

**The 2nd Conference of the
Caribbean Association of Judicial Officers
“Bringing the Law closer to the People”**

7th OCTOBER, 2011

Challenges in Sentencing

PANELIST:

1. Chairperson: Mr. Justice Ganpatsingh (retired Justice of Appeal of The Bahamas)
 2. The Hon. Mme Justice Roxane George(Guyana)
 3. The Hon. Justice Peter Williams (Barbados)
 4. Ms. Hazel Thompson- Ayhe, Lecturer Eugene Dupuch Law School
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Mr. Justice Ganpatsingh opened the session with a brief introduction, which set the context for the panel presentations. With the surge in the crime rate all over the Caribbean, sentencing has become one of the most challenging issues that countries have to contend with.

The Hon. Justice Peter Williams (Barbados) presented a paper to those in attendance on Rehabilitation and The Challenges in sentencing. He noted that rehabilitation is an essential area, which needs to be explored and implemented in Caribbean countries. Sentencing should not be limited to retribution, but efforts should be made to improve a criminal’s character and work towards re-socialization as a means of deterring crime upon release. In Barbados, **section 41** of the **Barbados Penal System Reform Act Cap 139** sets down specific sentencing guidelines geared towards rehabilitative methods which the courts are bound to consider when handing down sentences. Reference was made to **section 142** of **The English Criminal Justice Act 2003** also provides that the courts must have regard for the "reform and rehabilitation of offenders".

The Hon Justice Peter Williams continued the discussion of rehabilitation with particular regards to the Australian Rehabilitation Programmes outlined in the May 2004 Report from The University of South Australia for The Criminological Research Council entitled **Correctional Offenders Rehabilitation programs: the national picture in Australia**, and the programmes

in the United Kingdom as outlined in the **Rehabilitation of Prisoners** report produced by the House of Commons Home Affairs Committee dated 21st December 2004. The Hon. Justice Peter Williams felt that these reports could be used as benchmarks in our jurisdictions and reported on the New HMP Dodds in Barbados, which has a comprehensive rehabilitation and regeneration strategy. He ended by stating the importance of effective sentencing and the need for Judges to have knowledge of the rehabilitative programmes available in correctional facilities and in society as a means of curbing the crime rate.

The Hon. Mme Justice Roxane George presented on a variety of sentencing challenges - mandatory sentences, the sentencing of juvenile offenders after they have become adults, and compensation for victims and their families. In relation to mandatory sentencing, the question was posed - "Should time on remand be treated as time served?" In this regard, she asked a pertinent question, could the courts be fettered when sentencing ? The issue of mandatory sentencing appears to be affected by the landmark ruling in *Robinson v R (Bermudian Case)* as it gave judges the power to decide how long convicted murderers should spend in jail. The Court of Appeal in Bermuda said the statutory minimum period was "unconstitutional and void" and judges should be able to set a minimum period above or below 15 years depending on the circumstances of individual cases.

With respect to the sentencing of juveniles the main issue discussed was, should sentencing reflect the date of the crime or the date of the conviction. Juvenile offenders are being brought to trial as adults posing problems such as sentencing, and where to send them for detention. Countries such as Guyana and Jamaica have made certain amendments as regards the non-imposition of the death penalty on persons who have been convicted of murder which was committed while they were under 18 years old but there appears to be no clear-cut direction on what to do as regards sentencing of persons who have committed non-capital offences when they were under the age of 18 years but who were being tried as adults. .

Ms. Hazel Thompson-Ahye gave a detailed presentation on the sentencing of juveniles and how the Caribbean is in line with International Law and Human Rights Conventions, particularly the Convention on the Rights of the Child. She stressed the fact that these crimes are committed by

persons with an immature mind and that the brain does not fully mature until the age of 25. She noted that detention should be the last resort and for the shortest possible time and all efforts for rehabilitation should be offered to juveniles. Sentencing with regards to juvenile offenders should be about the child's best interest and should respect the child's right to life, survival and development.