IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No. GYCR2018/001
GY Criminal Appeal No. 1 of 2017

BETWEEN

MARK FRASER **APPLICANT**

AND

THE STATE **RESPONDENT**

Before the Honourables **Mr Justice A Saunders, PCCJ**
Mr Justice J Wit, JCCJ
Mr Justice W Anderson, JCCJ
Mr Justice D Barrow, JCCJ
Mr Justice P Jamadar, JCCJ

Appearances

Mr Kamal Ramkarran for the Applicant

Mrs Shalimar Ali Hack, SC and Mrs Diana O'Brien for the Respondent

JUDGMENT
of
The Honourable Justice Saunders, President
and the Honourable Justices Wit, Anderson
Barrow and Jamadar

Delivered by
The Honourable Mr Justice Jamadar

on the 25th day of October, 2019

Introduction

[1] Mark Fraser is a former member of the Guyana Defence Force. On 26 October 2002, while serving at Camp Base, Buxton, East Coast Demerara, he shot Oneal Rollins with his duly issued AK-47 assault rifle. Rollins died as consequence. Fraser was charged with manslaughter. He was nineteen at the time. His defence was that Rollins was shot and died as a result of an accident. Fraser was tried before a Judge and jury and, on 14 November 2007, he was found guilty of gross negligence manslaughter. Subsequently, on 30 November 2007, he was sentenced to four years imprisonment.

[2] Fraser immediately appealed his conviction and sentence (his appeal was filed on 14 December 2007). On 17 December 2007, he obtained bail pending appeal and was released from prison. He has not returned to prison. For about ten years, from the date of his appeal to July 2017, Fraser received no information about his appeal. This is unchallenged. Then, on or about 12 July 2017, he was informed by his attorney that his appeal had been fixed for hearing on 24 July 2017.

[3] On 24 July, the appeal was adjourned to 5 October 2017 because a copy of the record of appeal had not been provided to either side. It was the duty and responsibility of the court office to prepare and make available to all parties the record of appeal. It is undisputed that the record of appeal was essential in this case for Fraser to effectively pursue his appeal. On the 5 October the appeal was again adjourned, because Fraser's attorney had only been served the day before (4 October) with a copy of the record of appeal.

[4] However, at the hearing on 5 October, Fraser's attorney indicated that in addition to challenging the substantive decisions on conviction and sentence, the intention was to also raise a preliminary point that would be dispositive of the entire appeal. That point was that Fraser's right to a fair hearing within a reasonable time, guaranteed by Article 144 (1) of the Guyana Constitution, had been breached by

the delay between conviction and the filing of an appeal on the one hand, and the availability of the record of appeal and the listing of the appeal on the other hand, and because of the consequential and unfair impact of this delay on Fraser's ability to properly conduct his appeal.

[5] The Court of Appeal decided that both the proposed preliminary point and the substantive appeal would be heard together. It fixed 16 November 2017 for the hearing. However, Fraser, dissatisfied with the Court of Appeal's refusal to hear the preliminary point prior to consideration of the substantive appeal, filed an application to the CCJ on 6 November to challenge that decision. That challenge failed. However, it had the effect of delaying the hearing of the appeal, which was adjourned from 16 November 2017 to 25 January 2018 and then later to 5 March 2018. There is no assertion that the delay between 16 November 2017 and the date of hearing in the Court of Appeal has adversely affected Fraser in any new ways.

[6] After receiving comprehensive written submissions and after hearing oral arguments on the appeal, the Court of Appeal dismissed the substantive appeal against conviction and sentence but stayed any further imprisonment of Fraser, agreeing with him, that the delay between conviction and the first listing of the appeal breached his Article 144 (1) rights and warranted such a stay. The Court of Appeal delivered its decision and reasons orally on 8 June 2018.[1] That was about three months after the hearing of the appeal. The transcript of those oral reasons demonstrate that the court carefully considered and dealt with all relevant issues, including the Article 144 (1) delay point. Indeed, the Court of Appeal acted with expedition from the time that the Record of Appeal was filed. Delivering its decision with reasons within three months is within international performance standards and to be commended.

[7] Dissatisfied with the Court of Appeal's decision, Fraser sought its leave to appeal to the CCJ pursuant to section 6 of the Caribbean Court of Justice Act, Guyana

[1] No formal written reasons were issued

Cap. 3:07.[2] That request was refused on 1 November 2018. Determined to prosecute a review of the Court of Appeal's decision, Fraser is now seeking special leave of the CCJ[3], to appeal the decision of the Court of Appeal. Specifically, Fraser seeks to be afforded the opportunity to review the refusal of the Court of Appeal to set aside his conviction for manslaughter. He has neither appealed nor objected to the Court of Appeal's decision that any further imprisonment should be stayed.

[8] Thus, the single issue to be determined by this court is whether special leave ought to be granted to Fraser as sought, or at all. It is argued that there are three aspects of the Court of Appeal's approach that are so flawed that special leave ought to be granted. These are, first, the Court of Appeal's refusal to separate the constitutional delay arguments[4] from the substantive ones and to hear and determine those first. Second, the failure of the Court of Appeal to set aside the conviction based on the constitutional delay arguments simpliciter. Third, the failure of the Court of Appeal to set aside the conviction on the merits of the substantive appeal standing alone or taken together with the constitutionally unacceptable delay. It was also suggested that the failure of the Court of Appeal to grant leave to appeal as of right to the CCJ justified the grant of special leave in this case.

Decision

[9] For the reasons which follow, in the circumstances of this case and in the exercise of our judicial discretion, there is no proper basis upon which to grant special leave to Fraser. His application is dismissed. As awards for costs in criminal cases are not normally recognised at common law[5], and there being no facts in this case that would justify such an award, there will be no order of costs.

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[2] Appeals as of right
[3] Pursuant to section 8 of the Caribbean Court of Justice Act, Guyana Cap. 3:07, and by application filed on the 22nd November 2018
[4] Article 144 (1) of the Constitution of the Co-operative Republic of Guyana Cap. 1:01
[5] *Rohan Rambharran v The Queen* [2016] CCJ 2 (AJ) at [53]

Analysis

The test for special leave in this case

[10] This is a criminal appeal. The fact that a constitutional issue has been raised does not change its juridical character.[6] The relevant test is therefore that stated in cases such as *Cadogan v The Queen*[7], per Hayton JCCJ and *Doyle v The Queen*[8] per Nelson JCCJ.

[11] In summary, the current established test for special leave in criminal cases is as follows: whether (a) there is a realistic possibility that a (potentially) serious miscarriage of justice may have occurred, and/or (b) a point of law of general public importance is raised (that is genuinely disputable) and the court is persuaded that if it is not determined a questionable precedent might remain on the record.[9] In *Pinder v The Queen*, Nelson JCCJ stated that: "The Applicant must therefore persuade this Court that a potential miscarriage of justice or a genuinely disputable point of law arises out of the decision appealed from in order to qualify for the grant of special leave."[10]

[12] The standard to be met to satisfy the Court that special leave should be granted is that of arguability.[11] Furthermore, the evidential burden is to establish to the satisfaction of the Court, specific and particular 'items of evidence or passages in the summing up on which reliance is placed in order to provide a basis for the grant of special leave.'[12] Indeed, Saunders JCCJ, in *Lovell v The Queen*, has pointed out that "if little or no information is provided to enable the court to assess the merit of

[6] See, *Bridgelall v Hariprashad* [2017] CCJ 8 (AJ) and *Nervais v The Queen* [2018] CCJ 19 (AJ) where the criminal standard was applied even though constitutional issues were raised
[7] [2006] CCJ 4 (AJ)
[8] [2011] CCJ 4 (AJ)
[9] See *Cadogan v The Queen* (n7) at [2] and *Doyle v The Queen* ibid at [4]
[10] [2016] CCJ 13 at [4]
[11] *Cadogan* (n7) at [2] and *Doyle* (n3) at [4]
[12] See Nelson JCCJ in *Doyle* (n8) at [8]

the appeal or if the information provided is weak then the application must be dismissed."[13] Finally, the grant of special leave is discretionary.[14]

The delay points

[13] Essentially two points arise on the issue of delay. First, whether the issue of delay should have been heard and determined before embarking on the hearing of any other points raised in the appeal. Second, whether standing on its own, the delay point was dispositive of the entire appeal and justified setting aside the conviction. To be clear, the delay in question is limited to post-conviction delay, as identified above.

[14] In our opinion, on the first delay argument, there is no reviewable error of law or exercise of judicial discretion committed by the Court of Appeal, in hearing both the Article 144(1) delay point and the substantive appeal at one hearing. The record of appeal and the transcript of the Court of Appeal's reasons both demonstrate that the Court of Appeal gave specific directions for the filing of submissions on both aspects and carefully and judicially considered all the submissions made on behalf of Fraser on both aspects. Indeed, the Court of Appeal found merit in the Article 144(1) delay point and granted what it considered to be just and effective relief to Fraser. No prejudice has therefore been demonstrated. And, no serious miscarriage of justice can realistically be argued to have occurred.

[15] All that Fraser was entitled to, is a fair hearing, which in this context meant a fair opportunity to argue his appeal. The record shows that he was given this opportunity and that all his arguments were thoughtfully considered. Fraser's right to a fair hearing and to the protection of the law, are not an entitlement to a favourable outcome on his terms.

[13] [2014] CCJ 19 (AJ) at [9]. See also Rule 10.13 (a) and (b), CCJ Appellate Jurisdiction Rules, 2019
[14] See *Cadogan* (n7) at [2]

[16] On the second delay argument, Fraser also fails. This Court, in *Singh v Harrychan* has made it abundantly clear that: "It may also be that a conviction may be vacated for violation of the constitutional right to a fair trial within a reasonable time."[15] However, the developing jurisprudence of this Court also makes it clear that it is only in special or exceptional circumstances that post-conviction delay (as in this case), will result in the setting aside of a conviction properly arrived at.

[17] For example, in *Bridgelall v Hariprashad*,[16] the Court found a breach of the right to a fair hearing within a reasonable time, and permanently stayed any further enforcement of the sentence imposed but did not quash the conviction. Also, and in the context of pre-conviction delay, Saunders JCCJ and Wit JCCJ, in *Gibson v AG*, have pointed out:

> Given the high level of public interest in the determination of very serious crimes, however, it will only be in exceptional circumstances that a person accused of such a crime will be able to obtain the remedy of a permanent stay or dismissal for the breach only of the reasonable time guarantee. [17]

[18] A similar approach can be found in the jurisprudence of other final courts. For example, in the Privy Council appeal from Jamaica, *Tapper v DPP*, Lord Carnwath stated: "It follows that even extreme delay between conviction and appeal in itself will not justify the quashing of a conviction which is otherwise sound. Such a remedy should only be considered in a case where the delay might cause substantive prejudice." [18]

[19] The Court, in the exercise of its constitutional jurisdiction, has the power and discretion to make any orders and grant any relief that it considers just and effective to vindicate breaches of fundamental rights. However, in the case of post-conviction delay, where the conviction is found on review to be sound, vacating the conviction is not an automatic entitlement, or even one to be presumed. This is partly so because the courts in cases such as these must balance at least two

[15] [2016] CCJ 12 (AJ) at [29]
[16] [2017] CCJ 8 (AJ)
[17] [2010] CCJ 3 (AJ) at [63]
[18] [2012] UKPC 26

competing principles: (a) persons properly convicted of crimes should serve legitimate sentences, and (b) where a breach of a fundamental right has occurred, a court must fashion a remedy that is just, effective, and proportionate in the particular circumstances of each case.

[20] The law in this area is therefore not in such a state of uncertainty to justify special leave being granted to clarify it. Whether or not post-conviction delay will result in the setting aside of a conviction depends on several factors, including but not limited to, a consideration of whether the conviction was sound and whether there are any other special or exceptional circumstances which might result in a serious miscarriage of justice or in substantive prejudice. The Court of Appeal considered all of this and concluded that the conviction was sound, and that no special or exceptional circumstances were established to justify vacating the conviction. In particular, the Court of Appeal considered whether the following constituted substantive prejudice to Fraser in the conduct of his appeal, whether taken alone or together with the post-conviction delay.

[21] First, the omission in the record of appeal of: (a) a detailed description of the prosecutor's flawed description of the test for manslaughter in the closing address to the jury, and (b) the omission of a letter written by defence counsel to the judge bringing this to the court's attention. In considering this, the Court of Appeal determined, and rightly so, that the judge in his summing up did put the correct test to the jury, and in any event, Fraser was not denied a fair opportunity to raise this issue on appeal and/or to produce the said letter. In the circumstances, Fraser suffered no substantive prejudice.

[22] Second, the non-inclusion in the record of appeal of a detailed description of the prosecution's demonstration to the jury, of its version of Fraser's handling of his AK-47 assault rifle when he shot Rollins. The accepted position before this court, is that both the prosecution and the defence, at the trial, used the AK-47 in demonstrations to the jury. As the Court of Appeal accurately observed: "It would seem then that both sides took the opportunity to demonstrate their version of how

the event in question happened." No unfairness arises in these circumstances. In any event, Fraser was not denied a fair opportunity to raise this issue on appeal, or before this court. In fact, he has. Again, it cannot be said that Fraser suffered any substantive prejudice.

[23] Third, the assertion that the judge's note was erroneous, when it records that during the trial defence counsel consented to a juror remaining on the jury, in circumstances where that juror was allegedly seen speaking to a relative of the deceased. The contention is that 'this does not accord with counsel's recollection.' This assertion could therefore have been evidentially substantiated at any time before the hearing of the appeal, by an affidavit from either Fraser or his attorney at the trial.

[24] It was accepted before this Court, that the ten-year delay between conviction and receipt of the record of appeal did not prevent either of these options, or any other, being adopted. Yet, no steps were taken, even in relation to this application for special leave, to produce any such readily available evidence. It therefore cannot realistically be argued that there was substantive prejudice to Fraser in the conduct of his appeal by reason of post-conviction delay. There is simply no evidence to support this, and the contention therefore remains purely speculative.

[25] I have therefore not been persuaded about any demonstrated flaws, in either the approach or reasoning of the Court of Appeal, to conclude that its decision and reasoning have resulted in any serious miscarriage of justice being suffered by Fraser by reason of post-conviction delay. On the contrary, I think that the approach of the Court of Appeal in hearing both the Article 144 (1) challenge and the substantive appeal together, was a wise and prudent approach. In doing so, it was seized of both the constitutional implications of the delay and the arguments on how that delay may have prejudiced the prosecution of Fraser's appeal, as well as the challenges to the substantive soundness of the conviction. This approach allowed the Court of Appeal to properly consider what might be a just and effective remedy, having concluded that the post-conviction delay was in breach of Fraser's

Article 144 (1) right to a fair hearing in a reasonable time and that the substantive conviction was sound.

The soundness of the conviction

[26] To get special leave, this Court must be satisfied that there are arguable grounds, supported by evidence, that meet the relevant test (see [11]). In our opinion, these thresholds have not been met in relation to the grounds advanced that challenge the soundness of the conviction.

[27] This was an unremarkably straightforward trial. The prosecution contended that Fraser was guilty of manslaughter as a result of gross negligence. Fraser argued that the death of Rollins was a result of an accidental shooting. Both sides agreed that Fraser shot Rollins. In the language of the Court of Appeal: "The respective case (sic) for the Prosecution and the Defence admit of no complexity. The simple and agreed facts of the case are that Rollins was shot by Fraser; that as a result of that shooting Rollins died." A majority of the jury, having duly considered all the evidence, the addresses and the trial judge's summation, agreed with the prosecution.

[28] On appeal, Fraser contended that the verdict was unsafe because of a plethora of procedural errors made by the trial judge in the conduct of the trial, in his summing up to the jury, and even in his post-summation directions to the jury. The assertions in relation to delay and the fair prosecution of the appeal, have already been dealt with above. Each of the remaining arguments will now be dealt with below.

[29] First, Fraser contends that the trial judge erred in admitting the evidence of Escon Jackson. Jackson was presented by the prosecution as a ballistics expert and testified, inter alia, that it would take five pounds of (finger) pressure to discharge (the trigger of) an AK-47 assault rifle such as was in the possession of Fraser when Rollins was shot. This dispute arose because it was unclear whether Jackson had given evidence at the preliminary inquiry. An application had been made to admit additional evidence and to allow this witness to testify at the trial.

[30] The trial judge conducted a *voir dire*, and after receiving evidence and considering submissions from all parties, decided to allow the evidence. The Court of Appeal found no fault with the trial judge. The statement of Jackson intended to be relied on was served on the defence. There was therefore no surprise. In addition, and contrary to what has been submitted on behalf of Fraser, the trial judge duly directed the jury that they were not obliged to accept the evidence of Jackson, even though Jackson was presented by the prosecution as a ballistics expert. In the trial judge's words, 'you are the judges of the facts and you can banish his evidence from your mind.' Consequently, the Court of Appeal concluded that the evidence of Jackson was not prejudicial or unfair to Fraser. We agree.

[31] In any event, and as the Court of Appeal properly explained, the trial judge had a discretion to admit fresh evidence, "[i]t was perfectly opened (sic) to the trial judge to exercise his discretion in accordance with the principles of justice and fairness" to allow the prosecution to call this evidence. The Court of Appeal cited, in support, George C in *Yasseen and Thomas v The State*[19] and section 151 of the Criminal Law (Procedure) Act, Guyana.[20] No fault can be found in this approach and no realistic possibility of a serious miscarriage of justice has been demonstrated.

[32] Second, Fraser also claimed that the trial judge misdirected the jury on the elements of gross negligence manslaughter and the defence of accident. In particular, it was contended that the trial judge did not direct the jury that the relevant test for gross negligence manslaughter included the element 'that the risk foreseen was the risk of death.'[21]

[33] The Court of Appeal carefully examined the trial judge's summation and correctly observed that, in fact, the trial judge did adequately put this element of gross negligence manslaughter to the jury as the test on which they had to be satisfied, if they were to consider a conviction. In addition, the Court of Appeal, in its oral judgment, found that the trial judge had accurately and fairly identified and placed

[19] [1990] 44 219 at [236]
[20] Cap. 10:01
[21] *R v Adomako*, 1995 1 AC at [171]

before the jury, the material and relevant facts and considerations: "We feel, therefore, that the summing up, taken as a whole, did convey to the Jury what was really required in relation to the elements of the offence and the burden of proof and therefore we feel that no complaint can be made in the circumstances." The Court of Appeal made similar observations about the trial judge's treatment of the defence of accident.

[34] An independent assessment of the trial judge's summing up, confirms the correctness of the Court of Appeal's analysis. In fact, faced with a choice of gross negligence manslaughter and accidental death, and properly directed as to the elements of each, and as to the relevant burdens and standards of legal and evidential proof, the verdict of the jury was unequivocal, and found to be unassailable. We also agree. Again, it cannot reasonably be said that any realistic possibility of a serious miscarriage of justice has occurred.

[35] Third, Fraser contended that the trial judge erred in failing to undertake a full and proper investigation into the possibility of a compromised jury. As stated above, the dispute as to counsel for Fraser's consent, referenced above at [23], has not been substantiated by any evidence and is thus deemed unmeritorious. In any event, the record of appeal shows that in fact the trial judge did conduct an inquiry in the presence of defence counsel. Further, that following this inquiry and defence counsel's agreement, the judge allowed the trial to continue with the jury as constituted. Based on the record and the available evidence, there is therefore simply no merit in this contention. In appeals and unless otherwise demonstrated by cogent and compelling evidence, the official record is authoritative.

[36] Fourth, Fraser claimed that the trial judge failed to direct the jury that a disagreement was possible. In fact, the trial judge properly directed the jury on what constituted a unanimous verdict, a majority verdict and a disagreement leading to a non-verdict. As well, the trial judge properly directed the jury as to the consideration time requirements for a unanimous verdict, a majority verdict and a disagreement as follows:

> A verdict is either guilty or not guilty, Madam Forewoman and Members of the Jury, to come out with a verdict, it will have to be unanimous that is where all twelve of you agree on either guilty or not guilty. If all twelve of you agree you can come out at any time with either guilty or not guilty.
>
> Further, you may have a majority verdict taken and that is either eleven to one or ten to two. If there is a majority verdict of either eleven to one or ten to two you will have to spend at least two hours in the Jury Room. It is only if you are unanimous you can come back within two hours. If it's nine to three it is a disagreement not a verdict. If it is anything less, for example eight to four or seven to five it is a disagreement as well and not a verdict.

[37] The record of appeal also shows that the jury retired at 13.26 hrs and returned at 15.59 hrs, with a specific request for further directions on "the law surrounding gross negligence manslaughter." And that the trial judge specifically addressed the jury's concern, gave those directions and referenced his earlier directions on the types of verdicts that were possible. Finally, the record of appeal shows that subsequently: "The jury returned a verdict in proportion of ten to two of guilty of manslaughter." Therefore, based on the record, which has not been challenged, there is also simply no merit in this contention.

Leave to appeal as of right

[38] It is contended that special leave ought to be granted, because the Court of Appeal erred in refusing to grant leave to appeal as of right, pursuant to section 6(d) of the Caribbean Court of Justice Act, Guyana. Section 6(d) states that an appeal shall lie as of right from decisions of the Court of Appeal, "in any proceedings that are concerned with the exercise of the jurisdiction conferred upon the High Court relating to redress for the contravention of the provisions of the Constitution for the protection of fundamental rights."[22] However, a special leave application to this Court is assessed on its own merits, even if an applicant has been wrongly refused leave to appeal as of right from the Court of Appeal. On a special leave application,

[22] Cap. 3:07

this Court still needs to satisfy itself, before granting special leave, that the tests for obtaining special leave (see [11]) have been met.

[39] The Court of Appeal did grant redress to Fraser on the determination of the appeal,[23] for a breach of his Article 144(1) rights. And did so in circumstances in which the constitutional challenge could not have arisen before the trial court, it being premised on post-conviction delay. However, no reasons for the Court of Appeal's refusal to grant leave to appeal as of right have been placed before this court.

[40] Though we accept that the correctness of this ruling may raise important questions of law of general importance, we are nevertheless not persuaded that, standing on its own on this application, its exploration warrants the grant of special leave in this case.

[41] Not only is the grant of special leave discretionary, as stated above "special leave application exists independently of whether the Applicant has had an appeal as of right or has sought and been refused leave from the Court of Appeal to appeal to the CCJ."[24] Given our analysis, that there is no basis on any other grounds to justify the grant of special leave in this case; this issue of whether section 6(d) is to be narrowly construed as limited to constitutional proceedings commenced in the High Court, or can include circumstances such as these, need not be determined in this matter. Therefore, this issue is not, strictly speaking, a point of law that arises directly out of the decision appealed.[25]

Conclusion

[42] In *Doyle v The Queen*, this Court explained two policy principles that it adheres to in applications for special leave in criminal cases: (i) "The court will not lightly

[23] In the form of a permanent stay of any further imprisonment
[24] *Hyles v The DPP* [2016] CCJ 15 at [5], per Saunders, Anderson, Rajnauth Lee JCCJs
[25] (n10)

interfere with findings of fact implicit in the verdict of the jury or those made by the court from which the appeal originates." [26] (ii) "Where the Court of Appeal exercises a discretion and sets out the grounds for the exercise of that discretion the Court will not review it unless the grounds relied on cannot support the conclusion reached."[27] These two principles describe two fundamental aspects of the margin of appreciation, that apex courts defer to in relation to first instance and intermediate courts.

[43] Therefore, in determining for the purposes of special leave whether there is a realistic possibility that a (potentially) serious miscarriage of justice may have occurred, and/or whether a point of law of general public importance has been raised (that is genuinely disputable) and whether the court is persuaded that if it is not determined a questionable precedent might remain on the record, regard must be had to the two policy principles stated above.

[44] On this application, both principles also resolve themselves in favour of refusing special leave. The jury, as primary finders of fact and after long and careful deliberation, decided that Fraser was guilty of gross negligent manslaughter. The trial judge, at a separate sentencing hearing and after considering a social services report, imposed a four-year custodial sentence. The Court of Appeal, after careful review, agreed with the soundness of these conclusions. This court is not to lightly interfere.

[45] Further, the Court of Appeal, upon hearing the Article 144(1) arguments, and after thoroughly considering the material facts and the relevant legal principles, decided not to set aside the conviction and to only stay further imprisonment of Fraser. This decision was well within the legitimate range of options open to that court. Again, this court will not readily intervene, unless there is some obvious flaw in reasoning or fundamental unfairness, unreasonableness, or injustice in the outcome.

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[26] (n8) at para [5]
[27] Ibid at para [6]

[46] Finally, Fraser has not been deprived of his rights to access to justice and the protection of the law. Before the Court of Appeal and before this Court, Fraser has been able to challenge both conviction and sentence, and to do so on procedural, substantive, and constitutional grounds. In our analysis, those opportunities are now at an end. Furthermore, Fraser has been heard on and has obtained contextually just and proportionate redress for the infringement of his Article 144 (1) rights. No realistic possibility exists that a potentially serious miscarriage of justice can be said to have occurred.

/s/ A Saunders

The Hon Mr Justice A Saunders (President)

/s/ J Wit

The Hon Mr Justice J Wit

/s/ W Anderson

The Hon Justice W Anderson

/s/ D Barrow

The Hon Mr Justice D Barrow

/s/ P Jamadar

The Hon Mr Justice P Jamadar