



[2020] JMSC Crim 8

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIRCUIT COURT FOR THE PARISH OF ST. CATHERINE**

**HOLDEN AT SPANISH TOWN**

**INFORMATION NO. ST.**

**BETWEEN**

**REGINA**

**CROWN**

**AND**

**GEORGE WILLIAMS**

**DEFENDANT**

**Ms. Paula Llewelyn Director of Public Prosecutions and Mrs. Kemiesha Johnson-O'Connor for the Crown**

**Mr. Louis Hacker instructed by the Director of State Proceedings**

**Mr. Isaat Buchanan for the Accused**

**IN OPEN COURT**

**HEARD: July 17<sup>th</sup> & 24<sup>th</sup> 2020**

**Offence of Murder - Sections 9 and 24 of the Mental Health Act - Incarceration of mentally ill accused without trial - *Nolle Prosequi* - Principles of Problem Solving Justice**

**STEPHANE JACKSON-HAISLEY, J**

**[1]** On July 24, 2020 I dealt with the subject and made certain recommendations. I now convert my decision into writing.

## **BACKGROUND**

[2] Seventy-five-year-old George Williams first appeared before me on June 17, 2020 having spent the greater part of his life at the St Catherine District Prison. This was the first time he had faced the Court in almost fifty years. He was first incarcerated in 1970 after having been charged with the offence of Murder. He had been diagnosed as being schizophrenic and unfit to enter a plea; therefore, he was detained at the Governor General's pleasure.

The original case file was not available to the prosecution, however, the prosecution was able to discern certain material from the file which was retrieved from the St Catherine District Prison. According to the available facts, this Murder is alleged to have taken place sometime in July 1970 and the victim was a young Canadian tourist. He had been vacationing in Jamaica with his family and they were driving in a motor car through the countryside, passing through the town of Ewarton. On arriving at a certain section of the road, somewhere before Mount Diablo, it is alleged that the accused man flung a stone at their car causing damage to the windscreen. The car came to a halt and the Defendant was alleged to have approached the vehicle and thereafter proceeded to stab the victim to his death. He also caused injury to the victim's mother. Other family members of the deceased, including his father, witnessed this incident.

[3] The Defendant had been an intermittent patient at the Bellevue Hospital which houses the mentally ill. At the time of the alleged offence, he was an out-patient. He was arrested and charged for the offence of Murder and was taken before the Court in St. Catherine on a few occasions. He was assessed as being unfit to plea; however, he was never taken back before the Court until he first appeared before me.

[4] This matter came to the attention of the Court when counsel Mr. Isaat Buchanan filed an application for a Writ of Habeas Corpus Ad Subjiciendum. Among the orders sought, were orders for a Writ to be issued to have the Superintendent of the St. Catherine District Prison bring George Williams to the sitting of the St Catherine Circuit Court. In the alternative, he sought an order that George Williams be released and any

pending criminal case from 1971 be dismissed for want of prosecution. The grounds relied on included the fact that the Defendant had been in the custody of the St. Catherine District Prison since March 25, 1971, that he has not been convicted of any crime nor is there any lawful reason for him to be held in prison or for his continued detention. The application was supported by the affidavit evidence of George Williams.

**[5]** In his affidavit, he swears that he has been imprisoned without trial since around the 21<sup>st</sup> day of July, 1970 and that he was first indicted for a criminal offence on the 29<sup>th</sup> day of November, 1970. To the best of his knowledge, the Office of the Director of Public Prosecutions (ODPP) has taken no active steps since his commitment to prison in 1971 to prosecute his matter or even to ascertain if the purported witnesses are still alive and to determine whether any viable prosecution can be made from his case.

**[6]** In his time in the St Catherine District prison he asserts that he has seen multiple persons convicted of Murder serve their time and return to society whilst he sits in prison awaiting trial. He says he has not received constant psychiatric treatment during his incarceration. Further, that he was a patient of the Bellevue Hospital from 1965 and that Mrs. Velma Hylton who was then a crown counsel at the ODPP advised the prison authorities in a letter from the 1970s that he was wrongly in custody at the St Catherine District Prison and so ought to be returned to Bellevue Hospital. He asserts that he has been found fit to plea on more than one occasion, and as recent as February 22, 2020 by Doctor Barnes. His life for the last 50 years has been a living hell. He has witnessed in his more than 49 years in custody all types of death row prisoners being released from prison whilst he hopes for his day in court.

### **The Proceedings**

**[7]** The application having been brought to the Court's attention, I forthwith issued a Writ to the St Catherine District Prison to have the accused man brought before me and he was brought on the said day. He was accompanied by his file which revealed certain details. Among them was the fact that he was still assessed as being unfit to plea. The Court ordered that he be assessed by a psychiatrist and that a social enquiry report be

prepared. Counsel for the Defendant also asked that a psychiatric evaluation be done by a practitioner of their choice. The court acceded to that request and ordered that the prison authorities facilitate this process.

**[8]** Mr. Williams was brought back before me on July 24, 2020 and I then had the benefit of three important reports:

1. A psychiatric evaluation report for Doctor Myo Oo;
2. A psychiatric evaluation report from Doctor Jeffrey Walcott; and
3. A social enquiry report (SER) from the Department of Correctional Services Probation Aftercare Services.

**[9]** The Director of Public Prosecutions (DPP) expressed that in reliance on Dr. Oo's report that he is not fit to plea, they intended to discontinue the criminal proceedings against him; however, she felt that it was part of her responsibility before entering the *nolle prosequi* to ensure that certain provisions were in place in relation to the Defendant so that he would not pose a threat to society. She recommended that the Court hear from both psychiatrists and the probation aftercare officer before she indicated her position. This suggestion found favour with the Court. Both psychiatrists and the probation officer who prepared the SER thereafter gave evidence on oath and questions were posed by the Court, the DPP and counsel Mr. Buchanan.

**[10]** Dr. Oo, senior medical officer and consultant psychiatrist to the Bellevue Hospital, examined Mr. Williams on June 18, 2020. He conducted a detailed assessment of him and made certain findings. Regarding his mental status, he was found to be quite alert however, his insight and reality testing were poor. Dr. Oo opined that his memory appeared to be slightly impaired as he only remembered some selective areas of his life. His recollection regarding the incident appeared poor. Dr. Oo arrived at the following conclusions relating to his fitness to plea:

- Mr. George Williams suffers from a disorder of the mind "schizophrenia";

- His history and clinical picture suggest that his mental illness is a chronic condition and he has poor insight; and
- He could not answer any events relating to the index charge and therefore he remains unfit to plea.

His conclusion regarding the Court proceedings included the following:

- It appears that he understands that he was charged with murder, however, he could not answer any relevant questions relating the index charge. He reported that he did not know Mount Diablo District and did not know the Ian Lurie and James Lurie (the victim and his father) and he denies that he attacked them;
- He could not give any circumstances around which he was arrested and charged. Questions relating to the index charge were repeated. He answered that he threw a stone at the car; however, he could not give details with respect to what happened afterward. He could however report that he was arrested and taken to Bellevue Hospital.
- He could not answer questions regarding the general work function of a Judge, the Defence, or the Prosecution. He could not answer to the procedures of the Court except that his sentence is completed and he wants to go home. He lacks knowledge and understanding to testify relevantly. He believed that he was given a lawyer by the government and his ability to instruct his lawyer for his defence and to challenge witness/witnesses was impaired.

**[11]** In relation to his risk level, Dr. Oo prefaced his assessment in respect of this area by cautioning that no expert could accurately predict the level of absolute dangerousness of a forensic psychiatrist patient and so his assessment of dangerousness on the matter of future risks and his likelihood of committing another offence has limitations. Dr. Oo was of the opinion that his risk can be considered low to relatively moderate and made recommendations to include the following:

- that he should receive regular medications under strict supervision by a dedicated individual/individuals and assessment monthly by psychiatrist and the mental health team and counselling to deal with the adjustment process of re-integration.
- early detection of the signs of relapse, and prompt intervention and regular visits by the mental health team to prevent unnecessary hospitalization and re-institutionalization.
- Prompt admission to the nearest hospital under the direct care of mental health team for temporary stabilization if symptoms get worse.
- Discontinuation of ganja smoking

Provision of strong family support in order to maintain a harmonious relationship and continued psycho-social support rehabilitation and re-integration. Dr Oo opined that it is unfortunate that Mr. Williams was not given the opportunity to participate in psycho-social vocational rehabilitation programmes in prison.

**[12]** Dr Jeffrey Omar Walcott, a consultant psychiatrist, examined Mr. Williams once and this was on June 17, 2020 at the request of the family and arrived at some findings similar to Dr.Oo. Where he differed largely from Dr. Oo was in his opinion that Mr. Williams was fit to plea. He also diagnosed him with schizophrenia and suffering from symptoms which persist. However, he explained that generally this is based on the client's ability to perform outlined tasks which is that they understand the charges brought against them; have the ability to instruct their attorney; and have the ability to challenge witnesses and jurors. Further, Dr. Walcott explained that Mr. Williams' ability to perform those functions is not impaired based on the fact that he has no confidence and no thought cognitive deficits. In addition, he found that although he does not have any problem with thought content, meaning he is not having any illusion, the ability to process information is in keeping with someone of his educational standard or background.

**[13]** Dr. Walcott recommended that Mr. Williams' mental health be followed up at the Community Mental Health Services and that based on the services provided by them they have the resources and the ability to manage persons of his status quite easily. He recommended that he take advantage of the out-patient clinic services or the home care services where the team would visit him at home at prescribed times and administer treatment using a long acting injection. This is where he gets an injection twice a month and that provides enough pharmaceutical coverage. He made these recommendations because in his assessment Mr. Williams' risk of violence is low.

**[14]** Dr. Walcott further expressed that if Mr. Williams does not comply with the mental health officer or if it is believed that he is of imminent threat then they have the power to remove him to a facility for treatment that is a designated psychiatry facility, the general hospital, or Bellevue Hospital. He concluded by saying that his primary concerns would be for the accused man to be provided with a place to live and for his basic needs to be met.

**[15]** Senior probation officer Mr Brain Doyley conducted interviews of the Defendant, his family members and community members. Among the findings worth mentioning is the fact that the subject asserted that if he is released, he would not commit himself again but rather would lead an honest and industrious life. Interviews with family members reflect that they had taken steps to have his matter resolved sometime in the past but were discouraged by the tediousness of the process. In addition, the Defendant's brother has indicated that he is now in a financial position to provide for the subject and that plans are already in place to acquire the services of a care giver for his brother. Checks at the St Catherine Adult Correctional Centre reflected that the accused is not known to be involved in violent or deviant activities.

**[16]** His family remains supportive of him and from all indications, the family intends to provide tangible support to include adequate accommodations along with a credible plan for his physical and mental care. Having spent nearly five decades in confinement, subject has not displayed violent tendencies. This bodes well for him returning to the community and living within the confines of the law. Additionally, family members do not

appear opposed to his return and therefore should not display any antagonism towards him.

### **The Way Forward**

[17] After hearing from the three practitioners, Ms. Llewelyn expressed that in reliance on Dr. Oo's report that he is not fit to plea, the Crown is discontinuing the criminal proceedings against the accused and so they would enter straight *nolle prosequi* to bring the matter to an end. They wish him well and most importantly that he is able to reintegrate with the support of his family and the community. She also asked the Court to consider whether, taking into account the interest of the accused and the public at large, some sort of guardianship order could be made with respect to Mr. Williams.

[18] In entering a *nolle prosequi* the DPP was merely exercising the power conferred upon her by virtue of section 4 of the Criminal Justice Administration Act which gives her the power to enter a *nolle prosequi* by stating in open court that the Crown intends not to continue the proceedings and thereafter the proceedings shall be at an end. The matter having been brought to an end, the Court was left with two options, either to immediately discharge the accused without more or to consider the evidence presented by the medical practitioners and the probation officer and make certain recommendations. The Court chose the latter position.

[19] The proceedings that took place could be described as a hearing; however, it was not a fitness to plea hearing. It was a hearing into the circumstances surrounding the accused to determine how to ensure his transition into society after having been incarcerated for almost five decades. There existed no written precedent to guide the Court as to how to deal with a matter such as this. The Court therefore had to consider whether there were any legal provisions which provide guidance in this regard. Consideration was first given to the provisions of the Mental Health Act.

[20] With respect to the suggestion to impose a guardianship order, there is no provision in the Mental Health Act that addresses the imposition of such an order except to say that there are provisions under section 29 that allow the nearest relative of a



mental patient to apply to bring the patient's affairs within the jurisdiction of the Court. This would not be relevant here as it is not the affairs of the patient that are an issue but rather the patient himself. However, the question of a guardianship order for a mental patient came under consideration in the case of **In the Matter of the Judicature (Supreme Court) Act and In the Matter of an application by 'JA' for the exercise of jurisdiction by the Honourable Court over the management of property and affair of 'MA'**.<sup>1</sup> In this case an application was made for the Court to exercise its inherent jurisdiction in a case involving a mental patient. The Court was satisfied that its inherent jurisdiction can be invoked where a vulnerable adult is for some reason deprived of the capacity to make relevant decisions or incapacitated/disabled from giving or expressing consent. It is of note that this was an application brought within the civil jurisdiction of the Supreme Court whereas the instant case is one within the criminal jurisdiction. Moreover, in the instant case, there was no indication that the subject was suffering from any such incapacity at the present time and so the Court did not find that its powers were invoked to make such an order.

**[21]** The main provision that directly addresses how the Court should treat with a mentally ill person is Section 9 of the Mental Health Act which provides for the admission of a patient to a psychiatric hospital on an order by a court where persons are found unfit to plea or are found guilty and are adjudged to be suffering from a mental disorder or diminished responsibility. This section contemplates only in patient care and would only be relevant where it is expected that the subject would have an existing matter before the Court.

**[22]** In terms of the ambit within which the Court usually deals with the mentally ill, the Court is guided by Practice Direction dated March 5, 2001 issued by Chief Justice Lensley H Wolfe which stipulates as follows:

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<sup>1</sup> [2016] JMSC Civ. 34

*“With immediate effect whenever a mentally ill person is adjudged unfit to plead and is remanded in custody pending his or her being adjudged fit to plead, an order must be made by the Court requiring the Director of Correctional Services to furnish the Court with a report of the condition of such person at intervals not exceeding one month.*

.....

*Each report received must forthwith placed before a Judge of the Supreme Court or a Resident Magistrate..*

*The Court shall give directions as he or she sees fit based upon the said report.*

.....”

**[23]** What is clear is that these provisions would only be relevant where further institutionalization was within the contemplation of the Court. The accused having already spent a “protracted” period of time in a penal institution, this was no longer under consideration. It would be more prudent to consider any other available avenues through which treatment could be meted out to Mr. Williams.

**[24]** Section 24 of the Mental Health Act speaks to the establishment of a Community Mental Health Service which is empowered to undertake the provision of services at outpatient clinics, provision of rehabilitative services for persons after their discharge from a psychiatric facility, supervised home care and support for person with mental disorders and services for the promotion of mental health. The provisions under section 24 are worth exploring to ascertain whether these services could be made available to Mr Williams.

**[25]** The Court therefore has in consider whether there was anything that could be done to ensure that Mr. Williams availed himself of these services. Why did the Court think of this as an avenue? The alternative to that would be to allow Mr. Williams to leave without any guidance. A very real consequence of the lack of guidance and support would be the question of recidivism. Would it be irresponsible of the court to

allow him to leave without any regard to whether he posed a risk to society or even to himself? The court therefore had to grapple with the very real problem of how to release him to society with the least possible harm to society and to himself.

**[26]** In dealing with this matter the principles which came to mind are those which are often referred to as problem solving principles. These principles are not novel. This is commonly used throughout the sentencing process in our courts. The Court's concern is usually to ensure that at the end of the day that the individual has the best chance of rehabilitation and social integration and has an avenue toward regaining his rightful place in society and reducing the likelihood of re-offending. Such principles are also employed in other areas of the Courts.

**[27]** By way of example the Drug Treatment Courts (DTC)s use the principles of problem solving justice and encourages judges to utilize a problem solving approach in dealing with some types of cases. The DTC is a creature of statute, the relevant law being The Drug Court (Treatment and Rehabilitation of Offenders) Act and the Drug Court (Treatment and Rehabilitation of Offenders Act Regulations. Among the stated objects of the Act is the object of reducing the level of criminal activity that results from drug abuse and the need to provide such assistance to those individuals as will enable them to function as law abiding citizens.

**[28]** Although the law mentioned above is not applicable to the instant case as it deals specifically with persons suffering from a dependence on drugs and is confined to the Parish Courts, the principles utilized by Judges in DTCs could be explored to determine whether there is anything to be learnt from that. One of the main features of the DTC is the collaboration of different practitioners such as a psychiatrist, a probation officer, the prosecution, and the Judge. It is a Judge driven process whereby the Judge supervises the rehabilitation of drug-dependent offenders. The Judge is expected to collaborate with others and in fact receives updates and recommendations from psychiatrists and probation officers. The DTC is only available in the Parish Courts and participation of the mentally ill is somewhat restricted. The primary aim is to provide an avenue for these individuals to regain their rightful place in society. These provisions apply

exclusively to individuals who suffer from some incapacity of the mind relative to their drug dependence. Our legal system is currently devoid of any similar provisions which apply to accused persons who suffer from an inherent mental incapacity.

**[29]** We may think the principles of problem solving justice are foreign to the Circuit Courts and indeed over the years such principles seem relevant only during the sentencing process. However, the previously issued Practice Direction has demonstrated that there has been prior to now an intention to treat differently with the mentally ill as it allowed for a follow-up measure at intervals. The said Practice Direction allowed the Court to consider the report from psychiatrists who have examined the mentally ill accused and to assess whether he/she is fit to plea. If not fit to plea the Court would monitor the accused to ensure that there are frequent updates regarding his/her progress. It is clear that for some time now the court has recognised that there is a role to be played by Judges in monitoring the conditions of the mentally ill. The Practice Direction is applicable to both the Supreme Court as well as the Parish Courts. However, in light of the seriousness and nature of offences usually in the Circuit Court, it is a fact that principles inherent in problem-solving justice have only been used sparingly and in fact, there is no doubt that this should be approached with some degree of caution. However, what is clear is that with the growing number of cases involving the mentally ill in the court system, there is a developing place for problem-solving justice and a move towards this.

**[30]** Problem solving justice is not confined to persons who are suffering from some mental capacity due to drug dependence or mental illness but rather extends also to other cases in particular those involving children. The recently enacted provisions of the Child Diversion Act make certain provisions which are in keeping with this line of thinking. Among the core objects of this legislation as stipulated in section 3 is

*“ ... to ensure that every child in conflict with the law is treated in a manner that recognizes and upholds human dignity and worth, diverts the child from engaging in deviant and delinquent behaviour...”*

The essence of this legislation is to divert children from the formal court process which is geared towards solving the very troubling problem of addressing children in conflict with the law.

[31] Jamaica is not the only place in the Caribbean that seems to be moving or has moved towards this direction of problem solving justice. The Family Court in Trinidad and Tobago is described as “a problem-solving court which seeks to resolve conflict in family matters by providing specialist support where necessary”.<sup>2</sup>

[32] This Court therefore resolved to draw from the principles inherent in problem solving justice in dealing with Mr. Williams. It was essential to note that the criminal matter is now behind him and that further institutionalization was not a viable option for him. The main problem to solve in the instant case was how to assist Mr. Williams to regain his rightful place in the society, that he has been absent from for approximately five decades. The Court therefore took into account all the reports presented and the evidence led and made certain observations and recommendations.

### **Observations and Recommendations**

[33] Family members have demonstrated an interest in the welfare of the subject and this is supported by the result of the enquiries conducted by the probation officer. Mr. Williams’ brother and uncle are present and they have put in place certain provisions to assist him. That is commendable as he is going to need all the assistance he can get. Dr. Oo has indicated that he will need their love and patience. They will have to assist him in the integration process. This is important if we are to ensure that he remains crime-free, out of the court system.

[34] Both Doctors having confirmed that Mr. Williams is low risk and has shown no violence over the last couple of years, it is hoped that this will remain so and the family will play an integral role in maintaining this. He is schizophrenic and so if he doesn’t get

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<sup>2</sup> Judiciary Trinidad and Tobago, Family Court Overview available at <https://www.ttlawcourts.org/index.php/2020-01-28-18-30-04/2020-01-28-18-53-05/family-court-overview>

the required care there is a possibility that he will relapse. He must take the prescribed medication and go to the community health centre as often as is required, refrain from substance use and he must be supported physically and emotionally. The family is encouraged to ensure he gets his meals, that he has suitable accommodation and that they converse with him socially, to ensure that he feels accepted as part of the family. Counselling will be provided for the family as well as some instruction as to how to readily identify signs of relapse so he can be taken to get the necessary care. His general health ought to be attended to and when necessary, he is to get medical attention so that all his health needs, both mental and physical are taken care of. Any follow-up treatment would have to be implemented under the supervision of the Mental Health Department managed by mental health officers.

**[35]** He is encouraged to take advantage of the available social services such as the community mental health clinic and the probation department who have expressed an intention to assist with his follow-up. Mr. Williams also has a role to play in the process. He must take his medication and work with family members, medical practitioners and probation officers

**[36]** The pronouncements made by the Court are mere recommendations. They do not have the force of law but are merely intended to provide guidance to the agencies involved as well as the family members and the accused himself. In summary, firstly, it is of utmost importance that the family provides support to the Mr. Williams. Secondly, he is to be registered as a patient with the Mental Health Department. Thirdly, he is to be followed up by the Department of Correctional Services. Both Departments are to work together with the accused and family members to ensure that he gets the necessary treatment. Finally, Mr. Williams has a responsibility to himself to ensure that he abides by the instructions of these practitioners and he is urged to take advantage of these services and work with these agencies and his family to ensure that his mental health does not deteriorate and to enable as smooth a transition as possible back into society.