

COMMONWEALTH OF THE BAHAMAS

2020 PUB/con/

IN THE SUPREME COURT

Constitutional Division

IN THE MATTER an APPLICATION pursuant to Article 17 of the Constitution of The
Commonwealth of The Bahamas

AND

IN THE MATTER OF an APPLICATION by

MARCO OLIVER

BETWEEN

MARCO OLIVER

Applicant

AND

THE COMMISSIONER OF THE BAHAMAS DEPARTMENT OF CORRECTIONS

1st Respondent

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

2nd Respondent

BEFORE: The Honourable Madam Justice Deborah Fraser

APPEARANCES: Marco Oliver (*Pro sé*)

Mr. Timothy Bailey for the Respondents

HEARING DATES: 2nd March 2021, 6th August 2021, 13th September 2021,
1st October 2021 and 7th December, 2021

DECISION

The Correctional Services (Inmates) Rules 2014 – Commissioner of Corrections – Rules 8-14 of the Correctional Services (Inmates) Rules 2014 – Constitutional Motion – Constitution – Constitutional Rights – Request for Witnesses – Article 28 (2) Of The Constitution – Article 17 of the Constitution

FRASER, J

1. The Applicant Marco Oliver is seeking constitutional relief in relation to his prison conditions and claims that the Respondents have violated his constitutional rights guaranteed by Article 17 of the Constitution. The Applicant is currently serving a sentence for Armed Robbery and is due to be released in 2024. His claim relates specifically to alleged violations of the Correctional Services (Inmates) Rules 2014, rules 8-14, providing accommodation and care of Inmates. The Applicant has also requested a number of witnesses in this matter.
2. Counsel for the Respondents has contended that these are all issues which can be addressed by the Department of Corrections and the Commissioner of Corrections is able to speak to all of the issues raised. They have produced a report from the Internal Affairs Unit of The Bahamas Department of Corrections which was exhibited in the Affidavit of Attorney Perry McHardy, filed and sworn on 31 May, 2021.
3. Unfortunately due to the Pandemic this matter has been protracted. The Applicant in this matter was unrepresented and so as to ensure fairness, the Court held several case managements in this matter to allow the Applicant to put his concerns to the Court including why he thought it would be necessary to hear from the several witnesses. The Court also heard the parties on a preliminary objection by the Respondent in which it was submitted that the Applicant has no right of appeal to the Supreme Court until he has exhausted all available means of redress available to him. Counsel relied on Article 28 of the Constitution in that regard. The Applicant submitted that he has made all efforts to have his issues addressed by the Department of Corrections but to no avail. The

Respondent submitted that there was no proof of such efforts. My decision was reserved. I now rule.

ISSUE

4. After hearing both parties in this matter and after reading the submissions of Counsel for the Respondents, the only issue for the Court is: whether the Court should exercise its constitutional power in this matter having regard to Article 28(2) of the Constitution? The decision regarding witnesses has also been taken into account.

THE EVIDENCE

5. The Applicant submitted a letter to the Supreme Court dated 7 September 2017, alleging that he was being treated in an inhuman manner. He stated that he was deprived of: seeing the doctor, medication, exercises, toiletries, proper meals, showers, bedding and was being subjected to some of the most squalid conditions in the prison. He was forced to defecate, urinate, brush his teeth and wash his face in a bucket as well as sleep on the floor in a foul smelling small cell without ventilation. A subsequent letter was served on 27 January 2020 addressed to the Supreme Court in which the Applicant alleged that his constitutional right pursuant to Article 17 had been breached due to the non-compliance of rules 8-13 of the Correctional Services Inmate Rules 2014. The Applicant stated that he is being mistreated, oppressed and dehumanized at the Department of Corrections. The Applicant is also relying on copies of his diaries wherein he has documented the alleged complaints.
6. The Respondents are relying on an affidavit of Perry McCarty, Counsel in the office of the Director of Public Prosecutions, containing a summary of a report by the Internal Affairs Unit of The Bahamas Department of Corrections who conducted an investigation into the allegations. The relevant portions are as follows:
“6. That Chief Corrections Officer Curtis reported that the Applicant is housed in cell E (Eastern Group) along with two other inmates and is adequately accommodated with a mattress.

7. That the Department of Corrections kitchen provides three (3) meals per day and facilitates inmates that have a special diet, however investigations revealed that the Applicant was not placed in that category. Further, the Applicant is provided with Reverse Osmosis water daily for drinking purposes or he has the option to purchase drinking water from the Inmate's Commissary.

8. That the Applicant does not have access to medical care. The Applicant was examined by Dr. Hasting Johnson upon his initial admission to the Department on the 17th November, 2016. Recent visits to the Medical Department revealed that the Applicant complained about difficulty sleeping, pain in his left shoulder blade and testicular pain. He is currently receiving medical treatment for the same.

9. That **"EXHIBIT 1"** further discloses that the Applicant is allowed to shower and exercise twice per week i.e. Mondays and Wednesdays with Thursdays being a lockdown day for the guard to change. Due to the overpopulation and large amount of members of security threat groups it is difficult to permit each inmate to exercise every day. Most members refuse to leave their cells because of their allegiance to various gangs.

10. That the Applicant is given fresh water to use for personal hygiene purposes. Inmates in the Maximum Security Unit receive the required toiletries namely soap, toothpaste, toilet tissue, and tide on a weekly and bi-weekly basis. Toothbrushes are supplied upon request.

11. That a further inquiry was made of Chief Corrections Officer Curtis regarding the use of the bucket. He advised that separate buckets are provided to inmates daily, one is for the inmates to relieve themselves and the other would contain fresh water for the purpose stated.

12. That there is no record of the Applicant making any complaint nor any documentation to the Commissioner of Corrections that he has been treated unfairly, however he had appeared before the Disciplinary Tribunal several times for breach of the Inmates' Rules. The Report concluded that the Applicant has not been mistreated by inmates or officers while housed at The Bahamas Department of Corrections."

SUBMISSIONS

7. The Applicant has submitted that he did make efforts to bring these matters to the attention of the Commissioner of The Bahamas Department of Correctional Services but has not received any response and wishes to call a number of witnesses to support his allegations.
8. Counsel for the Respondents has submitted that witnesses in this matter are unnecessary and that the Commissioner of Corrections can speak to all issues in the Department. Counsel also submitted that there was no violation of the fundamental rights and freedom of the Applicant in particular Article 17(1), while he was on remand or serves his sentence. Further, that there is an administrative process within the prison system to address any grievances the Applicant may have and is an alternative remedy available to him. Additionally, Counsel for the Respondents submitted that the Internal Affairs Unit, after inspecting files and documents, found no record of the Applicant making a formal or informal complaint to the Commissioner of Corrections concerning inhuman treatment or fear of life.
9. Finally, Counsel for the Respondents submitted that the Applicant has no right of appeal to this Court until he has exhausted all available means of redress available to him in accordance with Article 28 of the Constitution and that the Applicant has not made a request to the Commissioner of The Bahamas Department of Correctional Services in accordance with the Correctional Services (Inmates) Rules, 2014.

LAW

10. The following laws were considered and relied upon in this case.

Firstly, Articles 17 and 28 of the Constitution of The Bahamas which reads as follows:

“17. (1) No person shall be subject to torture or to inhumane or degrading treatment or punishment.

(2) 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 authorize; the infliction of any description of punishment that was lawful in The Bahamas Islands immediately before the 10th July, 1973.”

“28. (1) If any person alleges that any of the provision of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction –

1. (a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and

2. (b) to determine any question arising in the case of any person which is referred to in pursuance of paragraph (3) of this Article, and may make such orders, issue such Writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.”

11. Secondly, the Correctional Services Act, 2014 which came into effect on 11 August 2014, established a Review Board to be known as the Correctional Services Review Board. This body replaced the Visiting Committee which existed under the now repealed Prisons Act.

“Functions of the Review Board.

16.(1) The functions of the Review Board are-

- (a) to keep constantly under review and to advise the Minister of all aspects of the Correctional Facilities and to visit and inspect at least once in every quarter, and as occasional may require, every area within the bounds of a correctional facility;**
- (b) on advice of the Commissioner, to approve participation of an employer in the extramural work programme and to ensure accountability for the management of earnings of inmates;**
- (c) to ensure that inmates receive proper treatment and to investigate any abuses which come to it knowledge in connection with correctional facilities , and to issue a written report of its finding to the Minister;**

- (d) to inquire into any report received to the effect that the mind or body of an inmate is likely to be injured by the conditions of his imprisonment and to bring any such findings to the attention of the Court and the Minister;**
- (e) to implement and ensure that the methods of reformation and rehabilitation of inmates are consistent with best practices for correctional reform;**
- (f) to give inmates an opportunity to lay their complaints or application before it.**

(2) The Review Board shall cooperate with the Commissioner in promoting the efficiency of correctional facilities and shall make enquiries into any matter specifically referred to the Review Board by the Minister and report thereon

(3) The Review Board shall at the end of every year report in writing to the Minister on –

(a) the treatment and welfare of the inmates;

(b) all defects in the construction, management or discipline of any correctional facility; and

(c) all improvements which in its opinion are requisite for –

(i) maintaining and improving the administration and discipline of the correctional facilities;

(ii) promoting the reformation and rehabilitation of inmates, and may make recommendations as the Board thinks fit.

17. Powers of members of Review Board.

(1) A member of the Review Board may, at any time after prior notification to the Commissioner, have access to –

(a) any part of a correctional facility; or

(b) any inmate.

(2) Any member who has been granted access to any part of the correctional facility or to any inmate shall document his findings and provide a copy thereof to the Commissioner.”

12. The Applicant is alleging that there has been a breach of Rules 9-13 of the Correctional Services (Inmates) Rules, 2014.

13. These rules are as follows:

“Accommodations and care of Inmates

9. Clothing, bedding and hygienic articles.

- (1) Every inmate shall at all the time of his admissions be supplied with
- (a) clean appropriate clothing, suitable for the climate and adequate to keep him in good health;
 - (b) adequate bedding supplies and any additional bedding material considered necessary for medical reasons and on the written recommendation of the medical officer;
 - (c) hygienic articles as are necessary for health and cleanliness; and
 - (d) a copy of these Rules.
- (2) Arrangements shall be made for the replacement of any supplies or articles referred to in paragraph (1), when necessary.
- (3) No further articles of any kind will be permitted to be received on behalf of any inmate.

10. Accommodation

- (1) Every inmate shall be provided with sleeping accommodation either in a cell or a dormitory.
- (2) When for medical or other special reason it is necessary for inmates to be associated at least three inmates may be placed in one cell and each inmate shall be supplied with separate bedding adequate for warmth and health.
- (3) Every inmate shall keep his cell and his personal belongings issued for his use, clean and arranged as may be directed.
- (4) Adequate bathing and shower installations shall be provided so that every inmate may be enabled and required to have a bath or shower at a temperature suitable to the climate.”

11. Food and Drink

- (1) Every inmate shall be provided at the usual hours with food of nutritional value adequate for health and strength of wholesome quality well prepared reasonably varied and sufficient in quantity.

(2) Any directions given by dietician or medical officer in respect of an inmate shall be observed.

(3) At least one litre of drinking water shall be made available every day to every inmate.

(4) No inmate shall be allowed to have any intoxicating liquor.

12. Medical Services

(1) At every correctional facility, there shall be available at least one qualified medical officer.

(2) Sick inmates who require specialist treatment shall be transferred to specialized institutions or to a public hospital.

(3) Where hospital facilities are provided for in an institution, the equipment furnishings and supplies shall be proper for the medical care and treatment of sick inmates.

(4) The services of a qualified dental officer shall be available to every inmate.

(5) The medical officer shall report to the Commissioner whenever he considers that an inmate's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

(6) The medical officer shall regularly inspect and advise the Commissioner upon-

(a) the quantity, quality, preparation and service of food;

(b) the hygiene and cleanliness of the facility and the inmates;

(c) the sanitation, heating, lighting and ventilation of the facility; and

(d) the observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

13. Exercise and sports

(1) Every inmate who is not employed in outdoor work shall have at least one hour a day except for Saturdays, Sundays and Public Holidays of suitable exercise in the open air if the weather permits, unless a medical officer orders otherwise.

(2) Authorized inmates may be permitted to participate in a sporting programme approved by the Commissioner.”

ANALYSIS

14. In summary, the complaints of the Applicant are that he was being treated in an inhumane manner at the Department of Corrections and such actions amount to a breach of Article 17 of the Constitution. The allegations are that he has been-

- (1) deprived of seeing the doctor;
- (2) not given the requisite medication for his hypertension or received a special diet for this ailment;
- (3) denied regular exercise or showers;
- (4) overcharging of telephone calls and items from the commissary;
- (5) subjected to the most squalid conditions in the prison and has to sleep on the floor in a poorly ventilated cell; and
- (6) force to defecate, urinate, brush his teeth and wash his face in a bucket.

In support of the above mentioned, he has maintained a personal diary of the particulars relating thereto.

15. Counsel for the Respondents, in addition to producing evidence which states that no such complaints have been brought to the attention of the Commissioner of Corrections has submitted that the Applicant's right to apply to the Supreme Court pursuant to Article 28 of the Constitution should only be exercised in exceptional cases where there is no parallel remedy.

16. Further, Counsel for the Respondents submitted that the Court's power to decline jurisdiction arises only where the alternative means of redress is considered to be inadequate. In support of this principle, the decision of Justice Indra Charles in the case of **Douglas Ngumi v. Hon. Carl Bethel, Hon. Brent Symonette et.al 2017/CLE/gen/01167** was relied on. In that particular case however, Justice Charles found that the bringing of the Constitution claim by the Plaintiff was not an abuse of the process as no parallel

adjudicate remedy was available to the Plaintiff. This however is not the position in this matter. Counsel for the Respondents has identified the alternative remedy and submits that there is a parallel remedy which the Applicant has not pursued.

17. The provision to Article 28 of the Constitution is very clear. The Supreme Court shall not exercise its powers where any person alleges that any of the provisions of Article 16 to 27 has been or is likely to be contravened if the Court is satisfied that adequate means of redress are or have been made available to the person concerned under any other law. The Court relies on the case of **Douglas Ngumi and The Hon. Carl Bethel et. al.** (*supra*) the court stated that:

*“[54] It is well established that the right to apply to the Supreme Court pursuant to Article 28 of the Constitution should be exercised only in exceptional cases where there is a parallel remedy: Lord Diplock at p. 268 in the Privy Council case of **Harrikissoon v Attorney General of Trinidad and Tobago** [1980] AC 265.*

*[55] The mere existence of an alternative remedy does not automatically warrant excluding constitutional proceedings under the proviso to Article 28(2). The crux is their adequacy. The power to decline jurisdiction arises only where the alternative means of redress is considered to be adequate. In this regard, the Courts have offered some guidelines in assessing the requirement of adequacy. One of these is that where there is a parallel remedy, constitutional relief is only appropriate where some additional "feature" presents itself, for example, arbitrary use of state power: **Attorney General of Trinidad and Tobago v. Ramanoop** [2005] UKPC 2005); unlawful imprisonment for 8 years: **Takitota v. Attorney General and others** [2009] UKPC 11 and breaches of multiple rights: **Belfonte v. Attorney General** [1968] W.I.R 416. See also paras 247 to 252 of **Coalition to protect Clifton Bay and Zachary Hampton Bacon III v The Attorney General of the Commonwealth of The Bahamas** 2016/PUB/con/00016 [unreported] Judgment delivered on 2 August 2016.”*

18. In 2014, the legislature of The Bahamas enacted the Correctional Services Act, 2014 which took effect on 11 August, 2014. The purpose of that legislation was to modernize

the law governing the custody and rehabilitation of inmates. Under section 51 of that Act, the Minister responsible for the Department of Correctional Services was empowered to make rules providing generally for the effective administration of the Act and for the good management and government of the Correctional Facilities. This included modern rules for:

- (a) the treatment and safe custody of inmates; and
- (b) the classification, diet, clothing, maintenance, employment, discipline, punishment, instruction and correction of inmates.

19. The Correctional Services (Inmates) Rules 2014, took effect on 18 August 2014 and specifically prescribed the accommodation and care of inmates are to receive under rules 9-15. The 'Correctional Services Review Board' was also established under the Act to advise the Minister on all aspects of the Correctional facilities. The Board was empowered to visit and inspect the facility at least once in every quarter and as occasion may require every area within the bounds of a correctional facility.
20. Further, the Board is to ensure that inmates receive proper treatment and to investigate any abuses which come to its knowledge in connection with correctional facilities and to issue a written report of its findings to the Minister and finally to give inmates an opportunity to lay their complaints or applications before it. The aforementioned legislation reflects that there is adequate means of redress for the Applicant in this case which appears adequate to address the concerns of the Applicant. It is only where such body has failed to act or address matters brought to their attention that the person aggrieved may approach the Court. After a hearing of the matter the Court may intervene.
21. The Applicant alleges that he has made several attempts to have his concerns addressed but to no avail. The Second Respondent in their Affidavit in Support of the Application states that there is no record of the Applicant making any complaint to the Board nor any documentation to the Commissioner of Corrections supporting the allegations that the Applicant has been treated unfairly. The Applicant has not produced any evidence to show that a Petition has been submitted to the Commissioner through the Assistant

Commissioner or Chief Corrections Officer of the relevant unit as the rules prescribe. The Applicant must comply with the Rules. The Second Respondent has been put on notice of the matter by virtue of this ruling therefore documents should be submitted in that regard and a hearing of the application should be made as soon as reasonably practicable.

22. This Application by the Applicant is hereby dismissed and the matter is now referred to the Correctional Services Review Board. The Board in its discretion will determine whether witnesses are necessary in this matter.
23. The Court thanks Mr. Bailey for his very useful submissions in this case and the Applicant for his valiant efforts in the absence of legal representation.

Dated this 28th day of January, AD, 2022

DEBORAH FRASER
JUSTICE