



[2024] JMSC Civ. 109

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
CIVIL DIVISION**

**CLAIM NOS.** SU2022CV03520  
SU2022CV03524  
SU2022CV03527  
SU2022CV03528  
SU2022CV03530  
SU2022CV03531

**BETWEEN** MENTALLY DISORDERED INMATES APPLICANTS  
HELD AT THE  
GOVERNOR GENERAL'S PLEASURE

**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: 14<sup>th</sup> December 2022, 23<sup>rd</sup> January, 23<sup>rd</sup> February, 15<sup>th</sup> March, 23<sup>rd</sup> March, 20<sup>th</sup> and 26<sup>th</sup> April, 4<sup>th</sup> and 25<sup>th</sup> May, 6<sup>th</sup> July, 5<sup>th</sup> 12<sup>th</sup> and 19<sup>th</sup> October 2023, 18<sup>th</sup> and 25<sup>th</sup> January, 1<sup>st</sup> February, 11<sup>th</sup> and 25<sup>th</sup> April and 19<sup>th</sup> September 2024**

**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**

**L. PUSEY J**

**INTRODUCTION**

- [1]** The tragedy of mentally disordered inmates in the “care” of the state has once again come before the courts. The circumstances of these inmates were highlighted with the

passing of Mr. Noel Chambers, who spent over 40 years in custody at the Court's pleasure before dying at the Tower Street Adult Correctional Centre. Like Mr. Chambers, the Applicants in this matter have been detained for years, deemed unfit to plea, and held at pleasure, albeit the Governor General's.

- [2] Unfortunately, the attention drawn to the plight of these inmates has not yet worked in their favour. The arrangements for the care and treatment of these inmates are inadequate and under-resourced, creating an unsatisfactory set of circumstances.
- [3] Urgent legal reforms are needed to address these issues and adequate financial and personnel resources are needed to implement the necessary reforms.
- [4] In the past year, the Court has conditionally released two inmates, who have been held in circumstances similar to the Applicants'. These inmates were released into the care of their family members who came forward and were willing to take care of them. Now, the Court must determine whether these Applicants will similarly be released. While the Court has the authority to release the Applicants, with or without conditions, it has chosen not to exercise the authority in this case. This decision is driven by the absence of any sufficient evidence demonstrating that the Applicants would be released into conditions favourable to their needs.
- [5] In setting out the reasons for this decision, we remain hopeful that this judgment may reach individuals or organizations willing to offer support to the Applicants. Due to the vulnerability of the Applicants and the sensitivity of this matter we have not named the Applicants. However, any individual or organization interested in assisting are encouraged to contact the Legal Aid Council, the Office of the Public Defender or the Correctional Services for further information on how they may do so.

## **BACKGROUND**

- [6] These Applications are six of fourteen filed by the Legal Aid Council, seeking a review of each Applicant's detention and their potential release, with or without conditions. These matters, though heard together, were not consolidated as the Court anticipated

that some matters would progress faster than others. Unfortunately, the current Applications saw no such progress. Consequently, on the 19<sup>th</sup> day of September 2024, the Court issued identical orders for these matters in Open Court for identical reasons and presents its reasoning for its decision in these matters jointly.

- [7] The Applicants were detained at the Governor General's pleasure having been charged on separate indictments, at separate points in time, for criminal offences. This is the first time that the Applicants have applied for the circumstances of their detention to be reviewed.
- [8] On the 21<sup>st</sup> day of November 2022, the Applicants filed separate Notices of Application for "*Review of Inmates Held at the Governor General's Pleasure.*" The Applicants 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.
- [9] The Notices of Application were supported by the Affidavits of Mr. Brian Forsythe, also filed on the 21<sup>st</sup> day of November 2022.
- [10] During the Case Management of the Applications, the Court received several documents which aided the Court in considering the Applications. The documents received were:
- (i) Psychiatric Reports;
  - (ii) Superintendent Reports;
  - (iii) Social Enquiry Reports; and
  - (iv) Certified Copy of their Warrant of Committal.

## **SUBMISSIONS**

[11] Counsel in the matter filed written submissions which were supplemented by oral submissions. The Court need not outline those submissions here and will refer to them, if necessary, to explain its position on a particular issue.

## **ISSUES**

[12] 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 Applicants' detention; and
- (ii) Whether the Applicants should be released unconditionally?

## **LAW & ANALYSIS**

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

[13] The Court is of the view that it has the jurisdiction to review this Applicants' detention. Having already elaborated on the rationale behind this determination in **B.C.C. v Rex** [2023] JMSC Civ. 216, the Court adopts and endorses that same reasoning in this case (see: paragraphs [24] – [37] of **B.C.C. v Rex** *supra*).

[14] The determination of the Applicants, in this matter, as being unfit to plea was not a determination made by a jury. In other words, a jury was not empaneled to find the Applicants unfit to plea. There was an administrative decision by the Judge to have the Applicants detained at the Governor General's pleasure based on medical information made available to the Court at that time which indicated that the Applicants were unfit to plea.

[15] The imposition of the detention in this way means that this Court has the authority, by virtue of its inherent supervisory jurisdiction, to review the Applicants' detention. Moreover, in conducting this review, the Court is not interfering with any sentence previously imposed on the Applicants for the offence to which they were found unfit to plea, as no trial regarding their guilt has taken place. Additionally, there is no evidence of any other sentences being imposed that would be affected by this review.

[16] Having found that the Court has the jurisdiction to review the Applicants' detention, the Court hereby formally Orders that the Applicants' detention be deemed to be at the Court's pleasure with effect from the date of their detention.

**Issue 2: Whether the Applicant should be released unconditionally**

[17] The purpose of the Application brought by the Applicants is twofold. On the one hand, it was brought to bring their detention into conformity with the constitutional finding of the Privy Council in the case of **Director of Public Prosecutions v Kurt Mollison** [2003] UKPC 6. On the other hand, it was also brought for these Applicants to be potentially released.

[18] The starting point in determining whether to release either of these Applicants is ensuring that they are not a danger, either to themselves or society. Then, the Court must ensure that there are circumstances that can appropriately and adequately address their needs in terms of accommodation and medication. Therefore, one of the foremost responsibilities of the Court when evaluating these issues is to ascertain whether the proposed circumstances for each Applicant warrants their release and whether there is adequate and appropriate accommodation available for them post-release.

[19] In its earlier judgment of **B.C.C. v Rex** *supra*, at pages 2-3, the Court delineated the scarcity of resources, both private and public, available in the country to facilitate the release of inmates akin to the Applicants. The judgment examined the roles and shortcomings of the Court and state institutions in managing inmates in comparable situations. The Court reaffirms those observations and incorporates them into the present case.

[20] The dearth of private and public resources which could accommodate these Applicants coupled with the unavailability of family members to assist, contributes greatly to the Court's position on this issue.

- [21] Having reviewed the evidence provided by the Applicants, the Court is of the view that the Applicants continue to be unfit to plea and there is no likelihood that even with treatment, these Applicants will ever be fit to plea. Therefore, the Applicants remain vulnerable individuals within these correctional institutions and are solely dependent on the correctional services for care.
- [22] Additionally, the evidence indicates that the Applicants' familial connections and mental faculties have not endured incarceration. It highlights that their preexisting mental disorders were exacerbated by their detention resulting in a further decline overtime. The evidence also implies that it is not likely that these Applicants, even if they keep up with their medication regime, will become functioning and independent members of society.
- [23] Subsequently, this Court does not take the view that these mentally disordered persons should be released unconditionally (see: paragraphs [38] – [49] of **B.C.C. v Rex** *supra*). Further, due to the manner in which the Applicants were detained, a conditional release of the Applicants could not properly be considered as parole since their detention cannot be considered as a sentence (see: paragraphs [51] – [58] of **B.C.C. v Rex** *supra*).
- [24] In the absence of appointed guardians or family members, the Court assumes the role of guardian for these vulnerable individuals, exercising its powers under the doctrine of "*parens patriae*". This principle establishes the Sovereign as the legal protector of citizens who cannot protect themselves. Historically, this authority was first exercised through the Chancellor and later transferred to the Courts of Equity, which upheld the Sovereign's protective role on behalf of the Monarch. In Jamaica, it is these Courts that fulfill the protective role for vulnerable individuals on behalf of the state.
- [25] Therefore, the Court is charged with ensuring the well-being of the Applicants and safeguarding against their abandonment in destitution if they are released. Additionally, the Court has a responsibility not only to the Applicants but also to the

state and the public to prevent their release into unfavorable conditions that could pose a threat to society.

- [26] The Court expressed its willingness to consider releasing the Applicants under certain conditions, as it has done in previous cases. To this end, several adjournments were granted to allow the Legal Aid Council to seek appropriate accommodations for the Applicants. Recognizing that the correctional facilities are ill-equipped to meet the needs of the Applicants, the Court has allowed these adjournments. The Court notes that the correctional facilities do not have adequate resources and sufficient properly trained personnel to adequately care for the Applicants. Furthermore, while efforts are made, the necessary medical protocols for maintaining the well-being of mentally disordered inmates are not always adhered to.<sup>1</sup>
- [27] After almost two years of adjournments, the Court provided one final opportunity for the Legal Aid Council to secure suitable arrangements. Regrettably, despite their efforts and assistance from others, including the Office of the Public Defender, the Legal Aid Council was unable to find appropriate accommodations.
- [28] Unfortunately, the Applicants in these matters have not been as lucky as other Applicants in a similar position. The Applicants could not secure the assistance of any state or private institutions or any family members to aid them in this time of need.
- [29] The Court acknowledges that the issues involved in these cases are sensitive and multifaceted. It emphasizes the need for an approach that balances the interests of the Applicants with those of the public. Given the circumstances, the Court believes that this approach does not support the unconditional release of the Applicants. Although correctional facilities are ill-equipped to meet the needs of the Applicants, they offer a more stable environment than releasing them into the unknown without

---

<sup>1</sup> The Report of the Mental Health (Offenders) Enquiry Committee breaks down all the issues faced with dealing with mentally disordered inmates. A copy of this Report can be found here: [https://supremecourt.gov.jm/sites/default/files/MENTAL%20HEALTH%20OFFENDERS%20ENQUIRY%20COMMITTEE%2021STAUGUST%2C%202020\\_0.pdf](https://supremecourt.gov.jm/sites/default/files/MENTAL%20HEALTH%20OFFENDERS%20ENQUIRY%20COMMITTEE%2021STAUGUST%2C%202020_0.pdf)

any means of self-care. Such a release would perpetuate a cycle of neglect which would significantly deteriorate their mental health and potentially harm society at large.

**[30]** I want to be clear that the Court is not indicating that the conditions in the correctional facilities are good or ideal for the Applicants. Rather, the Court considers the correctional facilities to be a “less bad” solution than releasing them without supervision and resources. In view of this, the Court has exercised its judicial discretion to refuse the Orders sought for the release of the Applicants in the circumstances.

### **COMMENTARY**

**[31]** The discourse surrounding the lack of resources to care for mentally disordered persons remain more relevant than ever and needs to be urgently addressed. The shift in focus at the Bellevue Hospital towards rehabilitation of mentally disordered persons have resulted in the neglect of more chronic patients in need of admission and long-term care, such as those in the correctional facilities.

**[32]** In other Caribbean territories like Barbados, Bahamas and Trinidad and Tobago, there are forensic psychiatric facilities that deal with the care and treatment of mentally disordered defendants, though they are not housed at these facilities. The absence of such a facility in Jamaica to provide support to the correctional facilities contributes to the ongoing worries regarding the safety and care of the Applicants and other mentally disordered inmates.

**[33]** Furthermore, the Report of the Mental Health (Offenders) Enquiry Committee indicated several attempts, some successful and some not, to engage successive government administrations in addressing the challenges faced by mentally disordered defendants and the correctional facilities in caring for them. The Report also highlighted several critical recommendations, none of which have been acted upon to date.



[34] The failure of the state to adequately address the issues faced by mentally disordered inmates may suggest a missed opportunity by the state to better support some of its most vulnerable citizens. The Mental Health Act, designed specifically to address issues concerning mentally disordered citizens, has been criticized in the Report of the Mental Health (Offenders) Enquiry Committee for its underutilization in these circumstances. The Mental Health Act confers broad powers on the Minister of Health and other public officials, which could play a pivotal role in addressing many of the challenges faced by the Applicants and similarly situated inmates.

[35] The Court remains committed to promoting and protecting the rights and well-being of mentally disordered individuals within the criminal justice system. However, in doing so it must also act in accordance with the laws which exist while prioritizing the best interest of the Applicants. While this decision to deny release is regrettable, it underscores the urgent need for systemic reform and the provision of appropriate resources. The Court hopes that its recommendations are heeded and that tangible progress will be made to prevent such unfortunate circumstances in the future.

**RECOMMENDATIONS:**

[36] It seems to this Court that the position of these Applicants would be significantly addressed if the following recommendations which are implicit in the Mental Health (Offenders) Enquiry Committee Report are put in place:

1. That there is the establishment of penal psychiatric institutions to care for inmates with severe mental illnesses, providing a safe and therapeutic environment.
2. That there should be enhanced cooperation between the Ministry of Health, Ministry of National Security, and other relevant government agencies to create a comprehensive management strategy for mentally disordered inmates. The judiciary stands ready, willing and able to assist in creating the legal framework by providing the requisite Orders and supervision for these persons.

3. That there is the development of robust community-based programs offering housing, healthcare, counseling, and/or vocational training to support the reintegration of mentally disordered individuals into the community.
4. The Report of the Mental Health (Offenders) Enquiry Committee Report is read and the recommendations therein are considered and implemented.

### **ORDERS**

**[37]** In final disposition of the matter, the Court makes the following Orders:

1. The Applicants are deemed to have been detained at the Court's pleasure with effect from the date of their detention.
2. The Orders sought for the release of the Applicants are refused.