

COMMONWEALTH OF THE BAHAMAS

CRI/CON/2021

In The Supreme Court

Constitutional Division

BETWEEN

JAHMAL DANIELS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

1st Respondent

AND

THE ATTORNEY GENERAL

2nd Respondent

AND

THE COMMISSIONER OF THE BAHAMAS DEPARTMENT OF CORRECTIONAL
SERVICES

3rd Respondent

BEFORE: The Honourable Mrs. Justice Deborah Fraser

APPEARANCES: The Applicant (*Pro sé*)
Mr. Timothy Bailey for the Respondents

HEARING DATE: 4th March, 2022

DECISION

Constitutional Motion - Unlawful Sexual Intercourse with a minor - Section 11(1)(a) of the Sexual Offences Act, Chapter 99 -The Bahamas Department of Correctional Services - Article 28 of the Constitution of The Bahamas- Article 22(1) right to freedom of religion and conscientiousness - Correctional Services (INMATES) Rules, 2014 - Rastafarian faith – Religion – Dreadlocks - Section 14(2)(b) of the Correctional Services Act, 2014 - Article 22 of the Constitution

FRASER, J

1. This matter concerns a Constitutional Motion made by Jahmal Daniels, the Applicant in this matter. He claims that his constitutional rights will be breached if the third Respondent requires him to cut his hair as it is against his Rastafarian Religion. The Applicant pled guilty and was convicted of four counts of **Unlawful Sexual Intercourse**, contrary to Section 11(1)(a) of the Sexual Offences Act, Chapter 99 and was sentenced to serve six(6) years and one (1) month at The Bahamas Department of Correctional Services commencing from 30 June 2021. At the time, the Court ordered upon conviction that the Applicant’s hair not be interfered with until the hearing and completion of this matter.
2. The Court heard preliminary objections from the Respondent in relation to Article 28 of the Constitution of The Bahamas. Counsel for the Respondents submitted to the Court that, the Applicant should use alternative means to address this matter. Accordingly, the Applicant was directed to make his request to the requisite sector of The Bahamas Department of Correctional Services. However, the Applicant received a response that he would have to receive a court order to enable him to maintain his hair.
3. Accordingly, on 4 March 2022, this Court heard submissions and evidence in relation to this matter and reserved its ruling and reasons on the same. I give them now.

Issues

4. The issue is whether the Applicant’s Article 22(1) right to freedom of religion and conscientiousness would be contravened by the Correctional Services (INMATES) Rules,

2014 which requires all male inmates to have their hair cut for the maintenance of good appearance and the public health of the prison.

5. Court must determine:
 - a. whether the Applicant has proven that he holds a sincere belief in the Rastafarian religion; and
 - b. whether the Applicant's dreadlocks should be cut in order to protect the public health of the prison.

Case of the Applicant

6. The Applicant called one witness in support of his case. Priest Rithmond (hereinafter referred to as 'the witness'), a priest of the Rastafarian faith appeared before the Court and gave Evidence in Chief at the request of the Applicant. The witness confirmed that the Applicant started to come to the Rastafarian church when he was around (14) fourteen years old and discontinued at various points. The witness also explained aspects of the Rastafarianism religion. He stated that a person would grow and maintain dreadlocks throughout their lifetime; and this was a custom held dearly by the Rastafarian community. He further stated that the only time in which a Rastafarian would cut their hair is if they had come into contact with a dead body; and even after that they could then again grow their hair into the style of dreadlocks.
7. In cross examination of the witness, counsel for the Respondents asked the witness if persons of the Rastafarian faith would cut their hair if they were convicted of a crime. The witness stated that that is a choice for that person to make but it is not the general practice. When asked if he thought it was right for the law to mandate the cutting of one's hair for the purpose of good hygiene and protection of other inmates and officers, the witness said he did not think it was right. When asked if the Applicant was a member of the Rastafarian faith, the witness stated that he was a confirmed member.
8. Counsel then questioned the witness in regard to whether someone can be ex-communicated from the faith and if so, for which reasons. The witness responded by

stating that it is possible for the church to ex-communicate a member if they were convicted of a serious offence like rape or armed-robbery. He also confirmed that having dreadlocks does not make you are a bona fide Rastafarian. Alternatively, he stated that there are persons who are a part of the Rastafarian faith who do not, wear dreadlocks and are still seen as members.

9. Through questions posed by the Court to the witness, he confirmed that the Applicant was a member of the Rastafarian church for twenty years and has always had his Dreadlocks. Further, he stated to the Court that he was not aware of what the Applicant had been convicted of. It was also stated by the witness that even if one is ex-communicated from the Rastafarian church, that they can still be a Rastafarian, just not a member of the church.

In submissions, the Applicant relied on a letter from Principal Officer Mr. Dave Mckenzie which stated *“I have had the opportunity to supervise very closely the above named inmate as a Principal Corrections Officer in charge of "B" Division at the Remand Centre. I Principal Corrections Officer, Dave Mckenzie am of the view that inmate Jamal Daniels is a well-mannered, very respectful, courteous, obedient and hard working. Inmate Jamal Daniels is a very religious inmate who expresses dedicated devotion and faith to God. He fully complies with the rules, policies and regulations of The Bahamas Department of Corrections. I consider inmate Jamal Daniels to be a noble inmate and believe firmly that he can be rehabilitated to become a law abiding and productive member of free society. If any additional information is required please-contact me at the Remand Centre at The Bahamas Department of Corrections at 364-9817 EXT 4032 or 4101.”*

Applicant's Submissions

10. The Applicant has submitted that the term correction should mean reform and the focus should be on changing a person's mindset, not *‘balding their heads and sticking them in a cell’*. The Applicant also submitted that he has attended many classes at the prison and has attained many certifications. He submitted that he is not a threat to anyone as he works around the prison.

11. On addressing the point of one's belief, the Applicant submitted that you cannot ever be certain of any person's religion; as the very definition of faith is believing without proof. The Applicant submitted that if someone reveals what they believe in, you can choose to believe him or not. He further stated that the first time he cut his hair was when his grandmother passed away however he did not cut his hair when his daughter passed away as he did not attend the funeral.
12. In relation to the public health concern the Applicant submitted to the Court that he takes his hygiene very seriously and that he purchases two shampoos a week in order to cleanse his hair. He appealed to the Court that the system must move from punitive to correctional. Further, he stated that he is well respected around the prison and the officers do not have a problem with his dreadlocks. In the evidence of the Applicant, regarding his attendance at church, when he was asked when was the last time he attended church, he stated that it was not a consistent occurrence. The Applicant admitted as regards this evidence that he '*fell short*' regarding attending church but that '*everyone does as we are not perfect*'.

Respondent's Submissions

13. Counsel's primary submission was that section 14(2)(b) of the Correctional Services Act, 2014 is not only for the proper hygiene of inmates but also to protect against the spread of disease and for the safety of the officers and other inmates. To support this submission (proper hygiene), Counsel relied on the case of **Superintendent of Her Majesty's Prison v Barry [2005] BHS J. No.98.**
14. In submissions, Mr. Bailey, Counsel for the Respondents relied firstly on rule 51 of the Correctional Services Act, 2014 which gives the requisite Minister the power to make rules for the effective governance of the correctional facilities and rule 14 (2) (b) of the Correctional Services (Inmates) Rules, 2014. He submitted that the Applicant is required to demonstrate to the Court that he is a practicing member of the Rastafarian faith and not simply someone who wears dreadlocks. Further, that the Applicant should show his membership card which he has not and that persons, like the Applicant who cannot strictly

prove that they are practicing Rastafarian or members of the Rastafarian faith should not be allowed to rely on the Rastafarian movement simply to retain their hairstyle whilst incarcerated.

15. In relying on Article 22 of the Constitution, Counsel submitted that no harm is done in these circumstances to the Applicant's religion because the cutting of the Applicant's hair would be for the greater good of the population of the prison. Counsel submitted that the cutting of the Applicant's hair will not preclude him from practicing his faith and that if his hair is cut, once he is released from prison he can allow his hair to be grown again.

16. Counsel concluded his submissions by stating that the Applicant should be made subject to the rules of the prison which would require that he has his hair is cut and maintained. In this regard he relied on **Hinds (Richard) v Attorney-General and another (No.2) (1999) 59 WIR 75**, which paragraph 97 was quoted stating that:

“Arrangements shall be made for male prisoners (unless excused or prohibited on medical or other grounds) to shave regularly and to have their hair cut as required. The hair of a male prisoner may be cut as short as is necessary for good appearance. Rule 87 clearly envisages that the shaving or cutting of a male prisoner's hair may be excused or prohibited on religious grounds although it would seem necessary to say that any excuse or prohibition would need to be subjected to adequate health, safety and security safeguards. In Teterud v Gillman, 385 F Supp 153, a decision of a US federal district court, an action was filed by an American Indian inmate of the Iowa State Penitentiary against the warden and other prison officials and administrators under the Civil Rights Act challenging the enforcement of a prison's hair regulation against the plaintiff and other Indian inmates....The court stated that in considering whether the hair regulation infringed upon the plaintiff's constitutional right to the free exercise of his religion, two issues must be considered: first, whether or not an Indian's cultural and traditional beliefs constitute a religion and, secondly, whether the plaintiff possesses a sincere belief in his creed.”

17. Subsequently, Counsel submitted that the Applicant has not proven to the Court that he is a Rastafarian or that his belief in the Rastafarian faith is honest and sincere, and that he is true to the creed of the faith.

The Relevant Law

18. Article 22(1) of the Constitution states:

"Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purpose of this Article the said freedom includes freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance."

19. The right protected under Article 22(1) is subject to the limitations set out in Article 22(5) of the Constitution. The relevant limitation in this matter is that of Article 22(5)(a) which reads:

"(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision which is reasonably required -

(a) in the interests of defence, public safety, public order, public morality or public health; or...."

20. Section 14 of the Correctional Services (INMATES) Rules, 2014 also is important to note as the Applicant is claiming that it is in contravention to his Article 22(1) right. The relevant portion of the Rules state that:

"(1) Inmates shall be required to keep their person clean and they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

(1).....

(2) **In order that inmates may maintain a good appearance –**

(a)....

(b) **the hair of a male inmate, shall be given a standard cut on reception, and from time to time as is deemed necessary”.**

DISCUSSION AND ANALYSIS

21. The Respondent has relied on the Privy Council case of *Hinds (Richards) v Attorney-General and Another (supra)* which featured an Appellant, one of whose grounds of appeal was that he was entitled to retain his dreadlocks; however he had not professed his belief in the Rastafarianism religion to the relevant bodies and as a result, his appeal to retain his dreadlocks was dismissed (at least this was one reason why his appeal was dismissed). The present matter is distinguishable from *Hinds (supra)*. All relevant parties and authorities were aware that the Applicant professed to be a member of the Rastafarian religion. However, although this was professed, the Applicant was challenged by the Respondent to prove his belief in the Rastafarian faith. He purported to do the same by (1) producing oral evidence that he is a member of the Rastafarian church (2) wearing dreadlocks and (3) producing evidence of practices which he performs consistent with the belief.

22. The Applicant called one witness, a member of the Rastafarian faith, to this Court who claimed that the Applicant visited and was a member of his church over a period of twenty years, though not continuous. Further, as it relates to church membership the Applicant could not produce his membership ID but the witness did vouch for his attachment to the church from time to time. However, another concern regarding his church membership is whether it should have been revoked having regard to the undisputed fact that the Applicant pleaded guilty to four counts of the offence of **Unlawful Sexual Intercourse with a Minor**. According to the witness for the Applicant, serious convictions such as rape would result in the ex-communication of a member from the congregation. However, it did not appear that the witness was aware of the offences for which the Applicant was

convicted. No evidence was adduced of the Applicant's ex-communication from the church, and it is not clear what format that would have taken if he was excommunicated.

23. However the conduct of the Applicant and his admission of guilt in relation to the offences in this case appear to be directly contrary to the very faith that he claims to be a part of. This conclusion can be derived from the witness called on his behalf. The witness stated to this Court that the Rastafarianism faith is one which is focused on love. He stated that *"Our faith, our religion is about doing the right through the power of the Most High God and our aim and objectives are freedom, redemption and international repatriation and to live in peace with everyone. That's the foundation of our organization."* Based upon the evidence of the Applicant's witness whom he relies if he claims to be a part of this religion and this particular church he is aware of the consequences of committing the offences for which he has been convicted. It is the view of the Court that the Applicant has not demonstrated through evidence adduced that he has a sincere belief in the Rastafarian faith.

24. The Court in the case of *Commodore Royal Bahamas Defence Force and others (Appellants) v Laramore (Respondent) (Bahamas) [2017] UKPC 13* stated that *"Freedom of conscience is in its essence a personal matter. It may take the form of a belief in a particular religion or sect, or it may take the form of agnosticism or atheism."* The Court is of the view that one's conscientiousness cannot truly be unveiled. The Applicant can only endeavor to show his true beliefs through what he has practiced versus what is known to the wider world as Rastafarian practices. The Respondents could not rebut the fact that the Applicant went to the Rastafarian church from time to time, and wore dreadlocks. However, there is no evidence to show that the Applicant practiced the things which the witness said he did in pursuit of his beliefs.

25. The main issue for the Court to probe now is if the cutting of the dreadlocks would be a breach of the Applicant's constitutional rights as one who claims to have a belief in the Rastafarian faith, in a prison situated in a democratic society. The issue in the Privy Council case of *Laramore (supra)* was whether or not Mr. Laramore's constitutional right

to freedom of religion and consciousness was interfered with by requiring him to remove his cap and stand in line for Christian prayers on the traditional color parades held by the Royal Bahamas Defence force for its members while he was of the Islamic faith. It was held that it was. This case however can be distinguished from the present in that there was no public health element in that case, or other limitation for consideration by the Court.

26. Public health is a limitation set out in Article 22(5) of the Constitution. The crux of the Respondents case is that the right to freedom of Religion is not one that can be exercised if it endangers the public health; in these circumstances, the health of the general prison. The Respondents further relied on the Court of Appeal case of **Barry (supra)**. The facts in that case are similar to facts in this matter. It involved a respondent who was imprisoned, claimed to be a Rastafarian and therefore asked the Court to allow him to retain his dreadlocks despite the rules of the prison which required him to cut them. The Court of Appeal ordered that the inmate's hair should be cut in accordance with the prison rules in order to protect the health of the prison.
27. The Privy Council in **Laramore (supra)** opined that freedom to believe, is absolute, however the 'freedom to act' is not. Accordingly, the Applicant has a prerogative to believe in whatever he prefers, however, all actions which may result from his belief cannot be all protected by the Constitution. An example of this is in the case of **Barry (supra)** where the Respondent was convicted of the possession of dangerous drugs (Indian hemp). Indian hemp, according to many Rastafarian authorities and the witness of the Applicant in this matter is a sacrament of the Rastafarian faith; it is an action that results from the belief of Rastafarianism. In that case it was seen that the Constitution did not and cannot protect a Rastafarian from using Indian hemp because it is currently an illegal drug in The Bahamas.
28. In this matter, the Applicant is also relying on a letter from an Inspector at the Prison who speaks to his character being 'good'. However, this does not address the public safety consideration at the prison. That letter does not address the issues and concerns here before the Court; they still exist. The conditions at the prison have not been known to change

from the 2003 ruling of **Barry (*supra*)**; therefore, the Court must adhere to the precedent set by the Court of Appeal in these circumstances.

29. It is hereby ordered that the Applicant be made subject to the rules of the Department of Corrections with respect to the regulations regarding his hair and the same should be cut as a precaution in the protection of the public safety of all inmates, prison officers and staff of the Bahamas Department of Correctional Services.

30. The Applicant's motion is hereby dismissed.

Dated this 14th Day of July A.D 2022

DEBORAH FRASER

JUSTICE