[2015] JMSC Civ 64

IN THE SUPREME COURT OF JUDICATURE

THE CIVIL DIVISION

CLAIM NO. 2013 HCV 06101

BETWEEN	**TROY GILBERT**	**APPLICANT**
AND	**REGINA**	**RESPONDENT**

IN OPEN COURT

Mrs. Emily Crooks, Attorney-at-Law for the Applicant.

Mrs. Andrea Martin-Swaby and Mr. Joel Brown instructed by the Director of State Proceedings for the Respondent.

Heard: 10th, 11th December 2014 & 7th January 2015.

Application for review of an inmate held at the Court's Pleasure – Part 75 of the Civil Procedure Rules – Section 7(7) of the Parole Act – Whether the Applicant should be released unconditionally or on parole with conditions – The court orders the Applicant to be released unconditionally.

CAMPBELL J,

Facts and Background

[1] The Applicant, Mr. Troy Gilbert, is an inmate at the Saint Catherine Adult Correctional Centre. He was convicted of Capital Murder of Mr. Hubert Gordon in the Home Circuit Court on 4th November 1996. The murder was committed at Mount Charles District, Mavis Banks, Saint Andrew. At the time of the commission of the offence, the Applicant was seventeen (17) years and eight (8) months. He was later sentenced to be held at the Governor General's pleasure.

[2] On 23rd July 2007, the Court of Appeal quashed that sentence and ordered, that Mr. Gilbert should be held at the Court's pleasure. In so doing, the Court of Appeal, followed the decision of the Judicial Committee of the Privy Council in **The Director of Public Prosecutions v Mollison (Kurt)** (No.2) (2003) 62 WIR 268, which

declared the unconstitutionality and unlawfulness of being held at the Governor General's pleasure.

[3] The Applicant has been imprisoned for eighteen (18) years and this is his third application for review of his status by virtue of **Part 75 of the Civil Procedure Rules (CPR)**. Applications for review were made in October 2007 and subsequently in May 2011. These applications were dismissed with recommendations.

[4] In the 2007 application, Miss. Justice Beckford, in refusing the application, made the following recommendations;

> "*a) That the Applicant be permitted to pursue any one of the several skills training programmes offered at the institution; and*
>
> *b) Continue his academic studies up to CXC or "0" level examinations level or any other examination within his capacity;*
>
> *c) Not to be eligible to renew his application for another seven (7) years."*

[5] In 2011, Miss. Justice Williams, after considering the renewed application recommended the following;

> "a) *That the Applicant continue his academic studies up to a level where he can do some examination within his capacity.*
>
> *b) That he pursues one of the several skills training programmes offered at the institution.*
>
> *c) That the Applicant be subjected to a period of counselling sufficient to ensure that his rehabilitation is completed.*
>
> *d) Not to be eligible to be released on parole or otherwise for another five (5) years.*"

The Statutory Framework

[6] Pursuant to section 4(d) of the **Parole Act**, the Parole Board is required to inter alia;

> *"review the cases of inmates serving life sentences or inmates in respect of whom a sentence of death has been commuted to life imprisonment, for the purpose of determining whether or not to grant parole to such inmates."*

The function of the Board constituted under the **Parole Act**, is to consider whether the inmate should remain or be released with or without conditions. Section 6(4) of

the **Parole Act**, provides for an inmate who was sentenced to life imprisonment, or had the death sentence commuted, to be considered eligible for parole after seven (7) years.

[7] A person who was sentenced to life imprisonment or a period of fifteen (15) years, for certain offences under the **Firearms Act** and under the **Offences Against the Person Act**, in which a firearm is used namely wounding with intent, would not be eligible for parole until a period of ten (10) years had passed. In case of a person committed of murder, before the 18th February 2005, and sentenced to life imprisonment, on the expiration of ten (10) years or the period prescribed by the court before the inmate becomes eligible for parole, the Board shall review the case and may grant or refuse parole.

[8] Section 7(7) of the **Parole Act**, provides;

> "*The Board shall grant parole to an Applicant if the Board is satisfied that -*
>
> *(a) he has derived maximum benefit from imprisonment and he is at the time of his application, fit to be released from the adult educational centre on parole;*
>
> *(b) the reform and rehabilitation of the Applicant will be aided by parole; and*
>
> *(c) the grant of parole to the Applicant will not in the opinion of the Board constitute a danger to society."*

[9] The **Parole Act**, makes provision for the Board to; *"allow him to leave the adult correctional centre in which he is serving a sentence and to spend a portion of the period of that sentence outside of the adult correctional centre".* The parole can be revoked or suspended, in which instant the sentence of the court is resumed. Suspension may be ordered if the parolee is being investigated for offences, or if conditions of the parole are breached. Revocation can be ordered in light of public interest. Section 11 (2) of the **Parole Act** provides for the assessment of the period on his return to the institution in computing the date of expiration of his sentence, when a parolee has his parole revoked or suspended.

[10] Section 29(1) of the **Juveniles Act**, enacted in 1951, now repealed, prohibited the pronouncement of death on a prisoner under age eighteen (18) years and mandated that instead, "*the court shall sentence him to be detained at Her Majesty's pleasure*." The law in Jamaica was that there was no jurisdiction in a court to pass the sentence of death upon a prisoner convicted of a capital offence if he was under the age of eighteen (18) years at the time of the commission of the

offence. (See; **Maloney Gordon v The Queen** (1969) 11 JLR 420, a decision of the Judicial committee of the Privy Council).

[11] Similarly, section 29(2) of the **Juveniles Act**, provided that; "*No juvenile shall be sentenced, to imprisonment, whether with or without hard labour*." The Privy Council in **Director of Public Prosecutions v Mollison (Kurt)** (No.2) (2003) 62 W.I.R 268, held that detention at her Majesty pleasure was unconstitutional and was in contravention of the principle of separation of powers that was enshrined in the Jamaican Constitution, because sentencing is a judicial function.

[12] **Part 75 of the CPR**, provides for an application for review of inmates held at the court's pleasure. This is not a review of the decision to detain the inmate or of any decision that may have been made on prior applications; it is instead a review of the inmate himself. The review is done in order to determine his suitability for the grant of parole. **Part 75.2(3) of the CPR** prescribes as a general rule that a period of five (5) years should have elapsed before the first application is made. However, **Part 75.2(4) of the CPR**, makes a period of two (2) years the generally required minimum within which an Applicant is permitted to resubmit an application. Exceptionally that period may be lessened.

[13] Section 3(1) of the **Offences Against the Persons Act**, provides that, every person who is convicted of capital murder shall be sentenced to death or imprisonment for life. For non-capital murder the sentence shall be imprisonment for life or such other term that the court considers appropriate not being less than fifteen (15) years. Section 3(1C) of the said Act, stipulates the eligibility for parole, where the court imposed a sentence of life imprisonment on a person convicted of capital murder. In capital murder cases, Section 3(1C) in effect stands in substitution of Section 6(1) to Section 6(4) of the **Parole Act**. It provides for a period of twenty (20) years in respect of capital murder, where life imprisonment is imposed for murder. The period of fifteen (15) years is the relevant period before any other imposition of life imprisonment; and for any other imposition of life sentence, a period of ten (10) years.

The Application

[14] By way of an Amended Relisting Notice of Application for Court Orders filed and dated 14th February 2014, the Applicant who is currently held at the Saint Catherine Adult Correctional Centre seeks the following Orders;

1. That the Applicant be released unconditionally; or
2. That the Applicant be released on Parole with conditions; or

3. Such further Orders as this Honourable Court deem fit.

[15] The grounds on which the Applicant is seeking these Orders are as follows:

1. The Applicant was convicted for Capital Murder on the 4th November 1996.
2. The Applicant was sentenced to be held at the Governor General's pleasure, such sentence was changed and the Applicant continued to be held at the Court's pleasure.
3. More than five (5) years has elapsed since the detention of the Applicant at the Court's pleasure.
4. The Applicant made two previous applications, the second of which was refused in 2011.
5. No application for review has been made in the past two (2) years.
6. The Applicant has been in custody for over twelve (12) years and has been sufficiently punished for the crime for which he was convicted.
7. The Applicant has been rehabilitated and is not a danger to society.
8. Pursuant to Civil Procedure Rules 75.6 this Honourable Court has power to grant the Orders sought.

Analysis and Findings

[16] An application for release under **Part 75 of the CPR**, is part of the sentencing process. The constitutional guarantees of a criminal trial which must be conducted in public by an independent and impartial tribunal are therefore relevant to the proceedings. The application constitutes the third application by the Applicant for his release pursuant to **Part 75 of the CPR**. The Applicant had been sentenced, on the 27th November 1996, to be detained at the Governor-General's pleasure. However, as a result of the decision of the Judicial Committee of the Privy Council, in **Director of Public Prosecutions v Mollison (Kurt)** (No.2) (2003) 62 W.I.R 268, such a sentence was declared to be unconstitutional as it contravened the principle of separation of powers. Sentencing being a judicial function, it was felt it should be dealt with by the Judiciary, and not the Executive. Consequently, the Applicant was detained at the Court's pleasure.

[17] The applications were refused, in 2007 and 2011 respectively. On both occasions, the Court made recommendations. It is no part of this Court's jurisdiction to review,

these decisions, and I respectfully concur with the comments of Miss. Justice Paulette Williams, on the second application, "*that this application is not a review of the one dismissed by Ms. Justice K Beckford on October 31st, 2007. It is a fresh application to be fully considered on is merit*."

[18] What it clear is that the evidence which was adduced at this hearing and at the application before Miss. Justice Paulette Williams, was directed in large measure at addressing concerns raised in recommendations previously made. Those recommendations were geared to assist the Court, in following the statutory guidelines, in determining the suitability of the Applicant, pursuant to the **Parole Act**, for the grant of parole. At paragraph 38, of her written reasons, Ms. Justice Williams, says; "*ultimately in considering whether the Applicant should be released, it is accepted that Section 7 of the Parole Act should provide guidance*." Mrs Justice McDonald-Bishop, in considering whether the suitability of an Applicant who had committed murder whilst a juvenile, said; "*I have also found to be a useful starting point on the question, Section 7 of the Parole Act of Jamaica*..." (See; **Regina v The Director of Correctional Services, Ex Parte Garfield Peart,** Supreme Court, Claim No. 2009 HCV 02240, delivered on the 24th June 2009).

[19] The **Parole Act**, provides for the process to be followed, for the grant or refusal of an application for parole, by an inmate in an adult correctional institution to spend a portion of that sentence outside of the institution. However, there are distinctions between the inmate to which the **Parole Act** is specifically aimed and the Applicants who fall under the regime provided for under **Part 75.6 of the CPR**.

[20] The most important point of departure is that the inmate under the **Parole Act** has had a determinate sentence prescribed on him. This sentence may have been prescribed by the sentencing court, or provided for by the Act. Section 2 of the **Parole Act** defines, "parole", as follows;

> *"means the authority granted to an inmate under the provisions of this Act to leave the adult correctional centre **in which he is serving a sentence** and to spend a portion of the period of that **sentence** outside of the adult correctional centre."* [**Emphasis provided**].

[21] The regime of the **Parole Act** expressly excludes persons detained under a sentence of the **Juveniles Act**, from the grant of parole. Section 2 of the **Parole Act** defines, "sentence" as follows;

> *"means any sentence of imprisonment, whether with or without hard labour, **but does not include** a sentence of preventive detention **or the detention of a person***

> ***sentenced under the Juveniles Act****, whether or not serving the sentence in an adult correctional centre;"* **[Emphasis provided].**

[22] The distinction between the regimes for the grant or refusal of parole as provided by the **Parole Act** and the procedure to be followed for release under **Part 75 of the CPR**, underlines the difference in status of the respective Applicants. Under the **Parole Act**, the inmate has already been sentenced pursuant to the judicial process, and all that follows is for an executive decision to be made as to whether he should be released or not. The Board hearings are held *in camera*, and the Applicant has no right of appearance at the hearing.

[23] On the other hand, the inmate detained at the Court's pleasure is awaiting an adjudication to determine the duration of his detention. In respect of the inmate awaiting the court's pleasure it is an indeterminate period. It is not a sentence of the same kind as a mandatory life sentence. Detention at the Court's pleasure involves an authority to detain indefinitely.

[24] The Full Court of the Supreme Court, in the matter of Claim No. 2008 HCV 05481 **Neville Whyte v Attorney General**, delivered on the 3rd June 2009, in examining a complaint of an inmate; that a Judge of Appeal, who was empowered pursuant to Section 5(A) of the **Parole Act** to determine whether the inmate had to serve a period of more than seven (7) years before he became entitled to parole, had so delayed the delivery of his determination, that the inmate suffered prejudice. The Amendment to the **Offences Against the Person Act**, substituted the minimum periods in the amendment for those in Section 6 of the **Parole Act**.

[25] The inmate sought certiorari to quash the decision of the learned Judge of Appeal and declaration that the said decision contravened his rights to a fair hearing within a reasonable time pursuant to Section 20(2) of the **Constitution of Jamaica** and declaration that the Applicant is entitled to have his application heard and determined by the Parole Board. The Full Court accepted the submissions of counsel for the inmate, Lord Gifford, Q.C. that the Judge of Appeal, was not acting in a judicial capacity but was a "*statutory authority exercising an administrative function*", and granted the declarations that the order of the Judge of Appeal, was null and void. (See; also **Albert Huntley v Attorney General for Jamaica & Anor.** (1994) 46 WIR 218).

[26] The procedure at the review, pursuant to **Part 75 of the CPR**, is not an administrative function, but a judicial act. The procedure allows for the application to be represented by an attorney or other person. The Registrar of the Supreme Court

shall appoint an attorney or any other person, with the consent of the Applicant if, none is appointed within fourteen (14) days of the notice. The application will be heard by a single Judge, who may sit in Chambers, when the Applicant is under eighteen (18) years or when justice requires it. The Judge may conduct the hearing in the manner he considers suitable to clarify the issues before him, and should explain at the beginning the order of the proceedings he will undertake, which may be, he will admit documents or information that would be inadmissible in a court of law, as allowed by the rules.

[27] Under the review proceedings provided for by **Part 75 of the CPR**, the Applicant and all other parties shall be entitled to attend and take part in the proceedings as the Judge consider appropriate. The parties are not defined for the purposes of **Part 75 of the CPR**. The Registrar is obliged to serve the documents filed in the application on the Director of Public Prosecutions. The Superintendent of Prisons is obliged to serve his report and the Psychiatrist report, within thirty (30) days of the filing of the application.

[28] In the United Kingdom, **The Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise** provides that prosecuting advocates should be in a position to assist the court by outlining those factors that bring the case within the suitable starting point and drawing the court's attention to relevant aggravating and mitigating circumstances, appropriate authorities, or sentencing guidelines, cases and any victim personal statements given by the victim's family. Those guidelines are relevant, to sentencing proceedings pursuant to **Section 3 (IE) of the Offences Against the Person Act**, which mandates that before sentencing for capital murder or murder, the court should hear from both prosecution and defence, submissions, representations and evidence. When those offences are being dealt with pursuant to **Part 75 of the CPR**, that mandate remains.

Sentencing Principles

[29] The law is well settled as it relates to the sentencing of a person held at the court's pleasure. In **Reg. v Secretary of State for the Home Department, Ex Parte Venables and Thompson** [1998] A.C. 407, it was noted that such sentence is wholly discretionary. Lord Browne Wilkinson explained at page 498:

> *"...detention during her Majesty's pleasure is wholly indeterminate in duration: it lasts so long as her Majesty (i.e. Secretary of State) considers appropriate. ... [It is] not a sentence of the same kind as the mandatory life sentence*

imposed on an adult murderer, the duration of which is determined by the court and is for life. ***In cases of detention during her Majesty's pleasure the duty of the Secretary of State is to decide how long that detention is to lasts, not to determine whether or not to release prematurely a person on whom the sentence of the court is life imprisonment."*** **[Emphasis added].**

(*See also; the judgment of McDonald-Bishop J, in* ***Regina v The Director of Correctional Services, Ex parte Garfield Peart****).*

[30] In **V v United Kingdom**, (Application No. 24888/94, ECHR 171, 16 Dec 1999) the European Court of Human Rights (ECHR) reviewed the sentencing of a child, who had been detained at Her Majesty's pleasure. The trial judge, had sentenced the offender to be detained at Her Majesty's pleasure. The judge subsequently recommended that, a period of eight (8) years, be served to satisfy the period of retribution and deterrence. However, the Chief Justice recommended a period of ten (10) years. The trial judge was of the view that had the offender been an adult, the appropriate period would be eighteen (18) years. The Secretary of State, had regard to the recommendations of the trial judge and the Chief Justice, but felt that the case was particularly cruel and if the offender had been an adult at the time of its commission, the appropriate tariff, would have been twenty-five (25) years and not eighteen (18) years as decided by the trial judge. The Secretary of State then fixed a period of fifteen (15) years as the tariff for the offender. The offender sought judicial review of the decision of the Secretary of State, on the grounds that the sentence was disproportionate and due regard was not given to his rehabilitation. The House of Lords' decision resulted in a change of policy by the Home Secretary, that in the future, the sentence would be kept, under review in light of the offender's progress and development.

[31] The decision of the European on Commission Human Rights, examined the judgment of the judicial review court and referred to Lord Hope's judgment, on the question of the judicial nature of sentencing of a person who is detained at Her Majesty's pleasure, which pursuant to our constitutional principles of separation of powers remains to be executed by the Judiciary. The judicial nature of the exercise of sentencing of someone detained at the court's pleasure, can be no less. Lord Hope identifies two (2) important components of that judicial exercise, which are as follows;

> "*But the imposition of a tariff, which is intended to fix the minimum period in custody is, in itself, the imposition of a form of punishment. This, as Lord Mustill observed in* ***R v Secretary of State for the Home Department, ex parte Doody*** *at p. 557A-B, '****the characteristics of an orthodox judicial exercise, which is directed to the circumstances of the offence and those of the offender and to what, having regard to the requirements of retribution and deterrence, is the appropriate minimum period to be spent in custody.'*** *The judge, when advising the Secretary of State about the tariff, must and does confine his attention to these matters."* **[Emphasis provided]**.

[32] There is a need to have regard to the child's development and progress, in the statutory regime of **The Childcare and Protection Act,** 2004 which defines a child as anyone under the age of eighteen (18) years, and has as one of its objects at Section 3(d), "*to recognize the special needs of children in conflict with the law*". The Applicant was four (4) months away from the age of eighteen (18) years. The younger the child, the greater the need for a close attention to be paid to his progress and development.

[33] In **Benjamin v R** (1964) 7 WIR 459, Wooding C.J. of the Court of Appeal of Trinidad and Tobago, at that time, accepted as correct a statement in the **Modern Law Review of September 1964** that there are really five objects which comprise the aims of punishment, which are as follows;

1. *Retribution, which is a recognition that punishment is intended to reflect the denouncement by the society and legislature of the offence and the offender;*

2. *Deterrence vis à vis potential offenders, the offender must be punished appropriately to deter other like-minded offenders from engaging in that form of deviant behaviour;*

3. *Deterrence vis à vis the particular offender, here, the purpose is to seek to ensure that the offender himself is deterred from future criminal conduct by the punishment inflicted on him;*

4. *Preventive, this is aimed at preventing the particular offender from offending against the law by incarcerating him; and*

5. *Rehabilitation, the aim is to rehabilitate the offender so that he may reform his ways to become a contributing member of society."*

[34] In determining the inmate's suitability for release, the review is required to examine two components of the sentencing procedure. Lord Mustill, described these components in **V v United Kingdom,** as follows;

> *"As will appear, the law and practice have more recently developed in a way which attaches great importance to the composite nature of the discretionary life sentence, and now requires that in the great majority of cases* ***the judge will quantify and announce the penal element and will thereby fix directly the minimum period in custody*** *which the offender must serve****, before the question whether it is safe to release him becomes decisive.*** *Although it is comparative novelty this regime conforms very well with the rationale of the discretionary life sentence and, as it appears to me, is fair, practical in operation and easy to comprehend."* **[Emphasis provided]**.

[35] Firstly, the retribution and deterrent phase of the sentence and, secondly, the element of public risk, that is, the consideration whether the inmate release would constitute a danger to the public. The first of these two limbs is penal in nature. This seeks to address the gravity of the crime, sometimes called a tariff, it seeks to measure the damage done and exacts that from the inmate. It attempts a punishment proportionate to the crime. It is therefore one of a determinate number of years, a penal element, which may be regarded as being, what Lord Mustill calls "*appropriate to the nature and gravity of the offence"*. The second component, is "*the risk element*", which calls into examination the suitability of the offender for release; the danger the inmate's release would pose to the public. These two periods are to run consecutively. (See; **R v Secretary of State, ex parte Doody**, [1993] UKHL 8, delivered on the 24th June 1993).

[36] As it relates to the retributive and deterrent element, in considering the minimum period that the offender will remain in custody, consideration will be given to the gravity of the offence, the number of victims involved, whether the offence was aggravated, for example, by an invasion of the victim's home, whether the murder was motivated by any religious, racial or ideological cause, was the murder done in furtherance of another criminal offence and has the offender been sufficiently punished?

[37] The **British Sentencing Guidelines**, lists some five (5) categories for murder, with corresponding sanctions attached. Based on a categorisation that range from (a) exceptionally high seriousness, in respect of the highest; a term of whole life sentence, to a minimum period of thirty (30) years, (b) through particularly high seriousness, (c) a murder committed in circumstances where the offender brought a knife or other weapon to the scene, not including a gun, that merits a minimum sentence of twenty-five (25) years, (d) in other circumstances outside of those specifically enumerated, if the offender is over eighteen (18) years, a minimum period of fifteen (15) years. If the offender was under the age of eighteen (18) years, a minimum sentence of twelve (12) years would be applied. The offender who is under eighteen (18) years, even if the features of his offence fall within the exceptionally serious or any of the other categories, the minimum sentence applicable is twelve (12) years.

[38] The Applicant was convicted of capital murder, a killing committed in furtherance of a robbery. **The Offences Against the Persons Act** provides for the imprisonment for life with the court specifying a period of not less than twenty (20) years which that person should serve before becoming eligible for parole. Counsel for the Crown submitted that since the Applicant was not sentenced under the **Offences Against the Person Act** and as such he is not required as a rule to serve the full twenty (20) years before being eligible for parole merely because it was capital murder.

[39] Counsel for the Applicant, indicated that the application before the court is for an Order for the court to release the Applicant either unconditionally; or on parole with conditions. She submitted that **Part 75.2 of the CPR,** which is post the **Kurt Mollison** decision facilitates these kinds of application. The Applicant at the time of the offence was four (4) months away from his majority. Although he was not sentenced pursuant to the **Offences Against the Persons Act**, the sentencing provisions is a worthwhile guide that should only be departed from in exceptional circumstances. In any event, the sentencing provisions, of the **Offences Against the Person Act**, is substituted pursuant to the amendment of 2005, for the provisions of Section 6(1) to 6(4) of the **Parole Act**. I find the British sentencing guidelines instructive, it provides for, the circumstances, as is faced by this court, where an offender, was under eighteen (18) years at the time of the commission of the offence, and his conviction falls in the most serious category. For an adult offender that would have required a sentence of a minimum period of thirty (30) years. In respect of the child, the applicable period is a minimum period of twelve (12) years. There is no such sentencing guideline, in this jurisdiction. The judge therefore has a discretion dependent on the age of the offender to fix, the determinate period which would be considered appropriate to address the nature and gravity of the offence.

[40] The Applicant had stated that he was influenced in the commission of the offence. Counsel excerpted his statement, in paragraph 13 of Miss. Justice Williams' judgment;

> "*Him say him ah go kill mi if mi noh do it, and mek mi tek up di block and mi lick him pon di side of him face wid it. Godfrey say mi must search Mass Hubert pocket and mi search him and mi find a bungle a twenty dollar and him search him two pockets a di back and tek out Mass Hubert billford. Mi show him di twenty dollar bill dem wey mi tek out and him grab it from mi."*

[41] The Applicant had not gone to the scene with any weapons. The feared gun was not the weapon used in this offence. It is noteworthy that the sentencing provisions of the **Offences Against the Persons Act**, positions offences committed with a firearm at the higher end of the sentencing regime. The Applicant had been taken to the police station shortly after the offence and had readily admitted his role in the commission of the offence. The Applicant was in custody shortly after the commission of the offence, and in custody for almost two (2) years before his conviction. In these circumstances, I would think that a period of eighteen (18) years would provide the necessary deterrence and retribution and be an appropriate period to address the nature and gravity of this offence.

The public risk factor

[42] The periods prescribed in the two components of the sentence, are to run consecutively. The second of the components, the risk posed to the public, by the release of the offender, will only arise if the custodial period that the offender has served is at least appropriate to address the deterrent and retributive aspect of the sentence. The latter of the questions, the public risk factor, is the preeminent consideration of the sentencing hearing. The question is, whether it is safe to release the Applicant. The evidence that was adduced before me was substantially directed at answering this question. Section 7(7), of the **Parole Act**, is a good starting point, in determining this issue.

[43] Crown Counsel, on behalf of the Respondent, conceded that he would be hard pressed to argue that the Applicant has not made the most or derived the maximum benefit from imprisonment. The Applicant entered the penal system illiterate and devoid of any trade skills, he is now functionally literate, and demonstrated this to my satisfaction. The Applicant has performed creditably in subjects that he has studied whilst in prison and was awaiting the results of external examination. The Staff Officer in charge of the educational programme, is of the view, that the Applicant has done well. He noted the Applicant's eagerness to learn and his great

interest in school. He commends the Applicant, on being one of the best behaving of the inmates and opined that there is very little else that the institution can do to help him.

[44] He has acquired training in tailoring, and testified he was responsible for the pants in which he was outfitted in court. There are other glowing recommendations from members of the penal institution which speaks to the Applicant's social and religious development. The Social Enquiry Report, prepared after visits to the community, from which both the Applicant and the deceased came, and which was also the location of the offence revealed that the Applicant was remembered as being generally quiet, easy going and respectful to the community elders. There was an indication of a willingness to accept the Applicant, should he return as a member of their community. The relatives of the deceased have long left the community. The Applicant's family has been supportive of him and made tangible efforts to facilitate, his return to the family home. As such, in the assessment and recommendation provided by the Aftercare Officer, it was noted that the Applicant stands to be of greater benefit to the society outside a Correctional Centre than within.

[45] The Chaplin, at the institution responsible for offering spiritual guidance, testified that the Applicant was remorseful, and was of the view that the Applicant, was ready to be admitted to Parole. The Applicant, has impressed him with his involvement in a programme, called "*Hush the guns*", that was geared to deter young men in particular, from involvement in crime and to encourage peaceful resolution of conflict. The Court was satisfied that it was safe to rely on the witness called in support of the application, as also, on the documents and reports, which were received into evidence. The Court accepted the witnesses who testified of the remorsefulness of the Applicant for his involvement in the offence. The Court was satisfied that the further development and rehabilitation of the accused could not be achieved in custody, that he had positively exhausted all that the correctional institution had to offer. That the skills he had acquired, had benefitted him and will enable him to successfully transition into society.

[46] The Applicant impressed me as being deeply remorseful of his participation in the commission of the offence. I find that he has developed skills in the avoidance of conflict which will put him in good stead on his return to civil society. He has displayed over the years a respect for authority. I am satisfied that his conduct over the last eighteen (18) years, as evidence in this court leads irresistibly to the conclusion, that to release the Applicant, will provide no danger to the public.

[47] There was one other point that was raised in relation to the recommendation of Miss. Justice Williams, that the Applicant should not reapply under five (5) years.

Counsel submitted that the learned Judge had no authority to recommend that no further application be made within five (5) years of the Order of the Court, because **Part 75.6 of the CPR** allows the Applicant to reapply to the court for a review not less than two (2) years after the previous application; in exceptional cases, a shorter time period is allowed. This court is satisfied that the Applicant has served the period of deterrence of 18 years imprisonment. The court is also satisfied, that the Applicant has been sufficiently rehabilitated, does not constitute a danger to society and it is fitting for his detention to cease.

In light of the circumstances and the evidence presented before the court, the court hereby Orders;

1. That the Applicant be released unconditionally.