

AMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2008/HCV00657

BETWEEN	GIBSON BUNTING	APPLICANT
AND	REGINA	RESPONDENT

Mr. David Batts instructed by Livingston Alexander and Levy for the Applicant.

Ms. Dahlia Findlay for the Crown/Respondent.

Heard 31st July, 15th August and 11th September 2008

Campbell J,

(1) On the 28th February 2008 inmate, Gibson Bunting, who was being held at the Court's pleasure, filed a Notice for review of his sentence. The application was made pursuant to Part 75, of the Civil Procedure Rules 2002.

(2) The grounds of the application were;

1. That the applicant had been imprisoned for 27 years.
2. That the applicant was a juvenile when the offence was committed and is now 46 years of age.
3. That the applicant is a reformed individual who has expressed remorse for his participation in the crime.
4. That the applicant has kidney problems and has a hernia which needs surgery and has not been afforded an adequate treatment while imprisoned.
5. That the applicant is a fit and proper person to be released and has family and support on which to rely if released.

(3) The applicant was arrested and charged, with capital murder, on the 2nd September, 1980 for an offence committed that same day. He was tried and convicted in the Home Circuit on the 19th January 1982, for the murder of Charlton Anderson, a P.N.P Councillor, who was shot and killed at his residence. The applicant says he had been given the duty of "lookout" outside the house, whilst his cronies, two of whom were armed with guns entered the victim's premises. In

his interview with the Probation After-Care Services, he stated that the attack on Mr. Anderson was motivated by political considerations.

(4) The applicant is seeking;

- (a) That the applicant be released unconditionally.
- (b) Alternatively, that the applicant be released on Parole with conditions.
- (c) In the further alternative that the Court make such Orders or give such directions as the Honourable Court sees appropriate.

(5) The application was supported by the applicant's affidavit, an affidavit of his cousin Ivor Thomas, a profile of the applicant from St. Catherine Adult Correctional Centre, a psychiatric assessment report, and a Social Enquiry Report by the Probation After-Care Officers. At the hearing of this application, the Court had an opportunity to hear from the applicant and from Joscelyn Greaves, Acting Overseer of the St. Catherine District Prison, and from a Mark Morris, a Probation After-Care Officer.

(6) When considering the grant of parole, the Board shall take into account the following (see S7 (6) of the Parole Act).

- (a) the nature and circumstances of the offence for which the applicant was convicted and sentenced;
- (b) remarks (if any) made by the Judge at the time of sentencing;
- (c) the information contained in the reports mentioned in subsection (3) and the report made by a parish parole committee.

(7) The murder in which the applicant was involved was politically motivated. The victim was chosen because of his political views. I have nothing before me that the applicant has retreated from that position which would allow him to be swayed to act against others who are of opposing views.

(8) Has the applicant derived maximum benefit from imprisonment, as required by Section 7 (7) of the Parole Act? It appears not. He says in his affidavit in support of the application, at para 8 "That in my 6 -7 years in prison, I was in trouble a lot for fighting mainly because older

men tried to take advantage of me and I had to defend myself. In the last 13 - 15 years, I have not been in trouble.” However, the profile presented to the Court by the prison authorities contradicts this and represents that his penal record shows that he was reprimanded by the Superintendent of the facility at Tower Street for having a dangerous weapon, knife, in his possession on the 24th October 1995. Further, he committed 21 breaches of the prison regulation between 1982 and 1999. The report states that there has been no report of misconduct since 2000. His assertion of not being in trouble for the last 13 – 15 years is incorrect and misleading.

(9) He maintained his innocence over all these years. His denial of guilt is not irrelevant to these deliberations, but I am aware it would be wrong to treat the prisoner’s denial of guilt as conclusive against the grant of parole (see **R v the Parole Board and Anor, ex parte Oyston**: Court of Appeal (Civil Division) 1st March 2000; (Lord Bingham, C.J. judgment is most helpful on this point). He has displayed a propensity to violence even before his incarceration. Except since 2000, there is a plethora of evidence of this violence. He has caused serious injury to three other inmates and was involved in seven or eight fights and was himself severely injured about four (4) times. He said the last time he was in a fight was in 2000. He still speaks of the circumstances of his arrest by the police and mentions that the police allowed him to be beaten by citizens. Although he has stated that he is not upset by this, it is clear it weighs heavily on his mind, particularly in circumstances where he sees himself as being innocent.

(10) Is he fit to be released from prison? He claims that he acquired the ability to read and write whilst in prison; however, it was clear to the court that he was only able to sign his name. He is functionally illiterate. In regard to the support to foster his assimilation into society, his father is 73 and unwell, his cousin, who provided an affidavit that he was prepared to assist in his rehabilitation, only visited him once in prison. These submissions of support appear to have been given, as Beckford, J. said in a similar application for review of sentence by Troy Gilbert, CL. 2007 HCV 0709, delivered on the 31st October 2007, “as palliatives for the purposes of the Application as opposed to proper plans that will be implemented if the Application is granted.” The applicant never entered the prison work programme, albeit he said due to insufficient space. There is nothing before me to indicate that at this the applicant is fit to be released from prison

(11) The mere fact of his being imprisoned for 27 years by itself is no assistance to the applicant for an offence of this type, where the victim's home was invaded by a group of men armed with guns. The applicant's kidney problems must be addressed in the facility where he is being kept. The Court will direct the necessary Orders to the Commissioners of Prisons concerning the applicant's medical problem. The consideration of parole can only be granted if the view is formed that the applicant will not constitute a danger to the society. The directions of the Secretary of State in England, issued 1996 are apposite.

1. In deciding whether or not to recommend release on licence, the Parole Board shall consider primarily the risk to the public of a further offence being committed at a time when the offender would otherwise be in prison and whether any such risk is acceptable. This must be balanced against the benefit, both to the public and to the offender, of early release back into the community under a degree of supervision which might help rehabilitation and so lessen the risk of re-offending in the future. The Board shall take into account that safeguarding the public may often outweigh the benefits to the offender of early release. (*R v The Parole Board and another, ex parte Oyston, Court of Appeal (Civil Division)*).

Mr. Batts submitted that the standard was on a balance of probabilities. I am unable to say, on what has been presented to me, that the applicant has discharged this burden. I am not satisfied that the applicant is a reformed person. He has made expressions of remorse, which I find to be inconsistent with his protestations of innocence.

(12) So, in accordance with R.75 6 (3), the application is hereby dismissed with the following recommendations:-

- A) That the applicant be permitted to pursue any programme for literacy that is available to inmates.
- B) That the applicant be admitted to such programmes within or outside, the walls of the prison, under any structured programme presently being pursued by the prison authorities to further the acquisition of his skills.
- C) Not to be eligible to renew his application for another five years.
- D) That the Commissioner of Prisons, within 30 days of this Order makes the necessary arrangements for this applicant to be examined by a doctor and to make further arrangement to facilitate any such medical directions given.