REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2009-03303

BETWEEN

WENDELL BECKLES

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

1ST DEFENDANT

JOHN ROUGIER
THE COMMISSIONER OF PRISONS

2ND DEFENDANT

Before The Hon. Madam Justice C. Gobin
Appearances:
Mr. T. Davis holding for Mr. M. Seepersad for the Claimant
Ms. Panchu holding for Mr. D. Byam for the Defendants

REASONS

1. This is a case without precedent. The circumstances which gave rise to it are deeply disturbing. The claimant needlessly spent just short of eight years of his life at the Remand Yard, Golden Grove Prison, deprived of his liberty without justification. This was not a case of a wrongful conviction, or of incarceration following a judicial order that was subsequently overturned for some reason. It was an unlawful incarceration that began through a failure on somebody's part to communicate the order of a magistrate which would have led to his release. It was

allowed to continue because it appears this claimant was literally as we say "lost in jail".

2. It seems no one in charge asked the obvious question, when is Beckles going back before a magistrate or a judge or simply why is he still here. The claimant said he himself told the officers at the remand yard that he had been discharged by the magistrate. It does not appear that anyone checked his assertion for almost eight years. He, perhaps doubting himself and his recollection and understanding of what happened before the magistrate, asked on several occasions when he was next due to return to court. Again no one took his query seriously enough to check, for almost eight years.

3. As a result of this unconcern, the claimant remained in custody until an application for a writ of habeas corpus was filed on his behalf. When this claim for damages for false imprisonment followed, the state neglected to put in a defence. Judgment in default was entered. That notwithstanding, because of indications given at the early procedural hearings, the State was allowed to rely on the Statute of Limitations on the assessment of damages.

4. By reason of the failure of the State to file a defence the following matters in support of a claim for aggravated and or exemplary damages the statement of case went unchallenged. In the absence of a defence, the claimant was not put to proof of any of them, and I quote.

(a) The claimant was kept in the remand section of the prison in a cell with a number of other prisoners without adequate bedding and toilet facilities and was at all material times, forced to sleep on the floor and relieve himself and defecate into a slop pail.

(b) The claimant was incarcerated in a cell which was dark, filthy and had a foul odour.

(c) The claimant continually made inquiries of the Prison Authorities, through the officers supervising him, as to when he would be taken back to Court and or released from custody.

(d) The defendants, their servants or agents took no steps to make enquiries as to the incarceration of the claimant notwithstanding the fact that the prison officers at Golden Grove were aware that the claimant had not been taken to Court for almost 8 years.

(e) The claimant informed the prison officers supervising the remand section that he had been discharged by the magistrate on the offence with which he has been charged.

5. I accept as notorious the conditions of our nation's prisons including those at the Remand Yard, Golden Grove. It is one thing to have to endure them when one is lawfully detained, quite another when one is not. It is quite unnecessary to receive evidence for a comparison of the claimant's usual surroundings. The type of squalor that one finds in prisons is not to be matched, even in the poorest communities in this country. There is a level of indignity that comes with having to be housed in appalling conditions but with a regular turnover of strangers in dark cells, with no freedom to leave for a breath of fresh air, with no privacy to relieve onself, that people living in worst conditions of squalor do not have to deal with.

6. This is the kind of case in which one asks - can any money compensate for this kind of injury? The answer would be no, but since that is obviously all that the law affords, the next would be how much money is sufficient to compensate in the circumstances. It would have to exceed all awards made in these courts to date because nothing so far in the reported cases nearly approaches it. And hopefully it will never arise again in the future.

7. After a default judgment was entered and the assessment of damages had been limited to the last four years of the period of the wrongful imprisonment, the parties were invited to attempt to resolve the matter by consent, even to do so on terms endorsed on counsel's brief. This was suggested because in a case which comes out of such extreme facts, any attempt to apply precedent or any exercise which involved attempting to apply well established principles to the details seemed to be inappropriate and useless.

8. After the matter had been adjourned from time to time for almost one year to accommodate discussions and the exchange of proposals, and the approval of the Attorney General, I indicated I would rule on the submissions which had been filed even while the discussions were on-going. At all times I considered that the amount of compensation that would be payable in any event simply because of the length of the period, would sufficiently compensate the claimant without the need to incur further costs and to apply further court resources to receiving evidence.

9. I approached this assessment on the basis that I was going to arrive at a figure "in the round" to include the elements of compensation for the loss of liberty, loss of

dignity, injury to feelings, punitive damages, aggravated damages, economic loss if there was such, and interest to the date of the judgment. As I said before given the extreme facts, this was always going to be a decision that is fact specific. Such an approach would save me agonizing over wholly inappropriate comparisons with other cases whether for constitutional relief or unlawful imprisonment.

10. Eventually with that approach I assessed damages in the sum of $2,100,000.00 for the four-year period. While I limited the damages recoverable to the period allowed under the statute, it was impossible to completely put out of my mind that that period was preceded by a period equal in length when the claimant was similarly deprived of his liberty. While I could not compensate him for the loss of his liberty for that earlier period, I considered it permissible to take into account the state of the claimant in which he would have been found after that initial period of incarceration. The cumulative effect on his mental suffering, his distress, loss of dignity, despair and hopelessness could not be ignored. The relevant 4 year period which I was assessing would only have aggravated this condition. So while I was limited to compensating for injury for the second 4 year period, I was compensating someone whose physical and mental condition had already been incrementally damaged during the preceding four years.

11. I rejected the reducing scale approach suggested in earlier cases. If continuous wrongful incarceration subdues ones personality or renders a person despairing to the extent that he begins to accept the impossibility of his situation, it renders it no less an injustice. When a person in the claimant's situation begins to get accustomed to

the loss of what distinguishes him as a human being, his very liberty, that in itself is dehumanizing. The longer the period of wrongful detention, the more damages to which he ought to be entitled.

12. As to the loss of earnings, there having been no challenge to the claim for economic loss, I did not consider it essential to receive evidence of this. The award I contemplated was going to be sufficiently large to include a claim for economic loss of the scale pleaded.

13. I considered that an award that was purely compensatory was not going to be sufficient. There had to be included in the figure, a sum to cover an element of punitive and exemplary damages to deter future conduct of the kind on the part of the authorities. This was so even in the absence of proof of malice on the part of any particular agent of the State. This travesty occurred because of a systematic failure, or institutional inefficiency of the type that was found in the case of ***Perry Matthew v The AG*** HCA3342 of 2004. In that case for constitutional relief Jamadar J as he then was, found that for that reason there was no justification to make an additional ward to vindicate the rights of the plaintiff.

14. In the instant case, it is precisely because of that verdict, that I find justification for significantly increasing the award. The fact that the system allowed an individual in the claimant's position to simply fall through the cracks, to go unnoticed for 8 years is what is the most dehumanizing of all. It is therefore no mitigating factor to say that there was no malice. The system is supposed to protect the rights of those who are in custody. The whole purpose of Remand Yard is to hold prisoners

awaiting trial while they go to and from Court pending trial. For eight years to have passed without his leaving the Remand yard, with no inquiry from those in authority as to why, points not just to an administrative slip but to a system which can render a human being voiceless and invisible to those in charge.

15. It was essential that the Court made an award that sent a signal to the authorities that this kind of neglect of the rights of persons in their charge would be treated seriously. The sum awarded to the claimant was therefore substantial, but for the above reasons it was considered appropriate in the circumstances. This did not change my view that no amount of money could compensate this claimant for this wrong.

Dated this 22nd day of May, 2012

CAROL GOBIN

JUDGE