

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A No. 1164 of 1998

BETWEEN

JOEY RAMIAH

Applicant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO
AND THE COMMISSIONER OF
PRISONS**

Respondents

Before the Honourable Mr. Justice P. Moosai

Appearances:

Mr. Om Lalla for the Applicant

Mr. R. Martineau S.C. and Mr. J. Walker for the Respondents

JUDGMENT

This is a Constitutional Motion by Joey Ramiah filed on the 2nd day of June, 1998. The reliefs include:

1. A declaration that the treatment of the Applicant at the Frederick Street State Prison since his incarceration in September 1996 has been cruel, degrading and inhuman and amounts to serious deprivation of human needs and contravened and continues to contravene the Applicant's enshrined rights as guaranteed to him by Sections 4(b), (d) and 5 of the Constitution of Trinidad and Tobago.
2. A declaration that the refusal and/or failure and/or omission of the Prison Authority to provide and/or administer medical

treatment to the Applicant was and is unconstitutional and illegal and contravenes and continues to contravene the Applicant's rights as guaranteed to him by sections 4(b), 4(d) and 5(2)(b) of the Constitution of Trinidad and Tobago.

3. A declaration that the refusal and/or denial and/or failure and/or omission by the Prison Authority to provide meals to the Applicant while an inmate in the Frederick Street State Prison is unconstitutional and illegal and contravenes and continues to contravene the Applicant's enshrined rights as guaranteed to him by sections 4(b), (d) and 5(2)(b) of the Constitution of Trinidad and Tobago.

4. A declaration that the conditions of the cells in which the Applicant is confined and which is under the control of the Prison Authority is unfit for the confinement of any human being and constitutes cruel, unusual and inhuman treatment and is unconstitutional and illegal and contravenes and continues to contravene the Applicant's rights as guaranteed to him by sections 4(b), (d) and 5(2)(b) of the Constitution of Trinidad and Tobago.

5. An order of Mandamus that pending the execution of the sentence imposed on the Applicant by the Court he be provided:

A: (i) with accommodation fit for human habitation

- (ii) with meals on a daily basis
- (iii) with water on a daily basis
- (iv) with medical treatment and
- (v) with reasonable and adequate access and facilities for
visit by his family and his Attorney-at-law.

B: That he be allowed daily sunlight and exercise.

6. Such further Orders, Writs and directions as may be necessary to enforce the guaranteed rights of the Applicant.

The grounds upon which the motion is based are as follows:

1. The Applicant had been and is being subjected to cruel, degrading and inhuman treatment by the prison authority since or about September 1996 and continues to be treated in such manner by Prison and has been and continues to be denied fundamental constitutional rights which said rights have not been forfeited by reason of the sentence passed on him, as aforesaid and which are in contravention of S 4(b), S 4(d) and S5(b) of the Constitution of Trinidad and Tobago.
2. The Applicant has been and is denied the right to the provision of meals and water and although a special diet has been recommended by the Prison medical officer he has been denied and continues to be denied such meals which treatment amounts to cruel, degrading and inhuman treatment and which said treatment is in contravention of the rights of the Applicant

under S 4(b), 4 (d) and S 5(2)(b) of the Constitution of Trinidad and Tobago.

3. The Applicant has been and is being denied medical facilities and treatment by the prison authority and by the Prison Medical Officer when requested and further has been and is being denied treatment for the said head injury. That the Prisons Medical Officer informed the Applicant that he has to be evaluated at a specially equipped hospital and that notwithstanding the Applicant has been denied medical treatment as advised by the Medical Officer by the Prison Authority. That the Prison Authority has failed and/or refused to provide the Applicant with medicine and to receive medicines from his family which said failure and or refusal are in contravention of S. 4(b), 4(d) and S 5(2)(b) of the Constitution of Trinidad and Tobago.
4. The Applicant has been and is being denied the right to see his family during regulated visits in a place which is suitable for such visits and the conditions whereof amounts to contravention of the constitutional right of the Applicant under S 4(b), 4(d) and S 5(2)(b) of the Constitution of Trinidad and Tobago.
5. The Applicant has been and is being denied the right to hold communication with his Attorney-at-law in private and is made

to be handcuffed during such visit which is in contravention of the constitutional rights of the Applicant under S 5(2)(c)(ii) of the Constitution of Trinidad and Tobago.

6. The State of Trinidad and Tobago is responsible for providing adequate facilities and the requisite machinery for the proper and effective management and treatment of prisoners at the State Prisons.

The Applicant was on 3rd September, 1996 convicted for the offence of murder and sentenced to death. The gravamen of the Applicant's complaint is that the Respondents have subjected him to cruel and unusual treatment or punishment in violation of the provisions of sections 4(b), (d) and 5(2) (b) of the Constitution.

Sections 4(b), (d) and 5(2)(b) of the Constitution provide:

“4. It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:-

- b. the right of the individual to equality before the law and the protection of the law;
- d. the right of the individual to equality of treatment from any public authority in the exercise of any functions.”

“5 (2) Without prejudice to subsection (1), but subject to this

Chapter and to section 54, Parliament may not:-

b. impose or authorise the imposition of cruel and unusual treatment or punishment.”

At the hearing of the Motion the Applicant made an oral application for the Court to appoint a Neurosurgeon and for the Motion to be adjourned until a Neurosurgeon prepared a report. I dismissed the oral application as I was of the view that matters of this kind ought to be proceeded with expeditiously. In addition the Prisons Rules contemplate a Medical Officer for the Prisons and it is in his charge that medical matters relating to prisoners reside. The Medical Officer has stated on Affidavit that a CAT scan revealed a vault fracture and a contusion but that could not severely affect the Applicant’s mental or physical health. Further I was of the view that the appointment of a neurosurgeon would not help me to determine whether the State has refused to let the Applicant see a Neurosurgeon.

Leave was also sought to cross-examine Lennox Watson on paragraphs 3,4 and 6 of his Supplemental Affidavit of 28th. July 1998. I granted leave to cross-examine on part of paragraph 6 since I was of the view that in matters of this kind, the ground for cross-examination is that you must have disputed questions of fact. Further Watson was merely correcting what he said in an earlier Affidavit.

I also refused leave to cross-examine Dr. Chen on paragraphs 14 and 16 of his Affidavit of 25th. June,1998 on the basis that there is no evidence on the Applicant’s Affidavits to the contrary, so that there are no disputed questions of

fact.

CRUEL AND UNUSUAL TREATMENT OR PUNISHMENT

In ascertaining what amounts to cruel and unusual punishment Sharma J.A. in Thomas & Hillaire v. Attorney General et al Civil Appeals Nos. 177 and 178 of 1998 (“*Thomas & Hillaire*”) said at pages 4 and 5:

“It is true that cruel and unusual punishment is a highly subjective matter and is capable of generating all sorts of esoteric and philosophical arguments. Be that as it may, one could hardly dispute that whatever the relative values, basic requirements should be met and a fair balance struck between dehumanizing a prisoner and discipline, order and institutional security so necessary in a prison

It is important to note that the words “cruel and unusual” are used conjunctively and they are not to be regarded as synonymous, that treatment or punishment can be cruel but not unusual and vice versa.”

In R.v Miller Cockriell (1976) 70 D.L.R. (3d) Ritchie J. delivering the majority decision stated at p. 345:

“In my opinion the words “cruel and unusual” as they are employed in S.2(a) of the Bill of Rights are to be read conjunctively and refer to “treatment or punishment” which are both cruel and unusual.”

In Estelle v Gamble (1976) 97 Supreme Court Reporter 285, Justice Marshall delivering the majority opinion of the Supreme Court of the United States stated at page 290:

“The history of the constitutional prohibition of “cruel and unusual punishments” has been recounted at length in prior opinions of the Court and need not be repeated here. It suffices to note that the primary concern of the drafters was to proscribe “torture[s]” and other “barbar[ous]” methods of punishment. Accordingly, this court first applied the Eighth Amendment by comparing challenged methods of execution to concededly inhuman techniques of punishment....

Our more recent cases, however, have held that the Amendment proscribes more than physically barbarous punishments. The Amendment embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency.....” Jackson v. Bishop, 404 F. 2d 571, 579 (C.A. 8 1968), against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with “the evolving standards of decency that mark the progress of a maturing society.” Trop v. Dulles, supra, at 101, 78 S. Ct. at 598, see also Gregg v. Georgia, supra, at 172-173, 96 S.Ct. at 2925(joint opinion);... or which “involve the unnecessary

and wanton infliction of pain,” Gregg v. Georgia, supra, at 173, 96 S. Ct. at 2925 (joint opinion);”

Having regard to the allegations made by the Applicant in the instant matter, I am of the view that for the Applicant to succeed, there must exist the factual underpinning which would enable the court to come to the conclusion that the Respondents have subjected the Applicant to cruel and unusual treatment or punishment. The onus of proof is on the Applicant. It is therefore necessary to examine the evidence in this matter.

ACCOMMODATION

The Applicant complains about the size of the cell, the slop bucket, the light, the fan and the infestation of his cell with flies, mosquitoes and cockroaches. At paragraph 6 of his Affidavit of 3rd June, 1996 the Applicant complains that since his incarceration as a condemned prisoner, he has been kept in a concrete cell which is about five feet in width and nine feet in length. This cell is cold, damp and cramped.

Mr. Martineau makes the point that it is amazing that in the tropics, cells can be cold. He also refers to the authority of Thomas & Hillaire in which the Applicant Thomas complained of the hot, stuffy, cramped conditions in his cell.

At paragraph 6 the Applicant states that he has been provided with a white plastic bucket in which he was to urinate and defecate. At paragraph 7 the Applicant states that he is allowed to clear his bucket sometimes twice per day but that on many occasions, the dates which he cannot now recall, he was not allowed

to clear his bucket as a result of which it overflowed onto the floor of his cell. As a consequence his cell is infested with flies, mosquitoes and cockroaches. The stench is unbearable, affects his breathing and aggravates his deteriorating state of health. The procedure of not allowing him to clear his bucket on a regular basis still continues.

Lennox Watson who at the time of swearing his Affidavit on 25th June, 1998 was Acting Commission of Prisons, deposed to an Affidavit and was cross-examined.

At paragraph 6 of Watson's Affidavit, he says that each condemned prisoner has his own cell. Cells are of a standard size measuring approximately 6 feet in width, 12 feet in length and 11 feet 7 inches in height. Each cell has its own bed and opens onto a corridor. The arrangement of the cells allows condemned prisoners to converse with each other. The cells are clean, warm and dry and there is no moisture or water accumulating in the cells.

Watson was not cross-examined with respect to the size of cells so I accept his evidence with respect to same.

At paragraph 9 and 10 of Watson's Affidavit, Watson states that condemned prisoners are allowed for security measures to use the toilet facilities once per day and to use their slop pail whenever necessary. Every morning the condemned prisoner is allowed to have a bath, to empty his slop pail and to clean out his cell. A prisoner may at his request also empty his slop pail at midday. Later at about 6.00 p.m. a condemned prisoner is again allowed to empty his slop pail.

Further a condemned prisoner may be allowed to empty his slop pail at any other reasonable time on request to the prison officer on duty. Under cross-examination Watson testified that in his official capacity he may visit the Prisons Condemned Division five times per week during the day and at any time he feels like during the night to see what is happening in the Condemned Division.

He denies that the Applicant has not been allowed to clear his slop pail as a result of which it overflowed onto the floor of his cell. As Watson says, he is in charge of the Prisons and had such an incident occurred, it would have been reported to him. He did not have to carry out any special investigations since as Deputy Commissioner of Prisons, he was in charge of Condemned Division. Anything that happens there comes through him.

In addition when he is carrying out his frequent rounds of inspections of Condemned Division, no report was ever made to him by the Applicant. In his rounds of inspection the sanitation was up to the required standard. With respect to the infestation by flies, mosquitoes and cockroaches, he carried out no investigations as no report was made to him of same and secondly, on his rounds of inspection he discovered no such condition.

Having seen the witness Watson, I am of the view that his evidence is to be preferred. He seemed to be a credible witness who under cross-examination, impressed the court as a witness of truth.

I therefore accept the evidence of Watson that the cells are clean, warm and dry and there is no moisture or water accumulating in the cells. Again, I accept the evidence of Watson that every morning a condemned prisoner is

allowed to have a bath and clean out his cell. Further he is allowed to empty his slop pail three times per day and at any other reasonable time on request to the officer on duty. Finally that the corridors are cleaned on a daily basis by sanitation staff at the Royal Goal. It is also important to note that at paragraph 8 of Watson's Affidavit, he deposes to the fact that prisoners are given a mild disinfectant with which to clean their cells. This has not been challenged in any manner.

There was an allegation that the Applicant's slop pail was leaking but it appears to have been remedied.

LIGHT

The Applicant at paragraph 9 of his Affidavit states that the light in his cell is a two foot fluorescent bulb that is kept on during the day as well as the night thereby making it impossible for him to sleep at night. As a result the Applicant says he suffers from insomnia and depression.

Paragraph 13 of Watson's Affidavit of 25th June, 1998 states that the fluorescent light is enmeshed in wire above the cell door outside the cell of each condemned prisoner and that the level of light is not sufficient to prevent the prisoners from sleeping comfortably at night. The light is kept on twenty-four hours per day for security reasons to enable prison officers to observe condemned prisoners at all times. Under cross-examination Watson says that he has never had a complaint that prisoners were having sleeping problems. He further endorses what he deposed to in his Affidavit namely, that the light is not in the cell. In the absence of any cross-examination I conclude that the light is not in the

cell.

In addition, Dr.Chen at paragraph 3 of his Supplemental Affidavit of 13th July, 1998, states that he has never known the Applicant to be suffering from insomnia and that from his medical records he has never treated the Applicant for insomnia.

Again leave was granted to cross-examine Dr. Chen but no cross-examination took place on the issue of insomnia.

I therefore come to the conclusion that the Applicant made no complaints of insomnia nor suffers from same. This court cannot over-emphasize that the maintenance of security, order and discipline in prisons is a matter within the peculiar knowledge and expertise of the Prison Authorities. They must be given considerable latitude and deference in the maintenance of security, order and discipline.

VENTILATION

The Applicant complains that at the time of swearing his first Affidavit on 3rd June, 1998, his cell had one small window for ventilation. The window is located next to a garage for prison vehicles. On mornings and evenings, vehicles are allowed to run their engines for about twenty minutes during which time carbon dioxide emitted from same fill his cell causing him to suffocate. There are also generators for electricity at this area which, when activated, fill his cell with noxious fumes thereby affecting his health. He has repeatedly complained to Prison Officers but no one has ever responded to his calls. The Applicant further states that the fumes from the generator are so harmful and dangerous to health

that the Prison Officers who pass outside his cell are forced to wear gas masks. His request to be transferred to a safer cell has been recorded in the Prison Request book.

Paragraphs 18 – 21 of Watson's Affidavit of 25th June, 1998 deal with this issue. Watson says the cells are well ventilated, a ventilation hole measuring two feet four inches in width and one foot three and three-quarter inches in height allowing the free flow of air from outside the building into the cell.

The Applicant is now kept in Division F 1 where there are ceiling fans along the corridor circulating air into the cells.

There was no cross-examination of Watson on the above so that I find that the cells are well ventilated, a ventilation hole measuring two feet four inches in width and one foot three and three-quarter inches in height allowing the free flow of air from outside the building into the cell. In addition the Applicant is now in Division F 1 where ceiling fans along the corridor circulate air into the cells.

With respect to the exhaust fumes Watson states that the Applicant's former cell was located near to the parking area for vans entering the Royal Goal compound, but that this area is an open yard of limited size and that not more than two vehicles were parked in the area adjacent to the C.1 cells at any given time. During the week an average of eight vehicles come into the compound on a daily basis but the engines are not left running but are switched off. In addition the drivers have instructions to park their vehicles with their mufflers or exhaust pipes facing away from the cells.

With respect to the generator, Watson admits that there is a generator on

the Royal Goal compound located north of the C1 Division. The cell in which the Applicant was previously kept, Cell 15, is on the southern side of the C1 Division and is not located near to this generator. Watson denies that noxious fumes from this generator enters the Applicant's cells and emphasizes that a generator is only operated during a power outage which rarely occurs. In the event of same occurring the Trinidad and Tobago Electricity Commission is immediately contacted and the problem rectified expeditiously.

There was little cross-examination on the above issues and I therefore accept Watson's evidence in this regard.

On the issue of the gas masks, there has been no attempt to cross-examine Watson on same. I therefore accept the evidence of Watson that dust masks are worn by prison officers for searching condemned prisoners who have contagious diseases such as skin rashes, scabies or tuberculosis or prisoners with open wounds. They are sometimes also worn by sanitation staff when they are clearing out garbage and dust from the condemned divisions.

MEALS

The Applicant at paragraphs 13-15 of his Affidavit of 3rd June, 1998 deals with the question of meals. He says that while he was on remand at Golden Grove Prison his family was permitted to provide him with meals in accordance with the doctor's recommendations. However, since he has been at Port of Spain State Prison he has been given meals but on an irregular basis. His diet at Port of Spain prison consists of a morning meal of crix biscuit and cheese, lunch consisting of boiled potatoes and beans and dinner consisting of crix biscuit and

cheese.

The failure by the Prison Authority to provide him with meals on a daily basis has seriously affected his physical and mental condition. The situation has remained unchanged despite his request. He has lost ten pounds or more since 1996. Each day he feels weak and faint and experiences severe bodily pain as a result of the orchestrated starvation by the Prison Authority.

He deposes to a series of dates on which he was deprived or only received some of his meals. These dates ranged from 24th July, 1997 to August 1997.

At paragraph 4 of his Affidavit of 25th June, 1998, Dr. Cyril Paltoo, the medical officer assigned to Golden Grove says that he does not recollect nor does the Applicant's medical records show that he recommended that the Applicant be provided with any special dietary meals. Had he made such recommendation, he would have entered same in his medical records.

Again Dr. Paltoo was not cross-examined on this so I accept that Dr. Paltoo did not recommend that the Applicant be provided with special dietary meals while he was at Remand Yard, Golden Grove.

At paragraph 10 of his Affidavit of 25th June 1988 Dr. Chen deposes to the fact that on or about 22nd October, 1997 the Applicant was brought to the prison infirmary on the request of the Commissioner of Prisons. Dr. Chen asked the Applicant if he had any preference with respect to food. The Applicant requested crux biscuit and cheese for both breakfast and dinner and boiled potatoes and beans for lunch. He recorded the Applicant's request on his diet sheet and even though he wrote the words "no bread", the Applicant was free to have bread if he

so desired. The Applicant's diet was provided to him (the Applicant) as a result of his own request and not due to any illness. The Applicant's consumption of bread would not be harmful or have any adverse effects on his health.

Dr. Chen was not cross-examined on paragraph 10 of his Affidavit and I therefore find that it was the Applicant who requested crix biscuit and cheese for both breakfast and dinner and baked potatoes and beans for lunch. I also accept the evidence of Dr. Chen that the Applicant's diet was provided to him as a result of his own request and not due to any illness.

At paragraph 20 Dr. Chen says that the Applicant told him that he was not being supplied with the food he had requested. He asked the Applicant what was his preference for food and he noted his request. Dr. Chen says he never recommended any particular food for the Applicant's diet because the Applicant was not suffering from any known medical disorder requiring a diet of biscuit and cheese. Dr. Chen denies that the Applicant ever spoke with him indicating his (the Applicant's) surprise that Dr. Chen did not know what the Applicant's diet was.

At paragraph 22-27 of Watson's Affidavit of 25th June, 1998, Watson deals with the issue of meals. All condemned Prisoners are given a balanced diet prepared by prison personnel trained at the Hotel School in Chaguaramas. This comprises of breakfast, lunch and dinner.

It is only if the prison medical doctor (whether at the prisoner's request or for medical reasons) recommends or prescribes a special diet for a prisoner that a different diet may be served. A recommended diet is one treated and understood

by the prison authorities as a preferred diet. The Applicant indicated his preference for a potato and biscuit diet and requested that he be provided with such a diet. Based upon this request the following diets were recommended by the Prisons Medical doctor:

- (a) A potato diet for the period beginning 20th November 1997 and ending 20th February, 1998.
- (b) A potato diet for the period beginning on the 23rd June, 1998 to the period 23rd September, 1998.
- (c) A biscuit and cheese diet for the period 15th April, 1998 to the 15th August, 1998.

Special diets or diets requested by prisoners are only served if available. If on any day there are shortages the Applicant is and has been served with vegetarian meals. Whenever a condemned prisoner refuses to take the regular meals served, it will be recorded in the Condemned Prisoners Daily Occurrence Book.

At paragraph 25 Watson deposes to the fact that the Applicant was offered meals on the dates that he alleges he was deprived, but refused to accept them.

At paragraph 6 of Watson's Supplemental Affidavit of 28th July, 1998 Watson deposes to the fact that between the period 16th January, 1997 to 3rd June 1998, a total of 449 days, 1347 meals were offered to the Applicant. The Applicant refused his meals 342 times. Under cross-examination Watson indicated that when it was brought to his attention that the Applicant was refusing meals he instructed that notes be kept.

Exhibit "C.E.1" comprises the Occurrence Book and the Condemned Prisoners' Treatment Log. The Occurrence Book reflects the date the book was received by the relevant prison officer (10th January, 1997) and the date the book was completed (5th October, 1997).

The Occurrence Book constitutes an agreed bundle for the period requested by the Applicant. There is one issue with respect to the Occurrence Book which the court must resolve.

Mr. Martineau has indicated that there are a number of entries reflecting refused diet, refused breakfast, refused supper and some entries reflecting "No food". Mr. Martineau is saying that they are relying on their records and the entries, "No food" to mean that the Applicant also refused food. If Mr. Lalla is saying that they mean something else, and the onus is on him to prove his case, he was quite prepared, if Mr. Lalla wished, to have the relevant officer produced for cross-examination.

Mr. Lalla indicated that he was relying on the contents of the records before the court. In answer to the court as to whether he wished an opportunity, having regard to what Mr. Martineau was saying, to cross-examine the relevant officer, Mr. Lalla indicated that he did not think it is necessary.

In the circumstances I rely on the entries "No food" to mean that the Applicant refused food.

I am therefore of the view that the Applicant has been offered three meals a day. The contrary was also not suggested to Watson. Having regard to his request the Applicant was provided with a preferred diet. On occasions when the

Prison Authorities were unable to provide the Applicant with his preferred diet, the Applicant was offered alternative vegetarian meals but refused same. I have also taken into account Dr. Chen's medical report of 8th. June 1998(Exhibit "G.C.2") in which the Applicant told Dr. Chen that whenever he cannot get his preferred diet, he is unable to eat whatever is offered. The Applicant is no different from anyone else. In circumstances where a person is unable to have a preferred meal, he may very well have to resort to something he does not like but which is a reasonable alternative.

At paragraph 26 of his Affidavit Watson states that there is a canteen on the prison compound. Every week a prisoner's family is allowed to purchase up to a limit of two hundred dollars (\$200.00) per week from the canteen to be given to the prisoner. Prison canteen records show that for 1998 Applicant's family has purchased many items for him.

The court notes that for the period 13th January, 1998 to 1st June, 1998, purchases totalling seven hundred and thirty-seven dollars and thirty cents (\$737.30) are exhibited to Watson's Affidavit. The items appear to be a wide assortment of snacks, powdered milk, biscuits and peanut butter.

In addition to the meals provided, the Applicant was supplied with other items by his family. The court notes that if, as the Applicant alleges, there was an attempt at orchestrated starvation, it would have been reasonable for his family to purchase basic necessities. However the expenditure seems to be concentrated in providing him with a wide variety of snacks.

WATER

At paragraph 8 of his Affidavit, the Applicant says he is allowed to fill a jug with water twice per day but sometimes he would be denied the opportunity, as a result of which he suffers from severe dehydration.

At paragraph 12 of Watson's Affidavit, Watson sets out what he terms in his cross-examination as the general procedure. Prisoners are allowed to fill their jugs twice per day, once when they come out to bathe and the second time on evenings just before lock down. In addition each prisoner is allowed an unlimited supply of drinking water and, if he runs out of water during the day, he would be allowed by prison officers to refill his water jug. In his viva voce evidence Watson again emphasized that on his rounds of inspection the Applicant made no complaints to him about being deprived of water. There was no suggestion that Watson was not speaking the truth. Even in the absence of that I accept Watson's evidence on the issue as to water and its unlimited availability to the Applicant.

VISITS BY FAMILY AND LAWYERS

At paragraph 22 of his Affidavit, the Applicant deposes to the fact that whenever his mother, wife or any other family member visits him, they are subjected to visiting him in his cell.

At paragraph 27 of Watson's Affidavit, he deposes to the fact that visits by a condemned prisoner's family takes place outside the prisoner's cell in the C.1 division because they have very wide corridors between the cells. In the F.1 division in which the Applicant is currently being housed, there is a separate annex where prisoners are allowed to have two family visits per week.

The court notes that the Applicant is not complaining that he cannot see his family. I am of the view that the decision as to where family visits take place rests solely with the Prison Authorities.

At paragraphs 23 and 24 of his Affidavit the Applicant deposes to the fact that although he has been and continues to be allowed to see his Attorney, on each of such occasions he is handcuffed and locked in a room. He is not allowed to hand any written material to him nor to hold private communication with him.

Krishna Dookeran, Prison Officer, in his Affidavit of 25th June, 1998, deposes to the fact that his duties include the supervision of condemned prisoners during meetings with their Attorneys. Conferences between a condemned prisoner and an Attorney take place in a room, the “barrister’s room”. When he supervises these visits he keeps the condemned prisoner within his sight but he stands far enough so that he cannot hear the conversation between the prisoner and his Attorney.

On 5th September, 1997 the Applicant requested his permission to hand a notebook to his Attorney. He told the Applicant that he could not grant him permission but that, for security reasons, he would have to send the notebook through the Superintendent of Prisons. He further told the Applicant that, if he so desired, he could read the contents of the notebook to his Attorney.

At paragraph 6 Dookeran deposes to the fact that the Applicant was the one who indicated to him that he (the Applicant) was ready to go back to his cell.

At paragraph 7 Dookeran denied telling the Applicant that he had no right complaining to his Attorney about his prison conditions.

Dookeran was not cross-examined. I therefore accept Dookeran's evidence.

With respect to the Applicant's contention that he is handcuffed while being interviewed by his Attorney, at paragraphs 27 and 28 of his Affidavit, Watson deposes to the fact that it is the policy that condemned prisoners are not handcuffed when they are within the cell division. The "barrister's room" is outside of the condemned division so that the prisoner must be taken there handcuffed.

Watson has not been cross-examined on paragraphs 27 and 28. In addition at paragraph 8 of his Affidavit, Dookeran states that some prison officers, including himself, remove the handcuffs from a condemned prisoner (including the Applicant) while he is in the "barrister's room". Again the Applicant in his Affidavit of 24th June, 1998, states that since the filing of his Constitutional Motion he is now being permitted to see his Attorney without being handcuffed and to have private communication with him.

PRIVATE COMMUNICATION

Attorney for the Applicant submitted that the Applicant was being denied the right to hold communication with his Attorney-at-law in private. The Prison Rules were Rules made by the Governor and Executive Council under the West Indian Prisons Act, 1838. Attorney for the Applicant has submitted that these rules are archaic and Victorian in nature and should not be considered as relevant.

Attorney for the Respondents has submitted that the Prison Rules were in existence at the commencement of the Constitution and therefore it is not open to the Applicant to argue that treatment in accordance with the Prison Rules is treatment in a manner which is in breach of S.5 (2) (c) (ii) of the Constitution. Section 5(2) (c) (ii) of the Constitution provides:

“5(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not:

- (c) deprive a person who has been arrested or detained-
 - ii. of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him.”

Rule 296, part of the Special Rules for Prisoners under sentence of death provides:

1. A prisoner under sentence of death may be visited by such of his relations, friends and legal advisers as he desires to see and who are authorised to visit him by an order in writing from the Superintendent of Prisons.
2. The Chaplain shall have free access to every such prisoner. If however the prisoner desires to be visited by his own Minister or priest arrangements shall be made for such visits.
3. No other person (other than the Inspector or an officer of the prison) shall have access to any such prisoner except by permission of the Superintendent of Prisons.

4. All visits to prisoners under sentence of death, whether by legal advisers or others, shall take place in the sight and hearing of a prison officer, notwithstanding that such visit may be in relation to an appeal.
5. A prisoner under sentence of death shall be allowed special facilities to correspond with his legal advisers, his relative and friends and shall be allowed such diet and exercise as the Superintendent may direct.

S.6 (1) (a) of the Constitution provides:

“ Nothing in sections 4 and 5 shall invalidate an existing law.”

Rules 296 (4) provides that all visits to prisoners under sentence of death by legal advisers shall take place within the sight and hearing of a prison officer. That being an existing law at the commencement of the Constitution, S. 5(c)(ii) cannot operate to repeal or to amend any then existing law: per Lord Diplock in Thornhill v. Attorney General [1981] A.C. 61 (P.C.) at p.72B.

Visits to prisoners under sentence of death by legal advisers can therefore take place within the sight and hearing of a prison officer although it seems that prison officers permit some privacy.

AIRINGS

At paragraph 10 of his Affidavit, the Applicant deposes to the fact that when he is taken out of his cell he is handcuffed and not allowed any type of exercise. He is only taken out for sunlight at irregular intervals which is as little

as once per week and sometimes twice per week. These last for no more than one hour.

At paragraph 14 of his Affidavit Watson had set out the procedure with respect to sunlight and exercise namely, that each condemned prisoner was allowed exercise at least one hour per day from Monday to Friday.

In his Supplemental Affidavit of 28th July, 1998 Watson sought to correct that by stating that he has investigated airings and exercise of the Applicant and other death row prisoners and found that, due to shortages and re-allocation of staff, it has not been possible to give them airing and exercise each day of the week. He further stated that the increased number of prisoners on death row within recent times as well as the necessity for prison officers to attend court with condemned prisoners has on several occasions taken them away from airing and exercise duties. In addition there has been an increased demand on the services of these prison officers to visit clinics and accompany prisoners to these clinics, including the Caura hospital, the Mount Hope Medical Complex and the Port of Spain General Hospital and other privately operated institutions.

At paragraph 15 of his original Affidavit Watson sets out the procedure. There are two exercise yards, one approximately 2,989 square feet and one 1,081 square feet. Whenever condemned prisoners go out for fresh air and exercise one Prison Officer I is assigned to each prisoner. There is also a Prison Officer 11 assigned to supervise the exercise yard. The prisoner is taken out of the condemned division, with his handcuffs in front of him. There are approximately eleven prisoners at a time.

I pause here to interject that that would require eleven prison officers 1, together with a Prison Officer 11.

At paragraph 16 Watson states that as a precautionary measure, in the interest of the security and safety of the prison population, handcuffs are not removed. Condemned prisoners are high-risk prisoners. I have already commented on the court's reluctance to review matters of security.

At paragraph 17 of his Affidavit Watson denies the Applicant's contention that he is not allowed to move when he is taken to the exercise yard.

The Applicant never sought to cross-examine Watson on paragraphs 15, 16 and 17 of his Affidavit. In the circumstances I accept the evidence of Watson that it is for reasons of security that condemned prisoners are handcuffed whilst in the exercise yard. In particular I accept the evidence of Watson that the Applicant is allowed to move when he is taken to the exercise yard and to do any type of exercise which may be done with his handcuffs on.

With respect to the airings both sides have agreed to the records which they think are relevant for the purposes of this case. These reflect that in January 1997 seven airings, in February 1997 six , in March 1997 four, in April 1997 five, in May 1997 eight, in June 1997 six, in July 1997 six , in August 1997 seven, in September 1997 five, in October 1997 three, in November 1997 four, in December 1997 four.

In January 1998 three airings, in February 1998 four, in March 1998 four, in April 1998 eight, in May 1998 five, in June 1998 seven .

In 1997 the Applicant had sixty-five airings and refused airings on two

occasions.

From January 1998 to June 1998 the Applicant had thirty-one airings.

It is to be noted that in Thomas & Hillaire the Applicant Thomas was offered twenty-one airings for the period January 1998 to June 1998 and the Trial Judge accepted Thomas' evidence in preference to that of Prison Officer Watson in respect of the period prior to 1998. At page 10 de la Bastide C.J. stated:

“Be that as it may, by no stretch of the imagination could the airings which were provided be regarded as sufficient in the reasonable exercise of one's discretion.”

In the instant case, and not counting week-ends and public holidays, it seems that the Applicant was provided with airings once every four days. Given the fact that there are eighty prisoners on death row and the problems highlighted by Watson with respect to the supervision and availability of prison officers, by my rough calculation from what Watson is saying, if there are 10 prisoners at a time, it would take 11 prison officers an entire 8 hour day to supervise prisoners' airings and exercise. On any day that death row prisoners have to be taken to court or to hospital, it would certainly entail a substantial disruption in the supply and availability of officers. Watson's statement that each condemned prisoner is allowed to come out of his cell for sunlight and exercise at least once per day from Monday to Friday certainly seems to be what the Prison Authorities regard as the ideal standard. I am also of the view that the airings cannot be regarded as sufficient but I rule out any question of ill-will or vindictiveness. I am also of the view that when one takes all the other matters into consideration, the question of

airings and exercise fall far short of what can be regarded as cruel and unusual treatment or punishment. It is suggested that the Prison Authorities should attempt to increase the number of airings to the Applicant so that he is provided with airings at least twice per week .It is hoped that with the transfer to the new Prisons many of these problems would be resolved.

MEDICAL

At paragraph 16 of his Affidavit the Applicant states that in or about 1991 he suffered from a head injury in a motor vehicle accident. Since that time he has suffered from severe headaches which sometimes last all day long and are severely painful.

In addition the Applicant states that he also suffers from seizures resulting in blackouts and he goes into a state of fits as a result of which he has sustained numerous injuries to his body. He continues to suffer intense pain resulting from sporadic seizures which last for long periods of time.

On 16th July, 1995 whilst at Golden Grove he fell seriously ill, fell to the ground and suffered severe personal injury and severe pain. He was only seen by Dr. Paltoo on 17th July, 1995. Dr. Paltoo recommended that he be sent to Mt. Hope Medical Hospital for a CAT Scan examination of his head. Dr. Paltoo told him that he is not competent to deal with his (the Applicant's) condition and that the Prison did not have the facilities to deal with his condition. He has made repeated requests of the Prison Authorities to be sent to Mt. Hope Medical Complex for medical treatment but he has been refused. Dr Paltoo told him that such a visit would have to be at his personal expense.

At the time of swearing his Affidavit (2nd June, 1998) the Applicant stated that his family had on 26th May, 1998 paid for a CAT Scan for him, but the Prison Authorities had refused to take him for same. I pause to point out that the Applicant had the CAT scan on 28th. May 1998.

He has not been able to keep a record of all the seizures but he was able to record that he suffered seizures on 5th April, 1996, 26th May, 1996, 26th September, 1997, 18th September, 1997, 8th November, 1997, 20th April, 1998 and 21st April, 1998.

On numerous occasions he has been ill from various ailments which include headaches, seizures, chicken pox and stomach problems and, notwithstanding his several requests through the Prison Infirmary Request Book to be medically examined, he has been denied medical examination. At paragraph 21 of his Affidavit, the Applicant stated he has been informed by his wife Carol Ramcharan that she and other members of the family had brought medicines for his illnesses and had left same with the Prison Authorities. They have not only refused him permission to receive same but have failed and/or neglected and/or refused to provide him with same. These are final proceedings and strictly speaking what he was told by Carol Ramcharan is hearsay. Carol Ramcharan swore to an Affidavit on 18th September, 1998 but makes no mention of the delivery of medicines to the Prison Authorities. I accordingly attach no weight to that evidence. I also note that Watson has said that if medicines are brought which are not prescribed by the prison medical officer, these would as a general rule and for security reasons, not be accepted by the Prison Authorities.

He has been told by several Prison Officers whose names he does not know that he is being subjected to such cruel, degrading and inhuman treatment because of his conviction in 1996 for murder and because of the perception people have of him as a notorious criminal. With respect to this the Applicant has not even attempted to name one such officer, not even a rank, number or nickname, not a description, has not even condescended as to particulars as to when he was told of this orchestrated plot by the Prison Authorities to subject him to cruel, degrading and inhuman treatment. He has not felt it necessary, for so serious a matter, to register one complaint with the Prison Authorities nor with the Commissioner of Prisons. I immediately reject the Applicant's contention in this regard. I make the point here as it impacts upon the bona fides of the Applicant.

Dr. Paltoo at paragraph 5 of his Affidavit deposes to the fact that he visits the Prison every other day (not including week-ends). When he visited on 17th July, 1995 it was reported to him by the infirmary officers that the Applicant was alleged to have had a seizure. As a result he recommended that the Applicant be referred to Eric Williams Medical Financial Complex to see if there was need for further treatment.

Under cross-examination Dr. Paltoo said he examined the Applicant on 17th July, 1995. The type of seizure that the Applicant allegedly had was a generalized seizure. The patient usually convulses with accompanying bowel, bladder incontinence, biting of the tongue and post-convulsive sleep or unconsciousness. It would have been very difficult for the Applicant to have had such a seizure without being noticed by anyone around. It was impossible for an

examination of the Applicant on 17th July, 1995 to say that he (the Applicant) had had a generalized seizure.

There was no attempt to cross-examine Dr. Paltoo on the severe personal injury which the Applicant was alleged to have suffered. Surely if the Applicant had suffered severe personal injury that would have been observed by Dr. Paltoo. I therefore reject the Applicant's evidence in this regard. Again this impacts upon the bona fides of this Applicant.

Dr Paltoo at paragraph 6 deposes to the fact that he saw the Applicant three times after 17th July, 1995 and on none of those occasions did he (the Applicant) indicate that he had had further seizures and that he wanted follow-up treatment. No attempt was made to cross-examine Dr. Paltoo on paragraph 6. Accordingly I reject the Applicant's evidence that he suffered seizures on 5th April, 1996 and 26th May, 1996 (this would be for the period of time that he was at Remand Yard, Golden Grove). It would have been of some importance if the Applicant had been able to establish that he had suffered further seizures which were brought to the attention of Dr. Paltoo. In those circumstances Dr. Paltoo may have been under a duty to ensure that the Applicant received treatment for same. I take that into consideration in assessing Dr. Paltoo's oral evidence. Dr. Paltoo said that he recommended that the Applicant be referred to the Medical Complex to see if there was need for further treatment. This is a case where a person is being sent to find out, an enquiry as it were, the doctor unable to determine from an examination of the Applicant and no one substantiating the Applicant's alleged seizure.

Dr. Gregory Chen's Affidavit of 25th June, 1994 reveals that as Prison Medical Officer assigned to the State Prison, Frederick Street, it is his duty to visit each condemned prisoner in his cell twice per month. In addition, if at any time a condemned prisoner complains of being unwell, he is brought to the prison infirmary where he will be examined and medication prescribed, if necessary.

He attended to the Applicant on or about 4th September, 1996. He also attended to the Applicant at the infirmary of the State Prison on 6th June, 1996, 10th September, 1996, 23rd December, 1996, 27th December, 1997, 2nd September, 1997, 22nd October, 1997 and 8th June, 1998.

On 4th September, 1996 he observed that the Applicant had several scars. The Applicant told him that these scars were as a result of a motor vehicular accident in 1991. The Applicant also informed him that he suffered a black-out in 1995. The Applicant also complained of pain in the neck region and headaches.

There was no cross-examination of Dr. Chen on paragraphs 2,3,4 and 5 and I therefore accept Dr. Chen's evidence in this regard. It is important to note that there was no mention made by the Applicant of the history of seizures he allegedly had whilst at Remand Yard, Golden Grove.

At paragraph 6 of his Affidavit Dr. Chen says that the Applicant has never complained of dehydration nor has he found that he (the Applicant) is suffering from dehydration. It was never suggested to Dr. Chen in cross-examination that the Applicant complained of dehydration. Dr. Chen's professional judgment is that he has seen the Applicant fairly regularly and the Applicant is not suffering from dehydration. I am of the view that the courts ought to be very wary of

reviewing the professional judgment of medical officers and they ought to be given considerable latitude in the diagnosis and treatment of medical problems of prisoners. I also take into account the finding I made earlier that the Applicant had unlimited access to water. I therefore come to the conclusion that the Applicant never complained to Dr. Chen of, nor does he suffer from, dehydration.

At paragraph 8 of his Affidavit, Dr. Chen comes to the conclusion that he never observed the Applicant to be more depressed than any other condemned prisoner. Under cross-examination Chen makes the point that if he says that someone does not look depressed, it is not possible that that person is suffering from an acute case of depression. Again I would abide by his professional judgment.

At paragraph 9 of his Affidavit, Dr. Chen deals with the Applicant's complaint that whenever he ate bread he become constipated and vomited profusely (paragraph 12 of Applicant's Affidavit). From his professional experience every prisoner complains of constipation which results largely from the stress of being imprisoned. The Applicant's consumption of bread would not cause him to suffer constipation or vomiting nor would it be harmful or have any adverse effect on his health. Again the court accepts Dr. Chen's conclusion.

At paragraph 11 of Dr. Chen's Affidavit, he states that the Applicant on 7th November 1996 weighed 105 pounds, Under cross-examination he admitted that weighing is an exact science but maintains that from his observation the Applicant has lost three to four pounds. Even though there was cross-examination on this issue I am of the view that not much impact was made on

Dr. Chen's credibility and of his professional observation. I therefore accept his evidence in this regard.

At paragraph 11 Dr. Chen states categorically that the Applicant is not suffering from any mental disease. From his professional training as a general practitioner and from observation he is of the view that the Applicant's mental health has not deteriorated since he (Dr. Chen) has been attending to him.

Dr. Chen has admitted under cross-examination that for one to state categorically that the Applicant is not suffering from any mental disease one would need to be a psychiatrist to make that determination.

I am of the view that a prisoner's right to psychiatric treatment must be based on the supposition that the requisite form of mental illness does in fact exist. Dr. Chen has seen this Applicant fairly regularly, Dr. Chen has made no observation that would require this Applicant to be seen by psychiatrist.

At paragraph 11 Dr. Chen states that on or about 8th June, 1998 when he examined the Applicant he complained of dizziness which he claimed to have started in 1995. The Applicant also complained of headaches which he said started sometime between late 1997 and early 1998. He also complained of weight loss. As a result of Dr. Chen's examination he prepared a medical report dated 8th June, 1998. Surprisingly there was no cross-examination on this crucial, in my view critical, aspect. I accordingly reject the Applicant's evidence that since 1991 he has suffered from severe headaches which sometimes last all day long and are severely painful. I am mindful however that Dr. Chen in his examination of the Applicant on 4th September, 1996 noted that the Applicant

complained to him of headaches.

At paragraph 12 of his Affidavit, Dr. Chen states that he never treated the Applicant for any seizure nor has he seen any evidence of him suffering from a seizure. There was no cross-examination on this paragraph so I accept the evidence of Dr. Chen in this regard. In coming to my conclusion I have also taken into consideration the fact that when Dr. Chen examined the Applicant on 8th January, 1998, no mention was made by the Applicant of any seizures. In addition at paragraph 19 Dr. Chen denies that the Applicant ever pointed out to him any injuries which he claims to have suffered as a result of seizures. Again there was no cross-examination on paragraph 19. I therefore accept Dr. Chen's evidence in this regard.

At paragraph 13 of his Affidavit Dr. Chen says that he never knew the Applicant to be suffering from chicken pox nor did he recall treating him for chicken pox. Again there was no cross-examination and I therefore accept the evidence of Dr. Chen in this regard.

At paragraph 14 of his Affidavit, Dr. Chen states that he endorsed the special medical remarks or observation sheet with his recommendation that a CAT Scan be done on the Applicant. The court notes that this endorsement was made on 23rd December, 1996.

At paragraph 16 of his Affidavit, Dr. Chen states that the Applicant was taken to Mt. Hope Medical Complex on 28th May 1998 when the CAT Scan was taken. He has seen the report which has revealed a fracture in the right temporal bone and a fracture in the right parietal bone, a vault fracture. There is a

contusion of the right temporal lobe of the brain. There is no evidence of blood extradurally or subdurally. He has referred the Applicant to the Port of Spain General Hospital for the purpose of being examined by a Neurosurgeon. His own professional opinion is that this contusion cannot severely affect the Applicant's mental or physical health. I accept the opinion of Dr. Chen.

The Applicant is contending that the failure by the State to provide him with proper medical care amounts to gross and negligent mistreatment.

In Estelle v Gamble 429 U.S. 97 S. Ct. 285 (1976), the United States Supreme Court held, inter alia, that while deliberate indifference to prisoner's serious illnesses or injury constitutes cruel and unusual punishment in violation of Eighth Amendment, prisoner's pro se complaint showing that he had been seen and treated by medical personnel on seventeen occasions within the three month period was insufficient to state a cause of action against physician both in his capacity as treating physician and as Medical Director of the Corrections Department, but the case would be remanded to consider whether a cause of action was stated against other prison officials.

At page 291 Mr. Justice Marshall stated:

“We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the “unnecessary and wanton infliction of pain,” Gregg v Georgia, supra, at 182-183, 96 S. Ct. at 2925 (joint opinion), proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs, or by

prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983."

Further at page 292 Justice Marshall stated :

"Similarly, in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute" an unnecessary and wanton infliction of pain" or to be "repugnant to the conscience of mankind." Thus a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment."

I agree with the test adopted by the United States Supreme Court in Estelle v Gamble namely, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is in keeping with

what Sharma J.A. suggested in *Thomas & Hillaire* that “ basic requirements should be met and a fair balance struck between dehumanizing a prisoner and discipline order and institutional security so necessary in a prison”.

I am of the view that the failure to provide the Applicant with a CAT Scan earlier was not an act or omission sufficiently harmful to evidence deliberate indifference to serious medical needs. Indeed Dr. Chen says that the contusion cannot severely affect the Applicant’s mental or physical health.

In the instant case Dr. Paltoo saw the Applicant on four occasions. In addition there are infirmary officers who are on duty 24 hours a day. These infirmary officers have special training in paramedic medicine and function as paramedics.

Dr. Chen visited this Applicant in his cell twice per month. He attended to the Applicant on 6th June 1998, 4th September 1996, 10th September 1996, 23rd September, 1996, 27th December 1996, 6th June 1997, 12th August 1997, 2nd September 1997, 22nd October, 1997 and 8th June, 1998. In addition subordinate to Dr. Chen there are infirmary officers who function as paramedics.

The Condemned Prisoners’ Treatment Log (Exhibit “CE1”) shows from the period 22nd August 1997 to 3rd February 1998 the Applicant received an almost daily supply of Pharmaton or Centrum. I am of the view that in terms of local conditions the provision of such vitamins is outside the reach of many citizens. It also puts paid to any orchestrated plot to subject this Applicant to cruel and unusual treatment or punishment.

With respect to the motor vehicular accident in 1991, Dr. Chen has

observed several scars plus a vault fracture and a contusion. Yet the Applicant has not condescended to particulars. Was he aware of the nature of his injuries? What were the results of examination/s by doctor/s? What was the prognosis? The Applicant moreover has not suggested in his Affidavits that he was unaware of the nature of the injuries that he suffered in the 1991 accident. One would imagine that the scars, the vault fracture and the contusion which have surfaced 7 years after would have been the subject of comment by doctors who examined him at the time. Indeed in Dr. Chen's medical report of 8th. June 1998 the Applicant told Dr. Chen that he was admitted in 1991 to Port-of-Spain General Hospital for a "couple of days" as a result of a motor vehicular accident. It would appear to me that the Applicant has not been frank with this court nor with the doctors. An applicant who is asking for discretionary relief certainly ought to disclose all facts to the court to enable the court to grant discretionary relief.

I am therefore of the view that the Applicant has not alleged acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. I cannot accept the Applicant's contention that the medical treatment in question has crossed the threshold of cruel and unusual treatment . Far from it. There are not many citizens who have the privilege of having bi-monthly visits by doctors or the availability of paramedics on a 24 hour basis. I am also of the view that the bona fides of this Applicant is seriously in question. That may also explain why the doctors may have had some difficulty in assessing the medical condition of the Applicant.

It seems that the Applicant has sought to challenge every aspect of prison

conditions. There are at least two welfare officers assigned to convicted prisoners who will listen to prisoners' complaints. Copies of the Prison Rules are posted at strategic locations around the prison. When a prisoner comes to the Royal Goal he is informed of all the things to which he is entitled.

Rules 278 and 279 of the Prisons Rules deal with complaints by prisoners.

Rules 278 provides:

“278.(1) Arrangements shall be made that any request by a prisoner to see the Superintendent or Deputy Superintendent or Assistant Superintendent or the Inspector shall be recorded by the officer to whom it is made and conveyed without delay to the superior officer in charge. The Superintendent shall inform the Inspector on his next visit to the prison, or earlier if considered necessary, of every such request of a prisoner to see him.

(2) Should the Deputy Superintendent or Assistant Superintendent be unable to deal with an application made by a prisoner the matter should be referred to the Superintendent.”

Rule 279:

“The Superintendent or Deputy Superintendent or an Assistant Superintendent shall, at a convenient hour on every day, other than Sundays and public holidays, hear the application of all prisoners who have requested to see him.”

. Similarly Part 1 of the Prisons Rules provides that an Inspector of

Prisons shall visit the prisons at least once per month and shall investigate every complaint or application made to him by any prisoner.

The Prisons Rules seem to contain several provisions for dealing with complaints by prisoners. This is supplemented by prisoners having recourse to their welfare officers and, of course, their Attorneys. It would certainly reinforce an Applicant's claim and his bona fides if he followed the procedure set out in the Rules and if complaints were registered contemporaneously with the happening of events.

In Thomas & Hillaire Sharma J.A. stated at page 5:

“Returning to the instant appeal, I do not think that the allegations made by the appellant, if true, can amount to cruel and unusual punishment. It will be ludicrous to suggest and farcical to accept that such behaviour on the part of the prison authorities is capable of constituting cruel and unusual treatment or punishment, when more than half of the law-abiding citizens have by barricading their homes with iron bars, created their own prisons in order to keep the likes of the applicant out.

The timing of the complaints of the applicant does a lot to discredit at least some of his allegations.”(Emphasis added)

At paragraph 26 of his Affidavit, the Applicant exhibits an Express newspaper article dated 22nd April, 1998. According to the Applicant the article was based on an interview he conducted with a reporter and reflected among other things conditions that he

faced at the State prison. The Applicant is quoted as saying:

“Ásk anybody in here, I does spend whole day in here praying, fasting and writing....”

The Applicant is quoted as saying on 2nd April, 1998 that he is fasting yet in his Motion dated 2nd June, 1998 he alleges that a failure to provide him with meals on a daily basis has seriously affected his physical and mental condition.

In *Thomas & Hillaire* Sharma J.A. stated at page 6:

“In view of what I have said, I am of the respectful view that the conduct complained of fell far short of what would constitute cruel and unusual treatment or punishment and at most might have constituted breaches of the prison rules.”(Emphasis added).

Again in *Thomas & Hillaire* de la Bastide C.J stated at page 8:

“It is not apparent to me why it should be regarded as unreasonable at least to acknowledge and take account of the possibility that someone who is subjected to inhumane treatment while in prison may seek an appropriate remedy to terminate and possibly compensate him for such treatment, whether or not he is under sentence of death, especially if the treatment in question not only contravenes the Prison Regulations themselves but has also crossed the threshold of cruel and unusual treatment.”

Breach of the Prisons Rules must not be equated to cruel and unusual punishment. In the instant case I am of the view that the Applicant has not been subjected to cruel and unusual treatment or punishment.

EQUALITY OF TREATMENT

In Attorney General v. K.C. Confectionery Ltd (1985) 34 WIR 387 (C.A.), the Court of Appeal held, inter alia, that although an aggrieved party need only show a prima facie case of unequal treatment in order to succeed, this must be subsumed to a presumption of regularity in the acts of officials, and the burden of proving the contrary involved proof of mala fides and lay upon the party who alleged otherwise; in this case the Respondents had adduced no evidence to rebut the presumption.

In addition in Attorney General v. K.C. Confectionery Ltd Persaud J.A. at pages 404 and 405 stated:

“The question canvassed before this court is whether the complainant must prove mala fides when he complains of a breach of his constitutional rights? It seems to me that we must start off with the presumption that public officials will discharge their duties honestly and in accordance with the law; this is another way of saying that “there is a presumption of regularity in the acts of officials”, and that the burden of proving the contrary rests on him who alleges otherwise. If this is correct, then two situations may arise. If complaint is made that the official has been dishonest in the discharge of his duties, or that he has acted out of spite towards the complainant, clearly mala fides is alleged, in which event it must be proved; and perhaps it is unnecessary to observe that the onus of proof rests on the complainant. If, on the other hand, the

allegation is that the official has merely contravened the law in the discharge of his functions, mala fides may not necessarily form part of the complainant's case, in which event the question of its proof does not arise. All that needs to be proved in such a case is the deliberate and intentional exercise of the power, not in accordance with law, which results in the erosion of the complainant's right the entitlement to which may become vested in him either from the Constitution itself or from an Act of Parliament."

I am of the view that the Applicant has not satisfied the tests set out above

. I am therefore of the view that this Motion cannot succeed. I hereby dismiss the Applicant's Motion with costs to be paid by the Applicant to the Respondents to be taxed, certified fit for senior and one junior counsel.

Dated this 13th day of November, 1998.

PRAKASH MOOSAI
JUDGE