

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Claim Number: SLUHCV2025/0041

IN THE MATTER OF an application by **MARIO PEREZ CHARLES** for the issue of a Writ of Habeas Corpus pursuant to Part 57 of the Civil Procedure Rules (Revised Edition) 2023.

BETWEEN:

MARIO PEREZ CHARLES

Claimant/ Applicant

-and-

**[1] THE DIRECTOR OF CORRECTIONS, BORDELAIS
CORRECTIONAL FACILITIES**

[2] THE ATTORNEY GENERAL OF SAINT LUCIA

Defendants

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Mr. Tiyani Behanzin for the Claimant/Applicant

Mr. George K. Charlemagne and Ms. Tia Austin for the First Defendant.

2025: February 10

JUDGMENT

Habeas Corpus Application – Remission and Sentencing Rules

[1] PARIAGSINGH, J: - Before the Court is the Claimant's application filed on 3 February 2025, by way of writ of habeas corpus, for an order that he be immediately released as he has been incarcerated in excess of the time he was sentenced to on his conviction for murder.

DISPOSITION:

- [2] For the reasons outlined below, I hold that the Claimant's detention is not unlawful. His application accordingly fails and is dismissed with no order as to costs.

BACKGROUND:

- [3] The Claimant, Mr. Mario Perez Charles, was arrested on 29 August 2012, and charged on 30 August 2012, with the murder of Crystal St. Omer contrary to Section 85 of the Criminal Code of Saint Lucia. At the time of his arrest and detention, he was 19 years old and had no previous convictions or pending matters. He remained on remand for 10 years and 9 months before being sentenced to a term of 18 years and 9 months upon his conviction.

THE SENTENCE:

- [4] In passing sentence on 9 December 2022, the sentencing judge, made the following orders:

- 1) **The Defendant is sentenced to eighteen (18) years and nine (9) months.**
- 2) **He has been remanded for three thousand seven hundred and forty-nine (3,749) days, equivalent to 10 years, three (3) months, and seven (7) days. He is required to serve a further eight (8) years and three (3) months.**

- [5] There was no appeal of the sentence imposed on the Claimant.
- [6] As at the date of the filing of the application for a writ of habeas corpus, by my calculation, the Claimant has been incarcerated for a total of 12 years, 5 months, and 5 days or 4,541 days.

THE PROCEDURAL/ OTHER ISSUES:

- [7] There are other issues raised by the Claimant. I will mention them for completeness in detail later in this judgment. For reasons which I pointed out to Counsel for the Claimant at the first hearing, it was agreed that on the return date of the writ, the only issue which would be dealt with by the Court is the lawfulness of the continued detention of the Claimant.

THE ISSUE ON THE HABEAS APPLICATION:

- [8] The central disagreement between the parties surrounds what appears, at first blush, to be a simple issue: **Whether remission of sentence applies to time spent on remand or pre-sentence incarceration?**
- [9] The parties, from their submissions, are not *ad idem* on this issue. The Claimant submits that remission applies to the entirety of his time spent in custody including time spent on remand before he was convicted and sentenced. The Defendants, on the other hand, contend that remission only applies to the custodial sentence imposed on the date of sentencing.

ANALYSIS:

- [10] **Section 22 of the Correctional Services Act¹**, (the Act) provides that:

"22. Any inmate or person detained in a correctional facility, a lock-up, or a legalized police cell **shall be released immediately upon becoming entitled to release, whether by the expiration of his or her term of sentence, or by pardon, or by commutation, or by remission of sentence, or by other lawful means.**"

- [11] The Claimant's application is hinged on the finding that he is entitled to remission on the entirety of his incarceration. If he is correct then he would have served more than 2/3 of his sentence and would be entitled to immediate release.
- [12] The starting point is that Saint Lucia, unlike the United Kingdom, does not have legislation which governs how the Court ought to treat time spent on remand. It is therefore governed by the common law. On this issue, there have been pronouncements by both the Judicial Committee of the Privy Council (the Board) in **Ajay Dookie v State of Mauritius²** and the Caribbean Court of Justice (CCJ) in **Romeo Da Costa Hall v The**

¹Cap. 14.02 of the Revised Laws of Saint Lucia

²2012] UKPC 21

Queen³. The pronouncements of the Board and the CCJ have been applied by the Court of Appeal in the recent case of **Omari Phillip v The King**⁴.

[13] The most recent pronouncement on the issue by the Board was in the case of **Ajay Dookee**. The Board held that courts must account for time spent in custody before sentencing, including both pre-trial detention and time spent in custody pending appeal. Generally, Defendants should receive 80-100% credit for remand time, ensuring that they are not penalized for delays in the judicial process. Full credit is typically granted for time spent awaiting an appeal, unless the appeal was frivolous or an abuse of process. In the UK, to ensure fairness, sentences should be backdated rather than simply reduced, preserving any remission benefits the defendant would normally receive. This approach aligns with principles established in cases like **Callachand v The State**⁵.

[14] However, in this jurisdiction, unlike the approach advanced in **Ajay Dookee**, there is no legislation which allows one to backdate a sentence. This issue was addressed by the CCJ in **Romeo Da Costa Hall** at para [21] when the Court stated:

“[21]. The Australian Law Reform Commission, in its report *Same Crime, Same Time: Sentencing of Federal Offenders* (ALRC 103) at para. 10.13, very helpfully identified three ways in which time spent in pre-sentence custody could be taken into account. **The first method is to backdate the commencement of the sentence to the date on which the offender was taken into custody. This method requires the sanction of statute, and since Barbados law does not provide for it, it need not be considered further.**” (emphasis mine)

[15] As stated above, there is no legislation in Saint Lucia (like Barbados) which permits the backdating of sentences. As such, the option of backdating a sentence to ensure that the Defendant gets the benefit of remission applying to the entirety of their incarceration, cannot be achieved by a backdated sentence in Saint Lucia.

³ [2011] CCJ 6 (AJ) – appeal from the decision of the Barbados Court of Appeal

⁴ ANUHCRA2016/0008 – Delivered on 13 November 2024 (unreported)

⁵ [2008] UKPC 49

[16] The second method identified by the **Australian Law Reform Commission** was the method preferred by the CCJ. This method, which is declaring the sentence and then separately declaring that time spent in pre-sentence custody was to count as time served under that sentence, also requires legislative sanction. This method, too, seems to not be available to the Court. In recommending the legislative changes to introduce the second method in Barbados, the CCJ advanced four main bases at paragraph [25] of **Hall** as follows:

“[25] In the first place, judges in determining sentence have power to reduce such sentence before pronouncing it, but not after. The power to shorten the term of imprisonment to which a person has been sentenced is not part of the judge’s inherent function or jurisdiction, and the exercise of such a power must be expressly conferred by statute. Secondly, a declaration, as envisaged by the second method, that part of a sentence has been served, is in substance indistinguishable from ante-dating the sentence. It is agreed that statutory sanction is required for the latter. It would be odd to say the least if it was not also required for the former. In *S v Vilakazi* ((576/07) [2008] ZASCA87; 2009(1) SACR 552 (SCA)) a declaration was made without statutory sanction, but no reasons were given. In fact, the matter was not even discussed, and in any event, the South African law on the subject is admittedly in an unsettled state. Thirdly, the sentence, part of which is to be declared to have been already served, is not simply a legal fiction; it is a very real sentence since it is proposed in effect to treat it as the sentence referred to in rule 41(1) of the Prison Rules, which provides that a prisoner “may by good conduct and industry become eligible for discharge when a portion of the sentence not exceeding one quarter of the whole sentence has yet to run.” Indeed, rule 41(1) does not provide for the grant of remission to prisoners on remand, who are not then being monitored for good conduct or industry since they are not under sentence. Remission in rule 41(1) refers to a prisoner “who is serving a sentence of imprisonment.” It follows that the question of remission in respect of time spent on remand does not arise. Fourthly, one must not fall into the trap of arguing that because there is no prohibition against a court treating time spent on remand as part of the sentence, one must assume that the court has such a power.”

[17] The third method is to reduce the sentence by the time spent on remand. The CCJ recognized the anomalies in this method at paragraph [26] of **Hall** when it stated:

“[26]. We are conscious of the anomalies of the third method (reduction of the sentence by the time spent on remand). The application of this method may result in persons charged and convicted of the same offence being given

markedly different sentences. This anomaly and the mistaken perception the third method might produce of a lighter sentence underline the importance of the following guidelines in such cases and indeed in all cases in which a sentence is reduced because of time spent on remand. **The judge should state with emphasis and clarity what he or she considers to be the appropriate sentence, taking into account the gravity of the offence and all mitigating and aggravating factors, that being the sentence he would have passed but for the time spent by the prisoner on remand.** The primary rule is that the judge should grant substantially full credit for time spent on remand in terms of years or months and must state his or her reasons for not granting a full deduction or no deduction at all. Goldstein J in *S v Vilakazi* (supra) at p. 142 stated that in granting credit for time spent on remand, the Court is “driven to eschew simple subtraction and fudge the period of awaiting trial, thereby doing substantial but perhaps less than perfect justice.” While there is an element of truth in this statement, even without the complication of time spent in pre-trial custody, sentencing is never an exact science, particularly when a serious offence is involved.”

[18] Lest there be any doubt left on the identified issue, the resolution becomes pellucid in paragraph [28] of **Hall** when it is stated:

“[28]. In the course of argument, there was a suggestion that the time spent on remand could be treated as “prison years” and grossed up to calendar years, applying the formula that 9 months served in prison are equivalent to one calendar year. **Remissions of sentence have to be earned and are normally effected by administrative action during the prisoner’s incarceration. We therefore do not consider it correct to “gross up” the time spent on remand to calendar years in order to calculate the credit for time served.**”

[19] **Rule 42 (2)** of the Prison Rules 1964, which were saved by Section 49 of the Act, provides that:

“(2) For the purpose of giving effect to the provisions of subsection (1) of this rule, **each prisoner on admission shall be credited with the full amount of remission to which he or she would be entitled at the end of his or her sentence if he or she lost or forfeited no such remission.**”

[20] The time when remission time begins to count is set out in **Rule 41**:

“(1) A prisoner sentenced to imprisonment, whether by one sentence or by consecutive sentences, for a period exceeding one month, may by good

conduct and industry become eligible for discharge when a portion of his or her sentence, not exceeding 1/3 of the whole sentence, has yet to run.” (emphasis mine)

However, in no case shall any remission granted result in the release of a prisoner until he or she has served one calendar month.

In addition, in no case shall any remission be granted to a prisoner sentenced to imprisonment for life.”

[21] In my view, the statutory regime provides that upon sentence, for a period in excess of one month, a prisoner the entire period of remission, in this case, 1/3, has to be credited to the sentence. The sentence for the purpose of remission, using the third method is not 18 years 6 months as the Claimant submits but rather the remaining period that the Claimant was ordered to serve when he was sentenced, that is 8 years and 3 months (3012 days).

[22] Ward JA in **Omari Phillip** at paragraph [82] highlighted the jurisprudence of this Court when he stated:

“[82] The jurisprudence of the Eastern Caribbean Supreme Court has consistently maintained that real credit must be given for time spent by the prisoner on remand. The rationale and methodology to be employed in so doing was articulated by Baptiste JA in *Shonovia Thomas v The Queen* (HCRAP2010/006 (delivered 27th August 2011, unreported)). In so doing, the Court of Appeal was following the guidance given by the Privy Council in *Callachand & Anor v State of Mauritius* [2008] UKPC 49 and the Caribbean Court of Justice in *Romeo Da Costa Hall v The Queen*. [2011] CCJ 6 (AJ). In *Callachand*, the Board stated at paragraph 9:

“It seems to be clear too that any time spent in custody prior to sentencing should be taken fully into account, not simply by means of a form of words, but by means of an arithmetical deduction when assessing the length of the sentence that is to be served from the date of sentencing.” (Emphasis added)”

[23] Applying the full remission provided for in Rule 41, the Claimant, once no portion of his remission was forfeited, has to serve a minimum of 2/3 of 8 years 3 months (3012 days). By my calculation, that is 5 years and 5 months and 30 days (or 2008 days). This by my

calculation expires on **Thursday, 8 June 2028**, provided that no remission time is forfeited.

- [24] It must be emphasized that the application of remission time is not a judicial act but rather an administrative function of the Director. He is given a discretion under the Act and is the only person who can determine remission time.
- [25] The Claimant's contention at paragraph 5 of his affidavit in support is, in my view, misconceived. The Claimant advances the proposition that remission time, or the reduction of his sentence, applies across the board to the entirety of his sentence. While a permutation of this argument was advocated by Wit JCCJ in **Hall**, the majority did not agree. Although this method raises several attractive arguments of fairness and the constitutionality of the approach, those issues do not fall to be determined in habeas corpus proceedings. Additionally, I am bound by the decisions in **Hall** and **Phillip**.
- [26] The rationale for remission not applying to the pre-sentence period, in my view is simple. The Claimant was sentenced in calendar years and received full credit for the time spent on remand in calendar years also. Put another way, the pre-sentence incarceration is credited in the same currency as the sentence, calendar years. The currency only changes from calendar years to remission time upon sentence. To apply remission to an already credited sentence would be to double compensate the Defendant for his time spent on remand.
- [27] The cases cited have one common theme: the method adopted for the calculation of remission is one for the legislature to decide. It is for the legislature to implement legislation to provide for the backdating of sentences or permitting time spent to be considered as part of the term of imprisonment imposed as a sentence (the first and second methods of applying remand time to a sentence). That is not an issue for this Court. This Court must simply apply the law for the time being.
- [28] Accordingly, it is my view that the Claimant's detention is not unlawful. His application for immediate release therefore fails.

PROCEDURAL/ OTHER ISSUES:

[29] Other issues were raised by the Claimant in his affidavit evidence. They are as follows:

- 1) **Grant of Extra Remission Under Rule 43:** In my view, this issue does not arise, as there is no evidence of any recommendation being made by the Director to the Governor-General for extra remission.
- 2) **Victimization and Dismissal from Work:** The Claimant contends that he was victimized and summarily dismissed from his prison work.
- 3) **Prison Wage Issue:** The Claimant contends that for the past 23 years, the rate of prison wages has been \$0.80 per hour, which was stopped by the Acting Director after the Claimant wrote a petition requesting a review of wage increases. He became aware that the Government of Saint Lucia published, in September 2024, an increase in the minimum wage to an hourly rate of \$6.52, effective 1 October 2024. He invites the Court, within his affidavit, to make a declaration to this effect.
- 4) **Lack of Sentence Review:** He also complains about the lack of an annual review of his sentence, which he contends he is entitled to.
- 5) **Compensation for False Imprisonment:** The Claimant seeks compensation for false imprisonment for 3 years and 8 months, in the sum of \$693,500.
- 6) **Declaration of Breach of Constitutional Rights:** The Claimant seeks a declaration that his constitutional rights have been breached.
- 7) **Dietary Complaints:** The Claimant complains about the high salt content of his diet, the overall quality of the food, and the lack of proper inspection of the food.

[30] I raised several procedural issues with Counsel for the Claimant about the state of the documents filed in this matter. The main issue is that the Fixed Date Claim Form has no prayer, and it contains a mixture of submissions, law, and evidence where it ought to

properly contain the grounds and state the relief sought. I must note that this document is incoherent and represents a significant affront to Part 8 of the Civil Procedure Rules (Revised Edition, 2023). There is no regard for the prescribed content of a Fixed Date Claim Form. Simply put, the Claimant has to reconsider the present form of his claim and take any procedural steps advised before his Fixed Date Claim Form can be heard.

[31] The Fixed Date Claim Form is to be listed for its first hearing on Thursday 3 April 2025 at 9:00am in Courtroom 02. The Claimant is to be facilitated with a link to attend the hearing remotely on that day.

COSTS:

[32] The general rule is that costs follow the event. The First Defendant has sought its costs in its affidavit in response filed today. In determining how to exercise my discretion to make an order for costs I am mindful that the Claimant's application was not frivolous. The issue of application of remission was not unreasonable to raise. I am also conscious that the Claimant has been in custody for the last 12 plus years. In this regard, I exercise my discretion to make no order as to costs on the application.

ORDERS:

[33] For the reasons above, I make the following orders:

- 1) The Claimant's application filed on 3 February 2025 is dismissed with no order as to costs.
- 2) The Fixed Date Claim Form is listed for its first hearing on Thursday 3 April 2025 at 9:00am in Courtroom 02.

- 3) The Claimant is to be facilitated with a link to attend the hearing remotely from the Correctional Facility on that day.



Alvin S. Pariagsingh
High Court Judge

By the Court,

Registrar

Assisted by: Yeveeda Guinness
Judicial Research Assistant