

IN THE HIGH COURT OF JUSTICE

H.C.A. NO. 1649 OF 1998

B E T W E E N:

RAJESH RAMSARRAN

APPLICANT

AND

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

RESPONDENT

BEFORE THE HON. MR. JUSTICE STOLLMAYER

Appearances:

Mr. G. Armorer for the Applicant

Ms. G. Yearwood for the Respondent

J U D G M E N T

By Notice of Motion filed 29th July 1998 the Applicant seeks certain reliefs alleging infringement of his rights under Sections 4(a), and 5(2) (c) (ii) and 5 (2) (h) of the Constitution of Trinidad and Tobago. In support of the Motion there is

the Applicant's Affidavit filed 29th July 1998 and in opposition is the Affidavit of Mr. Cipriani Baptiste, Commissioner of Prisons, on behalf of the Respondent.

The facts are not in contention. They are that the Applicant had been charged for possession of cocaine and on 30th April 1986 opted for summary trial, pleaded guilty and was fined \$2,500.00 or to serve 9 months imprisonment with hard labour by the Sitting Magistrate. On the same day the Applicant filed an Appeal against the severity of the sentence, not the conviction, but both the conviction but sentence were confirmed by the Court of Appeal on 27th February 1996. The Applicant not having with him at that time the means to pay the fine, a Warrant of Committal was issued immediately and he was taken to the State Prison.

On 28th February 1996 one Faisal Hosein paid \$2,481.25, being the remaining portion of the fine after setting off two days imprisonment, on behalf of the Applicant and he was released.

Thereafter on 20th August 1997 the Applicant was arrested on a Warrant of Commitment for non-payment of the fine and taken to the Chaguanas Police Station. Despite his protestations that the fine had in fact been paid, he was placed in a cell which had a foul odour, no bed and no bench. He remained alone in this cell from around 9.00 p.m. on 20th August 1997 to about 9.00 a.m. the following morning when other prisoners were placed in the cell with him. During the time he was in the cell at the Chaguanas Police Station he had one

meal, on the morning of 21st August 1997, and at about 3.00 p.m. on that day was taken by Prison Officers to the prison at Golden Grove. When arrested, he was not told of any right to see or speak with or retain an Attorney at law of his choice and during the time he was at the Chaguanas Police Station his requests to make a telephone call were denied.

On arrival at the Golden Grove Prison he was placed in a remand cell with other prisoners. He told Prison Officers that he owed no money and asked to speak to the Superintendent. He says this was denied him but the evidence for the Respondent is that no such request was made. In the event he did not speak with the Superintendent. He was allowed to bath on 22nd August 1997 and then taken to the State Prison at Port-of-Spain. There he was placed in a cell with other prisoners. I do not accept the Applicant's evidence that none of the cells in which he was placed at the prisons had no beds, or that he remained standing in the cell all day at the Chaguanas Police Station for some eighteen hours. He made requests to speak with the Superintendent of Prisons and eventually met with him on 23rd August 1997 at some time during the course of the morning. He was released at 3.30 p.m. on that day.

At the outset of the trial, Ms. Yearwood for the Respondent conceded that the detention and/or imprisonment of the Applicant from August 20th 1997 to 23rd August 1997 was unconstitutional and/or illegal and contravened his rights under Section 4(a) of the Constitution of Trinidad and Tobago as being a deprivation of

his right to liberty and security of the person, and the right not to be deprived of same except by due process of law.

This left for determination the issues of whether the Applicant had also been deprived of his rights under Section 5 (2) (c) (ii) and 5 (2) (h) of the Constitution. That is, his right to retain and instruct without delay a legal advisor of his choice, (I refer to this as “a right to instruct”) as well as the right to be informed of this right (I refer to this as “the right to be informed”), and the right to such procedural provisions as are necessary for the purpose of giving effect and protection to those rights and freedoms.

Mr. Armorer for the Applicant submits that the right to be informed exists under the provisions of Sections 5 (2) (h) as well as under the provisions of Section 5(2) (c) (ii). He also submitted that it is more difficult to argue that this right exists under Section 5(2) (c) (ii). He concedes that it is also more difficult to argue successfully that the Applicant has this right if he was lawfully detained under the Warrant of Commitment. Further, Mr. Armorer submitted, the right to instruct also arises under the provisions of Section 5 (2) (c) (ii) and 5 (2) (h).

In brief, the submissions on behalf of the Respondent are that under neither of the provisions of Sections 5 (2) (c) (ii) nor 5 (2) (h) do these rights extend to arrests on Warrants of Commitment, and that they arise only on an arrest or detention in circumstances where an individual is the subject of proceedings in which he is or

may be required to defend himself. The further submission is that these rights do not exist as a consequence of any settled practice existing when the constitution was introduced.

It is well settled that these rights to be informed and to instruct of which the Applicant claims to have been unlawfully deprived, exist in circumstances where an individual is arrested or detained within the course of a police investigation. See for example *Thornhill v. The Attorney General* (1979) 31 W.I.R. 498; *The Attorney General v. Wayne Whiteman* (1991) 39 W.I.R. 397.

The circumstances in which this Application is made, however, are different. Here, the Applicant had been already tried and convicted, and his Appeal had been unsuccessful. His arrest on the Warrant of Commitment was an administrative error and not one of insignificance at that. No fault was found, even alleged, with the procedure adopted by the Police in the original investigation, nor of the Applicant's arrest and trial. It is therefore presumed that all which was to be done then was in fact done, at that time, and that there was no infringement of his constitutional rights prior to 20th August 1997.

The purpose underlying these rights to be informed and to retain is to ensure a fair trial and is "clearly effective at the pre-trial stage, i.e. as soon as a person is arrested" per Davis J.A. in the *Whiteman Case* at page 399. It is to redress the

inequality between a suspect and a police and to make certain that the former is aware of and understands his rights.

The Applicant in the instant case was aware of all this from the time of his initial arrest and trial. There was no need, in my view, nor any requirement under the Constitution, that he be so informed once again after his arrest on the Warrant of Commitment. He was not accused of any new crime. There was no investigation in connection with any new issue. He was not required to defend himself against any accusation.

Having been tried and convicted, there is, in my view, no need to redress any inequality between a suspect and the police. It has not been demonstrated to me that there was any settled practice existing prior to this introduction of the Constitution that a person had a right to be informed when arrested on a Warrant of Commitment. Further, I have come to the conclusion that an individual arrested on a Warrant of Commitment has no right to be informed or to instruct under the provisions of either Section 5 (2) (c) (ii) or Section 5 (2) (h) of the Constitution.

I have therefore come to the conclusion that the Applicant had no right to be informed in these circumstances.

There does not, however, appear that there can be any great contention that a person in prison has certain rights to instruct. See, for example, the **Prisons Act Chap. 13:01** and the **Prisons Rules** made under **The West Indian Prisons Act 1838 (1) & (2) Vict. C.67.** and in particular **Rules 263 and 264** which read as follows:

“263. Any person committed to prison in default of the payment of any sum which in pursuance of any conviction or order he is required to pay shall be allowed to communicate or to have an interview with any of his friends on any week-day at any reasonable hour for the bona fide purpose of providing for the payment which would procure his release from prison.

264(1) Reasonable facilities will be allowed the legal adviser of a prisoner who is conducting any legal proceedings, civil or criminal, in which the prisoner is a party, to see the prisoner with reference to such proceedings in the sight but not in the hearing of a prison officer.

(2) The legal adviser of a prisoner may, with the permission of the Superintendent of Prisons, see such prisoner with reference to any other legal business in the sight and hearing of a prison officer.

(3)”

As to the right to instruct by an individual arrested on a Warrant of Commitment, there is again nothing before me to demonstrate that there was a settled practice

relative to this right which existed at the time the Constitution was introduced. The Applicant therefore seeks to rely on the provisions of either or both Sections 5(2) (c) (ii) or 5 (2) (h) of the Constitution.

Again, I do not think that the Applicant can avail himself of the provisions of Section 5(2) (c) (ii). These provisions are in my view, as I have said, for the protection of the individual who is arrested or detained during an investigation. They are for the protection of the person who requires or who needs to defend himself against some accusation. They are not for the protection of a person arrested on a Warrant of Commitment after trial and conviction, even if the arrest may itself be because of administrative error.

The provisions of Section 5 (2) (h), however, may provide the relief which the Applicant seeks. Effectively, this Section sets out that Parliament may not deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to, inter alia, the rights entrenched by Section 4(a).

The Respondent concedes that the Applicant's rights to liberty and security of the person, and the right not to be deprived of them except by due process of law, under Section 4(a) of the Constitution, were contravened. This position is based on the Applicant having been arrested, albeit erroneously, then kept in custody beyond the time when he should have been released. The release, it is submitted,

should have been effected after it became known or should reasonably have become known that the fine imposed upon him had been paid and that he had been released from prison after his conviction and sentence were confirmed on Appeal and the fine had been paid. It must be recalled that the Applicant does not claim that this arrest was itself unlawful.

The Applicant was arrested on 20th August 1997 and placed in a cell at about 9.00 p.m. At the outset he made it known to the arresting officers that his fine had been paid. He continued his protestations until he met with the Superintendent of Prisons, Mr. Verne Sylvester, on the morning of 23rd August 1997. He was released at about 3.30 p.m. that day.

There is in my view no good reason why it should take nearly seventy-two hours for a person in the Applicant's position to secure his release. Obviously, it took only a matter of hours for this to be effected after heed had been paid to his complaint. It is equally obvious that the procedural provisions were not in place to give effect and protection to his rights under the provisions of Section 4 (a) or that if they were in place, then they were either ignored or disregarded, for whatever reason.

An individual in circumstances such as the Applicant is entitled as a matter of law to have his complaint considered and dealt with, with reasonable dispatch. For

this to be done there must be properly devised and maintained procedures. On the evidence before me, they did not exist.

Given that the time of his arrest would appear to have been after 4.00 p.m. on 20th August 1997 a reasonable period of time to effect his release would have been, in my view, no later than mid-day on August 21st 1997.

In the circumstances there will be a Declaration that the detention of the Applicant from mid-day on August 21st 1997 to 3.30 p.m. on 23rd August 1997 was in contravention of his right to liberty and the right not to be deprived thereof except by due process of law under the provisions of Section 4 and of Section 5 (2) (h) of the Constitution.

Damages, if any, are to be assessed by a Master.

The Respondent is to pay the Applicant's costs.

The Respondent is to pay the Applicant's costs on the Motion.

DATED this 29th day of March 2000.

C.V.H. STOLLMEYER
JUDGE