



[2024] JMSC Civ. 20

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022CV03518

BETWEEN

C.C.

APPLICANT

AND

REX

RESPONDENT

IN OPEN COURT AND IN CHAMBERS VIA VIDEO CONFERENCE

Mrs. Dian Watson and Mr. Brian Forsythe instructed by the Legal Aid Council appeared for the Applicant

Mrs. Lenster Lewis-Meade and Miss Ashley Innis instructed by the Office of the Director of Public Prosecutions appeared for the Respondent

Miss Stefany Ebanks and Mr. Rushane Clarke watching proceedings for the Department of Correctional Services

Heard: 2nd and 23rd March; 25th May; 8th June; 13th July; 5th October and 7th December 2023; 18th and 25th January and 8th February 2024

Criminology – Detention – Review of Inmate Held at the Governor General’s Pleasure – Mentally Disordered Applicant – Applicant Deemed Detained at the Court’s Pleasure – Jurisdiction of the Court to Review Detention – Whether Applicant should be released unconditionally

L. PUSEY J

- [1] Due to the circumstances of this case and to guarantee the Applicant an equitable chance at societal reintegration, initials are used to safeguard the identity of the Applicant and his family.

INTRODUCTION

- [2] Like the Applicant in the case of **B.C.C. v Rex** [2023] JMSC Civ. 216, this Applicant, is a fortunate man. His fortune stems not from any intervention by the Court or the State, but from the presence of supportive family who are capable and willing to aid him during this phase of his life. Despite the Applicant’s lengthy detention at the

Governor General's pleasure spanning over four decades, it is evident that his familial ties have endured and remained steadfast throughout the years.

- [3] C.C. is one (1) of fourteen (14) persons brought before the Court by the Legal Aid Council for their circumstances of detention to be reviewed for possible release. The Court has to determine whether these persons are suitable to be released. In doing so the Court must be satisfied that the person being considered for release is not a danger, either to themselves or society. Additionally, that the person is released into circumstances that can appropriately and adequately address their needs in terms of accommodation and medication.
- [4] Therefore, one of the foremost responsibilities of the Court when evaluating these issues is to ascertain whether the proposed circumstances for the Applicant warrants release and if there is adequate accommodation available for them post-release.
- [5] In its earlier judgment of **B.C.C. v Rex** *supra*, at pages 2-3, the Court delineated the scarcity of resources, both private and public, available in the country to facilitate the release of inmates akin to the Applicant. Within that ruling, the Court scrutinized the responsibilities and deficiencies of both the Court and state institutions in handling inmates facing circumstances similar to the Applicant's. The Court continues to endorse those observations and incorporates them here.
- [6] The Applicant having been arrested and charged for Murder was determined by a Judge to be unfit to plea based on medical information presented to the Court and was detained indefinitely at the Governor General's pleasure on the 13th day of October 1982. Subsequently, such detention was declared to be unconstitutional. Inmates being held at the Governor General's pleasure needed to apply to the Governor General to have their detention substituted for detention at the Court's pleasure by the Court of Appeal (see: **Director of Public Prosecutions v Mollison (Kurt) (No. 2)** [2003] 62 WIR 268 and **R v The Director of Correctional Services, ex parte Garfield Peart** (unreported), Claim No. 2009HCV02240, Supreme Court of Jamaica, delivered on July 24, 2009).

- [7] Mechanisms were promptly put in place following the decision of **Director of Public Prosecutions v Mollison (Kurt) (No. 2)** *supra* for the review of indefinite detentions. Such mechanisms included the inclusion Part 75 of the Civil Procedure Rules and the issuance of a Practice Direction re Mentally Ill Persons dated March 5, 2001. Nonetheless, this is the first time since the Applicant's detention that he is being placed before the Court for his detention to be reviewed.
- [8] Exercising its inherent supervisory jurisdiction, the Court made Orders on the 8th day of February 2024 for the temporary and conditional release of C.C. into the care of his relatives, T.D. and M.D.C. Further, having promised to provide its reasons in writing, the Court now honours that commitment.

BACKGROUND

- [9] On the 21st day of November 2022, the Applicant filed a Notice of Application for Review of Inmate Held at the Governor General's Pleasure. The Applicant sought the following Orders:
1. That the Applicant's term of detention be substituted to the convenience of the Court in lieu of the Governor General;
 2. That the Applicant be released unconditionally; or alternatively
 3. That the Applicant be released on parole with condition; and
 4. Any such and further relief this honourable court sees fit.
- [10] The Applicant sought these Orders on the following grounds:
1. The Applicant was charged for the offense of Murder
 2. The Applicant has been detained at the Governor General's Convenience for over thirty-nine years.
 3. The Applicant has made no application for review in the past two years or at any other time.
 4. The Applicant has been in custody for 39 years and has been sufficiently punished for his crimes.

5. The Applicant has been diagnosed with schizophrenia and he has grown old and frail, during his detention, and no longer poses a threat to the society.
6. The detention of the Applicant at the Governor General's pleasure creates a constitutional inconsistency in light of the doctrine of separation of powers.

[11] The Notice of Application was supported by the Affidavit of Mr. Brian Forsythe, also filed on the 21st day of November 2022.

[12] During the Case Management of the Application, the Court Ordered that the Applicant file several documents which would aid the Court in considering the Application. In compliance with these Orders, the Applicant filed the following:

- (i) Psychiatric Report;
- (ii) Superintendent Report;
- (iii) Social Enquiry Report;
- (iv) Certified Copy of the Warrant of Committal; and
- (v) Report from DCS regarding the suitability of the intended accommodation and means of the relatives ("Means Report")

[13] Additionally, the Court also sought, an Affidavit that outlines the arrangements to be made should the Applicant be released from custody. In furtherance of this, the Affidavit of T.D. and M.D.C was filed on the 5th day of December 2023 and Supplemental Affidavits of both persons were filed on the 19th day of January 2024.

The Affidavits included information in relation to:

- (i) Where the Applicant would reside?
- (ii) Who would be responsible for the Applicant and his maintenance?
- (iii) How will the Applicant receive medical treatment?
- (iv) The likely costs associated with the Applicant's care and upkeep and how it would be funded.

[14] The Court duly reviewed all documents submitted in support of the Application. Nevertheless, it will refrain from exhaustively detailing the evidence contained within these documents. Instead, it will selectively highlight pertinent information from each document, if needed, to justify or elucidate its decision on specific issues.

SUBMISSIONS

[15] The Court acknowledges and appreciates the assistance provided by Counsel in this case. Counsel made both oral and written submissions, both of which were carefully reviewed by the Court. These submissions will be referenced only as is required to clarify the Court's position on a particular issue.

[16] The Court wishes to highlight that this matter was not adversarial. Counsel in the matter, most notably Counsel for the Respondent, played a constructive role in facilitating the hearing of this Application by providing suggestions to the Court regarding the appropriate course of action considering the circumstances of the Applicant.

ISSUES

[17] There are two main issues that the Court had to consider in this matter. These are:

- (i) Whether the Court has the jurisdiction to review the Applicant's detention; and
- (ii) Whether the Applicant should be released unconditionally?

LAW & ANALYSIS

Issue 1: Whether the Court has the jurisdiction to review the Applicant's detention

[18] The Court wishes to indicate that it finds that this case and **B.C.C. v Rex** *supra* are identical. Therefore, the Court is also of the view that it has the jurisdiction to review this Applicant's detention. Having previously detailed the reasoning behind this determination in **B.C.C. v Rex** *supra*, the Court adopts and endorses that same position here (see: paragraphs [24] – [37] of **B.C.C. v Rex** *supra*).

[19] The determination of the Applicant as being unfit to plea was not a determination made by a jury. In other words, a jury was not empaneled to find the Applicant unfit to plea. This means that there was an administrative decision by the Judge to have the Applicant detained at the Governor General's pleasure based on medical information made available to the Court which indicated that the Applicant was unfit to plea. Moreover, the Court in reviewing the Applicant's detention is not disturbing a sentence imposed on the Applicant by this Court. Therefore, this Court firmly believes that it has the jurisdiction to review the Applicant's detention.

Issue 2: Whether the Applicant should be released unconditionally

[20] To determine this issue, it is important that the Court carefully scrutinizes the reports and Affidavits filed in support of this matter.

Psychiatry Report

[21] The psychiatry report prepared by Dr. Stephanie Williams revealed that the Applicant is schizophrenic, but shows no signs nor has a history of violence during his detention. It also highlights that the Applicant needs medication and assistance with his daily activities. Further, it was concluded that the Applicant is not fit to plea.

Superintendent Report

[22] The Superintendent Report revealed that the Applicant has received a total of four (4) visits throughout his detention from various family members between the years of 1994 – 2018. It was indicated that the Applicant has no record of violent behaviour during his detention.

Social Enquiry Report

[23] The Social Enquiry Report was favourable. It concluded that the Applicant had proper upbringing and is seemingly harmless based on his medical issues. It was suggested that it would be fitting that the Applicant be released into the care of a family member.

The Means Report

- [24] The Means Report evaluated whether family members, whose care the Applicant would be released into could afford specific arrangements made for the Applicant should he be released. The Means Report assessed the family's finances and in the Court's view noted that with their collective efforts, the family could afford to maintain the Applicant. The Means Report also noted that the living arrangements were suitable in the circumstances for the Applicant.

Affidavits of T.D. and M.D.C

- [25] The Affidavits and Supplemental Affidavits of T.D. and M.D.C. indicated their ability and willingness to assist with the care and upkeep of the Applicant and that it would be a collaborative effort. This buttressed other reports which indicated that there was strong familial support.

Conclusions from the Reports and Affidavits

- [26] The Court does not take the view that mentally disordered defendants should be released unconditionally (see: paragraphs [38] – [49] of **B.C.C. v Rex** *supra*). Additionally, due to the manner in which the Applicant was detained, the conditional release of the Applicant could not properly be considered as parole (see: paragraphs [51] – [58] of **B.C.C. v Rex** *supra*).
- [27] Having reviewed the various reports filed in support of this Application, the Court believes that there need to be certain conditions imposed to ensure that the Applicant, during the course of his release, does not become a danger to himself or the society. The Court is tasked with safeguarding the well-being of the Applicant, being a vulnerable individual, to guarantee that he receives proper care and is not abandoned in destitution on the street. Hence, the Court bears a responsibility to the Applicant, the State and the general public to prevent the Applicant from being released into circumstances where he may pose a threat to society.

CONCLUSION

[28] In light of the foregoing, on the 8th day of February 2024, the following Orders were made in Open Court:

1. The Applicant, Mr. C.C., is deemed to have been detained at the Court's pleasure with effect from the date of detention, that is the 13th day of October 1982.
2. The true and correct spelling of the Applicant's name is as listed on the Warrant of Commitment committing him to the Tower Street Adult Correctional Centre on the 13th day of October 1982
3. The Applicant having been detained at the Court's pleasure since the 13th day of October 1982, is ordered to be temporarily released in the care of T.D. and M.D.C. subject to the following conditions:
 - (i) The Applicant shall reside at M.G.C. in the parish of Clarendon and shall not change residence without obtaining prior permission of the Court.
 - (ii) T.D. and M.D.C. shall be responsible for ensuring that the Applicant receives proper care and that his medication is provided and administered while he resides at M.G.C.
 - (iii) T.D. and M.D.C. will be responsible for ensuring that the necessary fees and/or costs associated with the Applicant's accommodation at M.G.C. are settled.
 - (iv) The Applicant is placed under the supervision of the Commissioner of Corrections or any Officer he shall so designate and T.D. and/or M.D.C. shall keep in touch with that Officer in accordance with the Commissioner's instruction.

- (v) The Commissioner of Corrections shall arrange for the Applicant to be visited at his place of residence by an Officer once every four (4) months within the first year of release, and thereafter once every six (6) months to ensure compliance with the Orders herein and the Commissioner of Corrections shall provide a report to the Registrar of the Supreme Court after every such visit.
 - (vi) T.D. and M.D.C. shall ensure that the Applicant has medical visits every two (2) months to ensure he receives medical treatment for his psychological afflictions for so long as is required by the attending Physician.
 - (vii) The Applicant is not permitted to leave the island of Jamaica without prior permission of the Court.
 - (viii) The Commissioner of Corrections or any Officer he shall so designate must be notified whenever the Applicant leaves his place of residence. Where the Applicant will not be at his place of residence for more than forty-eight (48) hours, the Commissioner of Corrections shall be notified of the alternative arrangements in writing. If such period is to be three (3) months or more, the Court shall be notified for Orders to be made.
 - (ix) The Court shall be notified immediately and without delay if T.D. and/or M.D.C. shall become incapacitated before the Applicant is incapacitated and in such case, the Court shall so Order that the Applicant be placed in the care of another or resume detention at the Court's pleasure.
4. The Court may vary or revoke any of the above conditions upon the recommendation of the Commissioner of Corrections or upon an Application by the Applicant.

5. The Commissioner of Corrections is empowered to see the proper enforcement of these Orders and conditions herein and in so doing, shall be guided by the Parole Act and Rules thereunder.
6. Any breach of the Orders or any condition herein must be communicated in writing to the Court without delay.
7. The Applicant shall not be released until a Formal Order is filed and signed by the Court.
8. A Formal Order is to be filed by the Applicant's Attorneys-at-Law and this Formal Order shall be signed by T.D. and M.D.C. and witnessed by a Justice of the Peace indicating that they understand the nature of the Orders herein.