

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2021-02278

BETWEEN

KEVIN DWAYNE TUCKER

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Appearances:

Claimant: Nestor Dinnoo Alloy instructed by Shelly-Ann Crawford

Defendant: Karissa Singh

Before the Honourable Mr. Justice Devindra Rampersad

Date of delivery: 17 July, 2021.

RULING ON HABEAS CORPUS APPLICATION

1. The sole question for determination on this application for habeas corpus boils down to whether the period during which the applicant was detained from January 2021 to date is unreasonable, having regard to the authorities raised in this regard¹. The court accepts that the applicant is entitled to be deported within a reasonable time. The question is what is reasonable in the circumstances of a Covid 19 pandemic, closed borders and a continuing state of emergency²?
2. There were other points raised such as the failure to hold a Special Inquiry before making the detention order and his pending criminal proceedings. However, it was determined that the Minister's exercise of his discretion did not require a Special Inquiry in the circumstances. Further, the pending criminal proceedings did not prevent him from being deported as discussed in the authorities raised by the respondent's attorney-at-law³.
3. Having regard to these circumstances, the court is satisfied that the period during which the applicant has been detained has been reasonable especially since the country is on the brink of its borders being reopened with the commensurate increase in availability of flights. The fact that flights have not been commonplace during the time of the pandemic and especially so since the borders have been closed is a matter of public knowledge. So too the plight of many citizens who were stranded abroad and were unable to return to Trinidad and Tobago due to the failure to obtain exemptions to do so. There is no doubt that the Minister has a discretion to issue an exemption but he is not the respondent in these proceedings. In any event the applicant has not provided any information to suggest that he obtained a ticket for travel during

¹ See for example *Troy Thomas vs. The Chief Immigration Officer* per Kokaram J where a five month delay in circumstances which were quite different was found to be unreasonable

² See http://www.ttparliament.org/chamber_business.php?mid=11&id=439

³ *O' Neil Williams vs. The AG & Or*

the lockdown period for which he failed to get an exemption. That was always an option open to him. Having failed to obtain such a ticket or provide any such evidence, the applicant relies on the respondent providing travel arrangements. This court is of the respective preliminary view in any event that the applicant ought not to be solely relying on the State to repatriate him as such a requirement seems unreasonable having regard that he is the one who serves to benefit the most by him making his own arrangements. That point, however, was not raised or dealt with at this hearing and it may have to be more closely considered should the need arise in the future.

4. Without a doubt, in light of the restricted travel options and without evidence from the claimant to suggest that there were flights available for him to have been allowed to leave the country, the circumstances clearly lend themselves to a finding that the continued detention while the arrangements for his deportation were being made was justified.
5. Having read the submissions on both sides, the court prefers to adopt the argument put forward by the respondent in the matter. Should the delay continue for an unreasonable time after the borders have reopened and flights have become more available, then there is nothing to stop the applicant renewing his application but, at this time, the court cannot agree with his position.
6. As a result, the court dismisses the application and, having discussed the issue of costs with the parties, there will be no orders to costs.

/s/ D. Rampersad J.