

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SLUHCV2018/0487

BETWEEN:

ANTHONY HENRY

Claimant

and

THE ATTORNEY GENERAL OF ST. LUCIA

Defendant

SLUHCV2018/0523

BETWEEN:

FRANCIS NOEL

Claimant

and

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

APPEARANCES:

Ms. Lydia Faisal and Mr. Alvin St. Clair for the Claimants

Mrs. Tina Louison and Mrs. Rochelle John-Charles for the Defendants

2019: October 24th
2020: February 19th

JUDGMENT

- [1] **SMITH J.** These claims, heard together, raise the issue of whether persons charged with serious crimes but found unfit to plead and stand trial due to mental illness may be detained in prison, as opposed to a mental hospital, under the law of Saint Lucia. The Government of Saint Lucia contends that they may. The claimants say it is an infringement of their right to personal liberty. The facts set out below provide the context for this claim.

Mr. Francis Noel

- [2] Mr. Francis Noel was arrested on 13th December 1987, age 36, charged with grievous harm and held on remand until his arraignment on 20th July 1992 when he was found unfit to plead and ordered by the judge to “be detained at the Royal Gaol until the Governor-General’s pleasure shall be known.” He remains up to this day at the Bordelais Correctional Facility (“Bordelais”). His total period of incarceration is 32 years for an offence that carries a maximum sentence of ten years.
- [3] Bordelais Medical Unit’s Psychiatric Progress Notes for Mr. Noel date back to 2003. The notes indicate that he was seen by consulting psychiatrists twice in 2003, nine times in 2004, five times in 2005, seven times in 2006, five times in 2007, five times in 2008, twelve times in 2009, three times in 2010, three times in 2011, once in 2012, three times in 2013, six times in 2014, eight times in 2015, six times in 2016, five times in 2017, seven times in 2018 and twice in 2019. There is no evidence that he received any psychiatric attention at Bordelais or elsewhere for the period 1992-2003.
- [4] The notes also reveal that he was examined and treated by various consulting psychiatrists including Dr. Rambally, Dr. Guillard and Dr. Swamy who diagnosed him as being delusional, schizophrenic and psychotic and administered medication.

- [5] Dr. Krishna Prasad, in a report dated 6th June 1984 addressed “to whom it may concern”, states that Mr. Noel was first admitted to Golden Hope Hospital (a mental health hospital) on 20th August 1973 and thereafter on a number of occasions over the period 1973 to 1984. She then states:

“Almost all of the occasions, Francis Noel was brought to the hospital by the police for disorderly behavior ranging from abuse of marijuana, threatening the people verbally and with cutlasses, assaulting the women and attempting to molest the school children, to attacking a delegate and causing him serious body harm. In the hospital, he used to curse and threaten the nurses, refuse the medications and burn the doors of the seclusion rooms.

In my opinion, also the previous psychiatrist's opinion, Mr. Francis Noel does not suffer from any mental illness to account for his disorderly behavior. He fits into a condition ‘anti-social personality’ which is properly known as psychopath.

Francis Noel never benefitted in the past from hospitalization and treatment and I don't think that he would ever benefit from such treatments in the future. Besides, he is a great security risk to the staff and the patients at the hospital.

Therefore I urge the concerned authorities to take suitable steps to protect the community from Francis Noel's disorderly and unlawful acts.

I am also quite willing to assist the appropriate authorities, should in case they need further information in his case.”

- [6] By order of Senior Magistrate Oswald Jack dated 21st January 1974, Mr. Noel was directed to be kept in custody under observation at the observation room at the Mental Hospital for a period of seven days. A similar order is in evidence dated 8th December 1981 by Magistrate Shillingford.

- [7] Dr. C.V. Raju, consultant psychiatrist at Golden Hope Hospital, in a letter dated 19th November 1991 wrote to the chief justice as follows:

“Further to my statement to this court on 18.6.90 (copy enclosed) I have reexamined Francis Noel again today (19.11.91) upon a letter from the Director of Public Prosecutions.

Francis Noel, aged 40 years had been a patient of Golden Hope Hospital since 1973, and was admitted more than 20 times since then. He was a habitual absconder without taking adequate treatment and always avoids medication when he is left on his own since he believes that there is nothing wrong with him.

I find him suffering with a chronic condition called **Paranoid Schizophrenia** that tends to persist up to his old age.

His prominent delusions are that he controls and gives sun and rain to people, so government and people owe money to him. Instead, they attempt to deprive him or get rid of him, so he hurt them. Since white man is the ruler, he must see blood, and hence his attacks on innocent people.

People with this psychiatric disorder are potential unprovoked aggressors in general and particularly with this kind of delusions Francis Noel is dangerous to the community he lives in.

As I mentioned earlier, this sickness itself is resistant to the available treatment methods and if at all controlled, needs regular medication and supervision which appears impossible when he is outside, as he bluntly refuses any treatment.

And hence, I feel he should be under some kind of custodial care till he improves in his mental condition for which I prefer to treat him in prison rather than Golden Hope Hospital, as this institute is lacking in adequate security from abscondings.”

- [8] The picture that emerges is that Mr. Noel has been mentally ill for most of his life, was a danger to the community, was receiving psychiatric attention at a mental hospital since 1973, had to be committed to a mental hospital by magistrates on a couple occasions because of his anti-social behavior and was so difficult to control that one psychiatrist requested that he be kept in prison and treated there for his mental illness. This might explain why for the entire period of his incarceration he was never transferred to a mental health facility.

Mr. Anthony Henry

- [9] The picture in relation to Mr. Henry is just a little less grim. On 26th September 1995, age 20, he was arrested for a double murder and held on remand pending trial for seven and a half years until his arraignment on 7th February 2000 when he was found unfit to plead and ordered by the judge to “be detained in custody at Her Majesty’s Prison until the Governor General’s pleasure shall be known” where he remained until he was discharged unconditionally by the High Court sitting in its criminal jurisdiction on 30th May 2019. His total period of incarceration was 24 years.

- [10] Bordelais Medical Unit's Psychiatric Progress Notes for Mr. Henry date back to 2003 as well. The notes indicate that he was seen six times in 2003, seven times in 2004, nine times in 2005, eleven times in 2006, eight times in 2007, ten times in 2008, eleven times in 2009, nine times in 2010, three times in 2011, once in 2012, five times in 2013, four times in 2014, three times in 2015, five times in 2016, six times in 2017, three times in 2018 and twice in 2019. Like Mr. Noel, there is no indication that he received any psychiatric attention prior to 2003.
- [11] The notes also reveal that he was examined and treated periodically over the period 2003 to 2019 by various consultant psychiatrists including Dr. Rambally, Dr. Swamy, Dr. Felicien and Dr. Gilliard and was diagnosed variously with psychosis, schizophrenia, bipolar affective disorder and anti-social personality disorder.
- [12] It is not in dispute that there were no periodic reviews – for the entire period of their incarceration – to determine whether either of the claimants had sufficiently recovered so as to stand trial. The claimants therefore remained detained in prison for the entire period of their incarceration and were never admitted to any mental health facility in Saint Lucia.
- [13] Each brought a claim seeking damages for breaches of his constitutional rights to a fair trial within a reasonable time; to personal liberty; and to protection from inhuman treatment. Mr. Henry also seeks an order that he be released into a mental institution. At the end of the hearing of this claim, counsel for the parties undertook to attempt a settlement of the claim. In 2003, the Government of Jamaica agreed to pay Ja\$9 million to 78-year-old Alfred "Ivan Barrows" Nettleford in compensation for his unjustified 28-year incarceration. Regrettably, this Court was informed at the end of November 2019 that the parties were unable to reach settlement and it would be necessary for the Court to resolve the issues arising in the claim.

Breach of Personal Liberty?

- [14] The right to personal liberty is not absolute but subject to certain limitations as are all of the fundamental rights and freedoms under the **Constitution of Saint Lucia**¹ (“the Constitution”), except for the protection from inhuman treatment, to which no limitations attach.

The Constitution

- [15] The limitations on a citizen’s right to personal liberty, insofar as they are relevant to this case, are as follows:

“3. PROTECTION OF RIGHT TO PERSONAL LIBERTY

- (1) A person shall not be deprived of his or her personal liberty save as may be authorized by law in any of the following cases, that is to say—

- (a) in consequence of his or her unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether established for Saint Lucia or some other country, in respect of a criminal offence of which he or she has been convicted;

...

- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;

...

- (3) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or

- (b) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law and who is not released, shall be brought before a court without undue delay and in any case not later than 72 hours after such arrest or detention.

- (4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit an offence, he or she shall not be

¹ Cap. 1.01 Laws of Saint Lucia

thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

- (5) If any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail so long as it is not excessive.
- (6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting: Provided that a judge, a magistrate or a justice of the peace or an officer of a court or a police officer shall not be under any personal liability to pay compensation under this subsection in consequence of any act performed by him or her in good faith in the discharge of the functions of his or her office and any liability to pay any such compensation in consequence of any such act shall be a liability of the Crown.” (Underlining supplied)

[16] I interpret section 3(1)(a) as saying that a person who is unfit to plead may be deprived of his personal liberty in the manner authorized by statute. The state’s position is that, from the time of the claimants’ respective arraignments, they were deprived of their personal liberty under the authority of the **Criminal Code** of Saint Lucia (“the Code”), as a consequence of their unfitness to plead to their respective criminal charges. It is therefore necessary to examine the provisions of the Code relating to unfitness to plead to see what it prescribes and what are its precise requirements.

The Criminal Code

[17] Sections 1019–1021 of the Code provide:

“1019. – (1) If any accused person appears before or upon arraignment, to be insane, the Court may order a jury to be impanelled to try the sanity of such person, and the jury shall thereupon, after hearing evidence for that purpose, find whether such person is or is not insane and unfit to take his trial.

- (2) If, during the trial of any accused person, such person appears, after the hearing of evidence to that effect or otherwise, to the jury charged with such indictment to be insane, the Court shall, in such case, direct the jury to abstain from finding a verdict upon the indictment, and in lieu thereof, to return a verdict that such person is insane.
- (3) But a verdict under this section shall not affect the trial of any person so found to be insane for the offence for which he was indicted, in case he subsequently becomes of sound mind.

1020. Where, in any indictment, any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, then, if it appears to the jury, before whom such person is tried, that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

1021 – (1) Where any person is found to be insane under the provisions of section 1019, or has a special verdict found against him, under the provisions of the preceding section, the Court shall direct the finding of the jury to be recorded and thereupon the Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit, until the Governor-General's pleasure shall be known.

- (2) The Judge shall immediately report the finding of the jury and the detention of such person to the Governor General who shall order such person to be dealt with as a person of unsound mind under the laws of this State for the time being in force for the care and custody of persons of unsound mind, or otherwise as he may think proper.” (Underlining supplied)

[18] This is what I distill from the above provisions of the Code:

- (i) A jury must be empanelled to determine whether an accused person is insane and unfit to take his trial.

- (ii) Where a jury so finds, the judge shall record the finding and order the person to be detained in safe custody in such a place as the judge thinks fit until the Governor-General's pleasure is known.
- (iii) The judge shall immediately report the finding and detention to the Governor-General who shall order the person to be dealt with as a person with unsound mind under the laws of Saint Lucia in force at the time for the care and custody of persons of unsound mind.

[19] It is to be noted that the Code does not specify where the place of safe custody shall be and leaves it to the judge to so determine – but only until the Governor-General's pleasure is known. I shall return to the phrase “the Governor-General's pleasure” shortly. If the judge considered the prison to be a fit and proper place for their detention in safe custody, this could only have been until the Governor-General considered the matter and gave directions.

[20] Once the judge reports it to the Governor-General, the Code mandates that the Governor-General shall order that the person be dealt with as a mentally ill person under the laws of Saint Lucia in force for the care and custody of the mentally ill. The Governor-General is restricted in what he may order by the requirements of the law in force for dealing with the mentally ill.

[21] There is no evidence before this Court that the learned judge immediately reported the finding and determination to the Governor-General. Neither is there any evidence that the Governor-General ever made any order that the claimants be dealt under the laws of Saint Lucia for the care and custody of the mentally ill, as required by the Code. I note that in the Trinidadian case of **Bissessar v Attorney General**,² the Court of Appeal similarly observed that there was no evidence that the judge had reported the matter to the President or that the President had made any order. I suspect that in many jurisdictions of the Commonwealth Caribbean the process ends with the judge's order for detention at the Governor-General's pleasure.

² Civil Appeal No. P 136 of 2010.

[22] The law in force at the time for dealing with the care and custody of persons of “unsound mind” in Saint Lucia was, and is, the **Mental Hospitals Act**³ (“the Act”). Before examining that Act, I must return to the expression “the Governor-General’s pleasure”.

“The Governor-General’s pleasure”

[23] The orders that the claimants be detained in prison at the Governor-General’s pleasure, taken at face value, suggest indefinite detention until the Governor-General orders otherwise. But the Governor-General’s discretion is not absolute. The essence of the rule of law and modern constitutionalism is that there is no unfettered discretion. The notion of unfettered discretion was debunked since **Attorney General v Reynolds**.⁴ In any event, as we will see below, the Act contemplates detention until mentally ill persons recover their mental health, which implies that they will receive appropriate treatment and that there will be an ongoing process to evaluate whether they are able to stand trial. The “Governor-General’s pleasure” is an archaic, unhelpful, colonial-era phrase that should now pass into desuetude.

[24] Ms. Faisal for the claimants contended, in reliance on **D.P.P. v Mollison**,⁵ that the orders for the claimants’ detention at the Governor-General’s pleasure offends the doctrine of separation of powers by giving the power to determine the length of detention, a judicial function, to the executive. I agree with Ms. Louison that, in the context of this case, reliance on **Mollison** is misplaced. As explained in **Bissessar**, an order for detention due to unfitness to plead is not sentence. There is no punitive element to the order. It is properly the function of the executive to ensure that the mentally ill who are unfit to plead get the appropriate treatment

³ Cap. 11.14 Laws of St. Lucia.

⁴ [1980] A.C. 24.

⁵ [2003] UKPC 6.

until they are fit to plead. There is therefore no need to substitute “Governor-General’s pleasure” with “the Court’s pleasure”.

The Mental Hospitals Act

- [25] The long title of the Act says it is “An Act to provide for the custody of persons of unsound mind”. Sections 31 through 33 come under the heading “Inmates of Unsound Mind” and provide as follows:

“31. Insanity before verdict

- (1) If any person, upon arraignment before the High Court in its criminal jurisdiction or during his or her trial for any offence, is found by the jury to be insane, the Court shall order that the trial of such person be postponed until he or she becomes of sound mind and that in the meantime he or she be detained in custody in such mental hospital as the Court appoints until Her Majesty’s pleasure is known, and thereupon the Governor General on behalf of Her Majesty may give such order for the safe custody of such person until he or she becomes of sound mind as the Governor General thinks fit.
- (2) If any person charged before any Court with any crime or offence appears to the Court to be of unsound mind and it shall not be practicable to hold an inquiry as to the state of mind of such person, it is lawful for the Court to order such person to be detained in custody in a mental hospital, which for this purpose shall be deemed to be a prison, until an inquiry can with reasonable expedition be held.

32. Special verdict when accused found guilty but insane at date of act or omission charged, and orders thereon

- (1) Where in any indictment or information any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he or she was insane, so as not to be responsible, according to law, for his or her actions at the time when the act was done or omission made, then, if it appears to the jury before whom such person is tried that he or she did the act or made the omission charged, but was insane as aforesaid at the time when he or she did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him or her, but was insane as aforesaid at the time when he or she did the act or made the omission.
- (2) Where such special verdict is found, the High Court shall

order the accused to be kept in custody as a inmate of unsound mind in such place and in such manner as the Court shall direct till Her Majesty's pleasure shall be known; and it is lawful for the Governor General on behalf of Her Majesty thereupon, and from time to time, to give such order for the safe custody of the said person during pleasure, in such place and in such manner as to the Governor General may seem fit.

33. Inmates of unsound mind

- (1) Where the Governor General is satisfied that any person unsound imprisoned for any cause in any prison is insane he or she may by warrant under his or her hand direct that such person be removed to such mental hospital for inmates or other mental hospital as the Governor General thinks proper, and that the person so removed be detained in such hospital until discharged as in this section is mentioned." (Underlining supplied)

[26] There might appear, at first blush, to be some tension between the provisions of the Code and the Act. While the Code provides that the judge may order the person of unsound mind to be detained in safe custody in such place and manner as the judge thinks fit until the Governor-General's pleasure is known, the Act makes it mandatory that the judge shall order that person to be detained in a mental hospital until Her Majesty's pleasure is known.

[27] The Code and the Act must, however, be read together and are intended to complement each other. The Code creates and defines offences, prescribes penalties and sets out some criminal procedure, including determining whether persons charged with offences are fit to plead. Where a person is found unfit to stand trial due to mental illness, the judiciary's role gives way to that of the Executive's, whose function is to provide care for the mentally ill as set out under the Act. Once a mentally ill person recovers mental health, he is brought back before the court where the judiciary then resumes its function.

[28] In **Bissessar** the Court of Appeal helpfully stated:

"It is no part of the judicial function to care for and treat an accused person found by a jury to be insane and unfit to take his trial. Until he pleads to the charge and is found guilty he does not come within the court's sentencing jurisdiction. During the appellant's detention at the hospital it

was for the executive to take into account his progress and responsiveness to the treatment regime and to determine whether he was fit to take his trial.”

- [29] It appears to me that once the claimants were found unfit to plead and take their trial and the judge made a provisional order for their safe custody and immediately reported it to the Governor-General as required by the Code, the provisions of the Act were then engaged. The Code itself contemplates this by providing that the Governor General shall give directions under the law in force for dealing with the mentally ill. Any order made by the judge for the custody of the person found unfit to plead and take his trial could only be temporary until the Executive, acting through the Governor-General, gave directions in accordance with the Act.
- [30] In a situation where the Governor-General makes no order, the default position under the Act is that the judge would have ordered the person to be detained in a mental hospital, not in a prison, until he becomes of sound mind.
- [31] The law of Saint Lucia is that where a person has been found mentally unfit to stand his trial a judge shall order that he be detained at a mental hospital. Though the Act does not expressly state that the Governor-General shall order that person to be kept at a mental hospital, the tenor and spirit of Act is that the Governor General must give directions that a mentally ill person be committed to a mental hospital for care until he becomes of sound mind. It could not be the law that persons who have not been found guilty of any offence nor sentenced to any term of imprisonment could be ordered confined indefinitely in a prison with no designed psychiatric unit.
- [32] Section 33 of the Act provides that if the Governor-General is satisfied that a person imprisoned for any cause in any prison is insane he may, by warrant, direct that such person be removed to a mental hospital for inmates or other mental hospital as he thinks proper. Section 33 deals not with persons who, upon their arraignment, are found unfit to plead by reason of unsoundness of mind but

persons who become mentally ill after trial while incarcerated. There is no conceivable reason why persons found to be mentally ill at arraignment should be treated any differently from persons found to be mentally ill while serving their sentence in prison. In both scenarios they plainly require treatment at a mental health facility and the intent of Act is to achieve that purpose in both scenarios.

The Correctional Services Act:

[33] The **Correctional Services Act**⁶ is to similar effect. It provides that:

“24. Mentally ill persons and persons with any contagious disease

- (1) Where a person detained in a correctional facility, lock-up or legalized police cell appears to the Director or person in charge of a lock-up or legalized police cell to be mentally ill, the Director or person in charge may order the Consultant Psychiatrist to examine the person detained.
- (2) Where the Consultant Psychiatrist certifies that such person detained is, in the opinion of the Consultant Psychiatrist, mentally ill, the Director or person in charge of a lock-up or legalized police cell, shall seek a court order to have the person detained committed to a mental hospital, there to be kept and treated as if he or she had been ordered to be detained in the mental hospital under the Mental Hospitals' Act until a consultant psychiatrist of such Mental Hospital certifies that the person has ceased to require treatment in that institution.
- (3) The court which made the order of committal under subsection (2), shall by order direct that the person detained be returned to the correctional facility, lock-up or legalized police cell where he or she was removed there to be dealt with according to law.” (Underlining supplied)

⁶ Cap. 14.02 Laws of St. Lucia.

- [34] Both the **Mental Hospitals Act** and the **Correctional Services Act** envision that persons of unsound mind should be committed to or transferred to and detained at a mental hospital, there to be kept and treated until they cease to require treatment. That is the minimum that can be expected of a modern, civilized society.
- [35] The State contends that the claimants received care at Bordelais “several times annually” from psychiatric professionals during the period of their detention, were diagnosed with mental illness throughout their incarceration and therefore, notwithstanding the absence of periodic reviews, were, in any event, unfit to stand trial as the medical records show that they never recovered from their mental illness.
- [36] That contention assumes equivalence between psychiatric treatment of a mentally ill person in the confines of a prison and one receiving such treatment in a proper mental health facility designed specifically for that purpose. I do not think that it requires an expert to say that there is a fundamental difference between the two. That is why the Act and the **Correctional Services Act** both have provisions requiring persons unfit to plead to be committed to a mental hospital and those found to be mentally ill in prison to be transferred to a mental hospital. Those provisions recognize that mentally ill persons should be treated at a mental hospital and not at a prison.
- [37] I appreciate that a prison may be set up and equipped with a psychiatric ward or unit, but there is no evidence that was the case here. Mr. Leonard Terrance, deputy director of Bordelais, deposed that at present Mr. Noel is housed at the Delta Unit which is the maximum-security unit and the only block of cells which has one-man cell facilities. He further stated that Bordelais’ medical unit is under the supervision of a nurse (he did not say psychiatric nurse), that prison officers are also assigned to the medical unit and that the unit is not designed to house inmates permanently. He further deposed that Mr. Noel was housed at the Foxtrot

Until between 2006-2007 which is designed for inmates with mental health conditions, but gave no further details about that unit.

[38] The State relies on section 30 of the Act, which provides that:

“The Governor-General may appoint the whole or any part of any building, prison, hospital, house or other place with any outhouses, yards, gardens, grounds or premises thereto belonging, to be a mental hospital for inmates.”

[39] The State contends that section 30 is permissive; there is no obligation on the Governor-General to appoint a mental hospital for inmates; the whole tenor of that Act contemplates a prison being utilized as a mental hospital for inmates; and there is no mandatory requirement for mentally ill inmates to be housed in a psychiatric hospital.

[40] I do not see how reliance on section 30 assists the State. I agree that the Act contemplates that a prison may be utilized as a mental hospital for inmates. This would have to have been appointed by the Governor-General, and presumably after being satisfied that a unit of the prison is adequately equipped to be appointed as a mental hospital. There is no evidence before this Court that the Governor-General ever appointed Bordelais or any section of it to be a mental hospital for inmates. In the absence of such an appointment, the Act requires both the judge and the Governor-General to commit/transfer such persons to a mental hospital.

[41] Further, the State’s case does not address the fact that evidence of psychiatric treatment of Mr. Noel only goes back to 2003. He was found unfit to plead and detained at Bordelais since 1992. There is therefore a ten-year period during which he might not have received any psychiatric treatment at all. It was common knowledge that he was a mentally ill person since 1973. There is no evidence that Mr. Henry received any psychiatric treatment between the period 2000 and 2003.

[42] Having failed to commit or transfer the claimants to a mental hospital as required by law where they would have had the best opportunity to recover and stand their trial, it is unreasonable for the State to now say that they never recovered from their mental illness during their incarceration, are still unfit to stand trial (in the case of Mr. Noel) and therefore were lawfully detained. Put another way, the State, by its failure to transfer them to a mental hospital, may have contributed to the failure of the claimants to have sufficiently recovered their mental health to stand their trial.

[43] I remind myself that section 3 of the Constitution states that a person shall not be deprived of his personal liberty except as is authorized by law. That law is the Code. The Code, as set out above, interlocks with and engages the provisions of the Act. Can it be said that the claimants were detained as authorized by law for dealing with the care and custody of the mentally ill found unfit to plead? I am left in no doubt that they have not.

[44] As previously stated, Mr. Henry was unconditionally released in May 2019. Mr. Noel has been in prison for 32 years for an alleged offence that carries a maximum sentence of ten years imprisonment and remains there to this day. The State justifies his continued detention for the protection of the community. It relies on section 3(1)(h) of the Constitution, set out at paragraph 16 above.

[45] Reliance on that section is surely misplaced. The proper construction of s 3(1)(h) is that a vagrant or person reasonably suspected to be of unsound mind or addicted to drugs or alcohol may be deprived of his liberty under a law that so authorizes it, for his treatment or the protection of the community.

[46] That law is the same **Mental Hospitals Act** which provides as follows:

“3. Inquiry as to whether person is of unsound mind

- (1) Any magistrate upon information upon oath of any informant to the effect that the informant has good cause to suspect and believe and does suspect and believe some person to be a person of unsound mind and a proper subject for

confinement, may, at his or her home or in any place which he or she deems convenient other than an open court, examine such suspected person and in the same place or elsewhere other than in an open court, may hold an inquiry as to the state of mind of such suspected person. However, in the case of a person suspected of being a feeble-minded person or child the informant shall be the parent, guardian or other person having the care of such person or child.

- (2) For the purpose of such inquiry the magistrate may summon witnesses and shall have and exercise the same powers for the summoning of witnesses, requiring their attendance and the recording of evidence as a magistrate has and exercises in a court of summary jurisdiction. However, such magistrate may, if he or she thinks fit, proceed with such inquiry in the absence of the suspected person, and without proof of the service of any summons upon him or her.
- (3) The magistrate may, if he or she thinks fit, adjourn the inquiry and by written order direct that such suspected person be kept in custody under observation at the observation room at a mental hospital for a period of 7 days, which period may be extended on the recommendation of the Superintendent for further periods of 7 days up to a maximum period of 56 days.

4. Medical Certificate

- (1) The magistrate shall appoint any medical officer in the service of the Government to examine the person suspected to be of unsound mind, and such medical officer shall, if he or she considers the facts warrant him or her in so doing, sign a certificate certifying that in his or her opinion the suspected person is of unsound mind.
- (2) Such certificate shall specify in full detail the facts upon which the person signing it founds his or her opinion and shall distinguish facts which he or she has himself or herself observed from facts communicated by others.
- (3) The person signing the certificate shall inquire of any persons able to give information as to the previous history of the person and shall state in his or her certificate all matters known to him or her which he or she deems likely to be of service with reference to medical treatment.
- (4) No certificate shall have any effect under this Act which purports to be wholly founded on facts communicated by others.

6. Adjudication of unsoundness of mind

Where upon such inquiry as is provided for by this Act it appears to a magistrate that any person is of unsound mind

and a proper subject of confinement, and such medical certificate as by this Act is required of his or her unsoundness of mind has been given, the magistrate may adjudge such a person to be a person of unsound mind and a proper subject for confinement, and may either proceed to make an order according to this Act for the care and custody of such person or if he or she is of opinion that the question of the care and custody of such person may be more conveniently decided by the magistrate of some other district may direct that the further proceedings be had before the magistrate of such other district.

7. Custody of person of unsound mind

Where under this Act any person has been duly adjudged a person of unsound mind and a proper subject of confinement any magistrate may—

- (a) if the consent in writing of the Medical Superintendent of a mental hospital is produced, order such person to be detained in a mental hospital;
- (b) grant to any person residing within the district of such magistrate a license authorizing such person to receive the person of unsound mind into some house specified in the license and situate within such district and there to take charge of such person; or
- (c) if it appears that the person of unsound mind is a pauper, by warrant under his or her hand commit him or her to a mental hospital there to be taken charge of as a pauper patient.”

[47] There is therefore a legal procedure for committing mentally ill persons, who have not been charged with any offences, to a mental hospital for their care and the protection of the community. This is the procedure that ought to have been invoked after Mr. Noel had spent ten years in prison. As pointed out at paragraph 6 above, this was what magistrates did in the past when Mr. Noel posed a threat to the community.

[48] The state has simply kept him in prison, where he ought not to have been in the first place. There is no lawful justification for keeping him in prison.

No Periodic Reviews Unconstitutional

[49] In **Bissessar**, the appellant had spent some seven years and nine months at the criminally insane unit at the St. Ann's Hospital (not in a prison as happened in this case) without any periodic review of his fitness to plead. The Court of Appeal held that it was implicit in the order of the judge that the treatment of the appellant should proceed on an ongoing basis and also that periodic assessments of his mental health were required to determine whether he had sufficiently recovered to take his trial.

[50] The Court, citing **Seepersad and Panchoo v Attorney General**⁷ held that he had a common law right to review. The specific findings of the Court of Appeal were:

- (i) The appellant was entitled to a periodic review of his fitness to take his trial during the entire period of his detention at the criminally insane unit of the St. Ann's Hospital. ;
- (ii) Such a right of periodic review included the right to be told of the outcome of the review as well as to the creation of a procedure by which any recommendation of the review body for his discharge could be facilitated.
- (iii) The failure to conduct such review was a breach of the appellant's right to protection of the law and to such procedural provisions necessary to give effect to his constitutional rights.
- (iv) Damages assessed at \$100,000 were sufficient to vindicate the appellant's rights and it is unnecessary to award vindictory damages.

[51] In **Michael Stephens v Attorney General of Saint Lucia**⁸, the jury had found that Mr. Stephens had committed an offence but was insane at the time. He was detained not in a mental hospital but at Bordelais. Wilkinson J commented "this is indeed a most unfortunate case and it a clear example of how people can fall through the cracks and get lost in the prison system. Mr. Stephens entered prison as a young man of 23 years and left as a middle aged man of 60 years." Wilkinson J held that the failure to periodically review Mr. Stephens sentence was a breach

⁷ [2012] 3 WLR 579.

⁸ SLUHCV2013/0425

of his constitutional rights and awarded damages of \$2,272,000.00 for his unlawful detention at Bordelais for the period 29 July 2003 to 8 July 2015.

- [52] The combined effect of having detained the claimants in prison as opposed to a mental hospital and then wholly failing to conduct periodic reviews to assess their mental fitness to plead amounts to an infringement of their personal liberty.

Inhuman Treatment?

- [53] Section 5 of the Constitution provides:

“5. PROTECTION FROM INHUMAN TREATMENT

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

- [54] The claimants contend that their section 5 protection was breached because the conditions under which they were detained were punitive rather than treatment oriented; they were made to wear blue penal uniform which denoted trial and conviction; had deficient diets and were harassed by inmates and officers.
- [55] I agree with Mrs. Louison that whether or not the conditions in which persons are detained amount to cruel and inhuman treatment is a value judgment. In **Thomas and Hilaire v Baptiste**,⁹ the Privy Council held that to fall foul of the constitutional prohibition against cruel and inhuman treatment, it must be shown that conditions in which the person was kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amounted to treatment which went beyond the harsh and could properly be described as cruel and unusual. Although prison conditions in Third World countries often fall short of the minimum that would be acceptable in more affluent countries, it would not serve the cause of human rights to set such demanding standards that breaches were commonplace. Whether or not the conditions amount to cruel and unusual treatment is a value judgment in which it is necessary to take account of local conditions both in and outside the prison.

⁹ [1999] UKPC 13.

[56] The Court has not been provided with any reliable evidence as to what the living conditions were inside and outside the prison. What is of greater concern, however, is the fact that the claimants were not supposed to have been incarcerated in a prison at all but to a mental hospital for treatment in order to recover and stand trial. All human rights are grounded in the inherent dignity of all persons as affirmed in 1948 by the **Universal Declaration of Human Rights**. The preamble of the Constitution envisions that “all persons have been endowed equally by God with inalienable rights and dignity. The imprisonment of persons requiring psychiatric treatment in a mental health facility amounts to the criminalization of the mentally ill.

[57] In **ZH v Hungary (App. No. 28973/11)**¹⁰, the European Court of Human Rights held that:

“Where the authorities decided to detain a person with disabilities, they had to demonstrate special care in guaranteeing such conditions as corresponded to the person’s individual needs resulting from his disability. States had an obligation to take particular measures which provided effective protection of vulnerable persons and included reasonable steps to prevent ill treatment of which the authorities had or ought to have had knowledge. Any interference with the rights of persons belonging to particularly vulnerable groups – such as those with mental disorders – was required to be subject to strict scrutiny, and only very weighty reasons would justify any restriction. In the instant case, given that the applicant undoubtedly belonged to a particularly vulnerable group and that as such he should have benefited from reasonable steps on the side of the authorities to prevent situations likely to result in inhuman and degrading treatment, it was incumbent on the government to prove that the authorities had taken the requisite measures. However, the government had failed to meet that burden of proof in a satisfactory manner, especially in respect of the initial period of the detention. Despite the authorities laudable but belated efforts to address his situation – the applicant’s incarceration without the requisite measures taken within a reasonable time had to have resulted in a situation that amounted to inhuman and degrading treatment, in breach of art 3 of the Convention, on account of his multiple disabilities.”

¹⁰ [2012] ECHR 28973/11

- [58] Prisons are not designed as facilities for the mentally ill, yet it is the case that throughout the Commonwealth Caribbean many mentally ill persons who cannot access psychiatric treatment are simply swept into the criminal justice system after they commit a crime, and very often even when they have not been adjudged as having committed any crime. While there are conscientious and committed consulting psychiatrists providing services, prison mental health services are woefully inadequate, understaffed and limited. If prisoners without mental illness struggle to keep mental and emotional equilibrium in prison, it must be next to impossible for those with mental disorders to cope in a prison.
- [59] The detention of the claimants, being mentally ill persons, in prison for 20 years and 27.5 years, respectively, without any periodic reviews of their fitness to plead, amounts to inhuman and degrading treatment. Further, when no regular reviews are held, not only the mentally disabled accused suffer, but the public at large since there is less and less chance of a fair trial and accountability for the crime.

Breach of Protection of Law?

- [60] The state concedes that there has been a breach of the claimants' right to a fair trial within a reasonable time. I am not, however, convinced that this is an appropriate head under which to award damages. Section 8 provides:

"8. Provisions to secure protection of law

- (1) If any person charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

- [61] The claimants were both charged with criminal offences. Neither claimant could have been tried because each was found unfit to plead due to mental illness. If there had been periodic reviews, which concluded that they remained unfit to stand trial, they could not have been brought to trial, no matter how long they

remained incarcerated. The right to a trial within a reasonable time is not triggered until they are fit to plead. There having been no periodic reviews, we shall never know whether they were ever fit to stand trial. The state conceded that, in relation to Mr. Henry, there is some evidence that he was stable between 2003 and 2007, but does “stable” mean fit to stand trial? Without proper periodic reviews, it is entirely speculative. This makes it impossible to say when the claimants could have been tried and equally impossible to say what was the period of delay in bringing them to trial and whether, in the circumstances, it was unreasonable. In **Bissessar**, the court took the approach of awarding damages for failure to conduct period reviews in breach of protection of law provisions.

[62] I think the approach in the circumstances of this case should be to award damages based on my finding that they were deprived of their personal liberty in a manner that was not authorized by law. Where a claimant seeks damages for breach of the right to a trial within a reasonable time, what he is seeking to vindicate is his or her right to personal liberty, to not be kept in prison awaiting trial longer than can be reasonably expected. Similarly, the award of damages for failure to conduct period reviews of a person’s fitness to stand trial is ultimately directed at vindicating personal liberty.

Damages

[63] In the recent decisions of **Everette Davis v Attorney General of St. Christopher and Nevis**¹¹ (2014), **Jermaine Browne v Attorney General of St. Christopher and Nevis**¹² (2018) and **Gavin Browne v Attorney General of St. Christopher and Nevis**¹³ (2019), High Courts of the Eastern Caribbean awarded damages at the rate of \$500.00 per day for the infringement of the right to personal liberty. I see no reason to depart from this assessment.

Disposition

[64] I therefore make the following declarations and orders:

¹¹ Claim No. SKBHCV2013/0220

¹² Claim No. SKBHCV2016/0074

¹³ Claim No. SKBHCV2018/0108

- (1) A Declaration is granted that the State's detention of the claimants in prison after being found unfit to plead due to mental illness, instead of in a mental health facility, is in breach of their right to personal liberty.
- (2) A Declaration is granted that the State's detention of the claimants in prison instead of a mental health facility, after being found unfit to plead due to mental illness, without any periodic review of their fitness to plead, is in breach of their protection against inhuman and degrading punishment and reduces their inherent human dignity.
- (3) A Declaration is granted that the State's detention of the claimants in prison after being found unfit to plead due to mental illness, without any period review for the entire duration of their incarceration to determine whether they had recovered their mental health so as to be fit to plead and stand their trial, is in breach of their right to personal liberty.
- (4) It is ordered that Mr. Francis Noel be transferred to a mental health facility.
- (5) Damages are awarded to Mr. Francis Noel in the sum of \$5,031,500.00 for his detention in prison for 10,063 days in breach of his right to personal liberty.
- (6) Damages are awarded to Mr. Anthony Henry in the sum of \$3,526,000.00 for his detention in prison for 7,052 days in breach of his right to personal liberty.
- (7) Interest is awarded on the respective damages at the rate of 6% from date of judgment until payment in full is made.
- (8) Prescribed costs are awarded to both claimants.

Postscript

- [65] It does not appear that Saint Lucia has ratified the **International Covenant on Civil and Political Rights** but the legislature may wish to consider **General Comment 35** on personal liberty from the Human Rights Committee which provides at paragraph 19:

“States parties should revise outdated laws and practices in the field of mental health in order to avoid arbitrary detention. The Committee emphasizes the harm inherent in any deprivation of liberty and also the particular harms that may result in situations of involuntary hospitalization. States parties should make available adequate community-based or alternative social-care services for persons with psychosocial disabilities,

in order to provide less restrictive alternatives to confinement. The existence of a disability shall not in itself justify a deprivation of liberty but rather any deprivation of liberty must be necessary and proportionate, for the purpose of protecting the individual in question from serious harm or preventing injury to others. It must be applied only as a measure of last resort and for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law. The procedures should ensure respect for the views of the individual and ensure that any representative genuinely represents and defends the wishes and interests of the individual. States parties must offer to institutionalized persons programmes of treatment and rehabilitation that serve the purposes that are asserted to justify the detention. Deprivation of liberty must be re-evaluated at appropriate intervals with regard to its continuing necessity. The individuals must be assisted in obtaining access to effective remedies for the vindication of their rights, including initial and periodic judicial review of the lawfulness of the detention, and to prevent conditions of detention incompatible with the Covenant.”

**Godfrey P Smith SC
High Court Judge**

By the Court

Registrar