

HUMAN RIGHTS COMMITTEE

Perkins v. Jamaica

Communication No. 733/1997

30 July 1998

CCPR/C/63/D/733/1997*

IEWS

Submitted by: Andrew Perkins (represented by Allen & Overy a Law firm in London)

Victim: The author

State party: Jamaica

Date of communication: 20 December 1995 (initial submission)

Date of decision on admissibility: 19 March 1998

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 July 1998,

Having concluded its consideration of communication No.733/1997 submitted to the Human Rights Committee by Andrew Perkins, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, his counsel and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Andrew Perkins, a Jamaican citizen, awaiting execution in St. Catherine Adult Correctional Centre in Kingston, Jamaica. He claims to be a victim of a violation of articles 7, 10 and 14 of the Covenant. He is represented by Allen&Overy, a law firm in London, England.

Facts as submitted by the author

2.1 On 12 December 1995, the author was convicted of two charges of capital murder arising out of the deaths of William and Marian Burrell, on 20 March 1994, and sentenced to death. The Court of Appeal dismissed his appeal on 17 June 1996. His application for special leave to petition the Judicial Committee of the Privy Council was dismissed on 16 December 1996. With this, it is submitted, all available domestic remedies have been exhausted.

2.2 At trial, the case for the prosecution was that on the morning of 20 March 1994, Mr. and Mrs. Burrell surprised an intruder at their shop. The intruder then attacked them with a knife, killing the woman on the spot. A witness testified that he had seen the author running out of the shop with a bloody knife in his hand. He had also seen Mr. Burrell leave, wounded at the throat, with a machete in his hand. According to a police officer, Burrell arrived at the police station with a wound in his throat and a machete in his hand, and told him that the author had killed Mrs. Burrell and cut his throat. Mr. Burrell later died in hospital from his wounds.

2.3 The author was arrested on 21 March 1994. On 22 March 1994, he gave a caution statement, in which he said that he hid in the shop in the evening of 19 March 1994 and that when he came out of his hiding place he saw Mrs. Burrell and stabbed her in the neck. Mr. Burrell then rushed at him with a cutlass, and the author cut him in the neck and ran away.

2.4 At the trial, the author gave an unsworn statement from the dock. He stated that he used to sell cocaine for Mr. and Mrs. Burrell. On 19 March 1994, he went to their shop around 9pm, as previously arranged. After he had waited some two hours for them to close their shop, an argument ensued about the money to be paid to the author. Mr. Burrell then stabbed the author in the lip, and when Mrs. Burrell rushed towards Mr. Burrell, she was accidentally stabbed in the throat. The author picked up the knife and stabbed Mr. Burrell who came at him with a machete.

The complaint

3.1 The author claims that on 21 March 1994, he was asked to sign a written statement of which he did not know the contents. He was threatened that he would be beaten and killed if he would not sign. When he refused to sign the paper he was taken back to his cell. The next day, he was beaten by police officers (whom he mentions by name) with batons. After 25 minutes, the author agreed to sign the paper. The author states that he wrote to the Ombudsman about this incident and that he received a reply in February 1996 that the matter was being investigated. He has not heard from the Ombudsman since. It appears from the trial transcript that the author's statement was admitted in evidence by the judge after a voir dire in which the author gave sworn evidence.

3.2 The author further claims that while awaiting trial he was held in a cell with 23 other people and that he had to stand most of the time because of lack of space. If he slept, it was usually on the floor. Since his conviction, he has been held in a single very small cell. He sleeps on a sponge and has to use a bucket as a toilet. He is not provided with reading material. He further states that he is being bullied by the warders who tell him that the

hangman is on his way and that he will be the next to go to the gallows.

3.3 The author states that he did not meet his attorney until the third preliminary hearing and only once before trial. He did not have a chance to give his attorney any instructions and complains that he was often absent during the trial ¹. He also states that he had no opportunity to speak with his attorney outside the court during the trial and that the attorney did not visit the scene of the crime although he had asked him to. The attorney's attitude is said to constitute a violation of article 14(3)(b).

3.4 The author claims that the beginning of his trial was unduly delayed and that he spent one year and nine months in pre-trial detention. This is said to be in violation of article 14(3)(c) of the Covenant.

3.5 The author also claims that article 14(3)(e) was violated in his case, since he wanted to have his father called as a character witness but this was not done.

3.6 The author further claims that the trial judge failed to leave the issue of provocation to the jury. It is further stated that the trial judge erred fundamentally when he directed the jury to disregard the possibility of concoction with regard to the statement given by Burrell to the police officer. It is further submitted that the judge erred in admitting the author's caution statement as evidence.

State party's comments

4.1 By submission of 5 March 1997, the State party informs the Committee that it has no objection to the admissibility of the communication and that it will address the merits of the case.

4.2 As regards the author's allegation that he was beaten by the police, the State party notes that there is no indication of the outcome of the investigation by the Ombudsman. In the circumstances, the State party feels that it cannot accept responsibility for the alleged breach of the Covenant.

4.3 Concerning the author's complaints about his legal aid attorney, the State party maintains that once it has appointed competent legal counsel, it is not responsible for the manner in which a defence counsel represents his client. Consequently, the State party denies that a violation of article 14(3)(b) has taken place.

4.4 The State party denies that a period of one year and nine months between arrest and trial constitutes undue delay under article 14(3)(c), especially since a preliminary inquiry was held during that time.

4.5 The State party further states that the failure to call the author's father as a witness would only be a breach of article 14(3)(e) if agents of the State had prevented him from being called as a witness.

4.6 Concerning the author's allegations about the judge's instructions to the jury, the State party refers to the Committee's jurisprudence that review of judge's directions are best left to appellate courts. The State party submits that there is nothing in the instant case to justify an exception from that principle.

Counsel's comments

5.1 With regard to the author's allegation that he was beaten by the police, counsel recalls that although the author reported this to his attorney, the court and the Ombudsman, there has been no follow up. Counsel disagrees with the State party that this is indicative that no violation has occurred, but, on the contrary, may indicate that investigations have not yet been completed.

5.2 Concerning the legal representation at the trial, counsel submits that the State party is in prima facie breach of its duty to appoint competent legal counsel. He argues that the author's attorney was incompetent by reason of his failure to consult with the author and take his instructions, his repeated absences from the trial, his failure to call (character) witnesses and his failure to visit the scene of the crime. It is further submitted that the attorney's frequent absences from the trial, in effect, left the author unrepresented for periods during the trial and that the assistance given to the author was therefore neither adequate nor effective.

5.3 Counsel maintains that a delay of one year and nine months between arrest and trial constitutes undue delay in violation of article 14(3)(c) and, because of the author's youth, also a violation of article 10(2)(b).

5.4 Counsel reasserts that the failure by counsel to call the author's father as a witness constitutes a violation of article 14(3)(e).

5.5 Counsel also maintains that the judge's instructions to the jury constitute a violation of article 14(1), and in particular his failure to disallow the caution statement as evidence, taking into account the age of the author at the time of arrest and the absence of any independent adult to advise him.

5.6 Counsel points out that the author was born on 23 September 1976, and that he was thus 17 years and six months old at the time of his arrest. It is therefore submitted that the author's detention while awaiting trial, constituted a breach of article 10(2)(b), because as a minor he was kept with adults. It is also submitted that the long pre-trial detention was especially unacceptable in view of the author's age and also constituted a violation of article 10(2)(b).

5.7 Finally, it is submitted that, since the author was a minor at the time of the murders, the imposition of the death sentence against him was unlawful and in breach of article 6(5).

6.1 In a further submission, counsel argues that the failure of the author's legal representative at the trial to bring the author's age to the attention of the Court is a serious indication of the inadequate representation afforded to him. Counsel reiterates that it would be unlawful for the Jamaican government to execute the author given that he was a minor at the time the

crime was committed.

6.2 Counsel further states that at least one letter which the author addressed to him has not arrived. It is said that this letter contained vital information about the author's correspondence with the Ombudsman concerning his treatment by the police. Counsel argues that if it were the case that the author's correspondence were being intercepted by the Jamaican authorities, it would be a serious breach of his right to consult with his solicitors.

The Committee's admissibility decision

7.1 At its 62nd session, the Committee considered the admissibility of the communication. It ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

7.2 The Committee noted that the State party had raised no objection to the admissibility of the communication. Nevertheless, it was the Committee's duty to ascertain whether all the admissibility criteria laid down in the Optional Protocol had been met.

7.3 With regard to the author's claim that the judge's instructions to the jury were inadequate, the Committee referred to its prior jurisprudence and reiterated that it was generally not for the Committee, but for the appellate Courts of States parties, to review specific instructions to the jury by the trial judge, unless it could be ascertained that the instructions were manifestly arbitrary or amounted to a denial of justice. The Committee noted that the author's submissions in relation to his claim did not indicate that the trial was manifestly tainted by arbitrariness or amounted to a denial of justice. Accordingly, he had failed to substantiate his claim, for purposes of admissibility, and this part of the communication was inadmissible under article 2 of the Optional Protocol.

7.4 The author further claimed that his right to obtain the attendance and examination of witnesses was violated, because his lawyer failed to call his father as a character witness. The Committee referred to its considerations in the preceding paragraph and considered that there was no reason to believe that counsel was not using his best judgment. This part of the communication was therefore inadmissible under article 2 of the Optional Protocol.

7.5 The Committee considered that the author's remaining claims, that he was subjected to ill-treatment upon arrest, that the beginning of the trial against him was unduly delayed, that he did not have effective representation at trial, his complaint about the conditions of his detention both before and after this trial, and his claim that he was under 18 years of age when the crime was committed, were admissible and should be examined on the merits.

7.7 The Committee noted that the State party had forwarded comments on the merits of the communication in order to expedite the examination of the case. Nevertheless, the Committee considered that the information before it was not sufficient to enable it to adopt its Views at this stage. In this context, the Committee noted that the State party had offered no explanation about the conditions of detention in which the author claimed to have been

held before trial, nor about the conditions in which he was currently being held. Nor had the State party provided information about the author's age at the time the crime was committed.

8. Accordingly, on 19 March 1998, the Human Rights Committee decided that the communication was admissible in so far as it might raise issues under articles 6, paragraph 5, 7, 9, paragraph 3, 10, paragraphs 1 and 2(b), and 14, paragraph 3 (b), (c) and (d), of the Covenant.

State party's observations and counsel's comments

9.1 The State party submits a copy of a birth certificate for Andrew Perkins, son of Ina Johnson and Hazeal Perkins, born in the parish of Clarendon on 23 September 1971. It also submits a copy of a school admission record for Andrew Perkins at Rock River School in Clarendon, which shows the date of birth as 2 September 1971, and the date of admission to school as 5 September 1977. The State party submits that it has made enquiries at the Rock Hall All Age School, but that there is no record of Andrew Perkins attending this school.

9.2 It appears from the means enquiry report, submitted on behalf of Andrew Perkins in substantiation of his request for legal aid, that he gives his date of birth as 23 September 1976. His parents' names are being given as Mirriam Pennant and Hazeal Perkins. It is stated that the author's parents separated shortly after his birth, that he grew up with his father and stepmother, and that he has seen his mother only once during his conscious years. According to the State party, enquiries at the Probation Office revealed that the author had stated that a birth certificate had been sent to the Jamaican Defence Force by him on his seeking to enlist therein. Enquiries at the Defence Force produced the birth certificate referred to above.

10.1 Counsel points out that the author gives his mother's name as Mirriam Pennant and that the birth certificate produced by the author shows that her name was Ina Johnson. The author further maintains that he attended Rock Hall All Age School from 1982-1986. Counsel refers to the legal aid report which states that the author did not attend school regularly, and suggests that this may be the explanation for the lack of record. Counsel refers to the application form for legal aid, on which the author gives his date of birth as 23 September 1976, and states that he does not consider the Andrew Perkins referred to in the birth certificate and the school admission record to be the same person as the author.

10.2 In addition, counsel notes that no action was taken at the time of the author's application for legal aid to protect the author, given the fact that he gave his date of birth as September 1976, which made him a minor at the time the crime was committed. He was brought to trial and sentenced as if he were an adult. According to counsel, the enquiries the State party has now made should have been made at the time that the author was committed for trial.

Issues and proceedings before the Committee

11.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph

1, of the Optional Protocol.

11.2 With respect to the author's claim that he was beaten and threatened by the police in order to make him sign a statement, the Committee notes that the issue was the subject of a *voir dire*, after which the author's statement was admitted by the judge, that it was before the jury during the trial, that the jury rejected the author's allegations, and that the matter was not raised on appeal. The Committee finds that the information before it does not justify the finding of a violation of any article of the Covenant in this respect.

11.3 The Committee notes that the trial against the author started in December 1995, one year and nine months after his arrest. Article 9, paragraph 3, entitles an arrested person to trial within a reasonable time or release. In the absence of a satisfactory explanation from the State party why the author, even if he could not be released on bail, was not brought to trial within a year and nine months, such a delay is unreasonable and constitutes a violation of article 9, paragraph 3, because he was remanded in custody. In the circumstances the Committee need not address the question of whether the delay also constitutes a violation of article 14, paragraph 3(c).

11.4 The Committee notes that the State party has failed to address the author's claim that he was kept in deplorable conditions of detention before his trial. In the absence of a reply from the State party, due weight must be given to the author's allegations to the extent that they are substantiated. The Committee finds that the conditions of pre-trial detention as described by the author constitute a violation of article 10, paragraph 1, of the Covenant.

11.5 The author has also claimed that he did not have enough time to prepare his defence, since he did not meet his lawyer until the third preliminary hearing and only once before the trial. In this context, the Committee reiterates its jurisprudence that the right of an accused person to have adequate time and facilities for the preparation of his defence is an important aspect of the principle of equality of arms. Where a capital sentence may be pronounced on the accused, sufficient time must be granted to the accused and his counsel to prepare the defence. The determination of what constitutes 'adequate time' requires an assessment of the individual circumstances of each case. The Committee notes from the information before it that the author's lawyer did meet the author on at least two occasions before the trial. The material before the Committee does not reveal that either counsel or the author ever complained to the trial judge that the time for preparation of the defence was inadequate. If counsel or the author felt inadequately prepared, it was incumbent upon them to request an adjournment. In the circumstances, there is no basis for finding a violation of article 14, paragraphs 3(b) and (d).

11.6 The author has claimed that he was born in September 1976 and under 18 years of age when the crime for which he was convicted was committed, and that the imposition of the death sentence against him is therefore in violation of article 6, paragraph 2, of the Covenant. The Committee notes that the State party has furnished a birth certificate and a school admission record on which the date of birth of Andrew Perkins is recorded as September 1971. Counsel has challenged these documents and argues that they do not relate to the author. He has, however, not provided any document invalidating the State party's assertion

that Andrew Perkins was born in 1971. In this connection, the Committee notes that counsel has not challenged the State party's statement that this is the birth certificate that the author himself sent to the Defence Force when applying to enlist therein. The only document indicating the author's date of birth as September 1976 is the application for legal aid, which was filled out by the author himself and, although showing the author's belief at the time, has no probative value. The Committee observes that it is incumbent on the State party to make enquiries if any doubt is raised as to whether the accused in a capital case is a minor. In the instant case, however, the Committee finds that the author was not under 18 years of age at the time of the offence and there is no basis to find a violation of article 6, paragraph 5, of the Covenant.

11.7 The author has claimed that since his conviction he has been held in a very small cell with only a sponge to sleep on and a bucket as toilet. Furthermore, he states that he is being bullied by the warders. The author's claims have not been refuted by the State party, which remains silent on the issue. The Committee considers that the conditions of detention and the treatment as described by the author are in violation of article 10, paragraph 1, of the Covenant.

12. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights, is of the view that the facts before it disclose violations of articles 9, paragraph 3, and 10, paragraph 1, of the Covenant.

13. Under article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Andrew Perkins with an effective remedy, entailing compensation and commutation of his death sentence. The State party is under an obligation to ensure that similar violations do not occur in the future.

14. On becoming a State party to the Optional Protocol, Jamaica recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. This case was submitted for consideration before Jamaica's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12(2) of the Optional Protocol the communication is subject to the continued application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. The Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Ms. Christine Chanet, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

1/ The trial transcript does not show that the attorney absented himself during the trial.