

**IN THE TURKS AND CAICOS ISLANDS
COURT OF APPEAL
BETWEEN**

CR — AP 4/2005

LEONARDOFORBES

Appellant

AND

THE CROWN

Respondent

Coram: Rt. Hon Justice E. Zacca President
Hon. E. Mottley Justice of Appeal
Hon. R. Langrin Justice of Appeal

Noel Skippings for the Appellant
Elizabeth Hinds for the Crown

Heard: January 29 and February 5 2007

Before us is an application to renew leave to appeal.

In the Supreme Court at Grand Turk before Ground, C.J, and a Jury, the Appellant was jointly tried and convicted on the 21st March 2001, on two counts, the first murder and the second, attempted murder. Leonardo Forbes being under the age of 18 years at the date of the offence, on the first count was sentenced to be detained at Her Majesty's Pleasure and on the second, eight years imprisonment - the sentences on each were ordered to run concurrently.

Section 5 -- Offences Against the Person Ordinance Cap. 28 states:

"Whoever shall be convicted of murder shall be sentenced to prison for life, Provided that sentence of imprisonment for life shall not be pronounced or recorded against a person who, in the opinion of the Court, at the time when the murder was committed was under the age of eighteen years, but in lieu of such punishment the court shall sentence such person to be detained during her Majesty's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Governor may direct, and whilst so detained shall be deemed to be in lawful custody."

On the 7th August, 2001 the appeals against convictions were dismissed.

In August 2006, the Applicant appealed to this Court requesting that his sentence be a determinate one and that he be released from prison.

In light of the authorities dealing with the separation of powers in the Westminster model constitutions, it was necessary in order to bring the sentence in conformity with the constitution of the Turks and Caicos to substitute "the court" for "Her Majesty's". See Privy Council cases: *Browne (Greene) v R* (1999) 54 WIR 213, *D.P.P. v Mollison (Kurt)* (2003) 64 W1R 140 and *Griffiths v the Queen* (2005) 2 AC 235

We further ordered that any application in relation to the applicant's release should be made to the Supreme Court where the matter can be appropriately dealt with.

It is difficult to understand why this application is again before us.

We wish to point out a relevant passage from the judgment of Lord Hobhouse in *Browne (Greene) v R.*(Supra) which guided our deliberations: At pages 219 it states:

"The sentencing court has discretion as to the length of the detention. The sense and purpose of the concept "during pleasure" is that it is not a once- and for all assessment that is made at the time that the defendant is first before the court after his conviction. Its purpose, as was pointed out in *Ex pane venables* (particularly by Lord Browne Wilkinson at pages 499 and 500) is that it enables the position to be reviewed from time to time. The submission of the appellant that he should have received a determinate sentence runs counter to that purpose and the proper objective of the proviso. This sentence which he should receive was detention during the court's pleasure, and that is the sentence which must be substituted. However in view of the passage of time between his conviction and the time that he will, pursuant to this opinion, return to be re sentenced it is to be recognized **that after having passed the sentence of detention during the court's pleasure, the court may consider that the stages has been reached in the appellant's rehabilitation and maturity where an order pursuant to that sentence can be made by the court which will limit the length of his further detention.** (Emphasis ours.)

In *Griffiths & Others v The Queen* [2005] 2AC 235, the Privy Council in allowing the appeals of four appellants against sentence that they should be detained during Her Majesty's pleasure, indicated that sentence should be at the court's pleasure and until the sentencing court directs their release. Their Lordships stated that they were content to leave it to the judges and officials in the various countries " to devise a system for operating such sentences that suits local conditions." Their Lordships however cautioned that such a sentence "requires that the court reviews the question of the detainee's release at appropriate intervals."

In our view; this can only be achieved if an application is made to the Supreme Court with the relevant affidavits which ought to be served on the Crown so that the matter can be dealt with appropriately.

Against this background, the Court orders that this applicant was wrongly before the Court.

Zacca President

Mottley J.A.

Langrin J.A

