal 54/2000. The question posed by Hosen JA was whether proceedings under the Constitution ought really to be invoked in a matter where there is an obvious available recourse under the common law. He referred to Lord Diplock's observations in HarriKissoon v. AG of Trinidad and Tobago (1980) A.C. 265/268 - "that the mere allegation of constitutional breach was insufficient to entitle the Applicant to invoke the jurisdiction of the court under what is now S14(1) of the Constitution if it was apparent that the allegation was frivolous, or vexatious, or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy."

(15) As noted at paragraph 39 of the referenced authority "their Lordships respectfully agree with the Court of Appeal that before he resorts to this procedure, the Applicant must considere the true nature of the right allegedly contravened. He must also consider whether having regard to all the circumstances, of the case, some other procedure either under the common law or pursuant to statute might more conveniently be invoked. <u>If, another procedure is available, resort to the procedure by way of originating motion</u>

will be inappropriate and it will be an abuse of process to resort to it." (emphasis mine)

(16) In consideration of this matter I was also reminded of the words of Dame Sawyer P in the decision of Terry Delancy SCC v. R APP 43/2006, an appeal to the Court of Appeal of a decision by Isaacs J (as he then was) refusing to exercise his powers pursuant to Article 28(2) of the Constitution to provide the Appellant with the necessary redress regarding inter alia, allegations of an unfair hearing on appeal. At paragraph 84 of the decision, "In my judgment to do what Counsel for the Appellant sought to do in the application before Isaacs J, could only be for the purpose of undermining the rule of law and would almost certainly lead to an erosion of respect for the judiciary as a whole."

(17) At paragraph 85, "Under the Constitution of The Bahamas, the court system is a hierachal one with the Privy Council at the apex, this court next, the Supreme (High) Court next, Magisterial Courts and other tribunals next and so on. Decisions of higher courts are normally binding in all lower courts. It therefore follows that a decision of a lower court, while it will be accorded every respect by a higher court, if it is not over ruled, cannot bind a higher court or even a judicial officer of the same rank. To apply to the Supreme Court for redress against this court's decision, therefore, was seeking to bind this court by a lower court's judgment or to indirectly appeal to a lower court for this court's decision. It certainly amounts to an abuse of the process of the court."

(21) Following the Court of Appeal decision in October 2008 it was open to the Applicant to apply to the Judicial Committee of the Privy Council for special leave to appeal to that body given the allegations advanced. It appears as if no such application was made. The Applicant has instead years later chose to start a Constitutional application on the basis that his constitutional rights as guaranteed under the Constitution were violated.

(22) I agree and adopt the words of Dame Sawyer P at paragraph 91 of the Terry Delancy judgment, "The Appellant having chosen not to pursue any further appeal to the Privy Council could not take himself out of the very words of the proviso to Article 28(2) of the Constitution."

(23) An alternate remedy was available to the Applicant. He failed or refused to avail himself of the same and now to his detriment. In the circumstances of this case, I find no good reason why I ought to exercise the powers as provided for under Article 28(2) and accede to the application of the Applicant. To do so would in my view be in error and an abuse of the process. For that reason, the application is dismissed.

Dated this 9th day of September 2016

Justice (Acting)