IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. G0155 of 2017
Legal Aid No. LACR/0162/2015

BETWEEN

OSBOURNE DOUGLAS

PLAINTIFF

v.

(1) THE GOVERNOR OF THE CAYMAN ISLANDS
(2) THE DIRECTOR OF PRISONS

RESPONDENTS

AND IN THE MATTER:

Cause No. G0164 of 2017
Legal Aid No. LACV 0225/2017

BETWEEN

JUSTIN RAMOON

PLAINTIFF

v.

(1) THE GOVERNOR OF THE CAYMAN ISLANDS
(2) THE DIRECTOR OF PRISONS
(3) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

RESPONDENTS

Appearances:	**Mr. Hugh Southey, Q.C., instructed by Mr. Laurence Aiolfi of Mourant Ozannes for Osbourne Douglas**
	Mr. Hugh Southey, Q.C., instructed by Mrs. Prathna Bodden of Samson Law Associates for Justin Ramoon
	Mr. Paul Bowen Q.C. instructed by Ms. Reshma Sharma and Ms. Claire Allen of the Attorney General's Chambers for the Respondents
Before:	**Justice Michael Wood Actg.**
Judicial Review Hearing:	**26th – 29th April 2021**
Oral Judgment handed down:	**28th May 2021**

HEADNOTE

Civil Division – Judicial Review - Colonial Prisoners' Removal Act 1884 *(the* ***"1884 Act")*** *– The Applicants challenge, inter alia: The lawfulness of the Plaintiffs' transfer under the 1884 Act and as a matter of domestic law; The failure to adopt a fair and proper procedure affording appropriate procedural safeguards to protect them and their families' interests; The failure to provide reasons and the written reasons of the decision-maker(s); The violation of the "Bill of Rights" (Bill of Rights, Freedoms and Responsibilities, in Schedule 2 Part 1 of the Constitution of the Cayman Islands) and specifically violations of (i) the prohibition upon inhuman or degrading treatment …; (ii) prohibition on deprivation of liberty … - The failure and refusal to provide decisions and disclosure in accordance with the duty of candour and obligations upon the public authority Respondents - The failure to make adequate provision or take steps to remedy any asserted deficiency to the security in place at HMP Northward.*

JUDGMENT

1. This Court has heard an application for over four to five days which was set out as follows in the Summons:

> *1. In the light of the Court's judgments (a) that a closed material procedure is not available in the Cayman Islands ('the Closed Material Issue') and (b) on the Respondent's summons for public interest immunity ('the PII Issue'), the Plaintiffs' application for judicial review should be struck out under GCR Ord. 18 r. 19 on the grounds it is untriable ('the Strike Out Issue').*
>
> *2. Case management directions for the resolution of the following issues:*
>
> *a. The Strike Out Issue.*
>
> *b. Whether the Bill of Rights ('BOR') applies to the decision under challenge and/ or whether the Grand Court has any jurisdiction under s 26 BOR to review the decision on BOR grounds (see Respondent's Grounds, paras 27-29) ('the Bill of Rights Issue')*
>
> *c. The Plaintiffs' substantive application for judicial review.*
>
> *3. The time limit for any oral or written application by the Respondent [or the Plaintiffs] for leave to appeal (a) the Ouster Issue; (b) the Forum Issue; 1 (c) the Closed Material Issue; (d) the PII Issue pursuant to section 11 (S)(b) of the Court of Appeal Rules (2014 Revision), shall be extended to 28 days after the date on which final judgment is handed down in respect of the Strike Out Issue, the Bill of Rights Issue and the substantive application*."

2. As both leading counsel said, this was one of the most difficult and challenging cases that they, with their very considerable experience had ever been involved in. All I can say is that I echo that I echo that view and endorse it.

3. I do not propose to set out all the material that has been provided to me. As I said I am very grateful to counsel for all the material, in particular, the authorities which I was provided with quite literally overnight. The authorities themselves run in excess of six thousand (6000) pages. Most helpful of all I have been provided with during the course of this hearing which has been referred to as the ***Agreed Combined Open Judicial***

Review Bundle which has been updated throughout the hearing and is divided into sections A, B, C and D.

4. I will not deal with every point raised during the initial oral arguments or the revised submissions and speaking notes. Some issues raised their heads and then retreated and were not raised again. What I have sought to do is to concentrate on the remaining live issues were dealt with by both leading counsel in their final submissions. And, as I said, they helpfully provided me with their comprehensive speaking notes.

5. I have, I stress, not decided every issue raised but I have sought to deal with the remaining issues which will enable me to reach my judgment in this case.

THE OFFENCE

6. The Plaintiffs, who are brothers, were both convicted of murder and possession of an unlicenced firearm. Both elected trial by Judge Alone and were convicted on the 26th May 2016 by Justice Quin after a nine-day trial.

7. On the 19th December 2016 Justice Quin, pursuant to s.14 of the ***Conditional Release Act*** (2014 Revision) sentenced the Plaintiffs as follows:

a. Osbourne Douglas:

i. For murder – 34 years' imprisonment; and

ii. For possession of an unlicenced firearm - 10 years' imprisonment concurrent

iii. This made a total of 34 years.

b. Justin Ramoon:

i. For murder – 35 years' imprisonment; and

ii. For possession of an unlicenced firearm - 10 years' concurrent.

iii. This made a total of 35 years.

8. I stress that these are the minimum terms which will be served prior to either of these Plaintiffs being considered for release on licence.

9. Both Plaintiffs had been in custody for some five hundred and twenty-two (522) days prior to the trial and during the trial. This time was set off against the total sentence.

10. I now address the facts, which, in my judgment, are extremely important in these proceedings from the judgment of the Cayman Islands Court of Appeal (CICA) – dismissing the appeals by both Plaintiffs against conviction and sentence.

11. The Judgment of the CICA was given by Sir John Goldring, President of the Court. The Judgment appears in the Judicial Review Bundle at section c, and I quote the following from that Judgment.

"*The facts*

A short summary of the Crown's case

3. *Jason Powery (also known as 'Moggy'), Jerome Hurlston and Justin Ebanks were friends. On the evening of 1 July 2015, they were in the vicinity of the Globe Bar, Martin Drive, George Town in Grand Cayman. A number of people had gathered in an alleyway outside the Globe Bar. Osbourne Douglas, and then Justin Ramoon, came to the area. Osbourne Douglas had a firearm tucked into his waistband. Justin Ebanks and Jerome Hurlston both saw the firearm. Justin Ebanks saw Osbourne Douglas pass the firearm over to Justin Ramoon. Osbourne Douglas left the scene. Justin Ramoon went out of Justin Ebanks' sight. He was then in sight of Jerome Hurlston. Jerome Hurlston saw Justin Ramoon fire one shot to the head of Jason Powery at close range. Justin Ebanks heard the shot. Justin Ramoon*

attempted to shoot Jerome Hurlston. The gun did not go off. Justin Ramoon walked away to his silver/grey Honda motor-car. Osbourne Douglas was waiting for him in the driver's seat. They drove off. In all, they had been in the immediate area for no more than about 10 minutes.

4. *There were four different CCTV cameras in four different locations in the area. None of the footage from those cameras depicted the actual shooting. It depicted people and events before and after the shooting.* Among other things, it depicted the arrival and departure of each of the appellants.

5. *Jason Powery died of a single gunshot wound to the head.*

6. *A 9mm fired Lugar cartridge was recovered from the scene. The bullet was never recovered. It must have passed through Jason Powery's head. The firearm was never found.*

7. *On 10 July 2015, Justin Ramoon and Osbourne Douglas were arrested. Each was interviewed three times. Each made no comment, provided a short, prepared statement accepting presence at the scene and denying responsibility for the murder.*

More detail

8. *We shall summarise the evidence in broad terms. We shall return to particular aspects when considering the grounds of appeal. We shall follow the order in which the evidence was called and considered by the judge in his judgment.*

The eye-witness evidence

9. *Jerome Hurlston had known Osbourne Douglas since they were "in pampers." He had grown up with Justin Ramoon. He knew Justin Ramoon's silver/grey Honda motor-car. He said the moonlight, the street light and light from the Globe Bar enabled him to see who was present in the alleyway. He and Osbourne Douglas were a few feet apart. He described Osbourne Douglas staring, looking at them, and singing a song. He had a gun. It was sticking out of his side. Its handle was black. It looked like a Beretta or a Taurus. He described it as a 9mm firearm. At some stage he said he saw Justin Ramoon. He was about 20 feet away. This is how Justice Quin described what Jerome Hurlston then said (pages 11/21-12/19):*

> *"Mr. Hurlston said Justin Ramoon looked at him for a little bit and then, as soon as Jason Powery turned to put his beer down, he walked up to Jason Powery and shot him in the face. Mr. Hurlston also heard only one shot. Mr. Hurlston said he saw Justin Ramoon walking back down towards him. He said Justin Ramoon had his head down, but he was looking at Mr. Hurlston, and Mr. Hurlston was looking at him coming closer. He said Justin Ramoon got closer and "his hand reach up". He then said "Andy hit [Justin Ramoonj with his shoulder and the gun went click .... "Mr. Hurlston said he could see Justin Ramoon clearly*

and he could see his clothes. He said that he could see him from the time he saw him stand at the side of the tree.
Mr. Hurlston said Justin Ramoon was about 4 feet away from him when he raised the gun or even 3 feet. Mr. Hurlston said he raised the gun but "didn't get time to point it". The man's shoulder hit the gun and it went click. Mr. Hurlston said the gun did not go off"

10. *Jerome Hurlston was first seen by the police on 9 July 2015. He said he would consider his position. On 10 July 2015 he gave a video interview which became the basis of his statement. It implicated the appellants.*

11. *We shall come to the inconsistencies in Jerome Hurlston' s evidence when we deal with the grounds of appeal. Throughout he maintained he was telling the truth.*

12. *Justin Ebanks said he had known Osbourne Douglas since the age of 12. He saw him in the alleyway. Osbourne Douglas looked straight into Jason Powery's face. His chest was pushed out. Justin Ebanks said he could see something shaped like a firearm bulging out. He saw its handle. He said he knelt down by a wall. He was not feeling well. This is how Justice Quin then summarised Justin Ebanks' evidence (pages 26/10-27/16):*

> *"He said when he looked up he saw Osbourne Douglas give Justin Ramoon the gun. He said he saw both Osbourne Douglas and Justin Ramoon about 12to15 feet away. He said he could see them because of the streetlight. Mr. Ebanks explained at this juncture he could see the back and side of Osbourne Douglas, the left side of his face. He said he could see Mr. Ramoon. He said he was wearing a white shirt and joggers and a pair of slippers. He said Mr. Ramoon walked up to Mr. Douglas and then Osbourne Douglas gave him a gun. When asked what part of Mr. Ramoon he could see, Mr. Ebanks said he could see his whole body. Mr. Ebanks said he could see him from head to toe. He said he had his hair in a bun and he had two little hairs let out over his left eye. Mr. Ebanks said he had a white shirt and three-quarter-length joggers and pair of slippers and a Red Stripe in his hand.*
>
> *Mr. Ebanks demonstrated to the court how he saw Osbourne Douglas turn to the left to see if anybody was looking before pulling out his gun. He said then Mr. Ramoon came up and grabbed it and pushed it into his waist. Mr. Ebanks said Mr. Ramoon looked at him and then Debo and Thalia with "more like a horrible look". He said he drank his beer down fast and "fling it down" and then continued walking. Mr. Ebanks watched him until he went out of his sight. Three seconds after he went out of his sight the shot went off"*

13. *Justin Ebanks said it only took a couple of seconds to pass the gun. He was able clearly to see it. He demonstrated what he said he saw. When it was suggested he had not seen the gun pass, he said, "Mr Douglas had a gun that evening. I seen him with my own two eyeballs give it, giving it to Justin Ramoon. Swore on the Bible. Nothing but the truth and only the truth I am speaking."*

14. *Justin Ebanks said he had Osbourne Douglas in his view for about 3-4 minutes, Justin Ramoon for about 2-3 minutes.*

15. *Justin Ebanks said he was not forced to say what he did. "I did this because of my own will. They killing an innocent child. Jason Charles Powery is an innocent child."*

16. *On 3 July 2015 Justin Ebanks had said to the police that he did not see anyone with a gun. He did not know who shot Jason Powery. On 8 July 2015 he was interviewed. He implicated the appellants.*

17. *Justin Ebanks had previous convictions. In July 2014 he was placed on probation for 24 months for inflicting grievious bodily harm. In June 2015 he was imprisoned for 5 days for assault occasioning actual bodily harm. On 30 January 2016 he was found in possession of a semi-automatic pistol with three live rounds, for which he was awaiting trial. We shall return to the topic of his possession of pistol and ammunition when dealing with the grounds of appeal.*

The CCTV footage

18. *The prosecution called two witnesses who had examined all the CCTV footage, Officer Francis and Mr Fredericks. The defence called Mr Murphy. Mr Francis first viewed the CCTV footage on 3 July 2015. He subsequently analysed it. His witness statement was dated 15 July 2015. Mr Fredericks was first instructed to provide expert evidence regarding the CCTV footage on 22 July 2015. The accounts of Jerome Hurlston and Justin Ebanks, given on 8 and 10 July 2015 respectively, were consistent with what the analysis of the CCTV footage subsequently revealed.*

19. *Mr Francis knew both appellants well. Both he and Mr Fredericks (who of course did not know the appellants), described Justin Ramoon and Osbourne Douglas in terms of male 1 and male 2 respectively. In our summary of their evidence, we shall refer to them by name.*

20. *At 22.28.32 Justin Ebanks and Jerome Hurlston could be seen at the Globe Bar. By 22.33 the appellants had arrived in the area in the silver/grey Honda. Justin Ramoon was driving. He parked the Honda facing the road at the back of a store called the Alpha Outlet Store. The two appellants separated. Osbourne Douglas walked towards the Globe*

Bar. Justin Ramoon moved the Honda from the back of the Alpha store, to a position nearer to and opposite the Globe Bar. By about 22.35 he had parked it, again facing outwards. At 22.37.48 Justin Ramoon walked to the Globe Bar. At about 22.39 he briefly returned to the Honda before going back to the area of the Globe Bar. Osbourne Douglas was still there. At 22.39.18 Osbourne Douglas, Justin Ebanks and Jason Powery could all be seen. Jason Powery was drinking. They were both smoking. By 22.40.57 Justin Ramoon had returned to the area of the Globe Bar. Osbourne Douglas was still there. Between 22.41.04 and 22.42.18 both appellants were in an area not covered by CCTV. They both remained in that blind spot for one minute 14 seconds. At about 22.43.28 Osbourne Douglas moved away. He walked towards the Honda. It was where Justin Ramoon (in Osbourne Douglas' absence), had moved it. Between about 22.43.33-6 people could be seen running away very quickly from the alley, no doubt as a response to what was happening. (The judge said that there was evidence that Osbourne Douglas spent some time clearing the young people away before the shooting took place). At 22.43.37 Osbourne Douglas reached the Honda and got into the driving seat. After sitting there for a moment, he drove to the front of Mary Street, where he stopped. By then it was 22.44.36. That placed the Honda nearer the alleyway in which the shooting had by then plainly taken place. The car's new position provided a direct route along the main road out of the area. Osbourne Douglas waited in the Honda. In the meantime, at 22.43.44, Justin Ramoon left the area of the Bar. He walked to where Osbourne Douglas (in his absence) had moved the Honda and was waiting in the driving seat. Justin Ramoon got into the passenger seat. At 22.45.30 Osbourne Douglas drove them both away.

21. *Mr Francis agreed there were times when he lost sight of the Honda. There appears to have been floated in cross-examination the suggestion that Mr Francis might have seen two different Hondas. A similar suggestion was floated with Mr Fredericks.*

22. *Mr Murphy was called. He said there was insufficient footage reliably to track individuals. He said, "Whilst it is possible that the individuals being tracked are male I (Justin Ramoon) and male 2 (Osbourne Douglas), the footage does not allow complete, positive identification." He was, he said, suggesting caution. In the final analysis of course, this was for the judge to assess.*

23. *The appellants' prepared statements were read. There was no submission at the close of the prosecution case. Neither appellant gave evidence. The defence in their detailed, written submissions to the judge, raised two fundamental issues. Firstly, it was submitted that the witnesses Jerome Hurlston and Justin Ebanks were untruthful, unreliable witnesses with an axe to grind, whose evidence could not be*

relied on; secondly, that in any event, they may have been mistaken when they identified the appellants as involved in the shooting.

The Judge's conclusions

24. *The judge said this about the evidence of Jerome Hurlston and Justin Ebanks (95/3-96/6 and 106/8-13):*

> *"I come now to the bad character of Jerome Hurlston and Justin Ebanks.*
>
> *The defence submits that both Jerome Hurlston and Justin Ebanks are men of bad character and belong to a gang in West Bay. The defense state that Justin Ebanks had his own firearm and he had it before the shooting on the 1st of July. The defense submit they are not reliable witnesses. The defense highlight the discrepancies and inconsistencies of the evidence of both Jerome Hurlston and Justin Ebanks. In my view, after close examination of the evidence and the discrepancies and inconsistencies, they are not significantly material. For example, Mr. Hurlston got the type of shirt Osbourne Douglas was wearing wrong. Mr. Hurlston told the police he could only see the outline of a gun under the shirt of Osbourne Douglas, whilst in court he saw part of the gun. Mr. Hurlston said Osbourne Douglas had the gun to the right side of his waist, Justin Ebanks said he had it to the left side. Mr. Hurlston said Osbourne Douglas lifted his foot when he came to stare, whereas Justin Ebanks does not mention that Osbourne Douglas lifted his foot. I find these inconsistencies to be of minor significance and not fundamentally material ... Having reviewed the submissions of both leading counsel, and examined the specific weaknesses that they have drawn to my attention on the eyewitnesses' identification evidence, !find the evidence of Jerome Hurlston and Justin Ebanks to be accurate and reliable. They have been subjected to very vigorous, but fair, cross-examination by two experienced leading counsel, and I find them to be truthful, accurate and reliable witnesses."*

25. *The judge said he found the evidence of* Mr *Francis and Mr Fredericks and the CCTV footage itself provided strong support for the eyewitness identifications of Jerome Hurlston and Justin Ebanks. He said too (103/6-24) that their description of the firearm as looking like a 9mm handgun and the finding of9mm cartridge was further evidence supporting the Crown's case.*

26. In short, the judge accepted the truth and reliability of Jerome Hurlston's and Justin Ebanks' evidence. He found their evidence to be strongly supported by that of Mr Francis, Mr. Fredericks and the CCTV footage itself. The 9mm spent cartridge located from the scene was consistent with the eyewitnesses' description of the handgun being a 9mm handgun. The case for the prosecution was sufficiently strong to require an answer from the defendants. The only explanation for the appellants' silence was their awareness that they had no answer, or none that would stand up to cross examination, and therefore an adverse inference was drawn. Their intention was to kill. The Grounds of appeal against conviction

27. There are two grounds of appeal. First, and primarily, it is said the judge in his judgment failed to grapple with the evidence which demonstrated that both Jerome Hurlston and Justin Ebanks, upon whom, it is said, the prosecution case rested, told many lies, gave inconsistent accounts, had obvious gang-related criminal backgrounds, had a motive falsely to blame the appellants and had possibly colluded in their accounts. It was not enough merely to say, as it is said the judge did, he found them "truthful, accurate and reliable witnesses." The judge should have set out the reasoning which led to such a conclusion in the face of all the evidence to the contrary. Had the judge properly analysed the evidence he would have been driven to find the evidence of the two witnesses incapable of belief.

28. Second, it is submitted that whether or not Jerome Hurlston and Justin Ebanks were truthful witnesses, the circumstances in which they purported to identify the appellants were such as to make any identification unreliable. That second argument, seemingly strongly advanced at trial, led to the judge giving himself a direction in terms of R v Turnbull [1977] QB 227. As we observed in argument, it does seem to us that the reality of this case as far as Jerome Hurlston and Justin Ebanks were concerned, was not the reliability of their identification of the appellants in the Turnbull sense, but whether they may have been lying and deliberately, falsely implicating the appellants whom they knew to be innocent. The first ground of appeal

29. Mr Larkin QC, on behalf of the first appellant, made three preliminary points. Mr Miskin QC, who did not appear below, adopted them on behalf of the second appellant.

30. First, Mr Larkin submitted the Crown's case was dependent on the truthfulness and reliability of Jerome Hurlston and Justin Ebanks, as the judge said. The judge was wrong to conclude the independent evidence pointed to the appellants' guilt, or any way confirmed their evidence. It was as consistent with the guilt of anyone among those present as with that of the appellants. There was no forensic evidence linking the

appellants to the shooting. Jerome Hurlston's or Justin Ebanks' vehicles were not examined. The CCTV merely placed the appellants at the scene, which they admitted. Justin Ramoon was staying nearby. He was not the only person who walked away from the scene. Jerome Hurlston did too. Others, as well as the appellants, drove away after the shooting. The CCTV does not depict either appellant with a firearm. Jerome Hurlston could be seen carrying an object prior to the shooting.

31. *Second, the appellants had no apparent motive to kill Jason Powery. He and his friends only decided to go to the Globe Bar a short time before arriving there. They were not expected. They were not reluctant to go there. There was, as Justin Ebanks and Jerome Hurlstone confirmed, no dispute between them and the appellants.*

32. *Third, others had a possible motive to kill Jason Powery. Jason Powery, Jerome Hurlston and Justin Ebanks were known as members of a gang (the Birch Tree Hill gang). There were rumours that two members of the gang had been murdered.*

33. *Jerome Hurlston, submitted Mr Larkin, was not independent, impartial, honest or reliable. He did not contact the police after the incident. He only identified the appellants after he believed the appellants had named him as being responsible. He had a powerful motive to blame the appellants. He said:*

> *"[The appellants} was trying to mix me up like I did something to my friend ... And they send the police to me. You know how much days went 'cross I never went to the police and they sent the police to me ... [the police] they say I set up my friend to kill my friend"*

34. *Some of what he said was not credible. He initially denied taking any drink or drugs. He then said he could not remember. Justin Ebanks, on the other hand, said, they went into the alley at Jerome Hurlston's request to smoke 'draw.''*

35. *Jerome Hurlston's account of events immediately after the shooting was incredible. In the face of CCTV footage showing him opening the door and reaching in, Jerome Hurlston denied going to Justin Ebanks' car after shooting. He then claimed a man was standing by the car door and staring at him. The CCTV depicted no such man. Justin Ebanks denied there was such a man. Jerome Hurlston was lying because he had something to hide.*

36. *When no longer a suspect, Jerome Hurlston asked the police to provide him with a boat, a car and money in order to give evidence.*

37. *Mr Larkin submitted that Justin Ebanks equally lacked credibility and reliability.*

38. *Although he had spoken to Jerome Hurlston before speaking to the police and implicating the appellants, he claimed he did not know the police were investigating that his own associates might have killed Jason Powery.*

39. *Justin Ebanks claimed he gave Justin Ramoon's street name ('Pot') when first in contact with the police. He said he gave a full account to Officer Daniels. As was agreed, he did neither of those things. He said he had not seen a gun and did not know who was responsible.*

40. *On 30 January 2016 Justin Ebanks was arrested for possession of a loaded firearm and ammunition. He was awaiting trial. His defence to the charge was duress: he feared for his life because of threats from the appellants. Mr Larkin submitted his defence of duress in the face of the appellants' alleged threats, gave Justin Ebanks a vested interest in the appellants' convictions.*

41. *Justin Ebanks' gave several different accounts during his evidence.*

42. *He was carrying the firearm because the appellants had threatened him by text for making a witness statement. He took possession of the firearm three hours after the threat. He could not access the text. He only first mentioned any such threat when arrested on 30 January 2016. The appellants were in custody at the time. He had had the firearm for about 12-14 months. He knew who supplied it. He was in fear of his life from that person. He found the firearm. He had had the firearm since the end of 2014 for his protection after David Ebanks, a cousin, was gunned down. He had first obtained the firearm after Jason Powery was shot. He could not say if he was threatened before or after Jason Powery was shot.*

43. *If Justin Ebanks did have the firearm before Jason Powery was shot, Mr Larkin submitted he may have had it at the time of the shooting. He had an overwhelming incentive to have the appellants convicted.*

44. *Mr Larkin submitted the judge had to confront the witnesses' lies and inconsistencies. Nowhere in his judgment did he say what discrepancies and inconsistencies he found, or, importantly, how he was able to conclude that they were "not significantly material" or, "of minor significance and not fundamentally material." Such bald assertions, submitted Mr Larkin, were not enough.*

45. *Moreover, had the judge properly analysed the evidence, he would have been bound to conclude that the credibility of the two witnesses had been*

destroyed. The lack of such analysis masks the fact that there were no sufficient reasons to find the witnesses honest and reliable.

46. *Mr Miskin agreed. The judge failed to estimate the two witnesses' truthfulness. He failed to consider whether they were capable of belief Had he done so, he would have been bound to conclude they were not. The second ground: identification*

47. *Having previously set out how in the light of Turnbull he was required to approach the evidence of identification, the judge said (91/16-21):*

> *"In this case, there is no issue of a fleeting glance. The observations by Jerome Hurlston of both Justin Ramoon and Osbourne Douglas were made over time periods of at least a few minutes and the Crown submit there is sufficient time to see and recognise the person."*

48. *Mr Larkin submitted the judge was wrong in his assessment. Jerome Hurlston had spoken of seeing Justin Ramoon's face for about 10 seconds at the time of the shooting, some 7 seconds thereafter. He could not have been watching the gunman all this time. He said the man turned and looked towards them "for a little bit." The gunman's head was down. Jerome Hurlston looked at the gun. There were people in the alley obstructing his view. He looked at people running away. At one point 'Andy' stepped in front of him. There was shadow from a tree. There was evidence that the lighting was poor. The CCTV footage suggested Jerome Hurlston was further away than he said.*

49. *Mr Larkin made similar points as far as Justin Ebanks' evidence of identification was concerned.*

50. *Although the evidence was that the appellants were together for 2-3 minutes, the passing of the gun took a couple of seconds. In interview, Justin Ebanks did not demur from the interviewing officer's suggestion that what he saw amounted to a glimpse.*

51. *In his skeleton argument Mr Larkin set out in some detail why, as he submitted, Justin Ebanks' identification was not reliable. We have read his submissions regarding the light, the obstructions and impediments he relied on. We need not repeat them. Further, he said in interview that it was the sound of the shot rather than any identification of the weapon that led him to conclude it was a 9mm firearm.*

52. *In the round, Mr Larkin submitted this was a wholly unexpected, shocking and fast-moving event with numbers of people moving around in dark conditions. The time for any identification was brief. Distances changed. Such circumstances would render the alleged eyewitnesses' identification unreliable. There was no supporting evidence. Our conclusion*

53. *This court:*

> *"shall allow an appeal against conviction if it thinks-*
>
> > *(a) that the verdict ... should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory ...*
> >
> > *and in any other case shall dismiss the appeal;*
> > *Provided that the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if the Court considers that no substantial miscarriage of justice has actually occurred."*

54. *We start by analysing what the CCTV evidence comes to. As we do so, it will become apparent, as Mr Perry QC on behalf of the Respondent put it, that this was a compelling part of the case against the appellants.*

55. *The appellants drove to the area in the silver/grey Honda. Having arrived at the Alpha Store, Osbourne Douglas went to the Globe Bar. Justin Ramoon moved the Honda nearer to the Globe Bar. Having done so, he went briefly to the Globe Bar. He returned to the Honda. He went back to the Globe Bar. Osbourne Douglas had remained there. They both moved into the area not covered by CCTV. They were there for over a minute. Osbourne Douglas then left. He walked back to the Honda. He knew where it was. At about the time the shooting was taking place, Osbourne Douglas was walking back to the Honda, or sitting in the driving seat or driving to a new location still nearer to the alleyway in which the shooting had taken place. He stopped the Honda in an ideal position for a getaway. The shooting having taken place, Justin Ramoon walked away from the area of the Bar. He plainly knew where the Honda now was. He walked directly to it. He got into the passenger seat. They drove off. They had been in the area for something like ten minutes.*

56. *These movements do not suggest two people in the area of the Globe Bar for social or innocent reasons. As the judge concluded, what they amounted to was clear evidence of the carrying out of a pre-arranged plan.*

57. *In short, the CCTV footage on its own was powerful evidence against the appellants.*

58. *It does not stop there. What the CCTV footage depicted was in all its essentials consistent with the accounts Jerome Hurlston and Justin Ebanks gave. When, on 10 and 8 July respectively they first gave those accounts, they could not have known what detailed analysis of the CCTV*

footage would reveal. They could not have known there was a blind spot in the CCTV evidence which might implicate the appellants; or about the detailed movements of the appellants and their vehicle. As Mr Perry submitted, it would be very surprising indeed for Jerome Hurlston and Justin Ebanks to collude to provide evidence which subsequently proved to be consistent with CCTV footage.

59. *It follows, that we do not accept that the independent evidence provided no support for the evidence of Jerome Hurlston and Justin Ebanks. It was highly material evidence both on its own, and in respect of their credibility and the reliability of their identifications.*

60. *Although it is now said the evidence of Jerome Hurlston and Justin Ebanks was incapable of belief and that the so-called independent evidence does not support their evidence, it was at no time submitted to the judge that the appellants had no case to answer on that basis. The reason for that is clear. On any proper analysis there was a plain case against the appellants.*

61. *The defence case did not to any, or any significant extent, weaken that case. Moreover, the failure of the appellants to give evidence entitled the judge to draw the adverse inferences he did.*

62. *As to the suggestion floated during the trial and before us, that Jerome Hurlston and/or Justin Ebanks might have shot Jason Powery, that seems to us, as no doubt it did to the judge, far-fetched. This was on the evidence three friends out together for an evening. Immediately before Jason Powery was shot through the head, they were having a drink and a smoke together. There was nothing to suggest any argument.*

63. *We should add: we cannot accept Mr Larkin's submission that if the appellants were responsible for the shooting, it was motiveless. There plainly was a motive. It has simply not been discovered.*

64. *As Lord Hughes made plain, when giving the Opinion of the Privy Council in R v Crawford [2015] UKPC 44, this court should be very slow before interfering with primary findings of fact of a trial judge particularly following a trial of some length. As he put it (in paragraph 9):*

> *"There has been no dispute before the Board as to the proper role of an appellate court when reviewing a decision of a trial judge which amounts to a finding of primary fact based upon his assessment of the credibility and reliability of witnesses whom he has seen and heard. It is well established that an appellate court should recognise the very real disadvantage under which it necessarily operates when considering such a finding only on paper. There are many statements of this principle. It is enough to*

set out the formulation of it by Lord Sumner in The Hontestroom [1927) AC 37 at 47-48:

> *"What then is the real effect on the hearing in a Court of Appeal of the fact that the trial judge saw and heard the witnesses ... not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case. The course of the trial and the whole substance of the judgment must be looked at, and the matter does not depend on the question whether a witness has been cross-examined to credit or has been pronounced by the judge in terms to be unworthy of it. If his estimate of the man forms any substantial part of his reasons for his judgment the trial judge's conclusions of fact should, as I understand the decisions, be let alone. In The Julia (1860) 14 Moo PC 210, 235 Lord Kingsdown says: 'They, who require this Board, under such circumstances to reverse a decision of the court below upon a point of this description undertake a task of great and almost insuperable difficulty. . . . We must, in order to reverse, not merely entertain doubts whether the decision below is right but be convinced that it is wrong. '"*
>
> *"The advantage enjoyed by the trial judge applies equally to those comparatively rare criminal cases tried by judge alone, with, of course, appropriate consideration being given to the different standard of proof"*

65. *As Lord Hughes went on to point out (in paragraph 10), the trial judge is immersed in the evidence in a way which cannot be replicated in the Court of Appeal. He has seen the way the evidence was given, how challenges to it were met. That, as it seems to us, was very much this case.*

66. *This was a nine day trial. Jerome Hurlston and Justin Ebanks each gave evidence for two days. They were cross-examined by two Leading Counsel. Their credibility was attacked. The reliability of their identifications was probed. The judge had ample opportunity to assess their credibility and reliability. He had detailed, written defence submissions. He accurately summarised them in considerable detail. (His summary ran from page 71/11 to page 79/21 of his judgment). He*

carefully summarised the CCTV evidence, the significance of which he plainly understood. He clearly understood what the issues in the case were. As he put it (90/12-21): "The Crown submit that the court can rely on the evidence of Jerome Hurlston and Justin Ebanks. The defence submit they are lying, alternatively, just mistaken."

67. *Having had the detailed submissions and summarised them, the judge plainly thought it sufficient briefly to refer to some aspects of the attack on their credibility.*

68. *Moreover, although, as we have said, this is not in our view an identification case at all, the judge dealt with that issue in detail (pages 95/11 to 96/6). (It seems to us that page 95/11 should be the first line in the next paragraph).*

69. *He was entitled to place some reliance on the finding of the 9 mm cartridge. As Mr Perry submitted, once collusion is rejected, there is something, albeit of limited weight, in the point the judge makes.*

70. *As Mr Perry submitted, it is axiomatic that a judge is not required to make findings in respect of every question raised in the course of the trial. He was required to make findings in relation to those matters which it is necessary to resolve in order to reach a conclusion on the issue before it. While each of us might well have set out in more detail our thinking behind the conclusions we had reached, we accept, as Mr Perry submitted, that when looking at the judgment as a whole, it is clear the judge had well in mind what the evidence was and the points made by the defence regarding it. He was entitled to place considerable reliance on the CCTV evidence. As Mr Perry put it, his conclusions set out his findings on the core issues which he had previously summarised. There was the clearest basis upon which to accept the Crown's case and reject the defence. In the round, what the judge said was in all the circumstances adequate.*

71. *In the final analysis, this was a strong case left wholly unanswered by the appellants. It is quite impossible to say that these convictions are unsafe or unsatisfactory.*

72. *In the result, we dismiss these appeals against conviction.* ***The appeals against sentence***

73. *Section 182 of the Penal Code provides that any person convicted of murder shall be sentenced to imprisonment for life.*

74. *Section 14 of the Conditional Release Law, 2014, states:*

> *"14 (1) Notwithstanding any other Law to the contrary, when sentencing a prisoner to a term of imprisonment for life, the court shall specify the*

period of incarceration the prisoner shall serve before the prisoner is eligible to be considered for conditional release on licence, the period being such as the court considers appropriate to satisfy requirements of retribution, deterrence and rehabilitation, but for murder, the period shall be thirty years before the prisoner is eligible for conditional release unless there are -

(a) extenuating circumstances, exceptional in nature, in which case the court may impose a lower period of incarceration; or

(b) aggravating circumstances, exceptional in nature, in which case the court may impose a longer period of incarceration

(2) In making a decision under subsection (l)(a) or (b), the court shall state the extenuating circumstances or the aggravating circumstances, as the case may be."

75. Section 21 states:

"21. The Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law"

76. Regulation 14 of the Conditional Release of Prisoners Regulations, 2016 was made pursuant to section 21. It provides that:

"For the purposes of determining the earliest possible conditional release date in relation to a prisoner on a term of imprisonment for life, the circumstances set out in Schedule 12 shall be considered.

77. Under the heading "sentencing guidelines," Schedule 12 states:

"Introduction

1. (1) Where a mandatory life sentence for murder is prescribed by any Law, for the purposes of section 14 of the Law the aggravating and extenuating circumstances are outlined in this schedule.

(2) For offences other than murder, for the purposes of section 14 of the Law, the aggravating and extenuating

circumstances may include all the relevant circumstances of the offence and or the offender.

(3) For murder, the period shall be thirty years before the prisoner is eligible for conditional release unless there are extenuating or aggravating circumstances, exceptional in nature, in which case the court may impose a shorter or longer period of incarceration respectively;

Aggravating circumstances and extenuating circumstances

2. (1) Detailed consideration of aggravating or mitigating circumstances may result in a minimum term of any length.

(2) Aggravating circumstances that may be relevant to the offence of murder include –

(a) a significant degree of planning or premeditation;

(b) the fact that the victim was particularly vulnerable because of age or disability;

(c) mental or physical suffering inflicted on the victim before death,

(d) the abuse of a position of trust;
(e) the use of duress or threats against another person to facilitate the commission of the offence;
(f) the fact that the victim was providing a public service or performing a public duty
(g) concealment, destruction or dismemberment of the body
(h) previous convictions
(i) abduction and sexual or sadistic conduct; and
(j) any other circumstances which may be considered relevant.

(3) Extenuating circumstances that may be relevant to the offence of murder include -
(a) an intention to cause serious bodily harm rather than to kill;
(b) lack of premeditation;
(c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 185(1) of the

Penal Code (2013 Revision)), lowered the offender's degree of culpability;

(d) the fact that the offender was provoked (for example, by prolonged stress);

(e) the fact that the offender acted to any extent in self-defence or in fear of violence;

(f) a belief by the offender that the murder was an act of mercy;

(g) the age of the offender; and

(h) any other circumstances which may be considered relevant.

Previous convictions

3. (1) In considering the seriousness of an offence committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating circumstance ***if*** *(in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to-*

(a) the nature of the offence to which the conviction relates and its relevance to the current offence; and

(b) the time that has elapsed since the conviction.

(2) Any reference in this schedule to a previous conviction is to be read as a reference to a previous conviction by a court in the Cayman Islands.

(3) The court may treat a previous conviction by a court outside the Cayman Islands as an aggravating circumstance in any case where the court considers it appropriate to do so…

. . Duty to give reasons

5 (1) Any court making an order pursuant to section 14 must state in open court, in ordinary language, its reasons for deciding on the order made."

78. In his sentencing remarks fixing the minimum terms at 34 and 35 years, Mr. Justice Quin, having noted that it was not suggested there were extenuating circumstances such as justified a reduction in the term of 30 years, said (paragraph 46 and following):

"Having heard all the evidence at the trial I find the following to be aggravating circumstances of an exceptional nature:

i. The pre-possession of the illegal firearm;

a) Each defendant had his own distinct role before the shooting, at the time of the shooting and after the shooting that is:

b) The Defendant Douglas walked ahead of Defendant Ramoon and cleared the alcove of young people;

c) The Defendant Ramoon drove the getaway vehicle to the scene of the murder;

d) The Defendant Douglas provided Defendant Ramoon with the firearm just before the killing;

e) The Defendant Ramoon shot Mr. Powery in the head at point-blank range, killing him instantly;

j) The Defendant Douglas drove the getaway vehicle away from Martin Drive and waited for the Defendant Ramoon in Mary Street;

g) The Defendant Ramoon gets into the car and the Defendant Douglas drives off

h) As could be seen from the evidence presented by the Prosecution, there was a very significant degree of planning and premeditation. The murder was carried out in less than 10 minutes with clinical precision. The victim was just standing there drinking a beer and there is no evidence of any provocation by the victim;

ii. After killing Justin Powery, the Defendant Ramoon walked down the alcove, he looked directly at the murder victim's friend and witness to the murder, Jerome Hurlstone, he raised his gun to shoot at Jerome Hurlstone only to be disturbed by another individual and for the gun to click without firing. Jerome Hurlstone's life was saved by the timely intervention of the third party and the fact that the Defendant's firearm failed to operate a second time.

47. It was in fact a very public execution of the most evil nature and it could be accurately described as chillingly clinical in its planning and execution.

48. To adopt Lord Bingham 's words in ***R v. Kelly,*** *it is a public execution which is far from "regular", far from "routine" and far from "normal". Accordingly, in my view, these are aggravating circumstances, exceptional in nature.*

49. There has been a very serious escalation of gun crime over the past 7 years. People must help the police in their

difficult task of finding out who is bringing the illegal guns into the Cayman Islands and who is harbouring the illegal guns. Over the past years too many young Caymanians have lost their lives because of illegal guns and furthermore, too many small business owners have been the targets of terrifying attacks from armed robbers with illegal firearms.

50. Under the Conditional Release Law, the Court must consider the appropriate period of incarceration to satisfy the requirements of retribution, deterrence and rehabilitation.

51. Accordingly, in my view, the aforesaid exceptional aggravating circumstances and the urgent need for meaningful deterrence merit an upward adjustment from the 30 years to 34 years imprisonment for each defendant. In addition, as a result of his previous conviction for possession of an imitation firearm, which is an additional aggravating circumstance, I make a further upward adjustment of one year in relation to Defendant Ramoon and, consequently, he is sentenced to 35 years' imprisonment on Count 1, murder.

52. Accordingly, on Count 1, the charge of murder, pursuant to the Conditional Release Law the Defendant Ramoon will serve 35 years' incarceration before he is eligible for conditional release. The Defendant Douglas shall serve 34 years' incarceration before he is eligible for conditional release." The Colonial Prisoners Removal Act 1884

79. Since Mr Justice Quin imposed those sentences, the appellants have been removed from Grand Cayman and are serving their sentences in prisons in England. They were transferred under section 2 of the Colonial Prisoners Removal Act 1884, which, as material, provides:

> *"Where as regards a prisoner undergoing sentence of imprisonment in any British possession for any offence it appears to the removing authority ...*
>
> *... (d) that by reason of there being no prison in the ... British possession in which the prisoner can properly undergo his sentence or otherwise the removal of the prisoner is expedient for his safer custody or for more efficiently carrying his sentence into effect ...*
>
> *in any such case the removing authority may ... order such prisoner to be removed ... to the United Kingdom."*

80. *There is currently an unresolved judicial review of the decision of the English Home Secretary, with the agreement of the Government of the Cayman Islands, to remove the appellants. By the judicial review, they seek to quash the orders for removal. We need not for present purposes go into the reasons advanced for justifying the removal. If the judicial review succeeds, the appellants will serve their sentences in the Cayman Islands. If it fails, they will serve their sentences in the United Kingdom. If that happens, their cases will fall to be considered by the courts of England and Wales under sections 273 and 274 of the Criminal Justice Act 2003. Section 273 provides*:

> *"Life prisoners transferred to England and Wales*
>
> *(1) The Secretary of State must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.*
>
> *(2) In subsection (1) "transferred life prisoner" means a person-*
>
> *(a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment .. for an indeterminate period, and*
>
> *(b) who has been transferred to England and Wales ... in pursuance of-*
>
> *(i) an order made by the Secretary of State under section 2 of the Colonial Prisoners Removal Act 1884 ...*
>
> *(3) In subsection (1) a "relevant order" means-*
>
> *(a) in the case of an offence which appears to the court to be an offence for which, if it had been committed in England and Wales, the sentence would have been fixed by law, an order under subsection (2) or (4) of section 269 ... "*

81. *Section 269, and the sub-sections there referred to, concern the "Determination of the minimum term in relation to mandatory life sentence" as they apply in England and Wales.*

82. Section 274 provides that the determination of that minimum term will be decided by a single judge of the High Court, with a right of appeal (with leave) to the Court of Appeal

83. In short, if the judicial review fails, the length of the minimum term the appellants will serve in an English prison will be decided by the High Court of England and Wales. When doing so, the Court will, we anticipate, take into account, among other things, why the decision was taken to remove them from the Cayman Islands to England, the fact, as Mr Perry put it, that the Cayman Islands is a small island community with its particular issues as far as serious crime is concerned, as well as the undoubted additional hardship of serving lengthy prison sentences a very long way from home

84. As far as this appeal is concerned, however, as is now agreed, we must apply Cayman law.

The grounds of appeal

85. Mr Miskin and Mr Larkin made a number of points, both in respect of the interpretation of the relevant statutory provisions and the factual basis upon which the judge approached the sentencing exercise.

The meaning of "circumstances, exceptional in nature"

86. Relying on what was said by Lord Bingham of Cornhill, Chief Justice, when giving the judgment of the Court of Appeal in the case of R v Kelly [2000] 198, Mr Miskin and Mr Larkin submitted that the words "exceptional in nature" in section 14(1) of the Release Law 2014, and paragraph 1 of Schedule 12 of the Conditional Release of Prisoners Regulations 2016, required circumstances which were, as Mr Justice Henderson QC put it in the case of Regina v Ricketts [2017] 1 CILR (paragraph 28 at b), "unusual or uncommon, although [not necessarily] ... unprecedented or very rare."

87. The passage relied upon in Kelly (and cited in his judgment by Mr Justice Henderson) was the following:

> *"We must construe 'exceptional' as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional a circumstance need not be unique, or unprecedented, or very rare,' but it cannot be one that is regularly, or routinely, or normally encountered." (per Lord Bingham CJ at p208C)*

88. *Mr Justice Quin was wrong, submitted Mr Miskin, to categorise the prior possession and use of a firearm as an aggravating circumstance of exceptional nature. As Mr Justice Henderson said in Ricketts, the possession and use of firearms in cases of*

murder was commonplace in the Cayman Islands. At paragraph 39 of his judgment, he said:

> *"It could hardly be said that the use of an unlicensed firearm, in and of itself, is unusual or uncommon. The use of firearms in the commission of offences is rampant on Grand Cayman. Of the six murder cases in which I must set the minimum term, no less than four were shootings."*

89. *It could not therefore be said, ran the appellants' submission, that the possession and use of firearms was "exceptional in nature" in the Cayman Islands. The use of a firearm could not therefore be* an *aggravating feature justifying a longer period of imprisonment.*

90. *Moreover, it was submitted, had the legislature intended the use of a firearm to be an aggravating feature, it would have said as much in Schedule 12, paragraph 2(2). As Mr Justice Henderson said in Ricketts (paragraph 39):*

> *"... if the Legislative Assembly considered the use of a firearm to be an exceptional circumstance, it would have listed it ins. 2(2) of Schedule 12. Its omission from that list is explained by the 30 year norm, which is the same as the usual starting point in the UK for murders committed with a firearm."*

91. *Other criticisms were made of the judge's approach to sentence.*

92. *He was wrong to state there was "a very significant degree of planning and premeditation," so as to justify reliance on Schedule 12, paragraph 2(2)(a). The evidence did not justify uch a finding. To place this case within the category of such cases did not leave room for cases in which there was serious and long-term planning.*

93. *He should not have taken into account the attempt to shoot at Jerome Hurlston. There was no conviction in respect of it. The judge should have ignored it.*

94. *It was not right on the evidence, emotively, to describe what happened in terms of a public execution, or as being "chillingly clinical."*

95. *The judge should not, without having had specific evidence adduced before him, have relied upon what was an assertion that gun crime in the Cayman Islands had escalated.*

96. *The element of deterrence (and for that matter retribution and rehabilitation) as set out in section 14 did not, on a proper reading of the section, apply to convictions for murder. Murder was dealt with by the thirty year term.*

97. *The judge was wrong, in Justin Ramoon's case, to add an additional year for the firearms offence committed when he was 19.*

98. In summary, 30 years was on any assessment, a very long period of incarceration. As the analysis carried out by Justice Henderson in Ricketts showed, it reflected an increase in what previously offenders had served before release when convicted of murder. That emphasised the importance of not watering-down the meaning of the phrase, "exceptional in nature."

Our conclusions

99. We start by echoing an aspect of the submissions Mr Perry made to us. The Cayman Islands is an island community. It has its own values where gun crime is concerned. It is very close to jurisdictions, one smaller, one larger, where guns are freely available, and drugs are a considerable problem. So far, its problems have not been as severe as those which have afflicted these neighbouring jurisdictions. It is not surprising if by its legislation it seeks to maintain that position.

The Conditional Release Law, 2014

100. We first consider what, in the context of the Conditional Release Law and its consequential regulations, the legislature intended by the words, "exceptional in nature." Did they reflect, as the appellants have submitted, and Justice Henderson ultimately appeared to conclude, an intention to require circumstances which were unusual or uncommon in the sense that they did not frequently occur, or do they, in the context of this legislation, have a different meaning? For while, as Lord Bingham said in Kelly, "exceptional" is not a term of art, what it means must depend entirely upon its statutory context.

101. As Mr Perry submitted, there is a paradox at the heart of the defence submissions. If they are right, the more depraved society becomes, the more acceptable it is for certain crimes to be marked as unexceptional and the court prevented from imposing a sentence which the public would think right and proper. That suggests that what is 'exceptional' is not related to the frequency with which it occurs. Moreover, the flaw in interpreting exceptional in terms of frequency of occurrence can be illustrated in a number of ways.

102. The first public execution by shooting will be exceptional. It will merit imprisonment for longer than 30 years. The fifth such execution will no longer be unusual or uncommon. Its circumstances will no longer be exceptional. Albeit the underlying facts and seriousness of offending are the same, the court cannot for the fifth such offence imprison for longer than 30 years. That, as it seems to us, cannot have been the intention of the Legislative Assembly.

103. Section 14 of the Conditional Release Law, when read as a whole, requires the court to consider what is appropriate "to satisfy the

requirements of retribution, deterrence and rehabilitation." We do not accept Mr Larkin's submission to the contrary. On the basis of the appellants' argument however, it was the intention of the Legislative Assembly that, on the one hand, the court had to satisfy the requirements of deterrence, while, on the other, it could not take into account as a possible aggravating circumstance any means of offending which occurred frequently, such as murder by shooting. That plainly cannot have been the intention of the Legislative Assembly.

104. *There is a yet further flaw in interpreting "exceptional" in terms of frequency. Extenuating circumstances must also be "exceptional in nature." A common, but cogent circumstance will not be exceptional and therefore something the court cannot take into account.*

105. *We therefore conclude that it cannot have been the intention of the Legislative Assembly that the words "exceptional in nature" have anything to do with how infrequent or uncommon in the Cayman Islands were the circumstances of the murder in question. In our judgment the words relate not to the frequency of the conduct, but its seriousness. The issue is whether the circumstances of the murder in question were so serious as to mark out the nature of the case as exceptional, and to justify imposing a longer period of imprisonment. As Mr Perry put it, the question is whether the circumstances were so serious as to take the case into the exceptional category.*

106. *Equally, when assessing any extenuating circumstances, the court will have in mind, not how often such circumstances may occur, but whether so exceptional is their weight as to justify imposing a lower period of imprisonment.*

107. *We also cannot agree, as the appellants submitted, and Mr Justice Henderson decided, that because paragraph 2(2) of Schedule 12 makes no mention of a firearm as an aggravating circumstance, the Legislative Assembly intended to exclude the use of a firearm as an exceptional circumstance justifying a longer tenn of imprisonment.*

108. *The words of paragraph 2(2) are clear. The aggravating circumstances set out are not intended to be exhaustive (see section 2(2)(j) in particular). Moreover, it cannot have been the intention of the Legislative Assembly to exclude as a possible aggravating circumstance the use of a firearm, while, (if we are right in our interpretation of section 2(2)), at the same time contemplating the use of, for example, a knife as a possible aggravating circumstance.*

109. *In our view, whether or not in any given case the use of a particular weapon, such as a firearm, amounts to an aggravating circumstance must depend on all the circumstances of the case*

as a whole. That having been said, it does seem to us that in most cases the prepossession and use of firearms is likely to amount to an aggravating feature. How the judge should approach these issues

110. We agree with Mr Perry, that it is unhelpful to seek to lay down in an over-fonnal way how judges should approach the sentencing exercise in cases of murder. This is preeminently an area for the application of judicial judgment and discretion. Each case will depend on its own facts. The judge will stand back and make an overall assessment of the circumstances as he finds them to be. He will no doubt take into account, among other things, the prevalence of particular sorts of murder in the Cayman Islands, the protection of the public and such aggravating or mitigating circumstances as he finds in the particular case. He will then make and explain his decision. We have no doubt this is an exercise which the judges of the Cayman Islands are well able to carry out.

Mr Justice Quin's decision

111. We start with a trite observation. The judge heard the evidence. He was entitled to reflect his view of all the circumstances on the basis of the evidence he heard.

112. It is said that the judge was wrong to state there was "a very significant degree of planning and premeditation," so as to justify reliance on Regulation 14, paragraph 2(2)(a). We do not agree. The judge heard the evidence. He was entitled to conclude that it did disclose a significant degree of planning, particularly in light of the sequence of events revealed by the CCTV evidence.

113. We do not accept that the judge was not entitled to take into account the attempt to shoot Jerome Hurlston. It was an important part of all the circumstances, as he found them. It would have been wholly artificial for the judge simply to have ignored this evidence in his overall assessment.

114. The judge was entitled to describe his assessment of what happened in terms of ***a public execution, or as being "chillingly clinical."*** *That is what, as he was entitled to, he concluded on all the evidence he heard.*

115. We do not accept that this experienced, local judge was not entitled to make the comments he did about gun crime in the Cayman Islands. It was not necessary for evidence to be called. This is a small jurisdiction. Judges such as Mr Justice Quin are familiar with the prevalence of particular forms of crime and offending. The accuracy of his comments is to some extent borne out by Mr Justice Henderson's comments, to which we have referred. Moreover, there is no dispute, as the appellants' submissions have underlined, that the use of guns, at least in cases of murder, is frequent. The concern in the Cayman Islands

regarding gun crime is also illustrated by the statutory requirement upon the courts to impose severe, mandatory sentences for the possession of firearms.

116. Before turning to whether the judge was entitled to add an extra year for Justin Ramoon's previous conviction for possessing an imitation firearm, we should summarise the facts as they were found by Chief Justice Smellie when sentencing the appellant. Justin Ramoon was 19. He went to the home of another person with what appeared to be a gun. He pointed the gun at the head of the occupant, who saw bullets in the chamber. He thought the gun was loaded. There was a struggle. The gun fell to the ground with a metallic sound. It was never found. That is why the offence was charged as an imitation firearm.

117. In our judgment, having regard to the nature of the offence, the judge was entitled, to treat the previous conviction as an aggravating feature within the terms of paragraph 3(1) of Schedule 12 of the Conditional Release Prisoners Regulations 2016.

118. We add this. These appellants wore no disguise. They openly had with them a gun. They were not unknown to at least some (if not most) of those present in the area of the Globe Bar. They plainly did not believe that anyone would dare to give evidence against them. That says much about these appellants. It also underlines the difficulty in obtaining evidence in cases such as this.

119. We accept, as was submitted, that 30 years' imprisonment is on any assessment, a very long period. We accept too that it is important not to water-down the meaning of the phrase, "exceptional in nature." However, it does not seem to us that was what Mr Justice Quin did. He was entitled to approach this sentencing exercise in the way he did."

12. I note by looking at paragraphs 111 – 115 the Court's comments on the possession of firearms. The minimum sentence in the Cayman Islands on a plea of guilty for a first offender charged with possession of an unlicenced firearm is one of seven (7) years. After a trial, as it was in this case, the sentence is a minimum of ten (10) years.

13. I echo from my own experience for cases I dealt with on the 23rd June 2017 in the Grand Court – guns are a real problem in the Cayman Islands. Virtually every murder involves one and they cause untold grief to everybody.

14. I will pause here to make this comment: I make reference to the Judgment of Justice Quin, and the fact that his view is endorsed by the CICA: There was a significant degree of planning and pre-meditation in this case. The actual murder was carried out in less than ten (10) minutes – that is ten minutes from the time of the arrival of these Plaintiffs to the time they departed. The murder was carried out with what was described as clinical precision. It was, in truth, "a very public execution" of a most evil nature and it could be described as chillingly clinical in its planning and execution.

15. Initially, by my calculation, the earliest dates of release for the defendants/Plaintiffs, given their ages, would be when they are respectively 59 years of age (Justin Ramoon) (being born on the 14th July 1950,) and, Osbourne Douglas, in 2049 when he would be age 63 (being born in 1986).

16. Their respective ages *may* have a relevance when considering whether s.9 of the Bill of Rights is applicable, and question of the issue of rehabilitation arises.

EVENTS LEADING TO REMOVAL

17. Justin Ramoon's previous convictions are set out in the Combined Bundle at D37. I note offences 6, 9 and 10 were quashed on appeal and brief details are at D24. Osbourne Douglas' previous convictions are at D40. I note offences 4, 6 and 9, where 9 was quashed on appeal and offence number 10. The brief details are at D23.

18. Ramoon's prison disciplinary record is at C215-216. Quite realistically the Respondents accept it is not the worst. Osbourne Douglas' is at C214.

19. Although Justin Ramoon denied vigorously being a member, let alone a leading light, of the Central Military Killers, he has what can only be described as a somewhat unfortunate tattoo on his shoulders – seen at D10. This clearly shows CMK. Any alternative explanation as to why he has that tattoo has yet to be brought forward. There are various reports at D3 – 5, 7 and 8.

20. In so far as Osbourne Douglas is concerned, I refer to D9, 14 and 16. Eubanks was a witness at the trial. Although Osbourne Douglas denied possession of a mobile phone, as set out in his disciplinary record, he did in fact plead guilty to possession of a mobile phone. At A132 paragraph 27 and C542 he admitted possession of a mobile phone by pleading guilty and the Respondents submit that that is a clear lie.

21. There are a number of preliminary issues relating to this case.

CLOSED MATERIAL PROCEDURE (CMP)

22. The preliminary hearings were heard by Justice Marlene Carter, Acting Judge of the Grand Court. There was consideration as to whether there was the provision for CMP in the Cayman Islands. There was also consideration as to whether the appropriate forum was the Grand Court or the High Court of the United Kingdom. The Judgment of Justice Carter is at C387. I will not, in so far as they are not relevant, and for PII issues, deal with these issues. These decisions are potentially subject to appeal, and, as they have already been ruled upon by a Judge of the Grand Court, it would obviously not be appropriate for me to reconsider or trespass on her territory. I have only considered the CMP authorities where they are relevant to an issue that I have to determine – namely

the Removal Order, which I will come to and, in particular, the tension between section C272 paragraph 20-21 – namely the tension as whether the CMP is not available in the Cayman Islands.

PII ISSUE

23. It was agreed by all parties that a special advocate should be appointed and in due course, Mr. Ashley Underwood Q.C. was appointed.

24. Justice Carter ruled on the PII issue. I stress that I have not been invited to re-visit the issue or view any documents at all. All I have view are some redacted documents which are in the Agreed Bundle. In particular, I note C415-417. The documents over which PII were claimed are at C440-C456.

25. The Open PII Judgment of Justice Carter (Actg.) is at C415 and Mr. Underwood's Skeleton Argument is at C327. I have to say I am not sure I agree with C328.3.5 or C329.5. Likewise I disagree with C457.4. But I agree with C489.

26. There was a PII hearing in December 2019.

> "*The PII hearing took place in December 2019 and included both open and closed sessions at which the Special Advocate was present.*
>
> ...
>
> *This updated Closed Table was shared with the Special Advocate who carried out his own further review of the judge's orders and indicated his view of the three categories of document:*
>
> *(a) As to category in ¶5(a), that he did not intend to appeal the orders.*
>
> *(b) As to category 5(b), that he agreed that the material had already been sufficiently disclosed so as to comply with the judges' orders.*

(c) As to category 5(c), he had no comment other than this was a matter for the judge to resolve.

The Court subsequently clarified its order of 19 October 2020 by a Closed Order dated 27 November 2020 confirming that, save in relation to one matter, the category 5(c) items had either already been sufficiently made in open evidence or should not be disclosed on PII or LPP grounds.

The Special Advocate has since confirmed that he does not intend to appeal the orders made on 27 November 2020"[1]

27. A further schedule of documents is at C471 – 488.

28. The resulting order of Carter J Actg. is at C492. That was approved by all parties (C494) and reiterated at C498. Those are the issues that are before the court as agreed by all parties.

29. The Governor's position is mentioned C364 and also discussion on the up-to-date position in respect of the return of both Applicants to the Cayman Islands. Discussion on that is at C500, C501 and C502 - paragraphs 5.5 to 7.4 as follows:

> 5. *In May 2020 I was asked to consider the possible transfer of another prisoner to the United Kingdom. At this time I therefore had to consider in detail the circumstances at Northward Prison. I was satisfied that the prison remained unable to safely and securely accommodate Category A prisoners that continue to pose a risk to national security. Since May 2020 my regular briefings have indicated no changes which would alter my view in this regard.*

[1] Paragraph 3 on page 468, paragraph 6 on 469 and paragraphs 8 and 9 on C470

6. *In the meantime I am satisfied that reasonable and proportionate steps have been, and continue to be taken, to facilitate the Plaintiffs' contact with their families having regard to the risk posed by the Plaintiffs, including the risk they pose of continuing their criminal activities and to the security and discipline of Northward prison if they were returned; the nature of the security at Northward Prison; and the fact there are no other establishments where they can be securely detained that would allow them any greater contact with their families.*

7. *The HMCIPS has obtained information from the UK Prison Service and informed me that contact between the Plaintiffs and their family has occurred as follows:*

    7.1. *In September/October 2019 six members of the Plaintiffs' family travelled to the UK and visited the Plaintiffs over a period of two weeks. The cost of this trip of approximately KYD$25,000 was met by the Cayman Islands Government;*

    7.2. *HMCIPS has an agreement in place that it will finance the cost of family visits to the Plaintiffs in the UK on a once per annum basis. Unfortunately due to Covid-19 family visits were not possible in 2020. In addition to travel restrictions, UK prisons also have visiting restrictions in place to reduce the spread of Covid-19;*

    7.3. *Mr. Ramoon is currently at HMP Frankland. Since 1 September 2020 Mr. Ramoon has had approximately 933 telephone calls with friends and family, including 278 calls to his mother, 113 calls to his brother Matio Ramoon, 75 calls to his father and 60 calls to his partner. In addition Mr. Ramoon has had three virtual (video platform) visits with his partner, and sent and received various letters.*

7.4. Mr. Douglas is currently at HMP Long Lartin. I am currently awaiting an update from the UK Prison Service of the family contacts that Mr. Douglas has had which I will ensure is provided to the Court as soon as it is available."

30. The Discussion also continues at C504 paragraphs 3.2-3.4 and C 505 3.6 – 3.7 as set out below:

"3.2. Mr. Douglas states that he is now in a relationship with Nina White. Ms. White was employed by HMCIPS until 2017. There are serious concerns about Ms. White and Mr. Douglas' relationship. It would appear that contact between Ms. White and Mr. Douglas began while they were both still in the Cayman Islands. Many of the staff and prisoners currently within Northward would have been in Northward when Mr. Douglas and Ms. White were here. Ms. White would have had access to personal/private information about her clients (prisoners) and potentially staff. There is a concern that she may share this information with Mr. Douglas.

3.3. Mr. Douglas states that he has not been offered any professional help in relation to his mental health. Mental health services at Long Lartin include a wide range of mental health support services provided by the NHS. I am advised that Mr. Douglas has not been assessed as needing those services and nor has he self-referred to them; however he does have a dedicated Offender Case Manager.

3.4. Both Mr. Ramoon and Mr. Douglas complain of a lack of funds for telephone calls. Ms. White has deposited a total of over £ 10,000 into the accounts of Mr. Douglas, Mr. Ramoon and 4 other prisoners. As recently as 8 March 2021 Ms. White placed £50 into the account of Mr. Douglas. Between 1 September 2020 and 1March2021 Mr. Ramoon made 255 telephone calls to a UK number used by Ms. White indicating that she is

also providing Mr. Ramoon with support. Mr. Ramoon currently has approximately £380 in his prison cash account.

....

3.6. Despite restrictions due to Covid-19, both HMP Long Lartin and HMP Frankland allow access to phone calls and virtual visits. This is consistent with the Covid-19 arrangements that were in place at Northward until March 2021 when the restrictions on visiting were relaxed in line with the public risk profile in the Cayman Islands. HMCIPS worked in partnership with Public Health England and the UK Ministry of Justice to create a Covid-19 Pandemic Plans to ensure consistency across many of the Overseas Territories.

3.7. It is stated that if Mr. Ramoon were in Northward he would have weekly visits and daily telephone calls with his family. Prisoners in Cayman do have access to visits on a weekly basis and can use the phone daily. The use of daily calls is not unique to Cayman and it is understood that Mr. Douglas and Mr. Ramoon have the same or better access to phones and remote/virtual visits as they would have here. Despite Mr. Ramoon stating that he would have weekly visits, whilst the Plaintiffs were in Northward their respective visits for the 18 month period 1 January 2016 to 1 June 2017 were as follows:

3.7.1. Mr. Ramoon had 24 visits (average 1.3 visits per month); and

3.7.2. Mr. Douglas had 13 visits (average 0.7 visits per month).

These figures indicate that the Plaintiffs were not having weekly visits with family even when they were in the Cayman Islands."

31. Carter J's Judgment goes on at C420 as follows:

"*THE RESPONDENTS' ARGUMENTS*

12. The Respondents submit that in the first instance, the documents which are relevant and prima facie disclosable are those documents which have been relied upon by the decision maker, which may undermine the Respondents' case or support the Plaintiffs' case and are necessary for disposing fairly of the cause or matter. The Respondents argue that the further limitation on the duty of candour is determined by the fact that the decision maker is required to provide full and accurate explanations of the facts relevant to the issue to be decided, that the duty becomes one of explaining the reasoning behind the decision by way of affidavit and that any underlying material is disclosed only if reasonably required, significant to the decision or referred to by the decision maker's affidavit.

13. The Respondents submit that the Court should be mindful that because its role in reviewing the decision of the public authority is to determine whether the decision was rational, fair and proportionate and not to substitute its own view on the facts, the Court is not required to find facts and therefore does not need to have all underlying evidence upon which the decision maker made his decision in order to decide whether he acted lawfully; that the extent of disclosure was to be conditioned by the nature of the decision being reviewed as well as the context in which the decision was made.

14. The Respondents went further to state that even in Bill of Rights cases, disclosure was still to be limited to issues which require it in the interests of justice and that the degree of such disclosure must be determined by the nature of the right engaged and the gravity of the interference with that right. The Respondents put this submission in the following way:

> *"Greater disclosure may be required in cases engaging unqualified rights such as the prohibition on torture (s 3) and more fundament rights such as the right to liberty s 5 or the right to a fair trial in its criminal aspect (s 7). Less disclosure will be required in cases involving interference with rights that are not of such a fundamental nature such as 7 in its civil aspect or qualified rights like s 9 (private and family life), when disclosure or even a 'gist' of the decision-makers' reasons may not be necessary, let alone disclosure of the underlying documents."*

15. The Respondents also argue that the material that is both relevant to matters in issue and necessary to dispose fairly of the proceedings has been disclosed pursuant to O.24 r.3 and r. 14 and are in the Plaintiffs' possession.

16. ...

17. ...

18. *Disclosure of documentation in a Bill of Rights case should be determined by the nature of the right engaged and the degree of interference alleged tempered by the width of the decision-maker's discretionary area of judgment. The Respondents in effect submit that the nature of the rights that the Plaintiffs allege*

has been engaged is not of such a fundamental nature to require greater disclosure than in any other judicial review matter and that in such cases even disclosure of a gist of the material may not be necessary. "

32. At C422 the Plaintiffs' case is set out at paragraphs 20-22 E of Carter J's judgment as follows:

> "*20. For the Plaintiffs the importance of the issues in this case where the applications for Judicial Review are focused on the Bill of Rights was of great relevance. Counsel for the Plaintiffs referred to s.7(1) and s.26 of the Bill of Rights, emphasizing that these constitutional provisions support the view that the interests of justice are particularly powerful in this case where it is alleged that constitutional rights have been violated unfairly. The Plaintiffs allege that the following rights are being infringed:*
>
> 1. *The rights enjoyed by prisoners under section 6.*
> 2. *The right to a fair trial protected by section 7.*
> 3. *The right to private life protected by section 9.*
> 4. *The rights of children protected by section 17.*
> 5. *The right to lawful administrative decision making protected by section 19.*
>
> *21. In particular Counsel for the Plaintiffs pointed to the right to have proceedings under s.26(1) determined. He submitted that this implied that "PII should rarely or never be upheld if that causes a matter to become un-triable or only triable through a fair process. Such a conclusion would be contrary to the express duty imposed by section 26 to determine proceedings."*[2]
>
> *22. On the matter of how the Court should consider the public interest in favour of maintaining confidentiality against the Plaintiffs' arguments, the following submissions were made:*
>
> *a. That the Respondents' apparent reliance on national security should be viewed with care because if an unjustified claim to be entitled to rely on national security may suggest an excessively cautious approach to PII.*
> *b. That the justification put forward for PII assumes what is in dispute: that the Plaintiffs pose a risk that cannot be managed by the Cayman Islands' Prison Service*

[2] Plaintiffs' skeleton submissions

and other public authorities. That risk is not accepted and may need to be determined at trial.

c. That sufficient disclosure is required to enable the Court to assess the Respondents' justification fairly especially in light of the express obligation in section 26 to a fair procedure.

*d. That it may be possible to gist materials (particularly with the assistance of a SA). However, even with gisting, disclosure of significant details is likely to be required, particularly if it is concluded that there is no jurisdiction to order a CMP. On this point the court was referred in particular to T**ariq v Secretary of State**[3] and **IR v United Kingdom**.*

e. *That ultimately the Court must determine for itself whether the interference challenged is proportionate. When determining that issue, proceedings must be adversarial and for this reason there must be sufficient disclosure to enable the Court to assess the justification in circumstances in which the Plaintiffs are able to make a proper challenge.*[4]"

33. The Special Advocate's position is set out at C425 at paragraph 30.

34. The relevant portions of Carter J's Judgment are as follows:

"*35. This court has carefully considered the underlying sensitive materials in order to determine their relevance to the Plaintiffs' case and whether the nature of the challenge to the Governor's decisions outweighs the national security concerns advanced by the Respondents* [redacted].

40. As stated above, the Respondents submit that all of the documents which are prima facie disclosable, bar those already disclosed to the Plaintiffs, should be withheld from disclosure. The Respondents' claim for PII rests on the following grounds:

(i) any facts or documents in the possession of the Governor and communications between the Governor and Secretary of State are prima facie privileged;

(ii) confidential government communications within departments or the Governor's Office and other government departments should be treated as confidential

[3] [2012] 1 AC 452
[4] *Miss Behavin' Ltd v Belfast City Council* [2007] 1 WLR 420.

(iii) *facts or documents may be withheld on national security grounds*

(iv) *any facts or documents may be withheld if disclosure would risk (a) endangering life; (b) revealing some undercover or other covert source of intelligence; (c) undermining the prison regime; or (d) compromising an ongoing criminal or intelligence investigation.*

NATIONAL SECURITY

42. *There is no issue that the first Respondent is entitled to claim that there is sensitive material in this case which should be withheld from the Plaintiffs as he has done by the issuance of the PII Certificate. In this instance the risk to national security encompassed the risk that the defendants may try to escape from HMP Northward. This was the assessment of the First Respondent. There is no question that a court should not seek to undermine the executive's assessment on matters such as national security because it is recognized that such assessment will be based on facts for which the decision maker has special knowledge or a special responsibility as it relates to that area for which in this case he is uniquely responsible.*

43. ...

44. *The Special Advocate has noted that the court should consider when looking at the issue of national security and PII that "Whether criminality is so serious or is so narrowly directed as to amount to a threat to national security will be a matter of fact and degree. But it does not matter since PII is about public interest, which is not restricted to national security."*

48. The Respondents point to the fact of the Plaintiffs' criminal conviction for a gang related murder and a previous conviction by the Plaintiff Ramoon for possession of an imitation firearm. They point to the manner in which the murder was committed as being bold and in front of numerous witnesses and to the allegation against the Plaintiff Douglas that he attacked Justin Ebanks, a witness against the Plaintiffs at trial, while both were detained at HMP Northward in September 2016.

58. The Court's task at this point is to determine whether the documents that have been withheld have been so withheld in the public interest, that the claim for PII has been properly made.[5] In so doing the Court must assess the documents themselves bearing firmly in mind the interests of justice which favours disclosure against the public interest asserted by the Respondents in this case.

[5] *Somerville v Scottish Ministers* [2007] 1 WLR 2757; Balfour v Foreign Office [1994] 1 WLR 681

59. Counsel for the parties and the Special Advocate have been especially helpful with their submissions and have extensively explored the many factors that this court must consider on this balancing exercise.

65. The Respondents submit the following:

i. "The sensitivity of the underlying material is of the highest order…Some of this material cannot be disclosed regardless of the factors weighing in favour of disclosure."

ii. "There has been sufficient disclosure to put Ps on notice of the reasons and evidence for R1"s decision…there has been sufficient disclosure of the withheld material by way of 'gist" to enable them to give effective instructions to the Special Advocate if a CMP were to be held and going beyond what is required by s 9."

iii. "…it is not accepted that any of this material is likely to provide 'substantial support' to Ps' case on any of the grounds [of challenge]"

iv. "…while Rs accept that their [Ps'] detention in the UK will cause an interference to their right to family life beyond what will occur if they were imprisoned in the Cayman Islands it is a necessary consequence of Ps' own criminal conduct and the nature of the risk that they present….R's accept that as a matter of common law natural justice …Ps' are entitled to basic procedural safeguards… But these are not of such an order to justify the Court ordering disclosure of material to which PII would otherwise attach."

v. As above at (4).

vi. "There are alternatives to disclosure of material to which PII should attach if the Grand Court finds it has no jurisdiction to order a CMP."

78. Having now determined that this Court does not have the legislative authority to order a Closed Material Procedure, and noting the Court's findings in ***Tariq and IR v United Kingdom,*** *this factor leads this court to find that it must lean toward greater disclosure,* ***if possible,*** *even as it considers that PII has been claimed on the main ground of national security. However, I also note the conclusions of Mr. Justice Ouseley in* ***AHK v Secretary of State [2013] EWHC 1426 (Admin)*** *a case in which a CMP was found not to be available.*

"The Claimants have been able to bring judicial review proceedings in respect of the decisions. They have been able to test the position by reference to the evidence which is admissible by the application of the PII test, which they said should be applied. The evidence relied on by the SSHD has been tested to see if the PII claim was made out. The Court then has to consider the claim in the light of what emerges from that process."

80. *The court notes the Plaintiffs position that even if limited disclosure is made after this PII exercise is concluded they submit the matter should still proceed to trial.*"

I RETURN TO EVENTS LEADING TO REMOVAL

35. I quote from the Agreed Bundle at C357-359 – paras 31-37 in relation to the Governor's position

"(a) National security

31. Sensitive material should be withheld to the extent that is necessary to avoid an actual or potential risk to national security: Duncan v Cammell Laird [1942] AC 624, 642; Conway v Rimmer, 939f; 955a-b; ***[4/52/1516, 32]*** *D v NSPCC, 233c* ***[4/54/1661]****. In such cases, although the Court is no longer bound to accept a ministerial certificate on national security grounds (since Conway departed from Duncan on this point), the Court should give particularly significant weight to the certificate of the minister: SSv Rehman, para 54; Balfour v FCO, [1994] 688g-h* ***[2/34/688]****. Subject to that caveat, Rs accept that the Court should inspect the documents and review the Governor's national security assessment.*

32. The decisions taken to transfer Ps under the 1884 Act included concerns that they presented a risk to national security, particularly in the event of their escape. While their activities could also be classed as 'normal criminality' (Ps' Skeleton, para 26) the Court should allow a very wide margin of discretion to R1's assessment that the risks posed by Ps are so grave as to also constitute a risk to national security (SS v Rehman, para 49, 53, 54 ***[6/71/2487]****; CG v Bulgaria, para 43* ***[7/86/3081]*** *Ps are wrong to suggest that it should be given a 'narrow' meaning, Skeleton para 24. Accordingly, to the*

extent that any disclosure of sensitive material risks undermining the police's duty to investigate, detect and prevent serious crime, or the security of HMP Northward or constitutes a real and immediate risk to third parties, that also constitutes a risk to national security given the size, geography and resources of the Cayman Islands and the nature, scale and seriousness of Ps' criminal activities.

(b) The protection, detection and investigation of crime

33. It has long been recognized that the identity of police informants and other police investigation methods are to be kept secret: Whittaker, 385, li. 25, ***[1/25/423]****; citing Lord Reid in Rogers v Home Secretary, 401e-f; Conway v Rimmer, 953g-954a* ***[4/52/1530]****; D v NSPCC [1978] AC 171, 218C-F, 232F-H* ***[4/54/1646, 1660]****; Carnduff v Rock, paras 33-36* ***[2/48/1388]****. The Court should not order disclosure of any such material unless it is sure that it will not disclose the identity of an informant or other police investigative method; this will mean that in principle such information should not be disclosed at all: Rogers, 401f-g* ***[8/102/3590]****.*

(c) Protection of the public

34. Many of the documents cannot be disclosed without putting third parties at a real and immediate risk – i.e. one which is objectively verified and is present and continuing - of their lives. The Court is obliged not to make such disclosure or risk being in breach of its duties under s 2 BOR: see A (Forced Marriage), para 87-88 ***[2/26/452];*** *L, Officer, paras 19, 20, 21, 22* ***[4/58/1802]****. A fortiori a precautionary approach is called for in such cases: Rogers, 401f-g* ***[8/102/3590]****.*

35. These risks to life are evident on the face of Ps' criminal conviction for the gang-related murder of Jason Powery for which they are serving their sentence. There is also objective and publicly available evidence that Mr. Ramoon (who fired the bullet that killed Mr. Powery at his brother's behest) has also sought to kill on two other occasions; once on the occasion of the murder of Jason Powery when he tried also to shoot Jerome Hurlston (see CA judgment, para 3, 113 ***(C226)****); the second on the occasion of his previous conviction for possession of an imitation firearm (see CA judgment, para 116). It is also apparent from the CA's finding at para 118 of their judgment that Ps believe themselves to be above the law because they committed the offence in front of numerous witnesses and 'did not believe anyone would dare to give evidence against them'.*

36. These risks are also evident from the fact that on 26 September 2016 Mr. Douglas attacked and injured Justin Ebanks, who was a witness against Ps at their trial, while both were detained at HMP Northward. Relevant information concerning this assault has been disclosed to Ps ***(C340)***

(d) Prison security

37. There is a public interest in ensuring the confidentiality of information concerning prison security. Disclosure should not be made to the extent that it may undermine prison security at HMP Northward: McCormick, Re [2017] NIQB 65, para 37 ***[8/100/3547]****. Details of the current security arrangements, and their shortcomings, could be exploited by Ps (if they were to be returned) and by other prisoners to whom they were able to pass this information: see unredacted Affidavit (2).”*

36. I now set out the Governor’s position, set out at C385 paras 3- 5.2:

“*3. On the 30th September I met with Mr. Forbes, and Crown Counsel. I was shown three volumes of documents and three affidavits which I understand are now referred to as the “Closed” documents in this case. I was taken through the contents of the Closed documents. I satisfied myself that the documents could not be disclosed to the Plaintiffs as to do so would be injurious to public interest or otherwise prohibited by law.*

4. (redacted)

5. For the other Closed documents I satisfied myself that they needed to be withheld to protect ongoing criminal investigations and/or for the protection of intelligence sources and/ or the protection of life. Furthermore. I considered that to disclose the documents would also be a risk to national security for these reasons:

5.1 The basis upon which the Plaintiffs were originally transferred to the United Kingdom in June 2017 (before I took up my post) was that they could not be safely detained at HMP Northward and that their activities presented a threat to national security. That is an assessment with which I agree. Despite their conviction and imprisonment the Plaintiffs had continued to

engage in serious criminal activity. Intelligence revealed that they had. Or were seeking to obtain. high-powered automatic weapons: they· had criminal associates with the knowledge and propensity to use them including professional 'hitmen' brought by boat from Jamaica; a track record of murdering and attempting to murder gang rivals and witnesses and of making threats of harm including to a senior prison officer. There was intelligence that they exercised control other inmates and might be able to influence prison officers through threats. A series of tit for tat gang killings and shootings involving the Plaintiffs was threatening to escalate, including an incident in which the Plaintiff's mother's house was shot up by a rival gang using automatic weapons. There was credible intelligence that they were planning an escape. (redacted portion) In those circumstances it is reasonable to conclude that. had the Plaintiffs remained in the Cayman Islands and had continued with their criminal activities on the same scale they represented an actual or potential threat to the peace and security of this small island nation. For example, there could have been an escape attempt involving smuggling of firearms into the prison, perhaps supported from outside by gang associates armed with automatic weapons: or a retaliatory or other gang-related incident involving the· use of automatic weapons on both sides, that could temporarily have overwhelmed the resources of the RCIPS and led to significant loss of life.

5.2 Disclosure of the documents in this matter risks revealing the identities of informants, police officers, witnesses. prison officers, staff at the Governor's Office, among others who have been involved in the decision to transfer the Plaintiffs and in the court proceedings in which they have challenged their transfer.

The retaliation which the Plaintiffs have exhibited towards those who speak out against them as witnesses or otherwise cross them in the past, and the risk that they may cause harm to anyone they suspect as a source from the Closed documents, is very real. (ends with redacted sentence)"

37. What appears as the "tipping point" or the "catalyst" leading to the 2 plaintiffs being removed from the Cayman Islands was that there was an attack on both Applicants' mothers' homes. It was not just an attack, the house was shot up. This is hardly a normal occurrence and, it is a cowardly hallmark of gang violence. It is worth noting from the Governor's position that it is not challenged that this incident actually took place. So, there the suggestion is that these Applicants are gang members, and leading gang members, and, by chance, within a relatively short period of time following their arrest their mothers' house were shot up.

I RETURN TO THE ISSUES - C492, 494 AND 498

38. Where issues are in dispute – that is, the number of visits or the number of calls made to these Applicants, I have given little, if any, weight to them, so as to remain proportionate. What I have to look at are the effects of the remaining issues. As I have said, I will consider the authorities as they are relevant to the issues that I have to decide. These, in my view, are the agreed points.

i. This is the first occasion that a Special Advocate has been instructed in the Cayman Islands.

ii. Overseas prisoners serving sentences in the United Kingdom have enhanced rights to the use of telephones and for video calls. The normal spending limits to which would apply to UK prisoners for making phone calls do not apply to "overseas" prisoners. So, in effect, subject to funds and availability, they can make as many calls as they wish.

iii. The Cayman government has agreed to fund a trip for six (6) members of the family for them to travel and see the Plaintiffs. As I understand it, and if I am wrong I apologise, that is six members of each Plaintiff's family. All ancillary costs and flights will be paid for up to a total of CI$25,000.00 per year. When visits do take place in the prison establishments in the United Kingdom, block bookings are made.

iv. Although visits have, regrettably, not taken place because of the Covid-19 pandemic, which began in late 2019, they continue in the UK prison system.

v. There has not, as at the time I first read this judgment, been a request to return either Plaintiff to the Cayman Islands government under the provisions of s.3 of the ***Colonial Prisoners' Removal Act 1884***.

vi. Conditions/Arrangements for incarceration in the UK Prison Estate are justiciable in the High Court of England and Wales. As yet, there has been no application apart from proceedings before Mr. Justice William Davis.

vii. Before a prisoner can be removed from the Cayman Islands to serve the remainder of his/her sentence in the United Kingdom, that action has to be

at least considered by the Secretary of State of the Foreign Commonwealth Office, the Governor of the appropriate overseas territory and the Lord Chancellor of the United Kingdom[6].

viii. Neither Plaintiff is the sole, let alone primary, carer, for any of their children

ix. The Issue of re-building HMP Northward in the Cayman Islands has been considered and has been subject to a business case. No decisions are expected to be made prior to the end of 2021 at the earliest. The Governor, and this is very important to note, is responsible on behalf of Her Majesty's Government, for national security and national safety[7]. Whilst on the subject of re-building HMP Northward, it has got to be recognised that the world is still in the throes of one of the worst pandemics in history. The budget of the Cayman Islands is heavily dependent on tourism – both those arriving via cruise ships, spending from cruise ship visitors, as well as longer-term guests staying in condominiums and hotels. The spending from the latter is far more than the spending per head of cruise ship passengers. In summary, the budget of the Cayman Islands must be under extreme pressure and schools, Covid-19 and hospitals must take priority. The Governor is entitled to make decisions, particularly those which touch and concern national safety, to see how they fit into place with the Government's other responsibilities.

[6] (See C53 paragraph 12)
[7] See s.55

39. I return to the approach taken by Carter J Actg. to PII and I quote from C437 paragraphs 77-80 and C439 paragraphs 83 and 85 as follows:

> **"*OUTCOMES***
>
> ***77.*** *The Court has now heard full submissions on PII both in the open session and in the closed session where the Special Advocate was able to advance arguments to aid the Court's determination. The result of the Court's deliberation and consideration of the documents for which PII has been claim are attached to this judgment. The Respondents maintain that the court, if it finds that there is material that cannot be disclosed because of the success of the PII application, should order a CMP in fairness to the Plaintiffs as being the avenue through which this court can ensure that the Plaintiffs have access to the documents through the use of a Special Advocate.*
>
> ***78.*** *Having now determined that this Court does not have the legislative authority to order a Closed Material Procedure, and noting the Court's findings in* ***Tariq and IR v United Kingdom,*** *this factor leads this court to find that it must lean toward greater disclosure,* ***if possible,*** *even as it considers that PII has been claimed on the main ground of national security. However, I also note the conclusions of Mr. Justice Ouseley in* ***AHK v Secretary of State [2013] EWHC 1426 (Admin)*** *a case in which a CMP was found not to be available.*
>
> > *"The Claimants have been able to bring judicial review proceedings in respect of the decisions. They have been able to test the position by reference to the evidence which is admissible by the application of the PII test, which they said should be applied. The evidence relied on by the SSHD has been tested to see if the PII claim was made out. The Court then has to consider the claim in the light of what emerges from that process."*
>
> *79. It is clear to this court's mind that the determination that there is no Closed Material Procedure available in this case does not thereby mean that this must be the overriding factor in its consideration of the principles governing its discretion on a PII application or that this is a factor which carries inordinate weight in the balancing exercise that this court must undertake.*
>
> *80. The court notes the Plaintiffs position that even if limited disclosure is made after this PII exercise is concluded they submit the matter should still proceed to trial."*
>
> *81. …*

82. .....

83. *The risk to third parties and informants in this matter is high. This court must be careful to ensure that the disclosure of the identity of persons who provided information to the police of the Plaintiffs activities will not result in them being harmed. The risk to those persons outweighs the need for disclosure especially in those instances when, as this court has concluded, the information that will be withheld as a result will not advance the Plaintiffs case in any material way. These are matters the disclosure of which could lead to the identity of informants.*

84. [redacted]

85. *While the result of the PII exercise has led to a significant number of documents being withheld from disclosure, the nature of the challenge brought by the Plaintiffs does lead this Court to the view that the Plaintiffs should now view the further documents which are to be disclosed arising from the PII exercise and they should be able to proceed to trial on those matters if any where there is a realistic prospect of the Court being able to decide the case. The observations of the Mr. Justice Ouseley in* ***AHK v Secretary of State [2013] EWHC 1426 (Admin)*** *are pertinent in this regard and the court would ask the parties to take a robust view of how the matter will now proceed. The Respondents will need time to comply with the Court's orders for disclosure as per the Schedule of Documents for which PII is Sought set out below, and to decide whether they will rely on any of the documents for which orders for disclosure have now been made. They will have 14 days in which to do so*."

40. Before addressing the decisions and the authorities to which I have been referred I should take into account the judgment of Mr. Justice William Davis[8].

41. On the 13th January 2020 he set out the facts of the case and the Conditional Release Act of the Cayman Islands – that is done at paragraphs 8, 10, 11, 16, 20 and 21.

42. It is obvious that Mr. Justice William Davis ordered a modest reduction in sentence to take account "*serving a very long sentence will be a hardship in addition to the mere fact of the length of the sentence*." Accordingly, the Judge made the very modest reduction he made. Again, by my calculation – Douglas Ramoon will be 56 years of age and Osbourne Douglas will be 60.

43. Without going through the authorities, I have been able to set out the facts and the way my mind has been working, and, the decision I have herein made is that I refuse any relief requested by the Plaintiffs and I do not intend to stay these proceedings.

Dated this the 28th day of May 2021

Justice Michael Wood
Acting Judge of the Grand Court

[8] [2020] EWHC 111 QB