

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

3 **INDICTMENT No. 114/12**  
4

5 **REGINA**

6 **v.**

7 **TAREEK RICARDO RICKETTS**  
8



9 **Appearances:**

**Ms. Cheryll Richards Q.C. and Ms. Elisabeth  
Less for the Crown**

10  
11  
12 **Mr. John Ryder Q.C. and Ms. Prathna Bodden**  
13 **for the Defendant**  
14

15 **Before:**

**Justice Alexander Henderson Q.C.**

16 **Hearing:**

**18<sup>th</sup> January 2017**

17  
18 **Delivery of Decision:**

**7<sup>th</sup> February 2017**  
19  
20  
21

22 **HEADNOTE**

23 *Criminal Law – Sentence – Mandatory life sentence – Minimum term –*  
24 *Conditional Release – Firearm – Exceptional in nature – Aggravating*  
25 *circumstance – Extenuating circumstance – Arbitrary and disproportionate*  
26 *legitimate expectation of release.*  
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29 **JUDGMENT**  
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1 1. John Tareek Ricketts was convicted of murder (and the related offence of possession of  
2 an unlicensed firearm) by a jury on August 17, 2013 and sentenced to imprisonment  
3 for life. In light of a change in the law, the sentencing hearing must now be  
4 supplemented with this judgment.

5  
6 **LEGISLATIVE BACKGROUND**

7  
8 2. The only sentence for murder in the Cayman Islands has been, and still is, one of  
9 imprisonment for life. Until recently, this was a “whole life” sentence; the offender had  
10 no prospect of ever being released. That position has changed as a result of decisions  
11 such as *Vinter & others v UK*<sup>1</sup>. While an offender convicted of murder has no  
12 entitlement to be released at any time, he now has an entitlement to be considered for  
13 release after a certain number of years have passed. I will refer to the period of time  
14 that must elapse before release as the “minimum term”. The hearing I have conducted  
15 was for the purpose of fixing the minimum term for Mr. Ricketts.

16  
17 3. The new minimum term legislation is contained in the *Conditional Release Law, 2014*  
18 (“the Law”), which received the assent of the Governor on November 20, 2014 and  
19 came into force on February 15, 2016; and in the *Conditional Release of Prisoners*  
20 *Regulations, 2016* (“the Regulations”). Both apply to all prisoners regardless of when  
21 they were convicted or sentenced: Law, s.3(1).



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<sup>1</sup> [2013] ECHR 645

1 The Law provides for the first time that a prisoner serving a life sentence shall be  
2 eligible “to be considered for conditional release on licence” after serving a minimum  
3 term of incarceration: Law, s. 7(1)(a). Going forward, that minimum term is to be set  
4 by the trial judge at the time of sentencing. For each of those who were sentenced  
5 before the Law came into effect, minimum terms must now be set. In both  
6 circumstances, the applicable principles are the same.

7  
8 4. The minimum term must be the period of time that the Court considers “*appropriate to*  
9 *satisfy requirements of retribution, deterrence and rehabilitation*”: Law, s. 14(1). The  
10 Court must assess the circumstances as if it were sentencing an accused who has just  
11 been convicted: Law, s. 23(1). Evidence of the offender’s behavior in prison after the  
12 date of the original sentencing is not admissible: Law, s. 23(4). When setting a  
13 minimum term for an offender who was sentenced before the inception of the new  
14 legislation, the Court must consider only those matters that were or could have been  
15 put before it at the original sentencing; events that occurred afterwards are of no  
16 relevance.

17  
18 5. When a life sentence is imposed for murder, the Law contains a clear expression of the  
19 intent and expectation of the Legislative Assembly: the minimum term “shall” be 30  
20 years unless there are “extenuating” or “aggravating” circumstances that are  
21 “exceptional in nature”: Law, s. 41(1). The former, of course, will tend to justify a  
22 lower minimum term than 30 years while the latter will support an increase.



1 6. The Regulations contain a schedule – Schedule 12 (and see regulation 14) – that  
2 elaborates upon what may be taken into consideration. Section 2(1) of Schedule 12  
3 states that “*Detailed consideration of aggravating or mitigating circumstances may*  
4 *result in a minimum term of any length.*” There are specific rules for previous  
5 convictions and murders committed while on bail and lists of aggravating and  
6 mitigating circumstances that “may be relevant to the offence of murder” in  
7 subsections 2(2) and 2(3) of Schedule 12.

8  
9 7. The following aggravating circumstances may be relevant:

- 10 (a) *a significant degree of planning or premeditation;*  
11 (b) *the fact that the victim was particularly vulnerable because of age or*  
12 *disability;*  
13 (c) *mental or physical suffering inflicted on the victim before death;*  
14 (d) *the abuse of a position of trust;*  
15 (e) *the use of duress or threats against another person to facilitate the*  
16 *commission of the offence;*  
17 (f) *the fact that the victim was providing a public service or performing a*  
18 *public duty;*  
19 (g) *concealment, destruction or dismemberment of the body;*  
20 (h) *previous convictions;*  
21 (i) *abduction and sexual or sadistic conduct; and*  
22 (j) *any other circumstances which may be considered relevant.*

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24  
25 8. Extenuating circumstances include:

- 26 (a) *an intention to cause serious bodily harm rather than to kill;*  
27 (b) *lack of premeditation;*  
28 (c) *the fact that the offender suffered from any mental disorder or mental*  
29 *disability which (although not falling within section 185(1) of the Penal*  
30 *Code (2013 Revision)), lowered the offender’s degree of culpability;*  
31 (d) *the fact that the offender was provoked (for example, by prolonged stress);*  
32 (e) *the fact that the offender acted to any extent in self-defence or in fear of*  
33 *violence;*  
34 (f) *a belief by the offender that the murder was an act of mercy;*  
35 (g) *the age of the offender; and*  
36 (h) *any other circumstances which may be considered relevant.*  
37



1 9. In all cases, aggravating or extenuating circumstances cannot have an effect on  
2 the decision unless they are, individually or in combination, “exceptional in  
3 nature”: regulation 1(3), reiterating a provision in s. 14(1) of the Law. I will  
4 return to this subject below.

5  
6 10. When deciding whether one or more aggravating circumstances are present,  
7 the standard of proof is the same as that applied by the jury in reaching their  
8 verdict. Before a circumstance can be viewed as aggravating, the Court must  
9 be sure of its existence; the evidence must establish that beyond a reasonable  
10 doubt. That is the effect of the decision of the UK Court of Appeal in *R. v*  
11 *Davies*<sup>2</sup> (in relation to the fixing of a minimum term) and of the decision of  
12 Quin, J in *R v Ramoon & Douglas*<sup>3</sup>. The rule is a salutary one, providing  
13 significant protection to a defendant.

14  
15 11. The Governor of the Cayman Islands has had the authority to release a prisoner  
16 serving a life sentence on licence under s.31A of the *Prison Law, 1975*. Six  
17 such prisoners have been released. The periods of imprisonment they served  
18 before release range from 22 to 29 years; the average is 26 years 4 months.  
19 The Governor’s jurisdiction to release has now passed to the Conditional  
20 Release Board.

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<sup>2</sup> [2008] EWCA Crim 1055; [2009] 1 Cr. App. R. (S.) 15  
<sup>3</sup> Indictment 53/2015, (unreported) December 19, 2016

1 12. One class of prisoner serving life for murder is exempted from the new  
2 minimum term requirement – those who have “applied for” release under  
3 s.31A of the *Prison Law, 1975*: regulation 15(1). There are two prisoners who  
4 have applied for but not yet obtained a release on licence. Because of the  
5 express wording of regulation 15(1), no minimum term can be set for these  
6 prisoners at this time.

7  
8 *CONSTITUTIONAL CONSIDERATIONS*  
9

10 13. At a case management conference I expressed some uncertainty about possible  
11 constitutional ramifications arising from the change in the law. The subsequent  
12 declaration by the Legislative Assembly that a minimum term of 30 years shall  
13 be the norm might be seen as a retroactive increase in the penalty. Section 8(1)  
14 of the *Cayman Islands Constitution Order, 2009* (the “Bill of Rights”) prohibits the imposition of a “heavier penalty” than the one that was applicable  
15 at the time the offence was committed. Article 7 of the *European Convention*  
16 *on Human Rights* contains a similar provision.  
17

18  
19 14. Ms. Richards, QC and Mr. Ryder, QC are in agreement that a change in the  
20 law regarding release on licence does not amount to a heavier penalty within  
21 the meaning of s.8(1); it is, rather, a change in the manner of execution or  
22 enforcement of the sentence. The penalty remains imprisonment for life. Thus,  
23 it cannot be argued that the Law and the Regulations infringe the human rights  
24 of prisoners sentenced before they came into effect.  
25



1 15. I am indebted to counsel on both sides for their insightful assistance. Having  
2 reviewed the authorities, I am in agreement with them. I draw my conclusion  
3 from the decisions in *Utley v Secretary of State for the Home Department*<sup>4</sup>;  
4 *Kafkaris v Cyprus*<sup>5</sup>; *Robinson v Secretary of State for Justice*<sup>6</sup>; *Del Rio*  
5 *Prada v Spain*<sup>7</sup>; and *The Queen on the application of Abedin v Secretary of*  
6 *State for Justice*<sup>8</sup>.

7  
8 16. The Defendant also accepts, on the authority of *Vinter v UK*<sup>9</sup>; *Kafkaris*<sup>10</sup>; and  
9 *R (Wellington) v Secretary of State*<sup>11</sup> that the possibility of release under the  
10 Law and the Regulations means that a mandatory life sentence for murder is  
11 not, for that reason alone, “grossly disproportionate” in a manner that infringes  
12 section 3 of the Bill of Rights.



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<sup>4</sup> [2004] 1 WLR 2278 (HL)

<sup>5</sup> (2009) 49 EHRR 35 (ECHR)

<sup>6</sup> [2009] EWHC 2251 (QBD)

<sup>7</sup> (2014) 58 EHRR 37 (ECHR)

<sup>8</sup> [2015] EWHC 782 (QBD)

<sup>9</sup> (2012), *supra*

<sup>10</sup> *supra*

<sup>11</sup> [2008] UKHL 72; [2009] 1 AC 335 (HL)



1                    “We must construe ‘exceptional’ as an ordinary, familiar English  
2                    adjective, and not as a term of art. It describes a circumstance which is  
3                    such as to form an exception, which is out of the ordinary course, or  
4                    unusual, or special, or uncommon. To be exceptional a circumstance need  
5                    not be unique, or unprecedented, or very rare; but it cannot be one that is  
6                    regularly, or routinely, or normally encountered. To relieve the court of its  
7                    duty to impose a life sentence under section 2(2), however, circumstances  
8                    must not only be exceptional but such as, in the opinion of the court, justify  
9                    it in not imposing a life sentence, and in forming that opinion the court  
10                    must have regard to the purpose of Parliament in enacting the section ...”  
11

12                    Lord Bingham’s definition was proposed in a case concerned with the  
13                    imposition of a life sentence upon repeat offenders under section 2 of the UK  
14                    *Crime (Sentences) Act 1997*. The definition was quoted and applied in a  
15                    decision involving a mandatory life sentence in *R v Offen & others*<sup>14</sup> and has  
16                    been followed in other UK cases (*ibid.*) In *Ramoon*<sup>15</sup>, Quin, J relied on Lord  
17                    Bingham’s definition and I adopt it here.  
18

19                    20.                    Section 39(2) of the *Firearms Law (2006 Revision)* provides that the court  
20                    must impose a mandatory minimum 10-year sentence for possession of an  
21                    unlicensed firearm unless there are exceptional circumstances. In *Bowen v R*<sup>16</sup>  
22                    our Court of Appeal observed (at para. 13) that the effect of the phrase in that  
23                    context is “not to give a court an unfettered discretion to impose a sentence of  
24                    less than 10 years whenever it thinks fit”. The Court adopted the decision in *R*  
25                    *v Rehman (Zakir)*<sup>17</sup> that the circumstances are exceptional if the mandatory  
26                    minimum “would result in an arbitrary and disproportionate sentence”.

<sup>14</sup> [2001] 2 Cr. App. Rep. (S.) 10 (CA)

<sup>15</sup> *supra*

<sup>16</sup> 2009 CILR 246

<sup>17</sup> [2005] EWCA Crim 2056



1 In *Attorney General's Reference (No. 51 of 2013)*<sup>18</sup> the Court of Appeal  
2 (Criminal Division) reviewed *Rehman* and other “exceptional circumstance”  
3 cases and said that such cases will be “rare”. The Court quoted the “*arbitrary*  
4 *and disproportionate*” yardstick with approval. Assessment of that question,  
5 the Court said, requires a “holistic approach”. This was also a firearms case.

6  
7 21. I consider the “*arbitrary and disproportionate*” formulation to apply equally to  
8 the setting of a minimum term. Assessment of whether the circumstances,  
9 taken as a whole, are exceptional is the first part of the analysis. If they are not,  
10 the 30-year minimum term must be imposed. If they are exceptional, the  
11 second stage requires an assessment of whether, in light of the exceptional  
12 circumstances that have been found to exist, imposition of the 30-year  
13 minimum term would be arbitrary and disproportionate.

14  
15 22. A theme that runs through several of the authorities is the need to bear firmly  
16 in mind the intention of Parliament manifested in the legislation. It is at the  
17 second stage that the intention of Parliament must be taken into account; the  
18 underlying policy rationale for the legislation will necessarily influence the  
19 result. This two-stage approach emerges most clearly from the decisions in  
20 *Offen*<sup>19</sup>, and *R v Buckland*<sup>20</sup> (a mandatory life sentence case).

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<sup>18</sup> [2013] EWCA Crim 1927; [2014] 1 Cr. App. Rep. (S.) 83

<sup>19</sup> *supra*

<sup>20</sup> [2000] 2 Cr. App. Rep. (S.) 217 (CA)



1 23. From time to time the UK courts have warned that the phrase “exceptional  
2 circumstances” should not be given so broad a construction as to dilute or  
3 remove the deterrent effect assumed to arise from mandatory minimum  
4 sentences and terms. Such provisions are measures for the reduction of crime  
5 and represent a reasoned policy choice of Parliament. The intent of Parliament  
6 will be frustrated if sentencing judges are moved by sympathy to avoid their  
7 statutory duty. In this respect see *Attorney General’s Reference (No. 115 of*  
8 *2015)*<sup>21</sup>; *Attorney General’s Reference (No. 23 of 2009)*<sup>22</sup>; and *Offen*<sup>23</sup>.

9  
10 24. There are two recent decisions of this Court that are instructive on the meaning  
11 of circumstances that are exceptional in nature.

12  
13 25. In *R. v Butler*<sup>24</sup>, Malcolm, J (Actg.) set the minimum term for a mother  
14 convicted of the murder of her 6-year-old daughter and, in doing so, took  
15 several aggravating and extenuating circumstances into account. He began by  
16 observing that some of the factors listed in the Schedule cannot be viewed in  
17 isolation as exceptional in nature, a view with which I agree. He then observed  
18 that both lists of factors conclude by saying that the Court may take into  
19 account “*any other circumstances which may be considered relevant*”. The  
20 inclusion of this broad invitation to treat any relevant circumstance as  
21 aggravating or extenuating suggests that the other listed factors are no more  
22 than legislative suggestions of possibly relevant elements.

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<sup>21</sup> [2016] EWCA Crim 765; [2016] 2 Cr. App. Rep. (S.) 23 at para. 18 (CA, Crim Div)

<sup>22</sup> [2009] EWCA Crim 1683; [2010] 2 Cr. App. Rep. (S.) 70 at para. 12 (CA, Crim Div)

<sup>23</sup> *supra*

<sup>24</sup> Indictment 102/2014 (unreported) May 6, 2016



1 26. Malcolm, J (Actg.) found the Defendant to have been suffering from a  
2 paranoid personality disorder with traits of narcissistic personality disorder. He  
3 accepted that as a substantial extenuating circumstance and reduced the term of  
4 30 years by six years as a consequence. Balanced against that were several  
5 aggravating circumstances that, collectively, resulted in an increase of four  
6 years. These were: abuse of a position of trust (the daughter was in her  
7 mother's sole care at the time of the killing), the infliction of mental or  
8 physical suffering upon the victim (the attack was prolonged, the child  
9 suffering 35 stab wounds), the particular vulnerability of the victim (she was  
10 only six), and the resulting harm to the husband who lost his daughter. The  
11 ultimate result was a minimum term of imprisonment for 28 years.

12  
13 27. In *R v Ramoon & Douglas*<sup>25</sup>, Quin, J held that several factors, considered  
14 collectively, amounted to aggravating circumstances that were exceptional in  
15 nature. These included the use of an unlicensed firearm, a "significant" degree  
16 of planning and premeditation resulting in a killing "with clinical precision"  
17 and in public, and an unsuccessful attempt to kill a witness to the shooting.  
18 Together, these factors resulted in an uplift of four years. A fifth year was  
19 added to Mr. Ramoon's minimum term because he had a previous conviction  
20 for possession of an imitation firearm.



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<sup>25</sup> *supra*

1        28.     In summary, I draw the following points from the authorities cited to me:

- 2            a.     the first step in a two-stage analysis is to decide whether there are  
3                         circumstances that are exceptional in nature;
- 4            b.     to be “exceptional”, the circumstances must be unusual or uncommon  
5                         although they need not be unprecedented or very rare;
- 6            c.     the assessment should be holistic, taking all of the circumstances into  
7                         account;
- 8            d.     the second step is to decide whether, in light of any exceptional  
9                         circumstances that are found to exist, a minimum term of 30 years  
10                         would be arbitrary and disproportionate;
- 11           e.     the intent behind the legislation, which here must be the protection of  
12                         the public, should be kept firmly in mind; and
- 13           f.     in the absence of circumstances that are truly exceptional in nature, the  
14                         Court has no discretion to depart from the 30-year norm.



1 *FACTS*

2 29. Jackson Rainford died from two gunshot wounds suffered around 10:30 p.m.  
3 on December 16, 2012 while sitting in the front passenger seat of a car outside  
4 455 Shedden Road in George Town, Grand Cayman. It was conceded that he  
5 was murdered. The only issue at trial was the identity of his killer. The  
6 Defendant's case was that he was elsewhere at the time.

7  
8 30. Terina Tomlinson testified that she had a romantic relationship with Mr.  
9 Ricketts for several years; they lived together for two years. Mr. Ricketts is the  
10 father of two of her children. They separated about nine or ten months before  
11 the shooting but continued to see each other. The Crown's case was that Mr.  
12 Ricketts continued to feel a romantic attraction to Ms. Tomlinson, despite the  
13 fact that he had entered into a new relationship with another woman, and was  
14 motivated by jealousy to shoot Mr. Rainford.

15  
16 31. Shortly before the shooting Ms. Tomlinson met Mr. Rainford. On December  
17 14, two days before the murder, Mr. Ricketts became aware that his former  
18 partner was associating with Mr. Rainford. In fact, Ms. Tomlinson spent that  
19 night with him.

20  
21 32. On the day of the shooting Ms. Tomlinson told Mr. Ricketts that she was going  
22 to the beach with Mr. Rainford and taking the children with her. That angered  
23 Mr. Ricketts.  
24



1 33. After the visit to the beach, Ms. Tomlinson went with Mr. Rainford to his  
2 house. Mr. Ricketts called her there and said he wanted to see the children. She  
3 said he could do so the following morning.

4  
5 34. Shortly afterwards, Ms. Tomlinson, the children, Mr. Rainford and his brother  
6 drove to her home at 455 Shedden Road. Ms. Tomlinson said she saw Mr.  
7 Ricketts waiting there, and he seemed upset. She went into her house quickly  
8 with the children. Mr. Rainford and his brother drove off but returned just five  
9 minutes later.

10  
11 35. At this point Mr. Ricketts, wearing a hoody to partially conceal his face,  
12 approached the car and fired several shots from an unlicensed handgun at Mr.  
13 Rainford, who expired soon after.

14  
15 36. In addition to killing Mr. Rainford, there was some evidence to suggest that  
16 Mr. Ricketts fired one shot at Mr. Rainford's brother but missed.

17  
18 37. The main identification of Mr. Ricketts was by the evidence of the deceased's  
19 brother; Ms. Tomlinson's identification evidence was flawed and unreliable.  
20 Cell phone records and CCTV video placed Mr. Ricketts near the scene of the  
21 shooting at the material time. The Defendant testified to an alibi but this was  
22 rejected by the jury.

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1 *ARE THE CIRCUMSTANCES EXCEPTIONAL?*

2  
3 38. The Crown says that the use of an unlicensed firearm is an aggravating  
4 circumstance that is exceptional in nature.

5  
6 39. It could hardly be said that the use of an unlicensed firearm, in and of itself, is  
7 unusual or uncommon. The use of firearms in the commission of offences is  
8 rampant on Grand Cayman. Of the six murder cases in which I must set a  
9 minimum term, no less than four were shootings. Moreover, if the Legislative  
10 Assembly considered the use of a firearm to be an exceptional circumstance it  
11 would have listed it in s. 2(2) of Schedule 12. Its omission from that list is  
12 explained by the 30-year norm, which is the same as the usual starting point in  
13 the UK for murders committed with a firearm.

14  
15 40. However, as I have sought to explain above, it is the circumstances as a whole  
16 that must be considered.

17  
18 41. In *Ramoon & Douglas*<sup>26</sup>, Quin, J was satisfied that the use of an unlicensed  
19 firearm in a murder involving a significant degree of planning and  
20 premeditation and resulting in a killing carried out in a public place with  
21 clinical precision was an aggravating and exceptional circumstance. He also  
22 referred to an unsuccessful attempt to kill a witness to the shooting. Quin, J did  
23 not say that *any* use of a firearm is an exceptional circumstance; he found that  
24 the combination of circumstances, including the location and manner in which  
25 the firearm was used, were exceptional.

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<sup>26</sup> *supra*



1 42. The circumstances in the case at bar are not comparable. We do not know the  
2 degree to which Mr. Ricketts planned the killing of Mr. Rainford, only that it  
3 was intentional. The crime was not committed in a sophisticated manner:  
4 although Mr. Ricketts made a feeble effort to disguise his face, he was  
5 recognized readily. The police experienced little difficulty in following the  
6 route of his escape on CCTV footage.

7  
8 43. There was a bit of evidence suggesting that Mr. Ricketts also fired a shot at the  
9 victim's brother. I have reviewed that evidence and find it inconclusive and  
10 unreliable. The witness was running away from the scene when the shot was  
11 fired. He had his back to Mr. Ricketts and was in no position to say with  
12 certainty that the Defendant was firing at him.

13  
14 44. In short, the proven circumstances concerning the use of a firearm are not out  
15 of the ordinary in the Cayman Islands and cannot therefore be treated as  
16 aggravating.

17  
18 45. The Defendant says that a combination of his age, apparent lack of maturity,  
19 and jealousy of the victim amount to an exceptional circumstance that should  
20 be viewed as extenuating. A separate submission, that he has a legitimate  
21 expectation that amounts to an extenuating circumstance, will be considered  
22 below. On the subject of age as a mitigating factor, see *R v Peters & Others*<sup>27</sup>.

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<sup>27</sup> [2005] EWCA Crim 605; [2005] 2 Cr. App. R. (S.) 101 (CA)



1 46. Mr. Ricketts was 21 years of age when he killed Mr. Rainford. He gave  
2 evidence at trial to assert an alibi. There was nothing about his evidence or  
3 demeanour that suggested a level of maturity different from that of a typical  
4 man of his age. He is the father of two of Ms. Tomlinson's children and seems  
5 to have been active in caring for them, including taking them to school. He  
6 obviously cared for them, and it hurt him to see another man apparently  
7 usurping his role as their father.

8  
9 47. The Crown's case was that Mr. Ricketts was motivated by jealousy, which I  
10 accept. Mr. Ricketts learned two days before the shooting that Ms. Tomlinson  
11 was associating with Mr. Rainford. Whatever emotions that stirred in him, they  
12 had 48 hours in which to dissipate. There was a fresh provocation, if I can call  
13 it that, in the afternoon of the day of the shooting when Ms. Tomlinson  
14 revealed to Mr. Ricketts that she was going to the beach with Mr. Rainford.  
15 Again, there was more than enough time (a period of several hours) for Mr.  
16 Ricketts to bring his emotions under control. He was also involved in a new  
17 romantic relationship of his own (with, as it happened, the wife of the  
18 deceased), a circumstance that would tend to blunt his feelings of jealousy.

19  
20 48. After anxious consideration, I am not able to characterize these factors as  
21 exceptional in nature. A consideration of his age, his maturity level, and his  
22 justified feelings of jealousy do not suggest to me that the circumstances are  
23 unusual or uncommon. Indeed, in cases of violent assault and murder, these  
24 factors are commonplace.  
25  
26



1 *LEGITIMATE EXPECTATION*

2  
3 49. The Defendant says that he has a legitimate expectation of being allowed to  
4 apply for conditional release and of being released on licence after having  
5 served significantly less than 30 years and that this is an extenuating  
6 circumstance that is exceptional. The expectation arises from the Governor's  
7 recent practice of releasing prisoners serving life sentences after an average  
8 incarceration of about 26 years.

9  
10 50. In *O'Reilly & others v Mackman & others*<sup>28</sup>, the House of Lords recognized  
11 the possibility (at AC, p. 275) that a prisoner might, based on his knowledge of  
12 what is the general practice, acquire a legitimate expectation of release. In  
13 *Campbell & Fell v UK*<sup>29</sup>, the European Court of Human Rights also  
14 recognized the possibility in these remarks:

15 *... the practice of granting remission – whereby a prisoner will be set free*  
16 *on the estimated date for release given to him at the outset of his sentence,*  
17 *unless remission has been forfeited in disciplinary proceedings – creates*  
18 *in him a legitimate expectation that he will recover his liberty before the*  
19 *end of his term of imprisonment. Forfeiture of remission thus has the effect*  
20 *of causing the detention to continue beyond the period corresponding to*  
21 *that expectation.*

22  
23 51. The scope of a prisoner's legitimate expectation concerning the date of his release was  
24 described by Lord Scarman in these words in *Re Findlay*<sup>30</sup>:

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<sup>28</sup> [1983] 2 AC 237; [1982] 3 WLR 1096

<sup>29</sup> (1985) 7 EHRR 165

<sup>30</sup> [1985] AC 318 (HL)



1                   ... But what was their legitimate expectation? Given the substance and  
2                   purpose of the legislative provisions governing parole, the most that a  
3                   convicted prisoner can legitimately expect is that his case will be  
4                   examined individually in the light of whatever policy the Secretary of State  
5                   sees fit to adopt provided always that the adopted policy is a lawful  
6                   exercise of the discretion conferred upon him by the statute.  
7

8  
9                   *Findlay* was quoted and applied in *R v Secretary of State for the Home Department*<sup>31</sup>.  
10

11  
12           52.       Under the Law and Regulations, there is no closed list of circumstances that might be  
13                   considered relevant to a proposed reduction in the minimum term. I am satisfied that a  
14                   legitimate expectation of release before having served a term of 30 years could, where  
15                   the facts justify it, amount to an extenuating circumstance. But do the facts justify that  
16                   conclusion here?  
17

18           53.       According to the affidavit evidence of Debra Prendergast, the Secretary of the  
19                   Conditional Release Board (and former Secretary of the Parole Commissioner's  
20                   Board), the first prisoner serving a mandatory life sentence to be released on licence  
21                   was released on June 21, 2013. The offence by Mr. Ricketts was committed on  
22                   December 16, 2012. Thus, Mr. Ricketts could have had no expectation, legitimate or  
23                   otherwise, concerning possible release on the date he committed the offence.  
24

25           54.       Mr. Ricketts was convicted and sentenced on August 17, 2013. By that date, just one  
26                   prisoner had been released on licence and that occurred just two months earlier. I  
27                   cannot infer the presence of a legitimate expectation of release at the time of  
28                   sentencing from this single instance.  
29

<sup>31</sup> [1997] 1 WLR 906 (CA)



1 55. Two further prisoners serving life imprisonment were released on licence in the first  
2 half of 2014. The Law received second reading in the Legislative Assembly on  
3 October 24, 2014 and would have received substantial media attention at that time, so  
4 no legitimate expectation of release before 30 years had passed could arise after that  
5 date.

6  
7 56. Am I able to infer that Mr. Ricketts acquired a legitimate expectation of early release  
8 from the fact that three prisoners serving life imprisonment were released in a period of  
9 a little over one year? These facts do no more than suggest to me that Mr. Ricketts  
10 may have entertained a hope of early release. The number of released prisoners is too  
11 small and the time is too short to permit a reasonable conclusion that a new policy had  
12 become entrenched and would necessarily be followed by successive governors, who  
13 are replaced every three or four years. A pattern had not yet emerged. There is no  
14 evidence that anyone in authority suggested to Mr. Ricketts that he would be released  
15 at any particular point in time. The evidence is too insubstantial to justify a legitimate  
16 expectation.

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*CONCLUSION*

57. For these reasons, I find that there are no extenuating or aggravating circumstances that are exceptional in nature. The result is that Mr. Ricketts must serve a term of imprisonment of 30 years before he shall be eligible for conditional release, and I so order. The 243 days served by Mr. Ricketts on remand are to be deducted from this term.

Dated this the 7<sup>th</sup> day of February 2017

*Henderson, J.*



Justice Alexander Henderson Q.C.  
Judge of the Grand Court