

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2012/0052

**IN THE MATTER OF THE CONTRAVENTION OF THE RIGHT TO PERSONAL LIBERTY
PROTECTED BY SECTION 3 OF THE CONSTITUTION OF GRENADA
IN RELATION TO WAYNESWORTH BARRETT BY HIS BEING DETAINED IN
CUSTODY AT RICHMOND HILL PRISON WITHOUT ANY LIMITATION OF THAT
PROTECTION BEING APPLICABLE TO HIM**

AND

**IN THE MATTER OF AN APPLICATION BY WAYNESWORTH BARRETT
FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM**

AND

**IN THE MATTER OF THE CIVIL PROCEDURE RULES 2000 ("CPR") PART 57
ON HABEAS CORPUS**

BETWEEN:

WAYNESWORTH BARRETT

Applicant

AND

THE COMMISSIONER OF PRISONS

Respondent

Appearances:

Dr. Francis Alexis, Q.C. with Ms. Ayanna Nelson for Applicant
Mr. Darshan Ramdhani, Solicitor General, with Mr. Adebayo Olowu, Crown
Counsel, for Respondent

2012: February 27, 28
April 4

DECISION

[1] **PRICE FINDLAY, J.:** The Applicant, Waynesworth Barrett, applies to the Court
for the following relief:

“In respect of the Applicant Waynesworth Barrett a Writ of Habeas Corpus ad Subjiciendum do issue directed to the Respondent, the Commissioner of Prisons, Richmond Hill Prison, Richmond Hill, St. George’s, to have the body of the Applicant the said Waynesworth Barrett before this Honourable High Court of Justice at Church Street, St. George’s, on such date and at such time as the Court may direct, together with the date and cause of the Applicant being taken and held in custody, so that the Court may examine whether such cause is legal.”

- [2] The brief facts of the matter are as follows:
- [3] The applicant entered Grenada illegally on 27th November 2011 via boat. He entered the jurisdiction at or near Grenville without presenting himself to either the Customs or Immigration authorities.
- [4] He remained in Grenada until his arrest on 2nd February 2012, on charges of illegal entry in violation of the Immigration Laws.
- [5] On the 6th February, 2012 the Applicant was taken before the Chief Magistrate in the St. George’s No. 1 Magistrate’s Court. He pleaded guilty and was fined \$500.00 and a Deportation Order made. He paid the fine forthwith.
- [6] Immediately after these Magistrate’s Court’s proceedings, the Applicant was taken to the St. Paul’s Police Station. He was kept there until 13th February, 2012.
- [7] On 13th February 2012 he was again taken to the St. George’s No. 1 Magistrate’s Court on a complaint without oath charged with “doing an act for the purpose of trafficking in a controlled substance to wit: cocaine...” contrary to s. 18(2)(c) of the Drug Abuse (Prevention and Control) Act Cap. 3 Vol. 1 of the 1994 Revised Laws of Grenada.
- [8] The Chief Magistrate on 13th February, 2012 adjourned the hearing of the matter to the 2nd March, 2012.

- [9] The Applicant was denied bail and remanded to custody and taken to Her Majesty's Prisons at Richmond Hill.
- [10] Prior to all this, the Applicant on the 5th February 2012 gave a Question & Answer interview, which he signed. The questions were put to him by Police Officer Andrea Thomas in the presence of Insp. Senneth Joseph.
- [11] The Applicant states that even though he signed the Question & Answer interview, it had not been read over to him nor did he read it himself.
- [12] He further deponed that he did not read the recorded interview as his energy and his will had been sapped on account of the fact that he had been in custody for more than 72 hours. He also complains of being deprived of the opportunity to speak to a lawyer at any time and, further, that his girlfriend was also detained and he was worried over her well being. He states the interview went on for more than two hours.
- [13] He alleges that at the date of the hearing no process of Court had been served on him in relation to the drug trafficking charge.
- [14] He complains that he has been detained at Her Majesty's Prisons since 13th February, 2012 without any complaint being alleged against him other than the drug trafficking complaint.
- [15] He alleges that his detention contravenes his guaranteed constitutional right to liberty and that such detention is unlawful and the Court do issue a Writ of Habeas Corpus for his release so that the deportation order be carried out and he be allowed to travel from Grenada to his native Jamaica.
- [16] The application is opposed by the Respondent.
- [17] Most of the facts as stated by the Applicant are not disputed by the Respondent.

- [18] The Respondent in his affidavit indicated that the Applicant was on a regional watch list and that he had been deported to Jamaica; they do not state from where.
- [19] They depone that he was convicted in Jamaica for attempting to use a forged passport.
- [20] The Police executed a search warrant at the premises of the Applicant's girlfriend in Lance Aux Epines and the Applicant was arrested.
- [21] The Respondent agrees that the Applicant gave the Question & Answer interview but state that he was cautioned and asked whether he wished an attorney prior to the interview. He declined.
- [22] He gave the interview voluntarily. He was clear and coherent at all times. The statement was read over to him on completion and he signed it.
- [23] The Respondent states that the statement confirmed the police suspicions on the Applicant's activities.
- [24] On 6th February, 2012 the Applicant was taken to court, but the police informed the Magistrate that investigations relating to the Applicant were ongoing and advised the Magistrate that the police would be detaining him.
- [25] The Applicant was advised by the police on 6th February, 2012 that he was being further detained on suspicion that he was involved in drug offences.
- [26] The decision was taken to charge the Applicant on 8th February, 2012 and the charge was formally drawn and was preferred against him on 12th February, 2012.
- [27] The delay was explained by the Respondent as having occurred because it was expected that others would be charged with the Applicant. Several persons were detained and two were eventually charged with the Applicant.

- [28] Also, the investigations into the alleged offences were continuing. These investigations involved law enforcement agencies in St. Vincent, Jamaica, the United Kingdom and Trinidad.
- [29] They assert the sheer volume of items and information and the investigation of the numerous leads posed a “formidable challenge”.
- [30] They described the investigation as “far reaching and complex”.
- [31] The Applicant complains that no process of any Court on the complaint of drug trafficking or otherwise has been served on him.
- [32] He complains that proper notice has not been given to him in accordance with s. 67B of the Criminal Procedure Code. He says that this shows that there is no reasonable suspicion.
- [33] Section 67B says:

“When any person is charged with any criminal offence, the person proffering the charge shall supply to the person charged a written statement of the charge, at least five days before the hearing of that charge commences:

Provided that if it is not practicable and feasible in a particular case to supply to the person charged such written statement of the said charge at least five days before the hearing of the said charge commences, the person proffering the said charge shall supply to the person charged such written statement of the said charge as soon as it is reasonably practicable to do so.”

- [34] He cites s. 51(1)(b) of the Interpretation Act in support of his contention.

S.51(1)(b) reads as follows:

(1) “In computing time for the purposes of any written law, unless otherwise provided –

(b) where a period is expressed to begin or to end at, on or with a specified day or to continue to or until a specified day, the period shall not include that day;”

- [35] He says the actions of the State contravene s. 3(1)(e) of his constitutional rights:
- “3(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say –
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Grenada;”
- [36] He further argues that s. 100 of the Criminal Procedure Code has not been complied with. He argues that because of that non compliance the Applicant’s detention is unlawful.
- [37] As a result of that non compliance and the unlawful detention the Applicant should be released.
- [38] The learned Solicitor General objected to the application. He stated that s. 100 does not apply because the matter was adjourned in the normal course of court at the request of the Prosecution, not the accused. The requirement put forth by the Applicant does not arise.
- [39] He argues that non compliance with the time limits as set out in the legislation is not fatal to the complaint before the Court.
- [40] He further argues that s. 100 does not state that non compliance with the time limits should result in the failure of the proceedings.
- [41] He argues that the irregularity in service of process (i.e. the complaint) can be cured and does not lead to the proceedings being invalidated.
- [42] It issues of reasonable suspicion and whether the Applicant gave the interview or read it before signing, he argued that those were matters for the Magistrate to hear and not relevant to the habeas corpus proceedings.
- [43] He makes the point that in criminal matters the Court is simply to look at the regularity and the jurisdiction of the Court.

[44] Is the Court seized of the matter? Does the Magistrate's Court have jurisdiction to hear the matter? Whether there is an order warranting the detention? Is there in fact a charge?

[45] Section 100 of the Criminal Procedure Code states:

"100. (1) No irregularity or defect in the substance or form of the warrant, and no variance between the charge contained in the warrant and the charge contained in the information, or between either and the evidence adduced on the part of the prosecution at the preliminary inquiry, shall affect the validity of any proceeding at or subsequent to the hearing.

(2) When any person accused of any indictable offence is before a Magistrate, whether voluntarily or upon summons, or after being arrested with or without warrant, or while in custody for the same or any other offence, the preliminary inquiry may be held notwithstanding any irregularity, illegality, defect or error in the summons or warrant or the issuing, service or execution of the same, and notwithstanding the want of any information upon oath, and notwithstanding any defect in the information, or any irregularity or illegality in the arrest or custody of the accused; the Magistrate may, if he thinks that the ends of Justice require it, adjourn the hearing of the case, at the request of the accused, to some future day, and in the meantime remand him or admit him to bail; and upon such adjournment, the accused shall not be committed to prison unless, before his committal, an information in writing and upon oath has been taken."

[46] With respect to the time limit for serving the Applicant with the complaint without oath which is the process which brought him to court in the first instance, the Court finds that the failure to serve the Applicant with the charge within the stated time does not invalidate the proceedings against him nor did it deprive the learned Magistrate of jurisdiction to hear the matter.

[47] In the case of **Tehily & Ors vs Governor of Wandsworth Prison & anor** Lord Justice Rose made the following observation:

"There was nothing ... which contemplated the dismissal of proceedings for breach of the time limit or indicated Parliament's intention that proceedings against defendants in relation to indictable only offences should be vitiated or rendered a nullity by failure to conform to the prescribed time limits."

[48] He went even further:

“In that context, had Parliament intended that non compliance with time limits should result in the failure of proceedings, it could have been expected to say so.”

[49] I agree with these sentiments and find that s. 100 of the Criminal Procedure Code is clear in its terms, that such an irregularity does not preclude the Court from hearing the matter.

[50] But s. 100 goes further; it gives the Magistrate the power not only to adjourn the matter if the ends of justice so require, but the Magistrate may or may not admit the accused person to bail.

[51] In this case, I think for obvious reasons (i.e. the Applicant having been convicted of the illegal entry and subject to a deportation order) the Magistrate chose to not admit the Applicant to bail. He was remanded to Her Majesty's Prisons.

[52] The section goes on: “... upon such an adjournment, there shall be no committal to prison, unless before that committal takes place an information in writing and upon oath has been taken.”

[53] It seems that this is an additional requirement imposed on the Court prior to the accused person being committed. It requires an information in writing and upon oath.

[54] In this case the Court has been presented with two documents, the initial complaint without oath and the warrant for the detention of the Applicant.

[55] There is no information in writing and upon oath on the record.

[56] This appears to be a mandatory requirement under the section. It would seem that in the absence of such an information an accused ought not to be committed to prison.

[57] Here the powers that be have failed to comply with the strict provisions of the Criminal Procedure Code.

[58] As a result, I find that the Applicant's detention is unlawful and would order his immediate release.

[59] He is still subject to the order of deportation made by the learned Magistrate on 6th February, 2012.

[60] I award the Applicant costs in the sum of \$3,000.00.

[61] I make these further observations; I have looked at the time it took to charge the Applicant and bring him before the Courts.

[62] It is a sad reflection on an experienced Police Force when it takes eight (8) days to institute and bring charges against an accused.

[63] The Police in this matter had a statement from this Applicant on 5th February, 2012 in which he made certain admissions. Yet the decision to charge him was not made until the 8th February, 2012 and he was not brought before the Magistrate until 13th February, 2012.

[64] I can only reiterate what was stated in **R v Holmes, ex parte Sherman and Another:**

“The requirement ... that a person taken into custody for an offence without a warrant shall be brought before a Magistrate “as soon as practicable” means in the absence of any statutory provision that he is to be brought before a Magistrate’s Court within 48 hours of the arrest.”

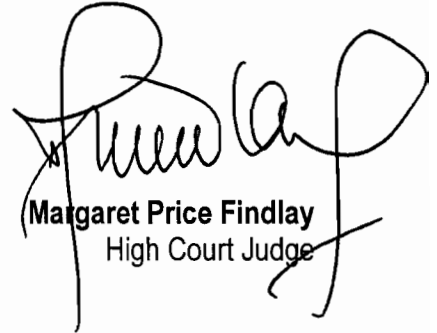
[65] In his judgment Lord Donaldson states:

“The law at present is that, as soon as there is enough evidence to prefer a charge, the arrested person **must without delay** be charged or informed that he might be prosecuted for the offence. The principle is subject to no qualification and no qualification should be introduced by, for example, setting an unduly high standard of sufficient evidence. The criticism that an officer refrained from charging and retained a man in

custody is incomparably more serious than that he charged a man on insufficient evidence." (My emphasis)

[66] I trust that the powers that be bear this admonition in mind.

[67] I order accordingly.



Margaret Price Findlay
High Court Judge