[2023] JMSC Civ. 216

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022CV03519

BETWEEN	**B.C.C.**	**APPLICANT**
AND	**REX**	**RESPONDENT**

IN OPEN COURT AND IN CHAMBERS VIA VIDEO CONFERENCE

Mrs. Dian Watson and Mr. Brian Forsythe instructed by the Legal Aid Council appeared for the Applicant

Mrs. Lenster Lewis-Meade and Miss Ashley Innis instructed by the Office of the Director of Public Prosecutions appeared for the Respondent

Miss Stefany Ebanks and Mr. Rushane Clarke watching proceedings for the Department of Correctional Services

Heard: 2nd and 23rd March; 25th May; 8th and 22nd June; 21st September; 19th and 26th October 2023

Criminology – Detention – Review of Inmate Held at the Governor General's Pleasure – Mentally Disordered Applicant – Applicant Deemed Detained at the Court's Pleasure – Jurisdiction of the Court to Review Detention – Whether Applicant should be released unconditionally – Eligibility for Parole – Unfit to Plea – Civil Procedure Rules, Part 75 – Criminal Justice (Administration) Act s. 25A, 25B, 25C, 25D and 25E – The Judicature (Supreme Court) Act s. 28 – Parole Act s. 2 and 6

<u>L. PUSEY J</u>

[1] Due to the circumstances of this case and to guarantee the Applicant an equitable chance at societal reintegration, initials are used to safeguard the identity of the Applicant and his family.

INTRODUCTION

[2] Even though the Applicant has been in custody for over forty (40) years, in some ways, B.C.C. is a fortunate man. He is not fortunate because of any act of this Court or the

State, but because he has family who are willing and able to assist him at this time in his life.

[3] B.C.C. is one (1) of fourteen (14) persons who have been brought before the Court for their circumstances of detention to be reviewed for possible release. The Court has to determine whether these persons are suitable to be released. This suitability has several components. The first is that the person is not a danger to themselves or to the society. The second is that the person is to be released into circumstances that address their needs – that is proper accommodation and satisfaction of their medical needs. Therefore, perhaps most importantly, the duty of the Court in considering these matters is to ensure that the circumstances of the Applicant are such that they are fit for release and that there is suitable accommodation to house that Applicant upon release.

[4] Unfortunately, there is a serious lack of appropriate state accommodations or non-governmental entities to host these persons. As such, the chances for release of Applicants similar to B.C.C., is greatly increased if they are as fortunate as B.C.C. to have family members who are willing and in a position to assist.

[5] It would have been ideal if there was a penal psychiatric hospital that could have housed mentally disordered defendants and provided the necessary treatment while safeguarding the public from any detrimental acts from such defendants. Unfortunately, there is no such facility in Jamaica, and the Applicant and others are kept in a section of the various correctional institutions.

[6] The Court and the Department of Correctional Services ("DCS") are required to monitor the progress of mentally disordered defendants and determine, periodically, whether or not that defendant is suitable to rejoin society (see: Practice Note re Mentally Ill Persons dated March 5, 2001 and **sections 25C** to **25E** of the **Criminal Justice (Administration) Act**).

[7] We, in the courts, have not been as vigilant as required in carrying out this responsibility – as pointed out in the Report of the Mental Health (Offenders) Inquiry Committee, a summary of which is attached as an Appendix to this judgment. Additionally, there still remains a dearth of state or private institutions that can house persons who are fit to leave correctional institutions but still need full time mental health care.

[8] The Court makes reference to the Introduction of the Report of the Mental Health (Offenders) Inquiry Committee, regarding the responsibility of the Court in relation to the mental disordered defendant, the relevant portions of which are outlined below:

> A mentally disordered person who comes into conflict with the law, will invariably encounter the criminal justice system. The criminal justice system is controlled by the state and is a convergence of the court services, the investigative and prosecutorial services, defence counsel (legal aid) and the correctional services. In circumstances involving the mentally disordered defendant, the mental health services will also be involved. All these entities impact the life of the mentally disordered defendant. The court is the entity charged with the protection of the rights and liberties of all individuals to include the mentally disordered defendant and by law must make decisions as to how best to treat with such persons.
>
> In executing its obligations to the people of Jamaica, the judiciary must apply the law and is affected by the policies and administration of other governmental entities that are involved in the administration of justice. This does not mean however, that the judiciary cannot initiate and pioneer changes for the better… The judiciary, ostensibly, drives the procedure treating with mentally disordered defendants within the criminal justice system and should therefore take a visible and leading role in the planning, design and administration of any process within the justice system that relates to mentally disordered defendants.
>
> … [T]he court is accountable in part, for the fate of those defendants who have been incarcerated when they have been found unfit to plead...[1]

[9] The Applicant was arrested and charged for murder. On the 7th day of May 1980, the Applicant was determined by a Judge to be unfit to plea in the Manchester Circuit Court based on medical information presented to the Court. On that same date, the Court Ordered that the Applicant be detained as "*a non-sane person during the Governor-General's pleasure or until the direction of the Governor-General be known*."

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[1] Mental Health (Offenders) Inquiry Committee, 'Report of the Mental Health (Offenders) Inquiry Committee' (August, 2020).

[10] This means that the Applicant is detained in a correctional facility for an indefinite length of time; as is usual in instances where a defendant is found unfit to plea due their mentally incapacity. Especially in instances where the defendant is deemed to be at great risk of reoffending.

[11] The law in relation to indefinite detention has evolved since the Applicant's own detention at the Governor General's pleasure. The Judicial Committee of the Privy Council in **Director of Public Prosecutions v Mollison (Kurt) (No. 2)** [2003] 62 WIR 268 declared that detention at the Governor-General's pleasure is unconstitutional and unlawful. It was held that such a detention is incompatible with the separation of powers doctrine which declares that judicial functions (such as sentencing or detaining individuals) should not be at the discretion of the Governor-General who is a member of the executive (see**: R v The Director of Correctional Services, ex parte Garfield Peart** (unreported), Claim No. 2009HCV02240, Supreme Court of Jamaica, delivered on July 24, 2009). In light of this decision, individuals were now to be detained at the Court's pleasure.

[12] The change of detention to the Court's pleasure was not automatic for inmates who were already Ordered or sentenced to be detained at the Governor-General's pleasure. Inmates had to apply to the Governor-General to have their sentence referred to the Jamaican Court of Appeal in order for it to be substituted to the Court's pleasure.

[13] Consequent on the decision in **Director of Public Prosecutions v Mollison (Kurt) (No. 2)** (supra), Part 75 of the CPR was added. This established a regime for the review of the detention of inmates held at the Court's pleasure. The intention of this was to ensure that inmates who are detained indefinitely would be periodically reviewed to determine whether they can be released with or without conditions. This was particularly so in instances where the inmate is mentally disordered, and DCS does not have the resources to facilitate their needs.

[14] The same is true in this matter before the Court. The Applicant has been detained for forty-three (43) years and his mental faculties are in a state of decline, such that DCS can no longer adequately care for him. The Court notes that this Applicant was still being detained at the Governor-General's pleasure and that this is the first time since his detention, that he has been brought before the Court for it to be reviewed.

[15] In accordance with its inherent supervisory jurisdiction, the Court made Orders on the 26th day of October 2023, for the temporary and conditional release of B.C.C. into the care of his relative, C.R. The Court had promised to provide its reasons in writing, and it now fulfills that promise.

BACKGROUND

[16] This Application was brought by Attorneys-at-Law employed to the Legal Aid Council as one (1) of fourteen (14) other similar Applications. The Court did not consolidate these Applications, as it recognized that the progress for some would be faster than others and as such heard each Application separately in Chambers.

[17] On the 21st day of November 2022, the Applicant filed a Notice of Application for Review of Inmate Held at the Governor General's Pleasure. The Applicant sought the following Orders:

1. That the Applicant's term of detention be substituted to the convenience of the Court in lieu of the Governor General;
2. That the Applicant be released unconditionally; or alternatively
3. That the Applicant be released on parole with condition; and
4. Any such and further relief this honourable court sees fit.

[18] The Applicant sought these Orders on the following grounds:

1. The Applicant was charged for the offense of Murder
2. The Applicant has been detained at the Governor General's Convenience for over forty years.
3. The Applicant has made no application for review in the past two years or at any other time.

4. The Applicant has been in custody for 42 years and has been sufficiently punished for his crimes.
5. The Applicant has been diagnosed with schizophrenia and he has grown old and frail, during his detention, and no longer poses a threat to the society.
6. The detention of the Applicant at the Governor General's pleasure creates a constitutional inconsistency in light of the doctrine of separation of powers.

[19] The Notice of Application was supported by the Affidavit of Mr. Brian Forsythe, also filed on the 21st day of November 2022.

[20] During the Case Management of the Application, the Court Ordered that the Applicant file several documents which would aid the Court in considering the Application. In compliance with these Orders, the Applicant filed the following:

(i) Psychiatric Report;

(ii) Superintendent Report;

(iii) Social Enquiry Report;

(iv) Certified Copy of the Warrant of Committal; and

(v) Report from DCS regarding the suitability of the intended accommodation and means of the relative C.R. ("Means Report")

[21] Additionally, the Court also sought an Affidavit that outlines the arrangements to be made should the Applicant be released from custody. In furtherance of this, the Affidavit of C.R. was filed on the 8th day of June 2023 and a Supplemental Affidavit of C.R. was filed on the 24th day of July 2023. The Affidavits included information in relation to:

(i) Where the Applicant would reside?

(ii) Who would be responsible for the Applicant and his maintenance?

(iii) How will the Applicant receive medical treatment?

(iv) The likely costs associated with the Applicant's care and upkeep and how it would be funded.

[22] All documents filed in support of the Application were duly considered by the Court. However, the Court will not embark upon a journey to detail the evidence contained in these documents in toto, but will highlight information from each document as is necessary to support or explain its decision on a particular issue.

SUBMISSIONS

[23] The Court commends Counsel in the matter for their help, as the Court, like Counsel, had to navigate the unchartered territory of this matter. Counsel in the matter made both oral and written submissions which were duly considered by the Court. These submissions will only be referred to as is necessary to explain the Court's position on a particular issue.

[24] The Court will note however, that Counsel for the Respondent did not object to the Application. Counsel for the Respondent moreso aided the Court in hearing this Application by offering recommendations to the Court on how to proceed in light of the Applicant's circumstances.

ISSUES

[25] There are two main issues that the Court had to consider in this matter. These are:

(i) Whether the Court has the jurisdiction to review the Applicant's detention; and

(ii) Whether the Applicant should be released unconditionally?

LAW & ANALYSIS

Issue 1: Whether the Court has the jurisdiction to review the Applicant's detention

[26] Inmates who are detained at the Governor General's pleasure would have to apply to the Governor General to have their detention substituted to the Court's pleasure. Upon application, the Governor General would refer the matter to the Court of Appeal so that the detention is substituted. The Court may only review the detention pursuant to

Part 75 of the CPR after it has been substituted to the Court's pleasure by the Court of Appeal. This is the usual practice where the inmate is charged, found guilty at trial, and sentenced to detention at the Governor General's pleasure; more commonly so where the inmate is a juvenile offender.

[27] An individual may also be detained indefinitely based upon a finding by an empaneled jury that the individual is unfit to plea. Prior to the effect of **Director of Public Prosecutions v Mollison (Kurt) (No. 2)** *supra* and the subsequent amendment to the legislation, this indefinite detention was ordered to be at the Governor General's pleasure. In such instances, there is a possibility that the individual may be found fit to plea and be tried for the crimes they are alleged to have committed (see: **section 25C (3)** of the **Criminal Justice (Administration) Act** and **Brown (Appellant) v The Queen (Respondent) (Jamaica)** [2016] UKPC 6).

[28] Therefore, where a defendant is found unfit to plea, the case against them does not automatically end or is discontinued. Unless the Crown decides to enter a "nolle prosequi"[2] or decides to offer no evidence against the defendant, the case is deemed as continuing and the mental state of the defendant should be regularly reviewed to determine their fitness to stand trial and should the defendant be found fit, there is nothing which prevents him from being tried (see: **section 25D** of the **Criminal Justice (Administration) Act** and **Brown (Appellant) v The Queen (Respondent) (Jamaica)** *supra* paragraphs 25-27).

[29] The circumstances of detention mentioned at paragraphs [26] and [27] above must be distinguished from the circumstances of the Applicant's detention. Unlike the aforementioned circumstances where a judicial decision was made, in the case at bar an administrative decision was made by the Judge based on information presented, usually in a medical report, which indicated that the Applicant is unfit to plea. This

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[2] This is an exercise of power by the Director of Public Prosecutions to discontinue criminal proceedings against a defendant. This power is conferred by **section 94(3)(c)** of the **Constitution** and **section 4** of the **Criminal Justice (Administration) Act.**

administrative decision would have effectively resulted in the Applicant's indefinite detention at the Governor General's pleasure.

[30] In other words, an inmate detained because of an administrative decision by the Judge in relation to medical information about an inmate's fitness to plea is similar to a defendant who is remanded in custody pending the determination of his/her trial.

[31] As was noted earlier, the Applicant, at the time of bringing the Application, was considered as being detained at the Governor-General's pleasure. This detention was based on an administrative decision that the Applicant was unfit to plea.

[32] At the time when the Applicant was detained, the position of the law which allowed such detention was found in the **Criminal Justice (Administration) Act**, Cap 83 (1953). **Section 25** of the **Criminal Justice (Administration) Act**, Cap 83 (1953)[3] indicated that the Court had the power to commit individuals who were found unfit to plea to be detained at the Governor General's pleasure, it offered no opportunity to treat with the eventual release or review of such detention.

[33] This was the usual practice until the constitutionality of detention at the Governor General's pleasure was being challenged in the case of **R v Kurt Mollison (No. 2)** (unreported), SCCA No. 61/97, Court of Appeal of Jamaica, delivered May 29, 2000 (which was further appealed resulting in the decision of the Privy Council in **Director of Public Prosecutions v Mollison (Kurt) (No. 2)** *supra*).

[34] Consequent on these developments, L. Wolfe, CJ (as he then was), in a Memorandum dated March 5, 2001, a copy of which is attached as an appendix to this judgment, utilized the wide powers of this Court to make practice directions where none previously existed (see: **The Judicature (Supreme Court) Act**, section 28). This birthed the practice in relation to how the Court must treat with defendants who are being detained indefinitely based upon a decision that the defendant is unfit to plea.

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[3] This was later amended by the **Criminal Justice (Administration) (Amendment) Act**, 2006 which introduced sections 25A-25E that deals with defendants who are unfit to plea and how the Court must treat with such defendants.

[35] In light of this, the Court is of the view that it may make such Orders as it deems fit in relation to the release of the Applicant. The Court concluded that it has the jurisdiction to review the detention of an inmate being detained at the Governor General's pleasure where that inmate was not sentenced for a crime committed or found to be unfit to plea by a jury, but where an administrative decision was made by a Judge that the inmate was unfit to plea based on medical information made available to the Court.

[36] The Court also notes, that the Applicant, at the time of his detention and this Application to the Court, was not serving time or in custody for any other crimes. Therefore, it cannot be argued that there are other sentences imposed by this Court that would be disrupted by an Order of the Court for the Applicant to be released with or without conditions.

[37] Subsequently, the Court Orders that the Applicant is deemed to have been detained at the Court's pleasure with effect from the date of detention, that is the 7th day of May 1980.

[38] Furthermore, the Court invokes the doctrine of "parens patriae" which is defined in the 9th Edition of Black's Law Dictionary as meaning:

> "parent of his or her country… the state regarded as a sovereign; the state in its capacity as a provider of protection of those unable to care for themselves"

Based on this doctrine, the Court has the power to make decisions concerning people who are unable to take care of themselves. As will be highlighted later on in this judgment, the Applicant is unable to take care of himself.

Issue 2: Whether the Applicant should be released unconditionally

[39] Having found that the Court has the jurisdiction to review the Applicant's detention and the said detention now substituted to the Court's pleasure, the issue of release will now be discussed.

[40] In so doing, the Court will review the evidence presented on the Applicant's case. The Respondent has not objected to the Application nor have they provided any evidence or submissions in opposition to the Application. There being no objection to the Application, the Court now considers the evidence presented in the various Reports and Affidavits mentioned earlier herein.

[41] The Court must also determine from the evidence that the Applicant is not a danger to themselves or to society and that the Applicant is released into circumstances that address his needs.

Psychiatry Report

[42] The Applicant filed a Notice of Intention on the 30th day of January 2023 which included a Psychiatry Report from Dr. Stephanie Williams dated the 20th day of January 2023 in which she concluded as follows:

> 1. Based on my assessment, [B.C.C.] is diagnosed with Schizophrenia and Major Neurocognitive Disorder. There is a documented episode of hitting a nurse on 21/12/2021
>
> 2. I recommend that he remains on oral medications. This strategy is to diminish the likelihood of decompensation of his mental illness and lessen the risk of violence…
>
> 3. He is currently not fit to plead.
>
> 4. Mr. [B.C.C.] requires assistance with basic activities of daily living. He would require close family and community support to ensure follow up and compliance of medication for mental health care. He would require follow up by the community mental health team.

Superintendent Report

[43] The Superintendent Report dated the 25th day of January 2023 indicates that the Applicant has not received any visits since his detention. The said Report also indicates that there is no record of the Applicant being violent or breaking any prison rules and is currently being housed at the DCS Infirmary.

The Social Enquiry Report

[44] The Social Enquiry Report contained in the Notice of Intention filed on the 30th day of January 2023, made the following assessment and recommendation:

> Attempts were made to interview [B.C.C.], however, his mental capability has greatly deteriorated. Subject denied being in prison and claimed that he was at the hospital. He believes the nurse is his mother. [B.C.C.] struggled to relay any relevant information during the interview. The little information was obtained from his penal record.

The Affidavit and Supplemental Affidavit of C.R. and The Means Report

[45] The Affidavit and Supplemental Affidavit of C.R. fortifies, for the Court, that the Applicant has strong familial support. The Means Report also indicated the suitability of C.R. and her accommodations and resources in addressing the needs of the Applicant. In fact, the family of the Applicant have been present for all hearings of the matter and the Court commends them. It will take true wherewithal to care for the Applicant and the family have shown their willingness to do same.

[46] The Court has been intentional in not detailing information from the Means Report or the Affidavits of C.R. The Court bears in mind that its reasoning will be published and for that reason, it shall abstain from including in this judgment portions of the Means Report and the Affidavits of C.R. which satisfied the Court that the Applicant, if released into the care of C.R., would be released into circumstances which addresses his needs.

Conclusions from the Reports and Affidavits

[47] The Court having duly considered the Reports and the submissions of Counsel for the Applicant, is not of the view that these Reports supported an unconditional release of the Applicant. The Court is of the view that the Applicant is a vulnerable person, and an unconditional release would undoubtedly be wantonly reckless and dangerous to the Applicant and members of the community.

[48] The Court has a duty to the vulnerable individual, who in this matter is the Applicant, to ensure that he is cared for properly and is not left on the street indigent. On the other hand, the Court also has a duty to the state and the public at large to ensure that the Applicant is not released and becomes a danger to society.

[49] The Court considers that because of the Applicant's mental disorders he may be harmful to people in the community. However, the Court is satisfied that a conditional release would greatly lessen the risk of harm.

[50] Furthermore, as mentioned earlier, the case against the Applicant has not been discontinued. This means that the Applicant may be called to answer to the charges against him, should he become fit to plea – though from the reports, this seems highly unlikely. This also forms part of the premise as to why the Court believes that it cannot release the Applicant unconditionally.

Conditions for Release

[51] Counsel for DCS, Mr. Clarke, indicated that the Applicant could not be released on parole, as the Applicant is not a category of person who is eligible for parole. Mr. Clarke indicated that, in light of the fact that the Applicant was not convicted and sentenced by the Court, Orders could not be made which bound DCS, any of its Officers and/or the Parole Board.

[52] **Section 2** of the **Parole Act** defines parole as:

> "…the authority granted to an inmate under the provisions of this Act to leave the adult correctional centre in which he is serving a sentence and to spend a portion of the period of that sentence outside of the adult correctional centre…"

Section 2 also defines "sentence" as meaning:

> "…any sentence of imprisonment, whether with or without hard labour, but does not include a sentence of preventive detention or the detention of a person sentenced under the Juveniles Act, whether or not serving the sentence in an adult correctional centre…"

[53] **Section 6** of the **Parole Act** indicates the eligibility for parole, subsection 1 states:

> "Subject to the provisions of this section, every inmate serving a sentence of more than twelve months shall be eligible for parole after having served a period of one-third of such sentence or twelve months, whichever is greater."

The Court need not go further to review the eligibility criteria espoused in **section 6** of the **Parole Act**.

[54] The Court agrees with Counsel from DCS that Orders could not be made requiring the Applicant to be placed on parole, as the Applicant is not eligible for same. The Court also agrees that it may not make Orders that include conditions that attempt to bind the Parole Board, as their power is limited only to inmates on parole and those eligible for parole pursuant to the ambits of the **Parole Act.**

[55] Due to the circumstances of the Applicant's detention, the conditional release of the Applicant could not properly be considered as parole. The Court has instead decided to coin the Applicant's release as a "temporary release" into the custody of C.R. This release shall be indefinite and is the Court's way of ensuring that this Applicant continues to receive adequate care and is monitored for his progress, if any, to determine fitness.

[56] The Court disagrees with Counsel from DCS that it cannot make Orders that bind DCS and its Officers. The Court is of the view that it can make Orders that require DCS and/or its Officers to supervise the temporary release of the Applicant and enforce the conditions of same. Especially so in circumstances where DCS takes directions from the Court in relation to the committal and release of inmates from their facilities.

[57] The Court is also of the view that the law permits the Court, where a person is unfit to plea, to make such Orders as it sees fit in relation to that person. Such Orders include the supervising, monitoring and reporting of the person's fitness to plea – duties which can only be undertaken by DCS in accordance with their statutory responsibilities.

[58] The Applicant in this matter is considered as still being unfit to plea. Therefore, the Court saw it fit to include Orders and/or conditions to the Applicant's release which would ensure that the Applicant is supervised by the State and his fitness monitored – duties which could only be undertaken by DCS in the circumstances.

CONCLUSION

[59] In light of the foregoing, on the 26th day of October 2023, the following Orders were made in Open Court:

1. The Applicant, B.C.C., is deemed to have been detained at the Court's pleasure with effect from the date of detention, that is the 7th day of May 1980.

2. The Applicant having been detained at the Court's pleasure since the 7th day of May 1980, and still being unfit to plea, is ordered to be temporarily released in the care of C.R. and subject to the following conditions:

   (i) The Applicant shall reside with C.R. who is to be responsible for his care and maintenance, in the parish of Manchester and shall not change residence without obtaining prior permission of the Court.

   (ii) The Applicant is placed under the supervision of the Commissioner of Corrections or any Officer he shall so designate and C.R. shall keep in touch with that Officer in accordance with the Commissioner's instruction.

   (iii) The Commissioner of Corrections shall arrange for the Applicant to be visited at his place of residence by an Officer once every four (4) months within the first year of release, and thereafter once every six (6) months to ensure compliance with the Orders herein and the Commissioner of Corrections shall provide a report to the Registrar of the Supreme Court after every such visit.

   (iv) C.R. shall ensure that the Applicant has monthly medical visits to receive treatment for his psychological afflictions for so long as is required by the attending Physician.

   (v) The Applicant is not permitted to leave the island of Jamaica without prior permission of the Court.

   (vi) Where the Applicant will not be in the physical custody and care of C.R. for more than forty-eight (48) hours, the Commissioner of Corrections

shall be notified of the alternative arrangements in writing. If such period is to be three (3) months or more, the Court shall be notified for Orders to be made.

(vii) The Court shall be notified immediately and without delay if C.R. shall become incapacitated before the Applicant and in such case, the Court shall so Order that the Applicant be placed in the care of another or resume detention at the Court's pleasure.

3. The Court may vary or revoke any of the above conditions upon the recommendation of the Commissioner of Corrections or upon an Application by the Applicant.

4. The Commissioner of Corrections is empowered to see the proper enforcement of these Orders and conditions herein and in so doing, shall be guided by the Parole Act and Rules thereunder.

5. Any breach of the Orders or any condition herein must be communicated in writing to the Court without Delay.

6. The Applicant shall not be released until a Formal Order is filed and signed by the Court.

7. A Formal Order is to be filed by the Applicant's Attorneys-at-Law and this Formal Order shall be signed by C.R. and witnessed by a Justice of the Peace indicating that she understands the nature of the Orders herein.

EPILOGUE

[60] The Courts have aspired to commit to the delivery of justice in a timely manner. Unfortunately, in this matter, this was not the case. The Court and other state agencies have fallen short in their duty to the Applicant and to other inmates in a similar position.

The Court is optimistic that, moving forward, the Court and the relevant state agencies will be vigilant in similar cases to prevent a further delay of justice.

[61] The Court regrets these unfortunate circumstances and hopes that this matter will inspire the Courts, relevant state agencies, Attorneys-at-Law, and the family of inmates in a similar position to the Applicant, to collaborate in an effort to have similar inmates released into more favourable circumstances.

APPENDIX 1

Short Summary of the Mental Health Enquiry Committee Report

The Report discusses the challenges faced by mentally disordered offenders within the criminal justice system. It emphasizes the need to critically assess the legal framework, detention facilities, and mental health services. The fitness to plead issues in courts is highlighted, with a historical perspective on balancing the rights of mentally disordered defendants and public protection. Concerns are raised about such individuals' deficient intake, interview, and remand protocols.

The Report cites the provisions of the Mental Health Act which provide an alternative to detention, but the practices are deemed uncertain and inconsistent. The Court's responsibility to ensure a defendant's sound mind during trial is emphasized, leading to a special verdict if a mental disorder is identified.

The Report notes that there are failures in adherence to the statutory provisions relating to the detention of mentally disordered defendants, such as the provision of monthly reports and the creation of registers which cause undesirable consequences. Additionally, despite the legal provisions, mentally disordered defendants are housed in correctional facilities rather than designated psychiatric facilities, leading to challenges in the care and management of these individuals.

The Report recommends the immediate removal of mentally disordered defendants from correctional facilities to psychiatric facilities. Urgent action is necessary to designate appropriate facilities in line with existing legislation and international conventions. Recommendations also include the discretion of courts to place mentally disordered defendants in diversion programs, reformulating the legal test for fitness to plead, and amending relevant acts for effective participation. Training and modern record-keeping systems are emphasized for proper management and database management of mentally

disordered defendants who are detained, to ensure they are brought back before the Court in a timely manner.

The Report also highlights the disharmony between legislation and executive policy in terms of creating a suitable framework for treating with mental disordered defendants having regard to their rights and liberties under the Constitution.

The Report was done by the Mental Health (Offenders) Enquiry Committee in 2020 and was comprised of 11 members:

1. The Hon. Mrs. Justice Georgiana Fraser, Puisne Judge (Chairperson)
2. The Hon. Mrs. Justice Sonya Wint-Blair, Puisne Judge
3. His Hon. Mr. Vaughn Smith, Senior Parish Court Judge
4. Her Hon. Mrs. Ann-Marie Lawrence-Grainger, Senior Parish Court Judge
5. Mr. Jeremy Taylor, Q.C. Senior Deputy Director, Office of the Director of Public Prosecutions
6. Ms. Nancy Anderson, Senior Counsel, Independent Jamaica Council for Human Rights
7. Mr. Hugh Faulkner, Executive Director, Legal Aid Council
8. Dr. Myo Kyaw Oo, Senior Medical Officer, Bellevue Hospital
9. Dr. Donna Royer-Powe, Director, Medical Services, Department of Correctional Services
10. Dr. Kevin Goulbourne, Director, Mental Health and Substance Abuse Services Unit, Health Services Planning and Integration Branch, Ministry of Health & Wellness
11. Ms. Stefany Roper, Legal Officer, Department of Correctional Services

The full report can be accessed and read here:
https://cad.gov.jm/wp-content/uploads/2020/10/MENTAL-HEALTH-OFFENDERS-ENQUIRY-COMMITTEE-21STAUGUST-2020.pdf

APPENDIX 2

MEMORANDUM

TO: ALL JUDGES OF THE SUPREME COURT
SENIOR RESIDENT MAGISTRATES
RESIDENT MAGISTRATES

PRACTICE NOTE

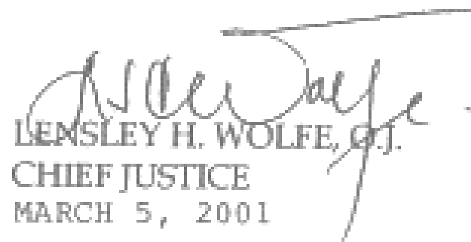
RE: MENTALLY ILL PERSONS

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

The Registrar of the Supreme Court or the Court Administrator of the Resident Magistrates Court will cause a register to be opened in which the name of each person remanded on the basis of being unfit to plead will be entered and a note made of each report received.

Each report received must forthwith be placed before a Judge of the Supreme Court or a Resident Magistrate, in the case of the Resident Magistrates Court, who shall give such directions as he or she sees fit based upon the said report.

The Registrar or the Court Administrator must bring to the Court's attention any breach of the order, within 7 days of the said breach.



LENSLEY H. WOLFE, C.J.
CHIEF JUSTICE
MARCH 5, 2001