

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2024/0309

BETWEEN:

TIMOTHY JACKMAN

Applicant

and

1. SUPERINTENDENT OF PRISONS
2. THE ATTORNEY GENERAL

Respondents

Appearances:

Mr. Wendel Alexander, Counsel for the Applicant
Ms. Annette Jackson with Ms. Joy Dublin, Ms. Alicia Aska and Mr. Zachary
Phillips, Counsel for the Respondents

2024: August 15
September 13

ORAL RULING

- [1] **WILLIAMS, J.:** On 15th August, 2024 I discharged an injunction previously granted on 1st August, 2024 which prevented the law enforcement authorities in Antigua and Barbuda from re-arresting the applicant, Mr. Timothy Jackman. At the time I undertook to provide brief reasons for my decision and I do so now.

Background

- [2] On 15th July, 2020 Mr. Jackman was sentenced for the offence of manslaughter to a term of imprisonment of 11 years and 9 months. It should be noted at this point that Mr. Jackman indicates that this sentence was in error and that the learned Judge intended to pronounce a shorter sentence.

- [3] Mr. Jackman was conveyed to prison. According to him a few days later the prison authorities gave him a card which indicated that his earliest possible release date was 3rd July, 2024. Sometime later the prison authorities gave him a second card which indicated the same release date.
- [4] A few days ahead of that date the authorities contacted his brother to have him bring appropriate clothing to facilitate Mr. Jackman's release. This was done and Mr. Jackman was released from prison on 3rd July, 2024. A few days after his release the prison authorities noticed that his release date had been incorrectly calculated. According to the authorities, Mr. Jackman had more time left to serve before he could be unconditionally released. Accordingly, steps were initiated to re-arrest Mr. Jackman and return him to prison to complete his sentence.
- [5] Before he could be re-arrested, Mr. Jackman took pre-emptive measures. He contacted attorney-at-law Mr. Wendel Alexander who on 24th July, 2024 filed a Notice of Application for an interim injunction to prevent the authorities from re-arresting him. The application was immediately scheduled for hearing on 1st August, 2024.
- [6] On the said date learned counsel for the Respondents informed the court that the Attorney General's Chambers had not had the opportunity to take instructions from the Superintendent of Prisons and requested time to do so. Consequently, the Respondents gave an undertaking not to arrest Mr. Jackman ahead of the adjourned date and an injunction was granted solely on the basis of this undertaking. The hearing was adjourned to 15th August, 2024.
- [7] In accordance with the directions of the court, the Superintendent of Prisons Lt. Col. Trevor Pennyfeather filed an affidavit on behalf of the Respondents on 9th August, 2024. Both Parties filed written submissions with authorities with Mr. Jackman's being filed on 13th August, 2024 and the Respondents on 14th August, 2024. A supplemental affidavit sworn to by Lt. Col. Pennyfeather was filed on 14th August, 2024. Supplemental submissions were filed on Mr. Jackman's behalf on 15th August, 2024.

Evidence

- [8] Mr. Jackman's material evidence has been summarized at paragraphs 2 to 5 of this decision and I do not propose to repeat it. I will however highlight that in his affidavit

filed on 24th July, 2024 Mr. Jackman points out what he says is an incorrect calculation of his sentence which he says should have been 9 years and 3 months instead of 11 years and 9 months. Mr. Jackman also describes the “stress, frustration and daily tears” by reason of learning that he had more time to spend in prison.

[9] The Respondents’ evidence is contained in two affidavits sworn to by the Superintendent of Prisons Lt. Col. Trevor Pennyfeather. Lt. Col. Pennyfeather admits that the release date communicated to Mr. Jackman was incorrectly calculated. According to him, remission of sentence is governed by section 211 of the Prison Rules which provides for the unconditional release of a prisoner who has served two-thirds of his sentence. Thus, there are two possible release dates namely the earliest and latest date of release.

[10] In his affidavit of 9th August, 2024 Lt. Col. Pennyfeather calculated Mr. Jackman’s earliest release date as 5th November, 2024. However, in his supplemental affidavit Lt. Col. Pennyfeather corrects this assertion by noting that it had been calculated based on a sentence of 9 years and 3 months. Thus, when calculated based on the sentence of 11 years and 9 months Mr. Jackman’s earliest release date becomes 29th June, 2026. Lt. Col. Pennyfeather reiterates that the miscalculation of Mr. Jackman’s earliest release date was a human error and thus Mr. Jackman was released from prison prematurely.

Issue

[11] The issue for determination is whether the injunction granted on 1st August, 2024 which prevents Mr. Jackman from being re-arrested should be continued until trial of this matter?

Discussion

[12] In both their written and oral submissions the parties agree that the test for the grant of interim injunctions is found in the case of **American Cyanamid v. Ethicon**.¹ Thus, the factors to be considered are:-

1. Whether there is a serious issue to be tried?
2. Where does the balance of convenience lie?
3. Whether damages would be adequate?

¹ [1975] AC 396

[13] At the hearing it was pointed out to the Parties that any claim brought by Mr. Jackman would be in public law. This is foreshadowed in Mr. Jackman's affidavit where he alleges that his rights conferred by sections 3, 5 and 7 of the Constitution of Antigua and Barbuda have been infringed by the actions of the prison authorities.

[14] The Court of Appeal in **Beryl Issac v. The Grenadian Hotel**² summarized the relevant principles applicable to injunctions in public law as follows:

“(a) In considering an application for an interim injunction in which there is a public law element in issue, the approach to be adopted is the application of the guidelines outlined in *American Cyanamid* with the necessary modifications appropriate to the public law element.

(b) The public law element is a special factor in considering the balance of justice and the court has a wide discretion to take the course which seems most likely to minimize the risk of an unjust result.

(c)

(d) It is an exceptional course for the court to restrain a public authority from enforcing an apparently valid law. A court would only take such course where having regard to all of the circumstances of the case the court is satisfied that the challenge to the validity of the law is *prima facie* firmly based and adoption of such an exceptional course is justified.

(e) A public authority acting within the law should be permitted to exercise its functions and duties for the benefit of the public.”

Serious Issue to be Tried

[15] Thus, the first issue to be examined is whether there is a serious issue to be tried. In **American Cyanamid v. Ethicon**³ the principle of a serious issue to be tried was stated as follows:-

“There was no rule of law that the court was precluded from considering whether, on a balance of convenience, an interlocutory injunction should be

² GDAHCVAP2017/0002 (decided 15th December 2017) at paragraph 12 (per Thom JA)

³ [1975] AC 396

granted unless the plaintiff succeeded in establishing a prima facie case or a probability that he would be successful at the trial of the action. All that was necessary was that the court should be satisfied that the claim was not frivolous or vexatious, i.e. that there was a serious question to be tried”.

[16] In order to determine whether there is a serious issue to be tried, the grounds upon which Mr. Jackman proposes to challenge the Respondents’ actions must be examined. Although it must be noted that it is not the Court’s function at this stage of the proceedings to determine the claim on its merits. All that is required is that Mr. Jackman must demonstrate that he has a viable cause of action.

[17] In his written and oral submissions Mr. Alexander challenged the Respondents’ actions on the following grounds which are summarized as follows:-

1. The learned judge imposed a sentence of 11 years and 9 months on the Applicant instead of the correct sentence of 9 years and 3 months.
2. Mr. Jackman had a legitimate expectation of being released from prison on 3rd July, 2024 as was expressly stated by the prison authorities and thus the Respondents were estopped from changing the release date.
3. The Respondents actions contravened Mr. Jackman’s rights conferred pursuant to sections 5 and 7 of the Constitution. These are the rights to liberty and freedom from inhuman treatment respectively.
4. Mr. Jackman has been imprisoned in conditions at the prison which are inhuman and degrading.

[18] The Respondents for their part have resisted this application on the grounds which I have summarized as follows:

1. Mr. Jackman’s right to liberty has not been breached as he has been imprisoned pursuant to an order of the High Court.
2. Any alleged error in Mr. Jackman’s sentence should be corrected by the Court of Appeal pursuant to **section 39(c)** of the **Eastern Caribbean Supreme Court Act**.⁴

⁴ Cap. 143

3. The Respondents have a legal obligation to ensure that the lawful sentence of the court imposed on Mr. Jackman is carried out.
4. Conditions at the prison are not inhuman and degrading.

[19] As previously indicated, I do not propose to examine these grounds in great detail nor am I required to do so. Remission of a prison sentence is governed by section 211 of the Prison Rules⁵ which provides as follows:-

“REMISSION. Every prisoner sentenced to a term of imprisonment whether by one sentence or by consecutive sentences for a period exceeding one month shall become eligible for unconditional release when he shall have completed two-thirds of the said term of imprisonment in addition to any number of days forfeited under rules 197 and 198.

Provided that nothing in the foregoing shall authorize the reduction of period of imprisonment to less than thirty-one days.”

[20] Before proceeding further, two fundamental principles must be borne in mind. Firstly, sentencing is within the remit of the courts which of course form part of the judicial arm of the state. However, the issue of remission of sentence whether pursuant to the Prison Rules or otherwise is completely within the domain of the Executive.

[21] Mr. Alexander in his oral submissions put a great deal of emphasis on the argument that the prison authorities having communicated a release date to Mr. Jackman and having released him were now estopped from acting otherwise. I respectfully disagree.

[22] The prison authorities in calculating a release date must act in accordance with the sentence imposed by the Court and section 211 of the Prison Rules. If the prison authorities act contrary to the Prison Rules they will have acted ultra vires their powers. The Privy Council in **Silly Creek Estate and Marina Company Ltd. v. Attorney General of the Turks & Caicos**⁶ has stated as follows:-

“... [It is] a well-established principle of public law: that statutory powers entrusted to the executive branch of government must be exercised within

⁵ Made pursuant to the Prison Act Cap. 341

⁶ [2021] UKPC 9 at paragraph 60

the four corners of the relevant statutory powers, and that when the executive acts outside these boundaries, its decision is ultra vires and unenforceable ...”

[23] Thus, there can be no legitimate expectation or estoppel in respect of an ultra vires act. In this case if the release date communicated to Mr. Jackman was calculated otherwise than in accordance with section 211 of the Prison Rules this Court should not require the prison authorities to apply the incorrect release date.

[24] However, this is not to say that Mr. Jackman does not have a cause of action at all. At this point I will confine my brief analysis to section 7 of the Constitution and will say no more about the possible grounds at this time. Section 7 of the Constitution provides as follows:

“No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.”

[25] It is certainly arguable that Mr. Jackman would have formulated his plans for re-integration into society based on the release date communicated by the prison authorities on two occasions. Thus, the authorities had years to correct this error but only did so after his release. Mr. Jackman now has to endure the stress of being liable to be re-arrested and then having to put his plans for the rest of his life on hold.

[26] In **Thomas v. Baptiste**⁷ referring to the equivalent provisions of the Trinidad and Tobago Constitution the Court of Appeal of Trinidad and Tobago stated:-

“It is a cardinal principle of our jurisprudence that a man must not be punished twice for the same offence and this will be so whether it is mental (Pratt and Morgan) and/or physical torture. It makes no difference.”

[27] It is certainly arguable that Mr. Jackman has been punished twice contrary to section 5 of the Constitution. Accordingly, Mr. Jackman has a viable constitutional claim against the Respondents for a breach of his constitutional rights. Thus, there is a serious issue to be tried.

⁷ (1998) 54 WIR 387at 410

Balance of Convenience

- [28] I will now consider the issue of the balance of convenience. In **Belize Alliance Conservation Non-Governmental Organizations v Department of the Environment**⁸ the Privy Council stated that "...the Court has a wide discretion to take the course which seems most likely to produce a just result (or to put the matter less ambitiously, to minimise the risk of an unjust result)."
- [29] In this case two competing interests must be taken into account. The first consideration is Mr. Jackman's rights which are guaranteed by the Constitution of Antigua and Barbuda. The second is the public interest in ensuring that a person who has been convicted actually serves the sentence which has been imposed by a court of competent jurisdiction.
- [30] In this case the balance of convenience weighs more in favour of ensuring that Mr. Jackman serves the sentence which was imposed by the High Court. Section 18 of the Constitution confers on this court the power to grant several remedies if it is found that the Respondents' actions have infringed Mr. Jackman's constitutional rights. These remedies include declarations and damages which in the circumstances should be adequate to vindicate any injustice suffered by Mr. Jackman. Any order requiring Mr. Jackman to remain free would be an interference with an order made by the Criminal Division of the High Court which has not been varied or set aside. This would be contrary to the Rule of Law, thus in the exercise of my discretion I decline to do so.

Adequacy of Damages

- [31] I have already alluded to the availability of damages pursuant to section 18 of the Constitution as a remedy if Mr. Jackman's constitutional rights are later found to be infringed. Mr. Jackman has given evidence of the anguish and anxiety that he has suffered as a result of learning that he has more time to serve. Mr. Jackman has however not demonstrated that he will suffer any irreparable harm or loss if he is required to complete his sentence. In these circumstances, I rule that damages would be adequate to compensate Mr. Jackman for any proven breach of his constitutional rights.

Order

- [32] I therefore order as follows:-

⁸ [2003] 1 WLR 2839 at paragraph 39

1. The injunction granted on 1st August, 2024 is hereby discharged and the Respondents are at liberty to re-arrest the applicant, Mr. Timothy Jackman and thereafter convey him to lawful custody.
2. The Applicant shall file a substantive claim which shall be listed for hearing on 17th September, 2024.
3. The Respondents shall take all reasonable measures to ensure the Applicant's attendance at court on 17th September, 2024.
4. No order as to costs.
5. The Respondents shall have carriage of this Order.

Rene Williams
High Court Judge

By The Court

Registrar

