[2023] CCJ 1 (AJ) GY

IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No GYCR2022/001
GY Criminal Appeal No 45 of 2015

BETWEEN

ORWIN HINDS **APPELLANT**

AND

THE STATE **RESPONDENT**

And

CCJ Appeal No GYCR2022/002
GY Criminal Appeal No 47 of 2015

BETWEEN

CLEON HINDS **APPELLANT**

AND

THE STATE **RESPONDENT**

[Heard together on 11 October 2022]

Before The Honourable: **Mr Justice Saunders, PCCJ**
Mr Justice Wit, JCCJ
Mme Justice Rajnauth-Lee, JCCJ
Mr Justice Barrow, JCCJ
Mr Justice Burgess, JCCJ

Appearances

Mr Arudranauth Gossai for the Appellants

Mrs Teshana Lake and Ms Diana O'Brien for the Respondent

Criminal Law – Evidence – Confession – Voluntariness of statements – Nothing to undermine probative value and weight of confessions.

Criminal Law – Sentence – Life imprisonment – Murder – Class of 'worst murders' – Appellants convicted of murder and sentenced to 81 years imprisonment without eligibility for parole before 45 years – Court of Appeal reduced sentences to 50 years – Criminal Law Offences Act, Cap 8:01 ss 100(A)(1)(a), 100(A)(3)(a) – Sentence of life imprisonment – Parole eligibility after serving not less than 20 years – Court of Appeal had no power to impose potentially harsher sentence – Court of Appeal failed to set minimum period to be served before eligibility for parole.

SUMMARY

Brothers, Orwin Hinds and Cleon Hinds were convicted for the murder of Clementine Fiedtkou-Parris for the payment of money, contrary to s 100(1)(d) of the Criminal Law (Offences) Act ('the Act'). The Trial Court imposed sentences of 81 years without eligibility for parole before 45 years. On appeal, the Court of Appeal reduced those sentences to 50 years. The brothers then appealed to this Court. On conclusion of the hearing, the Court dismissed the appellants' appeals against conviction for murder but reserved its decision on the appeals against the sentences imposed by the Court of Appeal. The Court in a judgment authored by Barrow JCCJ now delivers its reasons for its decision to uphold the appellants' convictions and its judgment on their appeals against sentencing.

The Court noted that the convictions of the brothers were primarily based on their written and oral confessions, and additionally in relation to Orwin, on the evidence of an eyewitness who identified him in an identification parade. In his written statement, Orwin described the plan that was hatched with his brother and two other men, 'Dutchie' and 'Blackboy' to kill the deceased, an elderly woman, for a sum of money. Orwin said that he obtained a gun, gave it to Cleon who then lent it to Blackboy. He said that he and the other men went along with a driver to the deceased's house and before the killing, he told the men that he wanted no part of it, but eventually was persuaded to go. He and Dutchie entered the house where they passed a man on the stairs. He said that Dutchie told him to restrain the man, which he did, and he then heard two shots. They left and heard the following day that Ms Fiedtkou-Parris had died. Later that day, Orwin said that Blackboy gave him $80,000 and Cleon, $5000. In Cleon's written statement, he confessed to being

told about the payment to murder Ms Fiedtkou-Parris, and his decision to lend the gun to the organisers to, 'get in on the business'. He also said that he drove around the house after and collected money for the killing.

The Court found that there was nothing in the appellants' arguments which could undermine the probative value and weight of their confessions. Counsel advanced the argument that Orwin was beaten to give his statement and it was therefore untrue. The Court found however that it was virtually impossible to overcome a jury's decision as to who or what to believe unless it could be shown that their decision was perverse. In the present case, the reasonableness of the jury's decision to doubt the appellant's allegations could not be doubted. As for Cleon Hinds, counsel submitted that the trial judge ought to have warned the jury of the danger of relying on the statement since there was no other confirmatory evidence. The Court found that in the circumstances of this case there was no requirement in law to deliver such a warning. There were other arguments raised, but these were of little substance and did not warrant fulsome consideration.

On the issue of sentencing, the Court first noted that the murder fell into the class of the worst murders under s 100(1) of the Act. These are far more violative of the society's peace and order and they are subject to the special sentencing regime set out in s 100A(1)(a). That section provides that a convicted person shall be sentenced to death or imprisonment for life. Where a sentence of life imprisonment is imposed, s 100A(3) states that the Court shall specify a period which the person should serve before becoming eligible for parole. In the case of the gravest murders, the period shall be not less than 20 years, and in the case of other murders, the period should be not less than 15 years. The questions of whether s 100A(1)(a) creates a mandatory sentence and whether, if it does, such a sentence is constitutionally compliant, were not raised and therefore the Court did not pronounce upon them.

The appellants' argument was that the Court of Appeal erred in law in failing to impose 'the sentence as prescribed by s 100A(1)(a) of the Criminal Law (Offences) Act'. Counsel's view was that *Alleyne v R* established that a sentence of life imprisonment amounted to a term of years of imprisonment. The thinking was that, since life in the context of that case was held to be a term of twenty-five years, the sentencing court ought

to have imposed that sentence. The Court however stated that it must be remembered that life imprisonment means a sentence of imprisonment for life and the convicted person has no right to be released. The fact that the parole system can result in the convicted person being released and not dying in prison did not alter that duration of the life sentence. The other dimension of counsel's argument was that the sentence of imprisonment for 50 years was, in practice, a more severe sentence than the maximum sentence of imprisonment for life. The Court found that a sentencing court has no power to impose a sentence that is intended to be more severe than life imprisonment, which is the maximum sentence.

The previous exposition produced the following important conclusions in respect of the class of murder in question: 1. a sentence of life imprisonment is the maximum sentence; 2. it carries with it a statutory entitlement to be considered for eligibility for parole; 3. that eligibility arises after a period of 20 years (in Guyana) or such later period as a court may fix; and 4. that a court has no power to impose a sentence of 50 years imprisonment (or any determinate period) that would exceed the sentence fixed by the Act. In this case, setting a minimum period that must be served before there could be eligibility for parole was therefore a mandatory obligation and one which the Court of Appeal did not fulfil. Also, as noted in *August v R*, it is an exercise which satisfies the penological objectives of punishment and deterrence.

The Court found that the period of eligibility for parole should be set at the minimum of 20 years for both appellants and mitigating factors, for example Cleon's minor role in the killing, could not operate to reduce that. The Court was therefore satisfied that the sentences of 50 years imprisonment imposed by the Court of Appeal must be set aside. Each appellant is sentenced to imprisonment for life and shall become eligible to be considered for parole after a period of 20 years imprisonment including the time spent on remand awaiting trial.

Cases referred to:

Alleyne v R [2019] CCJ 06 (AJ) (BB), (2019) 95 WIR 126, *August v R* [2018] CCJ 07 (AJ) (BZ), [2018] 3 LRC 552, *Chan Wei-Keung v R* [1967] 1 All ER 948, *Parris v The State* (Trinidad and Tobago CA, 25 May 2005), *Pompey v DPP* [2020] CCJ 7 (AJ) GY, *Ramcharran v DPP* [2022] CCJ 4 (AJ) GY, *Small v DPP* [2022] CCJ 14 (AJ) GY.

Legislation referred to:

Barbados - Offences Against the Person Act, Cap 141; **Guyana** - Criminal Law (Offences) Act, Cap 8:01, Prison Rules, Cap 11:01.

JUDGMENT
of
The Honourable Mr Justice Saunders, President
and The Honourable Justices Wit, Rajnauth-Lee, Barrow and Burgess

Delivered by
The Honourable Mr Justice Barrow
on 17 January 2023

JUDGMENT OF THE HONOURABLE MR JUSTICE BARROW, JCCJ:

Introduction

[1] On the conclusion of the hearing of these two appeals by brothers Orwin and Cleon Hinds, the Court was satisfied that it should dismiss the appeals against conviction for murder without having heard oral submissions on conviction from the State. The Court reserved its decision on the appeals against the sentences of imprisonment for 50 years that the Court of Appeal imposed, in substitution for the sentences imposed by the trial judge of imprisonment for 81 years, without eligibility for parole before 45 years. We now deliver brief reasons for our decision to dismiss the appeal against convictions and our decision and reasons on the appeals against sentences.

Outline of Principal Facts

[2] The convictions for murder for the payment of money, contrary to s 100(1)(d) of the Criminal Law (Offences) Act[1] ('the Act'), was based primarily on the written and oral confessions of each appellant; and additionally, in relation to Orwin Hinds, on the evidence of an eyewitness who identified him in an identification parade. The eyewitness, Fitzroy Fiedtkou, who died before trial, stated in his deposition in

[1]Cap 8:01.

the Magistrate's Court which was read to the jury that around 19:45 hours on 30 June 2011, he was sitting on the steps at the home of his 81-year-old sister, Clementine Fiedtkou-Parris, when two men came and asked for her. He called for her and when she came one of the men shot and killed her. Mr Fiedtkou identified Orwin Hinds as the person who had restrained him on the night of the murder.

[3] Each appellant made oral and written statements to the police which the trial judge admitted in evidence as having been voluntarily given. Orwin Hinds in his statement told how he obtained a gun and gave it to his brother, Cleon, to hold. Subsequently, one 'Blackboy' asked Cleon to lend him the gun to kill a woman and Orwin agreed. Orwin and Cleon met with Blackboy and one 'Dutchie' and learned more about the plan to kill the woman over a land dispute on behalf of a man who would pay them $1.5 million. Blackboy promised to pay $100,000 to rent the gun. On the fateful day four of them went in a vehicle along with a driver who parked not far from the house. Orwin said he declared he wanted no part of this, but he said he was persuaded to go, so he went. He and Dutchie got out the car and passed a man on the steps of the house. Dutchie asked for the lady and when she came Dutchie pushed the man aside and told Orwin to hold him back. Orwin said he heard two gunshots. He saw Dutchie with the gun in his hand. They left. The next day he heard that the lady had died and later that day he and Cleon went to Blackboy's house and Blackboy gave him $80,000. Cleon asked for a 'raise' and Blackboy gave him $5,000. Orwin said he later gave Cleon $20,000. He later disposed of the gun.

[4] In his written statement to the police, Cleon confessed to being told about the payment to murder the woman and his deciding to lend the gun to the organisers 'to get in on the business'. He told of meeting the others, handing over the gun to Dutchie and his remaining behind while Orwin went with the others to do 'the work'. He said when they were finished, they asked him to drive around the house to see what was going on. He saw lots of police and figured the lady was dead. Later they gave him $80,000 to share with Orwin.

The Appellants' Arguments

[5] It was readily apparent that unless the appellants could undermine the probative value and weight of the confessions they had given to the police, they had no prospect of getting a reversal of the convictions. As the submissions exposed, there was hardly any material with which to attack the integrity of the confessions. The unsworn statement made in court by each appellant was that he was beaten by the police to force him to sign the statement and that the statement was not true.

[6] For Orwin Hinds, counsel sought to establish that there was proof of the police beating and, hence, support for the claim that the contents of the statement were not true, by an extensive argument concerning an injury that Orwin suffered to his forehead. There was clear evidence of a swelling or bump that was seen by witnesses who saw him shortly after his arrest. Reduced to its essence, the argument was that the jury could, and no doubt should, have found that the bump confirmed Orwin's case that he was beaten, and the statement was untrue.

[7] The failure of that argument stems from the fact that it was reasonably open to a jury to disbelieve Orwin's assertion that the bump was caused by a police officer's beating. It did not follow that because there was the injury, this meant the appellant's claim was true that he got it from being beaten by police officers. There may have been good reasons for the jury to disbelieve it was true, ranging from their assessment of credibility having seen and heard the witnesses for the prosecution and the defence and the appellant giving his statement from the dock, and extending to the jury's sense of the truthfulness of what was said in the written statements and how the statements flowed. It is usually virtually impossible to overcome a jury's decision as to who or what to believe unless it can be shown that it was a perverse decision by a jury. Properly, counsel did not suggest the jury's decision was perverse. Given that the trial judge, in deciding to admit the statements as having been given voluntarily, had rejected the bump as proof of beating by police officers, the reasonableness of the jury's decision to do the same could not be doubted.

[8] The statement to the Trial Court by Cleon Hinds was also that he was beaten; but he had no bump on which to hang his claim. Counsel was left to argue that the judge should have warned the jury of the danger of convicting in reliance on the confession, because it was the sole evidence against him. Simply stated, there is no requirement in law to warn of the 'danger' of relying on a confession when there is no confirmatory evidence; the decision in *Chan Wei-Keung v R*[2] goes no further than to state the duty of a judge, after the judge has ruled on the voluntariness of a statement given to the police, in directing the jury as to the probative value or effect. In reality, the essence of Cleon's appeal was a wistful argument that the trial judge could have been more emphatic to the jury as to the fulness of the consideration they should have given to this appellant's claim that he gave his statement under duress. It is not a tenable ground of appeal that the appellant disagreed with how the trial judge directed the jury, once it is accepted that there was no misdirection or failure to direct, as was rightly accepted in this case.

[9] Other grounds of appeal were argued, including error of the trial judge in admitting the deposition of the deceased eyewitness into evidence, failing to direct the jury properly on the weakness of the identification evidence and on how to proceed if they rejected Orwin's defence of alibi. There was little substance to these arguments, as emerged in the discussions between counsel and the Court on the hearing, and there would be little benefit in now discussing them.

The Appeals Against Sentence

[10] As a case of murder for money, this crime fell within the class of the worst murders comprised in s 100(1) of the Act. That section subjects such murders to the special sentencing regime that is set out in s 100A(1)(a) of the Act, to which close consideration is now given.

[2] [1967] 1 All ER 948.

The Worst of Murders

[11] The worst murders are in a class of their own, specified in five paragraphs, in s 100 (1)(a) to (e), identified by reference to the victim or the nature of the murder. The following is a broad summary of these murders:

(a): murder of a member of the security forces or their assistant, a prison officer or their assistant, a judicial or legal officer, or any person acting in the execution of his duties who is vested by law with certain powers, authorities and privileges.

(b): murder of a witness or party in a pending or concluded legal proceeding or a serving or former juror in a criminal trial.

(c): any murder committed by a person in the course or furtherance of robbery, burglary or house breaking, arson of a dwelling house, or any sexual offense.

(d): any murder committed pursuant to an arrangement whereby money or anything of value passes or is intended to pass from one person to another or a third party or is promised. (This was the murder committed by the appellants.)

(e): any murder committed in the course or furtherance of any act involving the use of violence which by reason of its nature and extent is calculated to create a state of fear in the public or in a section of the public.

[12] It is at once apparent that these murders are far more violative of the society's peace and order than other murders because they are an attack on core institutions and principles which hold society together, including the fundamental value that human life cannot be bought, and the society's right to a safe and peaceful existence. Murders falling within this class are distinguished from other murders and made subject to the different sentencing regime provided by s 100A(1)(a) which states that a person convicted of such a murder '. . . shall be sentenced to death or to imprisonment for life'.

In contrast, s 100(2) of the Act provides that a person convicted of murder that is not so aggravated is to be sentenced according to s 100A(1)(b), which states that

they '… shall be sentenced to imprisonment for life or such other term as the Court considers appropriate, not being less than fifteen years.'

[13] Where a court imposes a sentence of imprisonment for life, s 100A(3) provides that the court *shall* specify a period which the person should serve before becoming eligible for parole. In the case of the gravest murders, the period shall be not less than 20 years; in the case of other murders, the period should be not less than 15 years.

The Specified Sentence

[14] The contrast between the two penalty sections, one following immediately after the other, could not be starker: for the worst murders the penalty is stated to be either death or imprisonment for life; for other murders the penalty shall be imprisonment for life *or* such other term as the court considers appropriate. On one view, in the former, there is no provision for imprisonment other than for life, while in the latter imprisonment for life is discretionary, and this dichotomy of views is demonstrated by the variation in the sentences imposed by trial courts in Guyana over the years.[3] The questions whether s 100A(1)(a) creates a mandatory sentence and whether, if it does, such a sentence is constitutionally compliant, were not argued before us. These are substantial legal issues upon which we will not dilate without the benefit of the views of counsel and the Court of Appeal. We therefore leave those questions for determination in some other case.

[15] Instead, we propose to determine the appeals against sentence on the basis that the sentence of life imprisonment (regardless of whether mandatory or discretionary) was specified in the Act, and intended to operate, as the maximum penalty. It was not within the power or discretion of the court to impose a supposedly or potentially harsher sentence of imprisonment for 81 years or 50 years. Without prejudice to the manner in which the two questions posed above should be interpreted or answered, it seems to us that if a court considers that the prisoner is deserving of as harsh a punishment as 81 years, the court should instead impose a life sentence. The

[3] See the observation at [28] below.

legislature considered that life imprisonment was a harsher penalty than any term of years and we see no basis for considering to the contrary. Subject to parole considerations life can only mean what it says.

Support for Life Imprisonment

[16] It is therefore a curious twist that the appellants seemed to be advocating to be sentenced to imprisonment for life, which is what appears in the Notice of Appeal for Orwin Hinds[4], as ground (f):

'(f) The Court of Appeal erred in failing to follow the sentence as prescribed by section 100A(1)(a) of the Criminal Law (Offences) Act, Cap. 8:01.'

[17] The error alleged could only have been in *not* imposing a sentence of imprisonment for life. As earlier indicated, the thrust of counsel's argument was that it has been established in some cases, such as *Alleyne v R*[5], that in practice a sentence of life imprisonment amounted to a sentence of imprisonment for a number of years. It appears that in formulating his case on appeal, counsel, therefore, mentally converted imprisonment for life to imprisonment for a stated number of years. The thinking, it seems, was to the effect that 'since we all know that life imprisonment means 25 years' then the court should have imposed the sentence of imprisonment for life and indicate, as counsel asked this Court to now do, its acceptance that in Guyana, as is said to be the case in Belize or Trinidad and Tobago, a sentence of life imprisonment was interpreted to be a sentence for 25 years or less.

[18] In layman's thinking and in a real-life assessment, it is an easily understood reach. It must, of course, be reiterated that life imprisonment means exactly what it says: it is a sentence of imprisonment for life. The convicted person has no right to be released. The fact that the system of parole may usually result in the convicted person being released and not dying in prison does not alter the nature and duration of the sentence that is imposed. A person sentenced to 25 years imprisonment has a right, as a matter of law, to be released at the end of that period or earlier, with

[4] Record of Appeal, 'Notice of Appeal of *Orwin Hinds v The State* GYCR2022/001' 3.
[5] [2019] CCJ 06 (AJ) (BB), (2019) 95 WIR 126.

remission.[6] In contrast, a person sentenced to imprisonment for life has no right to be released.

[19] However, notwithstanding that a person sentenced to imprisonment for life has no right to be released, because of the very real prospect and, indeed, likelihood of being released on parole, such a person may consider themself better off with a sentence of imprisonment for life rather than a sentence of imprisonment for 81 years or 50 years, which were the terms imposed respectively by the Trial Court and the Court of Appeal. The appellant's 'ground (f)' in his Notice of Appeal[7] reflects exactly that reasoning. The appellants want to be sentenced to imprisonment for life, hence the ground of appeal that the Court of Appeal erred in law in failing to impose 'the sentence as prescribed by s100A(1)(a) of the Criminal Law (Offences) Act'.

[20] The appellants' contention that the Court of Appeal erred in law in not imposing the sentence of life imprisonment contains the further dimension that in practical terms, the sentence of imprisonment for 50 years was a more severe sentence than a sentence of imprisonment for life, because realistically that latter sentence could see them released on parole after (say) 25 years imprisonment. It is dispositive that whether or not the sentence of life imprisonment is a mandatory sentence, it is the maximum sentence, and a court has no power to impose a sentence that is intended to be more severe than the maximum. There are good reasons why life imprisonment is indeed a maximum sentence. Even if the prisoner is released on parole after a minimum of twenty years, the prisoner is still subject to all the strictures of a parolee for the remainder of their natural life. By contrast, a prisoner with, say a 25 year sentence who is released on parole after say 20 years, will be free of their parole strictures after the expiry of 25 years.

[21] Counsel's reliance on the analysis in *Alleyne*[8] serves the appellants well. It must be remembered, of course, that the conviction in *Alleyne* was for manslaughter and s

[6] See Rule 256(1) of the Prison Rules, Cap 11:01.
[7] Record, 3.
[8] *Alleyne* (n 5).

6 of the Offences Against the Person Act of Barbados[9] made a person so convicted *liable* to imprisonment for life and, therefore, on the reasoning in *August v R*[10], did not subject them to a mandatory sentence. It is, nonetheless, helpful for the appellants that, as Anderson JCCJ discussed[11] in delivering the judgment of the Court, a sentencing court in Barbados should be aware of the normal range in the number of years' imprisonment that will be served before release on parole of a person sentenced to imprisonment for life. The reason for the need of such awareness in that case was so that the sentencing court could recommend a minimum period before parole,[12] but it assists the appellants to have the specific reference to this Court's recognition that:

> For example, in Belize life can be 15 – 20 years and in Trinidad and Tobago, the range of imprisonment is 15 – 25 years although in some cases considered to be the 'worst of the worst' the Trinidad and Tobago judiciary has imposed minimum sentences which ranged from 30 – 35 years.[13]

[22] The sentence that follows immediately upon the abovementioned quote from *Alleyne* is of further conceptual benefit to both the present discussion concerning severity of sentence, as well as the discussion below at [24] – [29] on fixing a period before eligibility for parole. That sentence reads as follows:

> In one of these cases, *Parris v The State*,[14] Parris had pleaded guilty to a charge of manslaughter and was sentenced to life imprisonment, not to be released before the expiration of 30 years. The Court of Appeal upheld this sentence on the application of the basic principle of sentencing that a maximum sentence is reserved for the most heinous circumstances and that in the view of the Court, the circumstances of Shawn Parris' case qualified as 'most heinous'.[15]

[23] The benefit to the present discussion of that exposition is that it supports the argument that a sentence of life imprisonment is a maximum sentence; that it carries

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[9] Cap 141.
[10] [2018] CCJ 07 (AJ) (BZ), [2018] 3 LRC 552.
[11] *Alleyne* (n 5) at [51].
[12] As noted, s 100(3) of the Criminal Law (Offences) Act obliges the sentencing court to do so and stipulates a minimum period.
[13] *Alleyne* (n 5) at [52].
[14] (Trinidad and Tobago CA, 25 May 2005).
[15] *Alleyne* (n 5) at [52].

with it a statutory entitlement to be considered for eligibility for parole; that eligibility to be considered for parole arises after a period of 20 years (in Guyana) or such later period as a court may fix; and that a court has no power to impose a sentence of 50 years imprisonment (or any determinate period) with a view that it would have the practical effect of exceeding the sentence fixed by the Act.

Duties of the Sentencing Judge

[24] As mentioned above at [12], when a court sentences a person convicted of murder of the worst case to imprisonment for life, s 100A(3)(a) of the Act provides that '… the court shall specify a period, being not less than twenty years, which that person must serve before becoming eligible for parole'.

It is a mandatory obligation. Unfortunately, the Court of Appeal did not specify the period of eligibility in this case.

[25] The Court noted in *August* that the purpose of the legislation fixing a minimum period that must be served before there could be eligibility for parole was to satisfy the penological objectives of punishment and deterrence.[16] By so providing, the legislature seeks to meet the society's sense of justice and thereby to maintain trust and confidence in the law. But the conferral of discretion on the court to determine the period after which parole may be granted also fulfils the society's humanitarian duty to provide for persons who have been rehabilitated, to be returned to their place in the society. The period of imprisonment that must be served before eligibility for parole is known as the 'punitive period' and the period that follows is known as the 'security' or 'preventative' period, and it is during this latter period that it may be decided whether there should be continued detention or release on parole.[17] Therefore, it was a duty of fundamental importance, both to the convicted persons and the society, that the Court of Appeal failed to perform in this case.

[26] The obligation on the court to judicially determine the period before there is eligibility for parole means that it may be still necessary for a trial court to hold a

[16] *August* (n 10) at [71] – [83].
[17] ibid,at [74].

sentencing hearing, the importance of which has been emphasised in the Court's jurisprudence,[18] so that a fair decision may be made by the judge of aggravating and mitigating factors, in relation both to the offender and the commission of the offence. The judge would need to consider on such a hearing, as well, the relative moral turpitude of multiple offenders such as the orchestrator, the trigger man, the active assistants, and non-participants in the actual execution of the crime, as well as indications of reticence and remorse, and the like.[19] Following such an exercise, a trial judge may find it appropriate to impose the statutory minimum period of eligibility for parole in the case of one offender and to impose a higher period in the case of another.

The Present Pass

[27] It is clear that the Court of Appeal erred in law in imposing a sentence for a term of 50 years without specifying the period, being not less than 20 years, after which the appellants shall become eligible for parole, as mandated by s 100A(3) of the Act. In sentencing cases, usually the concern of the court is to decide by reference to a maximum sentence, the range of sentence to impose in a particular case. In this appeal, the concern is for the Court to fix the minimum period that must be served by the appellants before they should be eligible to be considered for parole. The considerations are far less in doing so, in a case such as the present, where the minimum period of eligibility is fixed by law because the mitigating factors cannot operate to reduce the minimum period of eligibility. The Court has heard no arguments on this aspect and therefore, this view would be subject to reconsideration in a future case but it would seem, the period of eligibility in this case should be set at the minimum of 20 years for both appellants. It may be, had it been legally permissible, that Cleon, the brother who did not physically participate in the execution of the murder, could have been considered for eligibility for parole before 20 years, but that consideration is precluded by law. It may also be considered that Orwin, who physically participated by preventing any possible help

[18] See *Pompey v DPP* [2020] CCJ 7 (AJ) GY; *Ramcharran v DPP* [2022] CCJ 4 (AJ) GY; and *Small v DPP* [2022] CCJ 14 (AJ) GY.
[19] See s 100(3)(b) of the Criminal Law (Offences) Act where the legislation expressly requires, where there are multiple participants, but in a case other than one such as the present case of murder for pay, for the actual killer to be sentenced to imprisonment for life and for another convicted person to be sentenced to imprisonment for life or a term of years in the discretion of the court.

being given to the victim by her brother, is more guilty than his sibling but this in itself is no reason to subject him to a greater period of imprisonment before eligibility for parole. The 20-year period before eligibility for parole in a worst murder, compared to the 15-year period in a murder that is not one of the worst, indicates that Orwin's actual participation does not require any heightened severity beyond that greater severity in eligibility for parole.

[28] At the request of the Court, the office of the Director of Public Prosecutions very helpfully provided a table, supplemented by the contributions of counsel for the appellants, of recent sentences on convictions for the worst murders. The table showed multiple instances where a sentence of life imprisonment was imposed but also multiple instances where a sentence of imprisonment for a term of years was imposed. From such sources as were readily available on its own research, this Court was unable to access the records of the cited cases in which the sentences were imposed and the Court, therefore, had no basis upon which to understand the variation between sentencing tribunals in imposing a sentence of life imprisonment, and a sentence for a term of years.

[29] It is regrettable that this Court is unable to understand the divergent approach taken by sentencing courts, but such an examination may properly be regarded as academic in this appeal, where the error of law by the Court of Appeal was in purporting to or seeking to exceed the maximum sentence provided by law, as well as failing to specify a minimum period before eligibility for parole. The inconsequentiality, for this case, of the divergence in sentencing is more so because this Court is satisfied that the sentence of life imprisonment is the right sentence to impose, based on all appropriate considerations in imposing a life sentence, as stated by Saunders PCCJ in *Alleyne*[20] and based as well on the fact that, paradoxically, it is the sentence urged by the appellants, as was also suggested in that appeal.[21]

[20] *Alleyne* (n 5) at [79]-[80].
[21] ibid at [83].

Disposal

[30] The decision of this Court, therefore, is that the appeals against conviction are dismissed and the appeals against sentence are allowed. The sentences of 50 years' imprisonment are set aside, and each appellant is sentenced to imprisonment for life, and shall become eligible to be considered for parole after a period of 20 years imprisonment including the time spent on remand awaiting trial.

/s/ A Saunders

The Hon Mr Justice Saunders (President)

/s/ J Wit

The Hon Mr Justice Wit

s/ M Rajnauth-Lee

The Hon Mme Justice Rajnauth-Lee

/s/ D Barrow

The Hon Mr Justice Barrow

/s/ A Burgess

The Hon Mr Justice Burgess