

IN THE SUPREME COURT OF JUDICATURE OF

JAMAICA

CLAIM NO. 2007 HCV0709

BETWEEN	TROY GILBERT	APPLICANT
AND	REGINA	RESPONDENT

Lord Anthony Gifford, Gifford Q.C. for the Applicant
Mrs. C. Hay for Crown

Heard: 30th, 31st October, 2007

BECKFORD, J:

On the 4th June, 1994 Mr. Hubert Gordon was bludgeoned to death at his home at Mount Charles, St. Andrew. The Applicant Troy Gilbert who was born on the 29th March, 1977 was convicted of this murder on the 4th November, 1996. By virtue of his age at the date of the commission of the offence the Applicant was sentenced to be detained at the Governor General's pleasure.

Consequent on the decision of the Judicial Committee of the Privy Council in **Director of Public Prosecutions v Mollison (Kurt)** (2003) 62 W.I.R. 268 the Jamaican Court of Appeal on the 23rd July, 2007 quashed the sentence. As a result the Applicant is now being held at the Court's pleasure.

In accordance with Part 75.2 of the Civil Procedure Rules 2002 the Applicant seeks a review of his incarceration at the Court's pleasure. The orders he seeks are set out in part 75.6(1) and (2) of the Civil Procedure Rules to wit:

- a) an unconditional release or
- b) release on parole with conditions.

Part 75.2(2) of the Civil Procedure Rules 2002 states that the Application must be by notice in form XX and must be supported by an Affidavit. There is no form XX but the Applicant's application was made and supported by: –

- 1) Applicant's affidavit
- 2) Affidavit of his mother Karlene Bloomfield
- 3) Affidavit of his aunt Aldeth Wray
- 4) Superintendent's report
- 5) Psychiatric reports of Dr. Myo Kyaw Oo
- 6) Social Enquiry report and
- 7) Caution Statement of Troy Gilbert – Applicant.

At the Case Management Conference it was agreed that at the hearing the Applicant, his aunt – Ms Aldith Wray and Mr. Elton ^{Harris} ~~Parris~~ – Superintendent of the St. Catherine Adult Correctional Centre would in addition to their Affidavits and/or reports be called to give *viva voce* evidence. In addition written questions would be submitted to Dr. Oo for further report to be used at the hearing. There was full compliance with all the orders made at the Case Management Conference.

The hearing started on 30th October, 2007 and was completed on 31st October, 2007.

I looked at the circumstances of the offence for which the Applicant was convicted and sentenced, the information contained in the several Affidavits, the reports

of Dr. Oo, the probation officer and the Superintendent. I listened as well to the evidence of the Applicant, his Aunt and the Superintendent.

Having heard all the evidence as well as the submissions of Lord Gifford for the Applicant and Mrs. Hay the Assistant Director of Public Prosecutions for the Crown I made my findings.

I agree with Counsel for the Applicant that Section 7 of the Parole Act should be considered in determining whether or not the Applicant should be released on parole.

Section 7 of the Parole Act provides:

“(7) 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 for parole, fit to be released from the adult correctional centre on parole;

(b) the reform and rehabilitation of the applicant will be aided by parole;
and

© the grant of parole to the applicant will not, in the opinion of the Board, constitute a danger to society.”

As to (a) when I read the Applicant's Affidavit I was favourably impressed. But on his *viva voce* evidence it became clear that he was not an electrician not having completed any such course either before or during his incarceration. Further a simple test at the hearing proved his inability to read. It therefore begs the question whether at this level ~~he~~ would be able to go to the library to get a book to read to relieve stress as opposed to his initial statement to the doctor that he used ganja to relieve stress.

But clearly he has made some improvement, as from being illiterate when he entered the institution he has now been exposed to the use of phonetics and is making a valiant effort at reading by this method . It may be sometime before he is ready to sit GCE O'level and CXC exams as stated in paragraph 9 of his Affidavit. Since this is his stated ambition it is my opinion that he will best achieve his goal in the controlled environment in which he now is.

In this regard therefore it is my opinion that he has not yet derived maximum benefit from his imprisonment. Having heard the Aunt's evidence as well as having read her Affidavit it is unlikely that the Applicant would be encouraged to continue learning to read and write in the environment to which he would be released. He would be expected to farm and learn the trade of the Aunt's spouse which is tailoring. There is no mention of his continuing his studies.

Further now that the Applicant is an Adult if he is given a term of years then he can participate in any of the skills training programmes available in the institution.

Next, the Court looked at whether the reform and rehabilitation of the Applicant will be aided by parole. I came to the conclusion on the totality of the evidence that the reform and rehabilitation of the Applicant will not be aided by parole. I accept the report that he has been smoking ganja since before his incarceration and has continued this up to shortly before the hearing. The Applicant has said nothing about an interest in pursuing an occupation in tailoring yet this is something the Aunt has proffered, clearly without discussing it with the Applicant. The Aunt speaks of farming coffee and tailoring and the Applicant speaks of chicken farming and fish farming.

Clearly both the Applicant and his Aunt gave these prospective occupations as palliatives for the purposes of the Application as opposed to proper plans that will be implemented if the Application is granted.

The Aunt is convinced that her nephew was “framed” whilst the Applicant himself continues to “blame” someone else for his (the Applicant’s) participation in the murder.

I am not convinced that the reform and rehabilitation of the Applicant will be aided by parole.

This murder took place in the district adjoining the one in which the Applicant’s Aunt resides and where the Applicant would live were he to be released on parole. However the Aunt cannot say whether or not the deceased was popular in that district or how members of that area would feel about the release of the Applicant. Nevertheless the social report is that members of that community are “tight lipped” about any release of the Applicant at this time.

With the expressed opinion of the Aunt and the Applicant himself as well as the reluctance of community members to speak to the issue together with the fact that the Applicant is a drug abuser – smokes ganja – I am convinced that release of the Applicant at this time would not be in the best interest of either himself or the society.

So in accordance with R. 75.6(3) the Application is hereby dismissed with 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 “O” level examinations level or any other examination within his capacity. or
- c) Not to be eligible to renew his application for another seven (7) years.