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MEDIA RELEASE
(For immediate release)

**No. 12:2020
14 May 2020**

CCJ CALLS FOR SENTENCING GUIDELINES IN CHILD SEXUAL OFFENCE CASE

Port of Spain, Trinidad and Tobago. In a judgment released today, the Caribbean Court of Justice (CCJ) allowed the appeal and thus reduced the sentence in the child sexual offence case of *Linton Pompey v The Director of Public Prosecutions [2020] CCJ 7 (AJ) GY*. The Court, which consisted of the full bench of all seven Judges, also stressed the need for sentencing guidelines to be developed and published by the Judiciary of Guyana.

Mr. Pompey was convicted on September 21, 2015 of three sexual offences against his niece, who was 14 years old at the time of each offence. The Trial Judge passed sentences of 5 years for the sexual assault and 15 and 17 years for the first and second rape convictions respectively and ordered that the sentences run consecutively. Therefore, Pompey's total prison time would have eventually amounted to 37 years. The Court of Appeal dismissed Pompey's appeal against both his conviction and the sentences imposed on him. The Court of Appeal noted that it was important to send a strong message that sexual offences, particularly rape, of child family members would not be tolerated.

The CCJ only gave Pompey permission to appeal his claim that his sentences were too severe. The Court agreed unanimously that the overall prison time of 37 years was excessive. However, the Court was divided as to how that time should be reduced. The majority opinion was delivered by CCJ President, the Honourable Mr. Justice Saunders, on behalf of himself, the Honourable Mme Justice Rajnauth-Lee and Messrs. Justice Barrow, Burgess and Jamadar. They noted that although it was open to the Trial Judge to order consecutive sentences as the offences arose from separate incidents, the Trial Judge did not sufficiently consider that the resulting combined sentence would be excessively high. The Trial Judge could have imposed a sentence for the second rape, the most serious offence, that fairly reflected the offender's overall criminality. In this way, Pompey would have served the lesser two sentences simultaneously with the sentences given for the second rape. In applying this option, the majority held that the sentence of 17 years passed for the second rape was neither so lenient nor so harsh that it warranted being set aside by an appellate court. The majority, therefore, did not adjust that sentence but ordered that the other two sentences be served at the same time with it, resulting in an overall sentence of 17 years.

In separate concurring opinions, Mme. Justice Rajnauth-Lee and Mr Justice Jamadar focused on the alarming prevalence of sexual offences against children and the robust approach that was required in respect of sentencing for such offences.

Messrs. Justice Wit and Anderson, in their joint dissenting opinion, considered that appellate courts are given wide powers to review sentences. As the cumulative 37 years in prison was excessive, the sentences imposed should be replaced by sentences that were warranted in all the circumstances of the case. These two judges considered that the sentences should accordingly be replaced with 9 years for the second rape, 6 years for the first rape, and 9 months for the sexual assault conviction. They would also have ordered that these sentences run concurrently.

Mr C.A. Nigel Hughes and Mr. Ronald Daniels appeared for Mr. Pompey. Mrs. Shalimar Ali-Hack SC, Director of Public Prosecutions, Mrs. Teshana Lake and Ms Natasha Backer appeared for the State.

The full judgment of the Court and a judgment summary are available on the Court's website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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