REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P 226 of 2010

Between

FELIX JAMES

Appellant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

PANEL: **N. BEREAUX, J.A.**
P. MOOSAI, J.A.
M. MOHAMMED, J.A.

APPEARANCES: **Mr. M. Seepersad and Mr. T. Davis for the appellant**
Mr. N. Byam for the respondent

DATE DELIVERED: 13 March 2018

I have read, in draft, the judgment of Bereaux J.A. I agree with it and I have nothing to add.

P. Moosai
Justice of Appeal

I too agree.

M. Mohammed
Justice of Appeal

JUDGMENT

Delivered by Bereaux, J.A.

Introduction

[1] This is an appeal from the decision of the High Court dismissing the appellant's constitutional motion. The appellant was the recipient of a presidential pardon pursuant to section 87(1) of the Constitution. He challenges the pardon as being unconstitutional on the primary basis that it was outwith the presidential power under section 87(1) of the Constitution. The judge however found that the pardon was properly granted. He was charged with murder in 1971 but at his trial on 24 April 1975, the jury by a special verdict under section 68 of the Criminal Procedure Ordinance, Ch. 4 No. 3 (1950 Rev. Ed.) ("the Ordinance") found him to have been insane at the time that he killed the victim. The trial judge ordered that the appellant be detained "*in safe custody, in such place and manner as the Court thinks fit*" until Her Majesty's pleasure be known. This order was made pursuant to section 69 of the Ordinance. Under section 70 of the Ordinance the court was then mandated to report the finding and the detention of the person to the Governor who "*shall order such person to be dealt with as a criminal lunatic under the laws of the Colony for the time being in force for the care and custody of criminal lunatics, or otherwise as he may think proper."* Act No. 30 of 1975 (proclaimed on December 2nd, 1975) amended section 70 to provide that the "*Governor-General…shall order the person to be dealt with as a mentally ill person in accordance with the laws governing the care and treatment of such persons or in any other manner he may think necessary*". Sections 68, 69 and 70 of the Ordinance are now sections 66, 67 and 68 of the Criminal Procedure Act after the laws of Trinidad and Tobago were revised and consolidated in 1980. "*Her Majesty's pleasure*" is now referred to as "*the President's pleasure*". The appellant was detained pursuant to the special verdict from 24th April 1975 until his release on 2nd July 2009 pursuant to the pardon.

[2] The pardon was subject to certain conditions to which the appellant agreed before his release from prison. They were as follows:

(a) For a period of three years from the date of the pardon, he shall report to

the St. Ann's Psychiatric Hospital Tribunal in accordance with the requirements of the Mental Health Act, Chapter 28:02.

(b) The tribunal shall forward to the President each periodic report in respect of the review and evaluation over the prescribed period.

(c) He shall take such medication as may be prescribed by his attending psychiatrist.

(d) He must reside with either of his two sisters: Ms. Eugene Samuel or Ms. Prunella Alvarez.

(e) He shall not possess or use any firearms or weapons of any kind.

(f) Should he fail to comply with the conditions he shall be subject to arrest and his release will stand revoked and he will be detained until the President's pleasure is known.

The conditions were set out in a presidential warrant dated 30th June, 2009 as well as in a letter dated 1st July, 2009 from the Minister of National Security to the Acting Commissioner of Police.

[3] The appellant contends that these conditions fetter his liberty and breached his right to liberty under section 4(a) of the Constitution and that the condition at paragraph [2] (f) above, which provides for summary arrest (in the event that he breaches any of the other conditions), is likely to deprive him of his liberty and his right to the protection of the law.

[4] He makes a number of allegations as to the constitutionality of the pardon, the most significant of which are:

(i) That under section 87 the President had no power to order his release or detention. The ordering of his detention and release were outside the remit of section 87 and the pardon is *ultra vires* section 87(1) of the Constitution.

(ii) That the executive had no continuing jurisdiction over him (as one found to be guilty but insane) following his release. The conditions were thereby unlawful.

(iii) The imposition of the conditions is in breach of the doctrine of the

separation of powers in that the deprivation of liberty is a judicial function.

(iv) The conditions were imposed other than by virtue of a judicial process.

(v) He was not afforded a right to be heard in relation to the imposition of the conditions in breach of his rights under section 5(2)(e).

(vi) The condition at paragraph [2] (e) breaches his rights under section 4(a) and (b) of the Constitution because it deprives him of his right to hold property in relation to firearms and weapons, which deprivation has been without due process of law.

Relevant facts

[5] The appellant alleges that while detained during the President's pleasure at St. Ann's Psychiatric Hospital he was only interviewed for the first time *"regarding [his] mental state"* in 2004 by Dr. Iqbal Ghany. Thereafter he was reviewed *"on several occasions"* by the Tribunal. He said that *"following the trial [he] was not prescribed any medication for any mental illness"*.

[6] After a long period of detention he brought a constitutional motion, HCA #2659 of 2003 against the Attorney General. On 2nd October 2006, the court made an order (without objection by the Attorney General) that:

(i) The appellant's case be remitted to the Minister of National Security to determine whether he was a fit and proper person to be released from custody. Such a determination was to be made within ten days of receipt of the court's order from the Registrar of the Supreme Court.

(ii) The determination was to be made only on the basis of the medical reports that had been forwarded in those proceedings.

(iii) The Minister must convey his opinion to His Excellency the President within 4 days from his determination.

(iv) The appellant's attorneys-at-law were to be kept informed of all decisions made and, if a negative opinion was taken by the Minister, then the appellant's attorneys were to be given reasons within ten days of arriving at

that opinion.

(v) Damages were to be assessed by the Master but such damages were to be assessed only on the basis that the relevant statutory authorities, in breach of their statutory duty, had failed or neglected to follow and apply the relevant statutory provisions relating to a person in the circumstances of the appellant.

The medical reports forwarded in those proceedings included a medical certificate dated 3rd February 1975, from Dr. John Neehall which certified that the appellant was "*now of sound mind*". Further, the minutes of the tribunal meeting of 8th November 2004 stated that members of the panel interviewed the appellant and *"The consensus of the Tribunal was that he was fit for release with … follow-up a month after discharge"*. There were subsequent amendments to Ibrahim J's order but they are not all relevant to my decision.

[7] Despite Dr Neehall's report and the views of the tribunal, the Attorney General decided not to release the appellant. He communicated his decision to the appellant's attorneys by letter of 9th November 2006. In coming to his decision the Attorney General considered four reports by consultant psychiatrists who had examined the appellant. He decided that he could not recommend the appellant's release based on what was contained in them because he was not fully satisfied *"in my own mind that the Applicant would not pose a threat to the citizens of this country if he were to be released"*. Four additional reports were subsequently referred to the Attorney General pursuant to a further variation of Ibrahim J's order. The Attorney General considered these reports and concluded that the documents provided no assistance to him *"in arriving at a determination as to the fitness of the applicant"* for release.

[8] The appellant then brought judicial review proceedings challenging this second decision. On 30th January 2009 Dean-Armorer J held that the Attorney General's decision was irrational, quashed it and remitted the matter to him for reconsideration. On 2nd July 2009 the appellant was released pursuant to the presidential pardon now under challenge.

The appellant's additional contentions

[9] The appellant alleges that with respect to his approval of the conditions of the pardon he was so eager to be released that he simply signed the pardon conditions and decided he would inform his lawyers about them after his release. He was not given a copy of the paper that he signed. Upon his release and having discussed the pardon with his lawyers, he considered that the conditions restrict his liberty. In so far as it directs that he must live with his sister that condition restricts his freedom to live where he chooses more so since he wants a place of his own. It also affects his private life as he is unable to invite friends and family to a place of his own.

[10] Further, as a construction worker, he has access to a variety of tools and implements which could be interpreted as weapons. This could affect his ability to earn a living. He complains as well that he is unaware of the basis upon which the conditions were imposed. He was not informed of the recommendations of the Psychiatric Hospital Tribunal or the doctors in charge of his case. During his incarceration he *"was never presented with any material which supported [his] continued detention"*.

[11] Additionally, he contends that there is no basis for his having to report to St. Ann's Hospital every six months for a period of three years and then be subject to indefinite imprisonment for breach of that condition. The report of the first review of his case in 2004 recommended that he should remain in St. Ann's for observation for a period of six months. He was then reviewed after that six month period and was recommended for release but he remained at St. Ann's for several more years. He contends that his observation process having been completed since 2004 there is nothing to justify his continued reporting to St. Ann's in the manner prescribed.

Judge's decision

[12] The trial judge dismissed the appellant's claim and found as follows:

i. The President was entitled to exercise powers under section 87(1) of the Constitution to grant a conditional pardon.

ii. Such exercise did not infringe the principle of separation of powers.

iii. The attachment of the conditions to the pardon was not *ultra vires* the powers conferred by section 87(1) of the Constitution.

iv. The conditions themselves were not unlawful or unconstitutional, either individually or collectively.

Issues

[13] The broad question in this appeal is whether the judge was right to dismiss the action. This turns on the narrow issue of whether a special verdict under section 66 of the Act (formerly section 68 of the Ordinance) is amenable to the grant of a section 87(1) pardon. The judge in upholding the pardon gave a purposive construction to the word "convicted" in section 87(1) and held that a special verdict was in that sense a conviction for which a pardon could be granted.

Summary of decision

[14] The judge was wrong. The authorities are clear that the result of a special verdict under section 66 is that the accused is acquitted of the charge. See **Felstead v R [1914] A.C. 534**, **R v Duke [1963] 1 Q.B. 120** and **Attorney General's Reference (No. 3 of 1998) [2000] Q.B. 401**. Since it was an acquittal the appellant had not been found guilty of any offence and could not then be pardoned.

Law and Conclusions

[15] I shall consider sections 68, 69 and 70 of the Ordinance which were the actual provisions in the Ordinance which applied as at the time of the special verdict. Section 68 provided:

> ***"Where, in an indictment, any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done or the omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused person was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission."***

Section 69 provided:

> ***"Where any person is found to be insane under the provisions of section 66 or section 67, or has a special verdict found against him under the provisions of the last preceding section, the Court shall direct the finding of the jury to be recorded, and thereupon the Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit, until His Majesty's pleasure shall be known."***

Section 70 provided:

> ***"The Court shall immediately report the finding of the jury and the detention of such person to the Governor, who shall order such person to be dealt with as a criminal lunatic under the laws of the Colony for the time being in force for the care and custody of criminal lunatics, or otherwise as he may think proper."***

[16] In **Felstead v. R** the question was whether an accused who was found by a special verdict to be guilty of an act but insane at the time, could appeal against that finding of insanity. The verdict was founded on section 2 of the Trial of Lunatics Act 1883. That provision was virtually identical with section 68 of the Ordinance. The appellant in that case was tried on a charge of wounding with intent to cause grievous bodily harm to his wife. The jury found him to be guilty but insane and an order was made for his detention during His Majesty's pleasure. The appellant appealed that part of the verdict which found him insane at the time of doing the act. The appeal was dismissed by the House of Lords which found that a special verdict given under the **Trial of Lunatics Act 1883** is one and indivisible and is a verdict of acquittal. Consequently an accused person found guilty of the act charged but insane at the time, was not a *"convicted"* person within section 3 of the Criminal Appeal Act and could not appeal from that part of the verdict which found him to have been insane at the time of doing the act.

[17] At page 541 of the judgment Lord Reading, after considering the development of the law governing insane persons accused of criminal offences, commented on the effect of the 1883 Act. He said:

> ***The last stage was the Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38), which is the statute now applicable. It made no substantial difference in the administration of the law, except that it enacted that where upon evidence the jury are satisfied that the accused did the act charged, but was insane so as not to be responsible according to law for his actions at the time he did the act, they must return a special verdict to that effect. That is not a verdict that the accused was guilty of the offence charged, but that he was guilty of the act charged as an offence. In other words, this verdict means that, upon the facts proved, the jury would have found him guilty of the offence had it not been established to their satisfaction that he was at the time not responsible for his actions, and therefore could not have acted with a "felonious" or "malicious" mind, which is an essential element of the crime charged against him.***

The indictment of the appellant was for "feloniously" and "maliciously" wounding Lilian Ann Felstead, with intent to do some grievous bodily harm. It is obvious that if he was insane at the time of committing the act he could not have had a mens rea, and his state of mind could not then have been that which is involved in the use of the term "feloniously" or "maliciously," for "crimen non contrahitur, nisi voluntas nocendi intercedat."

[18] He then went on to consider why the special verdict did not operate as a conviction:

It was further argued that, as the Trial of Lunatics Act, 1883, provided under s. 2 that where such a special verdict is found the accused should be kept in custody as a Criminal lunatic, the Legislature must have intended the special verdict to operate as a conviction of a crime. In my judgment this contention is not well-founded. By the use of the term "criminal lunatic" the Legislature meant by a compendious reference to bring into operation the powers given under the statute of 1860 (23 & 24 Vict. c. 75) and later statutes, which provided for detention in certain asylums, and under certain conditions, both of persons found insane and acquitted under the afore-mentioned Act of 1800 and of convicted persons who became insane during confinement in prison.

It was also contended that, as by s. 20 of the Criminal Appeal Act, 1907, writs of error and other modes of bringing a verdict and judgment under review had been abolished, the Legislature must have intended to give a right of appeal to the Court of Criminal Appeal whenever such a special verdict was found. It must, however, be borne in mind that your Lordships are deciding the proper interpretation to be placed upon the words of the statute, and cannot extend the right of appeal to those who, in your Lordships' opinion, are not persons "convicted on indictment."

My Lords, I have for these reasons come to the conclusion that the appellant is not a "person convicted on indictment." By the verdict of the jury he has been acquitted of the crime, and the order for his detention for safe custody is consequent upon the finding of insanity, and is not for a fixed period but during His Majesty's pleasure.

[19] In **Attorney General's Reference (No. 3 of 1998) [2000] Q.B. 401** at page 408 (per Judge L.J.) the decision was acknowledged as *"good authority"* and binding on the English Court of Appeal. It was also applied in **R v. Duke [1963] 1 Q.B. 120** at page 123 where Lord Parker CJ accepted as "beyond doubt" that the Court of Criminal Appeal had no jurisdiction to hear an appeal against a verdict of guilty of manslaughter but insane because (per **Felstead v. R)** *"a special verdict found under the* ***Trial of Lunatics Act 1883****, was an acquittal"*. The position was very succinctly summarised by the Northern Ireland Court of Appeal in **Criminal Cases Review Commission's Reference under s 14(3) of the Criminal Appeal Act 1995 [1998] NI 275**. At page 280, under the rubric of "*The legislative history*" Carswell LCJ stated:

The substantive issue before us is whether a special verdict under the 1883 Act is a conviction, sentence or finding of a nature which comes within the scope of s 10 of the 1995 Act, so empowering the Commission to refer it to this court for review. The Commission outlined in its reference the historical development of the law relating to verdicts of insanity and counsel took us through the provisions in detail. It is of assistance to examine them in order to see how the law has reached its present position.

Where a defendant is of unsound mind, he is regarded by the common law as unable to form the guilty mind required to found a conviction. The disposition of cases of such defendants has varied over the past 200 years. Before 1800, when the jury found that a defendant had committed the act but was insane, it could either return a general verdict of not guilty or a special verdict that he had committed the act but was non

compos mentis, in which event the court would enter a verdict and judgment of acquittal. The judges had power to order him to be detained in custody as a dangerous person, although it appears that not all followed this practice: Glanville Williams Criminal Law, The General Part (2nd edn, 1961), p 456. The practice was made mandatory by the Criminal Lunatics Act 1800, under which if a defendant was found not guilty of felony by reason of insanity the jury had to return a special verdict to that effect, and then the court was obliged to order the defendant to be detained during His Majesty's pleasure.

The terms of the special verdict were changed by s 2(1) of the Trial of Lunatics Act 1883, which prescribed that it was to be to the effect that 'the accused was guilty of the act or omission charged against him, but was insane ... at the time when he did the act or made the omission.' This verdict, which was commonly, if inaccurately, referred to as 'guilty but insane', was strongly criticised by the Atkin Committee in 1923 as being unsatisfactory and illogical. Their recommendation for a change in the law was not put into effect until the 1960s.

As counsel for Gordon submitted, the special verdict under the 1883 Act was no different in substance from that which was given under the 1800 Act: cf the argument of the Attorney-General Sir John Simon in R v Felstead [1914] AC 534 at 538. The House of Lords adopted the same view in Felstead, where they held, overruling R v Ireland [1910] 1 KB 654, that a person so found insane was not 'convicted' so as to give him a right of appeal under the Criminal Appeal Act 1907.

[20] Although I am not bound by **Felstead** I find it highly persuasive. Section 68 of the Ordinance was virtually identical with section 2(1) of the **Trial of Lunatics Act 1883**. Indeed our Ordinance was passed in 1925 and no doubt used the 1883 Act as a template. Section 68 (now section 66 of the Act) distinguished between "offence" and "act". It accepts that there is a difference between "doing the act" and committing "an offence". This is because a person who is insane at

the time that he did the act, could not have had the *mens rea* to commit the offence. The absence of *mens rea* means that he did not have the necessary intention and he committed no offence.

Does Section 87(1) of the Constitution apply?

[21] Section 87, in so far as relevant, provides:

> ***(1) "The President may grant to any person a pardon, either free or subject to lawful conditions, respecting any offences that he may have committed. The power of the President under this subsection may be exercised by him either before or after the person is charged with any offence and before he is convicted thereof.***
>
> ***(2) The President may –***
>
> ***(a) grant to any person convicted of any offence against the law of Trinidad and Tobago a pardon, either free or subject to lawful conditions;***
>
> ***(b) …***
>
> ***(c) …***
>
> ***(d) …"***

[22] Section 87(1) speaks of the President granting a pardon to any person "*respecting any offences that he may have committed"*. Section 87(2) provides that the President may grant a pardon to any person "*convicted of any offence*". Section 87 clearly contemplates an "*offence*" having been committed. But as Lord Reading explained in **Felstead**, the appellant, because he was insane at the time of commission of the act, did not have the necessary *mens rea* to commit the offence of murder and for this he was acquitted. The order for his detention was consequent upon the finding of insanity (as Lord Reading explained). It was not *"punishment"*. As such it was not for a fixed period but during the President's pleasure during which time his mental health had to be treated and reviewed.

[23] It is the same in this case. Because the appellant was found to have been insane at the time that he had killed the victim, he did not have the necessary intention and had "committed" no offence. Secondly, because the special verdict under section 68 (now section 66 of the Act) was an acquittal he could not be said to have been "convicted" of an offence. Neither section 87(1) or 87(2) applied. The pardon was thus *ultra vires* section 87 and illegal. To the extent that it purported to establish conditions with which he had to comply, they too were illegal.

[24] At paragraph 22 of his judgment, the judge appeared to reject the argument (now upheld by this court) that a section 66 special verdict (formerly section 68 of the Ordinance) was an acquittal which could not be the subject of a pardon. In doing so he purported to give a purposive construction of the meaning of "conviction" so as to include a special verdict under section 66 (formerly section 68 of the Ordinance). To be precise, section 87(1) speaks of offences "*committed*" and to the exercise of the presidential power of pardon "*either before or after the person is charged"* with an offence and before he is *"convicted thereof*." The judge's construction of the term "*convicted*" flies in the face of the decided cases to which I have referred. Indeed the decision of the House of Lords in **Felstead** is directly on point. The holding in that case as explained at paragraph [16] above is that a person found guilty but insane at the time of commission of the *actus reus* is not a *"convicted person"* for the purposes of an appeal under section 3 of the Criminal Appeal Act.

[25] The judge also found that any finding that a section 87(1) pardon was inapplicable to a special verdict, proceeded on the false proposition that words had to be read into section 87(1) of the Constitution, to the effect that a possibility of conviction must exist in order for a pardon to be granted. In my judgment, no such approach is necessary. The legal effect of the section 66 (formerly section 68) special verdict is (as the authorities have held) that a verdict of acquittal has been given. That is a fact which leaves nothing to the imagination. Once such a verdict has been rendered, a pardon cannot then be granted after the fact. In my judgment the judge was plainly wrong in his conclusion on this question.

The detention

[26] Mr. Seepersad submitted *en passant* that the appellant's detention at the President's pleasure was in fact unconstitutional and should have been at the court's pleasure. I say that it was made "*en passant*" because the constitutionality of the order of detention is not germane to the issue in this appeal. But in any event the submission was misconceived. As Lord Reading explained in **Felstead**, the order for the appellant's detention in *"safe custody"* was made pursuant to the finding of insanity rather than any finding of guilt. The detention is not a "*sentence*" or a *"punishment"* and it was for this reason that the order of detention was not for any fixed period but at the President's pleasure. Since it is not punishment and it is at the President's pleasure the detention cannot be a judicial function.

[27] Further, the presidential order, per section 70 of the Ordinance (now section 68 of the Act), that the appellant be dealt with as a mentally ill person in accordance with the laws of Trinidad and Tobago, put him under the care and control of the executive, to be treated medically according to the laws of Trinidad and Tobago. That function is also an executive function not a judicial function. The order therefore did not offend the doctrine of separation of powers.

[28] What was required during the period of the appellant's detention was for the appellant's mental fitness to be reviewed medically from time to time. As noted by Lord Hobhouse in **Browne v. R [2000] 1 AC 45** approving Lord Browne-Wilkinson in **R v. Secretary of State for the Home Department**, **Ex parte Venables [1998] AC 407** at 499 – 500, the term *"during pleasure" "enables the position to be reviewed from time to time"*. In this case the appellant's medical condition was reviewed (belatedly) from 2004 and he was found to be fit for release. What should then have occurred was his release without any of the conditions attached as by the presidential pardon. It may be that the appellant's medical team may have required him to visit the St. Ann's

Hospital as an outpatient. Certainly concern that he may have posed a threat to the public was understandable but if there were medical reasons for the appellant to report to the hospital then it was for the hospital's authorities and his doctors to specify them. In those circumstances the conditions attached to the pardon were not justified. But in any event given that the pardon was invalid so too were the conditions illegal. They amounted to a fetter on the freedom of the appellant and breached his right to liberty.

[29] In so far as the condition at paragraph [2] (a) required the appellant to report to the hospital for a period of three years in accordance with the requirements of the Mental Health Act, it was an unnecessary fetter on the appellant's liberty. I can find nothing in the Mental Health Act to require it. No medical evidence supporting such a requirement has been provided. It was a breach of his right to liberty. I shall order that monetary compensation be assessed by a judge in chambers.

[30] Condition (d) purported to limit where and with whom the appellant could live. It was a clear breach of the appellant's right to liberty. I shall also order that monetary compensation be assessed by a judge in chambers. Condition (e) purported to prohibit him from carrying weapons of any kind. There are already laws which control such usage and such an imposition outside of legislation was illegal and ultra vires section 4(a) of the Constitution. I grant a declaration that it was ultra vires section 4(a) of the Constitution but I can see no reason to order monetary compensation in respect of this breach. The appellant sought to argue that this condition limited his ability to use garden implements because a cutlass, rake, fork etc. could be deemed a weapon. I agree that this is arguable but the clear intention (however wrong) was to limit the appellant's access to offensive weaponry such as guns and knives with the intention of harming others and as a means of bearing arms rather than to limit his use of implements for gardening.

[31] As to the condition at paragraph [2] (f) above, I find that it is arbitrary and illegal. There is no nexus between the breach of any of the conditions set out at paragraph [2] and detention at the President's pleasure, nor can there be. The

detention order made until the President's pleasure be known was made because the appellant was found to have been suffering from a mental disability. It was made pursuant to statute and for a specific reason. Once the appellant was released from detention the order for his detention was rendered otiose and could not be used to control his conduct so as to make him subject to the same type of detention should he run afoul of the pardon conditions. To justify his further detention there must be some applicable law which directs his further detention at the President's pleasure. The condition was unlawful. But I also do not consider that monetary compensation is necessary in respect of this illegal condition. I shall simply grant a declaration that it was arbitrary, illegal and unconstitutional, a breach of the appellant's right to the security of person and to the protection of the law.

[32] The appeal is allowed and I shall make the following orders:

1. The pardon was illegal and ultra vires section 87(1) of the Constitution and I grant a declaration to that effect.
2. Because the pardon was illegal, so too were the conditions of the pardon and I so declare.
3. Further, the conditions set out above at paragraph [2] (a), (d) and (e) breached the appellant's right to liberty under section 4(a) of the Constitution. Monetary compensation is to be assessed by a judge in chambers for the breach of his right to liberty in respect of condition (a) and (d) only.
4. The condition set out at paragraph [2] (f) was arbitrary, illegal and unconstitutional and a breach of the appellant's right to the security of person and to the protection of the law.

Nolan P.G. Bereaux
Justice of Appeal