

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CONSTITUTIONAL LAW DIVISION**

**IN THE MATTER of Articles 17, 19, 20 AND 28 of the Constitution of The
Commonwealth of The Bahamas
2019/PUB/con/FP/0001**

BETWEEN

**RAYMOND MOXEY
Applicant**

AND

**THE ATTORNEY GENERAL
Respondent**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Miss Simone Brown for the Applicant
Mr. Neil Brathwaite for the Respondent

HEARING DATES: November 2, A. D. 2020

DECISION

**Hanna-Adderley
Introduction**

1. The Applicant was charged in April of 2010 with Armed Robbery. He was arraigned before Stipendiary & Circuit Magistrate Andrew Forbes and denied bail. He was remanded to Her Majesty's Prison until October 2010 when he was granted bail by the Supreme Court and required to sign in at Central Police Station on various days of the week.
2. The Preliminary Inquiry commenced in or about April 2013. The inquiry was concluded sometime in May 2013 and he was committed to stand trial in the Supreme Court, however since that date to the date of the hearing the Applicant had not been served with a Summons or Voluntary Bill of Indictment.

3. The Applicant remained on bail when sometime in 2017 he failed to sign in twice at Central Police Station in breach of his conditions of bail. He was charged with a violation of bail and sentenced to 6 months at the Bahamas Department of Corrections.
4. This application was set down on June 2, 2020 and subsequently on September 29, 2020. At each adjournment Counsel for the Attorney General foreshadowed that it was likely that the Crown would be taking a certain course in respect of the Applicant. The application was finally adjourned to November 2, 2020.
5. At the commencement of the hearing Mr. Neil Brathwaite, Counsel for the Attorney General's Office informed the Court that at the direction of the Director of Public Prosecution the proceedings against the Applicant had been discontinued. Counsel for the Applicant indicated that the Applicant would be proceeding with an application for compensation.
6. The application by the Applicant commenced by way of Notice of Motion filed on May 27, 2019 and supported by the Affidavit of the Applicant filed on May 27, 2019 seeking redress pursuant to Articles 17 (1), 20 (1) and 28 of the Constitution of the Commonwealth of The Bahamas ("**the Constitution**"). The Applicant also filed a Summons on November 2, 2020, supported by the Applicant's Affidavit filed herein on November 2, 2020 seeking leave to amend the Notice of Motion to add a claim for compensation under Article 19 of the Constitution. The charges having now been discontinued by the Crown, the Office of the Attorney General has not disputed the sequence of events in this case and has not filed a responsive Affidavit but Mr. Brathwaite made oral Submissions on behalf of the Crown in response to the Applicant's application for compensation.
7. The Court must determine whether the fundamental rights guaranteed to the Applicant pursuant to Article 19 of the Constitution is being or is likely to be breached and whether he ought to be compensated therefore.
8. The Applicant's application is dismissed for the reasons set out below.

Statement of Facts

9. The Applicant's affidavit evidence reveals that while incarcerated for 6 months for breach of his bail conditions he lost his job and that had he been afforded a trial within a reasonable time he would not have breached any bail conditions. That he had not been afforded a fair trial within a reasonable time and that it was inhumane to have remained on bail with no possible date for trial. That as a result of this treatment he had suffered loss and damage. That the omission of the particulars for compensation from his Notice of Motion was an oversight.

Submissions

10. Counsel for the Applicant Miss Simone Brown submitted that the basis of the Applicant's application for compensation under Article 19 of the Constitution is contained in the Applicant's hereinbefore-mentioned Affidavit and she summarized the events from the Applicant's arrest to his incarceration for breach of his conditions of bail. She further submitted that in addition to having lost his full-time employment after being incarcerated for 6 months the Applicant now has a criminal record, whereas before his conviction his record was clean. That since his conviction the Applicant has been unable to travel to the United States but for the simple fact that he now has to bear a criminal record for a matter that had it proceeded within a reasonable time, he would not have run afoul of the new offense of the violation of bail. At that time, he would already have been on bail for 7 years or more.
11. Miss Brown submitted that the Applicant is deserving of a declaration for compensation under Article 19 of the Constitution. That it is purely inhumane to have a matter sit on top of a person for over 7 years, then they are sentenced, they have to go the Department of Corrections, and they now have a criminal record for the matter. That the Applicant relies on the verbiage of Article 19 and submits that Article 20 has been breached and that the Applicant is entitled under Article 19 for compensation.
12. Miss Brown accepted that the Applicant would have breached the law in relation to bail but she maintained that if the matter had been the tried in a reasonable time the Applicant would have won the case and it would have been a moot point.

The Applicant would not have been on bail and he would not committed the offense under the Bail Act. Miss Brown referred the Court to the case of **Missouri Bain-Thompson v The Commissioner of Police** 2015/PUB/con/000015.

13. Mr. Brathwaite submitted that the substratum of his Learned Friend's contention is that because the trial did not come on within a reasonable time the Defendant committed a further offense. Counsel submitted that the Defendant did not have to commit a further offense and he did not see how the Crown or the Respondent can be blamed for the fact that the Defendant committed a further offense and therefore, as he claims, suffered loss as a result of his commission of a further offense. Mr. Brathwaite also submitted that this argument presupposes that if the trial had come off within a reasonable time that he would have been acquitted. The fact of the matter is, if the trial had come off he might not have been on bail because he might have actually been in prison, having been convicted.
14. Mr. Brathwaite submitted that in all of these circumstances of this case the whole basis for the contention of any loss suffered by the Applicant is simply baseless. That with respect to such constitutional applications, in the normal course of events, the ultimate remedy that is applied for is actually a stay of proceedings. That in the authorities provided to the Court by Miss Brown the ultimate remedy which the Court actually says ought not necessarily to be imposed is a stay of the proceedings. The authorities indicate that in many instances a declaration of a breach is sufficient but, the Crown having now discontinued the proceedings, there is no basis for any continuation of the constitutional application because in order for the Court to hear and determine a constitutional application the matter on which it is presupposed ought to still be in existence.
15. Mr. Brathwaite submitted that the matter has now been discontinued and that he did do not know of any authority where an application for a stay on the basis of a breach of a fundamental right to have trial within a reasonable time has actually resulted in compensation. It can result in the most extreme circumstances in a stay and the authorities will indicate that even that remedy should only be imposed when there is no prospect of a fair trial. Mr. Brathwaite did not know of a single

case in which compensation itself had been awarded. There are cases in which compensation has been awarded for breach of a constitutional right. Those cases are cases where there has actually been what amounts to tortious behavior on the part of the State and where in addition to any compensation for such tortious behavior, the Court feels that a further measure of compensation is necessary for the vindication of the rights. That those principals simply do not apply on this case. That having regard to all of the circumstances of this case there simply is no basis for any consideration of compensation. That the matter has now been disposed of. The Applicant no longer faces the prospects of imprisonment as a result of possible conviction and that ought to be the end of the matter.

Issues to be decided

16. The issue to be determined by this Court is whether the Applicant's rights pursuant to Articles 19 and 20 of the Constitution have been or are likely to be violated and whether the Applicant should be compensated for such violation.

Analysis and Conclusion

The Law

17. The Constitution provides at Articles 19 and 20 as follows:

“19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases —

(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;.....”

“20. (1) If any person is 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.”

18. In the case **Missouri Bain-Thompson v The Commissioner of Police** (supra) the Applicant had been awaiting a retrial in connection with a charge of conspiracy to abet fraud by false pretenses and abetment of fraud by false pretenses for almost 11 years. The Applicant sought a declaration, inter alia, that by reason of the delay in fixing the date for the retrial there had been a violation of her right to a fair hearing within a reasonable time as guaranteed by Article 20 (1) of the Constitution. The Applicant was successful in persuading the Court that exceptional circumstances existed which would make it impossible for her to receive a fair trial within a reasonable time and a permanent stay was granted.
19. This authority is clearly not relevant to the instant case except to underscore Mr. Brathwaite's submission that it is only in exceptional circumstances that a Court will order a permanent stay of the proceedings but yet, in this case, the decision taken by the Director of Public Prosecution to withdraw 4 counts of Armed Robbery against the Applicant took matters further in the Applicants favour. Miss Brown referred to the authorities of **R v Bow Street Stipendiary Magistrate ex parte Director of Public Prosecutions et al** (1989) 154 JP 237 and **Bell v Director of Public Prosecutions of Jamaica and another** [1985] 2 All ER p 585 which also deal with the breach of an individual's Constitutional right to a fair hearing within a reasonable time. In none of the cases referred to the Court where each of the applicants were successful was the Crown ordered to pay compensation to the Applicants.
20. Article 19 (1) of the Constitution provides that no person shall be deprived of his personal liberty except as may be authorised by law in the execution of the sentence or order of a court in respect of a criminal offence of which he has been convicted. The Applicant breached a condition of his release on Bail for which he was convicted of a criminal offence and sentenced to 6 months imprisonment. His conviction and imprisonment on a lawful charge is an exception to his constitutional right not to be deprived of his liberty. Notwithstanding the fact that there had been a long delay in the commencement of his trial at the time of his

conviction, there can be no justification for holding the Crown liable for his intervening criminal conduct.

21. Mr. Brathwaite submitted, and I accept, that the charges against the Applicant have been withdrawn and that the basis for an application pursuant to a breach of Article 20 of the Constitution cannot be sustained. Even if it could, a successful claim pursuant to a violation of Article 20 would not result in an order for compensation.

Disposition

22. The Applicant's application for a Declaration that he should be compensated in the circumstances of this case has no basis in law and the application is dismissed.

This 23rd day of November, A.D. 2020

**Petra M. Hanna-Adderley
Judge**