SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.535 OF 2000

BETWEEN:

ALFRED HARDING

Applicant

and

(1) THE SUPERINTENDENT OF PRISONS
(2) THE ATTORNEY GENERAL OF SAINT LUCIA

Respondents

Appearances:
Mr. Martinus Jean Francois for the Applicant.
Ms. Cheryl Mathurin for the Respondents.

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2000: July 13 ,14
July 31

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JUDGMENT

[1] HARIPRASHAD-CHARLES J.: On 4th day of July 2000, the Applicant issued a Notice of Motion which was subsequently amended pursuant to Section 5 of the Saint Lucia Constitution Order 1978 alleging that certain of the fundamental rights and freedom enshrined, guaranteed and secured in the said Constitution has been, is being or likely to be contravened in relation to him. The redress sought in the Amended Notice of Motion was for the following reliefs:

(i) A Declaration that the mechanical restraint with chains secured with two padlocks tied to the ankles of the Applicant on 31st day of August 1999 for a continuous period of ten (10) months and fifteen (15) days until 15th day of June 2000 without any removal amounted to torture or inhuman or degrading punishment contrary to Sections 3 and 5 of the Constitution of Saint Lucia.

(ii) A Declaration that the removal of the said mechanical restraint and its replacement whenever the Applicant visits the bathroom or whenever the Applicant is visited by his legal adviser amounted to torture or inhuman or degrading punishment contrary to Sections 3 and 5 of the Constitution of Saint Lucia.

(iii) A Declaration that the cellular confinement of the Applicant since 31st day of August 1999 and continuing to the present time without break and ordered by the Superintendent of Prisons amounted to torture or inhuman or degrading punishment contrary to Sections 3 and 5 of the Constitution of Saint Lucia.

(iv) A Declaration that the placing of the Applicant in a wet cell on 31st day of August 1999 wherein he was required to sleep on the said wet floor on a piece of blanket for two (2) months when the Respondents knew or ought to have known that the Applicant is asthmatic amounted to torture or inhuman or degrading punishment contrary to Section 5 of the Constitution of Saint Lucia.

(v) A Declaration that the denial of visitation rights of the Applicant amounted to torture or inhuman or degrading punishment contrary to Section 5 of the Constitution of Saint Lucia.

(vi) A Declaration that the matters complained of by the Applicant are and were arbitrary, oppressive and unconstitutional and the Applicant is entitled to compensatory, aggravated, exemplary and punitive damages of $500,000.00 and the Costs of this application.

(vii) Such orders, writs or directions as may be necessary or appropriate to secure redress by the Applicant for contravention by the Respondents or either of them of the Fundamental Rights and Freedoms guaranteed to him by Section 5 of the Constitution of Saint Lucia.

[2] Prior to the hearing of the Constitutional Motion, Counsel for the Respondents, Ms Cheryl Mathurin challenged the jurisdiction of the Court to entertain these proceedings. The gist of her argument was that there are other appropriate remedies available to the Applicant and therefore, he should pursue those remedies for alleged breach of the Prison Rules. In this context, she referred to Section 16 of the Constitution and in particular, the proviso. Mr. Martinus Francois, Counsel for the Applicant argued that the Applicant has locus standi before the Court and even if there are other remedies available to the Applicant, the Court has a discretionary power in deciding whether to entertain these proceedings and should be mindful not to discourage citizens or public spirited persons, who have locus standi from approaching the Court on matters of constitutional importance. I was satisfied that the Court has jurisdiction to entertain the Constitutional Motion and ordered that arguments on the matter be proceeded with.

THE BACKGROUND FACTS

[3] The Applicant, a citizen of Barbados came to Saint Lucia some six months prior to his arrest by the Police on 26th day of August 1999. From the evidence adduced, the Applicant was in a store in Castries when two police officers approached him. One of the lawmen spoke to the Applicant and simultaneously, the Applicant pulled out a firearm and pointed it in the direction of the lawmen who took cover as the Applicant fled out of the store onto Cadet Street. The Police continued their

pursuit of him and the Applicant attempted his escape by climbing and jumping onto the roofs of several buildings in what might be described as a " tarzanic" chase in the City of Castries in broad daylight. He was subsequently arrested and charged with the possession of unlicensed firearm and possession of nine live rounds of ammunition without a permit. On 27th day of August 1999, he appeared before a Magistrate and was sentenced to Her Majesty's Prisons for an extended term of imprisonment.

[4] The chronology of events that led to the institution of the Motion commenced when the Applicant was taken to Her Majesty's Prisons on 31st day of August 1999. Upon his arrival there, the Applicant was placed in mechanical restraint with chains tied to his ankles secured by two padlocks and placed in the maximum security section of the prison which is also used to accommodate death row inmates as well as inmates who are separated from the general prison population or inmates who are considered to be at security risks. It was also alleged by the Applicant that not only was he kept shackled in solitary confinement but that the said cell was flooded in about two inches of water and that he suffered two asthmatic attacks as a result of having to sleep on the wet concrete. There is the further allegation that he was denied his entitlement to one hour of exercise daily and any sunlight and also visitation rights contrary to the Prison Rules 1964.

[5] I pause here to observe that on the hearing of this Motion, the Applicant abandoned the relief previously sought under Section 13 of the Constitution and proceeded solely with the relief under Section 5 of the said Constitution.

THE ISSUES

[6] The following are the principal legal issues for determination in this Motion:-

(1) Whether the Superintendent of Prisons acted within the law or not and

(2) Whether the treatment meted out by the Applicant amounted to torture, inhuman and degrading punishment or other treatment as envisaged by Section 5 of the Saint Lucia Constitution Order 1978?

(1) WHETHER THE SUPERINTENDENT OF PRISONS ACTED WITHIN THE LAW?

[7] Arising out of this legal issue is a number of sub-issues that need consideration namely:

(a) Whether the alleged mechanical restraints placed on the Applicant for ten [10] months and fifteen [15] days, until 15th day of June 2000 without any removal is contrary to the Prison Rules?

(b) Whether the temporary shackling of the Applicant whenever he visits the bathroom or whenever he is visited by his legal adviser is contrary to the Prison Rules?

(c) Whether the alleged cellular confinement of the Applicant since 31st day of August 1999 and continuing to the present time without break is contrary to the Prison Rules?

(d) Whether the alleged placing of the Applicant in a wet cell on 31st day of August 1999 for two months is contrary to the Prison Rules and

(e) Whether the alleged denial of visitation rights is contrary to the Prison Rules?

(a) MECHANICAL RESTRAINTS

[8] Learned Counsel for the Applicant submitted that from the moment the Applicant was taken to Her Majesty's Prisons on 31st day of August 1999, he was placed in mechanical restraints with chains tied to his ankles and secured with chains and two large C hubb padlocks. He also stated that the Applicant had been continuously shackled since his arrival at the Prisons twenty-four hours a day. It is alleged that the Applicant had to bathe and sleep in the shackles. Counsel

contended that the said mechanical restraints were only removed on 15th day of June 2000; following his Notice of Intended action against the Respondents. The Applicant was therefore in shackles for a period of ten [10] months and fifteen [15] days. Counsel further submitted that the fact that the Applicant was shackled continuously greatly inhibited his freedom of movement and resulted in severe injuries to his ankles and feet.

[9] The Respondents did not deny any of the allegations made by the Applicant in respect of the continuous use of mechanical restraints on the Applicant. In fact, both Respondents admitted that the mechanical restraints were removed on 15th day of June 2000 pursuant to the Notice of Intended Action filed by the Applicant on 2nd day of June 2000. What is expressly denied were the injuries allegedly suffered by the Applicant as a result of him being continuously shackled for a period in excess of ten months. In fact, the Superintendent of Prisons deposed in his affidavit that he has no knowledge of and has not seen injuries to the Applicant's ankles and feet. His evidence is somewhat supported by the evidence of the two doctors attached to the Prisons. Dr. Gerard Saltibus, in his affidavit deposed to on 11th day of July 2000 averred that he saw the Applicant on 27th day of June 2000 and he did not notice any injuries to his legs as a result of them being in mechanical restraints. Dr. Kenneth Eric Louisy who was the medical officer attached to the Prisons during the period August 1999 to January 2000 made a similar observation. I am more inclined to believe the Respondents' evidence that there were no visible injuries on the Applicant. However, I opined that the shackling of the Applicant for such a lengthy period must have traumatized him and he must have suffered psychologically.

[10] Counsel for the Applicant cited Sections 57 and 166 of the Prison Rules and in particular, Section 57 Subsection (4). Section 57 reads as follows: Mechanical Restraints.

> "(1) Mechanical restraints shall not be used as a punishment or for any purpose other than the safe custody during removal, except on medical grounds by direction of the Medical Officer, or in the

circumstances and under the conditions stated in the following paragraphs of this rule.

(2) When it appears to the Superintendent that it is necessary to place a prisoner under mechanical restraint in order to prevent his injuring himself or others, or damaging property, or creating a disturbance, the Superintendent may order him to be placed under mechanical restraint, and notice thereof shall forthwith be given to the Visiting Justice and to the Medical Officer.

(3) The Medical Officer on receipt of the aforesaid notice shall forthwith inform the Superintendent whether he concurs in the order, and if on medical grounds he does not concur the Superintendent shall act in accordance with any recommendations which he makes.

(4) No prisoner shall be kept under mechanical restraint longer than is necessary, or for a longer period than twenty-four hours unless an order in writing from a Justice of the Peace who is a member of the Board of Visiting Justices is given, specifying the cause thereof and the time during which the prisoner is to be so kept, which order shall be preserved by the Superintendent as his warrant. [My emphasis]

Section 166 of the Prison Rules expressly states as follows:

Restraint.

"(1) If the Superintendent represents to a member of the Board that he or the Medical Officer has, in a case of urgent necessity, put a prisoner under mechanical restraint, and that it is necessary that the prisoner be so kept for more than twenty-four hours, such member may authorize the continuance of that restraint by order in writing, which shall specify the cause thereof and the time during which the prisoner is to be kept."

[11] Applying the law as set out above to the facts of this case, I come to the following conclusions:

(a) Shackling is permitted under Rule 57 and Rule 166 of the Prison Rules but in very limited circumstances.

(b) Placing a prisoner in mechanical restraints shall not be used as a method of punishment under no circumstances.

(c) It shall only be used to move a prisoner from one place to another or, in a case of urgent necessity to temporarily restrain a violent prisoner, and in any event, for not more than 24 hours without the Order of a Member of the Board of Visiting Justices.

(d) Nowhere in the Prison Rules is it expressed that a prisoner who is dangerous or potentially dangerous could be shackled for an extended period.

[12] In determining the issue whether the shackling of the Applicant for a continuous period of 10 months and 15 days is contrary to the Prison Rules, the case of Reynolds Peters v Bernard Marksman (Superintendent of Prisons) and the Attorney-General, Civil Suit No. 246 of 1997 [unreported] emanating from Saint Vincent & the Grenadines is illustrative of this principle. In this case, the Court had to consider, inter alia, the issue of shackling of a prisoner for an extended period of approximately six months. At page 14 of the said judgment, Mitchell J [Ag.] had this to say:

> " I am satisfied that in the circumstances of this case the shackling of the prisoner for an extended period, including while he slept and ate, without the Order of the Justices, was a brutal and severe assault on the person and psyche of Mr. Peters. It was designed to brutalize and break him and to reduce him to compliancy by stripping him of all dignity and self-respect. It amounted to a form of torture."

[13] I gratefully adopt the words of Mitchell J. [Ag.].

[14] I therefore hold that the placing of mechanical restraints with chains and two large Chubb padlocks tied to the ankles and feet of the Applicant for twenty-four [24] hours a day for a period of ten [10] months and fifteen [15] days, including while he bathed, ate and slept is a brutal and severe assault on the person and psyche of Alfred Harding. Undoubtedly, it was in breach of the Prison Rules and thus

unlawful. Such conduct by the Superintendent of Prisons in the year 2000 is reminiscent of the African Slave Trade which I thought had long been abolished.

(b) OCCASIONAL MECHANICAL RESTRAINTS

[15] It is not disputed that the Applicant is still being placed in mechanical restraints whenever he visits the bathroom or whenever he is taken to the front part of the prison to consult with his legal adviser. In fact, at paragraph 6 of the affidavit of the Second-named Respondent, the Attorney General, he deposed as follows:

> "That I am informed and verily believe that in light of the circumstances under which the Applicant was apprehended and the record of his conviction from Barbados, that it is necessary that he be restrained whenever he is outside of the maximum-security area of the prison in the public interest as referred to in Section 1 of the Constitution."

[16] Learned Counsel for the Applicant emphasized that the occasional shackling of the Applicant is a continuing violation of his rights. Mr. Francois urged the Court to liberate the Applicant since he is the only prisoner who is placed in shackles. It is the submission of Counsel that there is not one strand of evidence to demonstrate that there has been any infraction of the Prison Rules by the Applicant of that he is refractory.

[17] The gist of the Respondents' argument is that the Applicant is a supposedly dangerous Criminal and as a consequence, the occasional shackling is justified in the public interest. Counsel asserted that Section 57 and Section 166 of the Prison Rules make provision for the Superintendent of Prisons to use mechanical restraints on a prisoner as a means of protection. She asserted that because of the Applicant's potential threat to prison officials, the Superintendent was justified in shackling him.

[18] I have no difficulty in accepting Ms. Mathurin's argument that shackling is permissible but in *very limited circumstances*. In fact, this is exactly what the

Prison Rules expressly states. However, while the Superintendent may order a prisoner to be placed under mechanical restraints in order to prevent him injuring himself or others, or damaging property, or creating a disturbance, he must notify forthwith a Visiting Justice and the Medical Officer. In the instant case, no such notification was done. It is accepted that the Superintendent has a discretionary to shackle a prisoner in order to prevent him injuring himself or others, or damaging property, or creating a disturbance. But, these ingredients must exist in order to place the prisoner in mechanical restraints. I find that none of the requirements to justify the occasional shackling of the Applicant were present. I therefore hold that the placing of such mechanical restraints on the Applicant whenever he visits the bathroom or whenever his legal adviser visits him is also contrary to the Prison Rules and unlawful.

(c) CELLULAR CONFINEMENT

[19] On this issue, Counsel for the Applicant submitted that Sections 58 and 166 of the Prison Rules have been violated when the Applicant was placed in an empty cell in the "condemned" Section of the Prisons. Counsel emphasized that the "condemned" Section of the Prisons is reserved for prisoners who have been condemned to death for a capital punishment and that the Applicant has not been convicted of such offence. He further contended that nowhere in the affidavits of the Respondents is there any allegation that the Applicant is a refractory or violent person to warrant such cruel and degrading treatment. Counsel asserted that not only is he placed in cellular confinement cell but that the Applicant is denied any sunlight or exercise contrary to the Prison Rules.

[20] Counsel for the Respondents contended that the word "condemned" as asserted by the Applicant is a mere pseudonym. I do not agree with Counsel. Even the Superintendent of Prisons, at paragraph 4 of his affidavit averred that the Applicant has always been housed in the maximum- security section of the prison which is also used to house death row inmates as well as inmates who are

separated from the general population for their own safety, or inmates who are considered to be security risks. In my considered opinion, "condemned", "death row" and "high security" cells are one and the same thing.

[21] It is not disputed that the Applicant was and is still being kept in solitary confinement in that section of the prison. In their respective affidavits, both Respondents deposed that given the circumstances under which the Applicant was apprehended, his current convictions and his record of conviction from Barbados and Canada as well as an outstanding warrant of arrest for attempted murder in Barbados, it is necessary that he be housed in the maximum security area of the prison. The Superintendent of Prisons deposed that currently Roger Hilaire is secured in this area as he has escaped on several occasions and also injured another inmate who was cleaning his cell. However, there is no such evidence about the Applicant. It is manifestly clear that this Applicant has never escaped from Her Majesty's Prisons and or he had been violent or rebellious or unmanageable to fellow inmates as well as prison officials.

[22] Learned Counsel for the Respondents submitted that the Applicant is a dangerous Criminal; the likes of whom the peaceful and tranquil society of Saint Lucia had never seen. "It was indeed a spectacle," dramatized Counsel" to see the manner in which the Applicant was apprehended." Counsel urged the Court to find that the cellular confinement of the Applicant is not a punishment. However, she could not give a tangible reason for such confinement except to emphasize the impending danger that the Applicant poses to the public and to the law-enforcement officers. I pose a rhetorical question: if the Applicant is not being punished, why is he still in cellular confinement?

[23] The question of " cellular or solitary confinement" is dealt with by Sections 58 and 166 of the Prison Rules 1964 and as interpreted by the Courts. Section 58 of the said Rules reads thus: Temporary confinement.

> "The Superintendent may order any refractory or violent prisoner to be temporarily confined in a special cell certified for the purpose in the same manner as cells to which rule 9 applies, but no prisoner shall be confined in such a cell as a punishment or after he has ceased to be refractory or violent."

Section 166(2) states as follows:

> "If the Superintendent represents to a member of the Board that he has arranged for a prisoner to work temporarily in his cell and not in association, such member may authorize the arrangement by order in writing, and such order may be renewed from month to month."

[24] On the question of confinement to a cell, this issue was considered by the Supreme Court of Zimbabwe in the case of **Conjwao v Minister of Justice [1992]** (2) SA 56. In that case the Applicant and his two co-accused had been convicted of murder in attempting to blow up an ANC Building in Zimbabwe and were sentenced to death. Subsequently, another person was found guilty of having conspired with others to forcibly effect the release from lawful custody of the Applicant and his two co-accused. Strict security measures were implemented. The Applicant's access to the exercise yard was reduced to half an hour on weekdays only. During this time, he had to shower, attend to laundry, wash his eating utensils and sweep out his own cell. The Supreme Court of Zimbabwe unanimously found that such confinement was plainly offensive to notions of humanity and decency and transgressed the boundaries of civilized standards and involved the infliction of unnecessary suffering.

[25] Solitary confinement of prisoners is not in itself a breach of the Prison Rules; it is permissible for reasons of security or discipline or to protect the segregated prisoner from other prisoners and vice versa. It may also be justified in the interests of the administration of justice, e.g. to prevent collusion between prisoners in respect of pending proceedings. In each case, "regard must be had to the surrounding circumstances, including the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the persons

concerned": See: Ensslin, Baader and Raspe v Federal Republic of Germany (1979) 14 DR E Com HR 64 at page 109.

[26] Having ascertained the relevant facts in the instant matter and applying the law, I find that the cellular confinement of the Applicant is not permitted as a punishment. It is permissible only with the authorization of the Board of Visiting Justices and may last only for a month unless renewed by the Visiting Justices. Even if there were good reason to confine a prisoner to a cell, he must be allowed reasonable access to exercise and sunlight. I hold that the cellular confinement of the Applicant for an extended period of time was a punishment without a lawful reason and without the sanction of the Visiting Justices. This, in my opinion is virtually to treat him as non-human and is repugnant to the values and attitudes of any civilized society.

(d) ALLEGATION OF WET CELL AND ASTHMA ATTACKS

[27] Counsel for the Applicant urged the Court to accept the further allegation of the Applicant that not only was he kept shackled in solitary confinement in a single cell but that the said cell was flooded in about two inches of water. Counsel stated that the Applicant immediately reported the condition of the cell to Sergeant Jules who was the Officer-in-Charge. According to the Applicant, he informed the Officer that he was asthmatic and could not sleep on the wet concrete whereupon Sergeant Jules told him that when he lies down, his bodily heat would dry up the water.

[28] Counsel submitted that the Applicant complained to the visiting prison doctor, Dr. Louisy about sleeping on the cold concrete floor especially since he is asthmatic. As a result of his complaint to the doctor, he was given a ventolin inhaler. The Applicant's testimony is corroborated by the evidence of Dr. Louisy to the extent that the doctor averred that he had cause to prescribe a ventolin inhaler to the Applicant on two occasions for an asthmatic complaint.

[29] The Applicant alleged in his affidavit sworn to on 4th day of July 2000 that after numerous complaints, he was provided with a wooden bunk in or about November 1999; some two months after sleeping on a cold floor. He alleged that this type of treatment amounted to torture or inhuman or degrading punishment pursuant to Section 5 of the Constitution.

[30] On the other hand, the First-named Respondent, the Superintendent alleged that to his knowledge, the Applicant's cell has never been flooded and that the majority of inmates at Her Majesty's Prisons sleep on the floor as the prison is unable to provide for the ever- increasing number of inmates.

[31] It is manifest from the evidence that the Applicant was asthmatic before he was confined to Her Majesty's Prisons. However, I do not believe the Applicant's evidence that his cell was flooded with two inches of water. I ask myself the question: why would the Superintendent of Prisons be so cruel to the Applicant? After all, it is my considered opinion that the Superintendent of Prisons shackled and confined the Applicant to the single cell because he was faced with a troubling situation of having to deal with escaped prisoners who are supposedly dangerous. He was not going to let this prisoner escape. So, he decided to take precautionary measures from the outset. Suffice it to say he did so in violation of the Prison Rules.

[32] As I have remarked in the preceding paragraph, I do not believe that the Applicant was placed in a cell flooded with two inches of water. I believe that the concrete floor must have been cold. And after complaints, the Superintendent of Prisons made amends by providing Applicant with a wooden bunk shortly thereafter. However, I was somewhat disheartened when the affidavit of the Superintendent of Prisons was amended to reflect an additional paragraph to read:

15. "That the majority of inmates at Her Majesty's Prisons sleep on the floor as the prison is unable to provide for the ever-increasing number of inmates."

[33] I opined that the Superintendent of Prisons would have done more justice to the case had he remained silent. I am positive that he is aware of Section 10 of the Prison Rules In this context, I refer to Mitchell J. in Reynolds Peters v Bernard Marksman, Superintendent of Prisons et al [supra]. At page 14 of the said Judgment, His Lordship said:

> "But the time will come when the very overcrowding in the present old nineteenth century prison will be the basis for a constitutional challenge to a term of imprisonment in such a facility as being inhuman and degrading, which challenge will at the least cause serious embarrassment."

(e) VISITATION RIGHTS

[34] Sections 84 and 85 of the Prison Rules are explicit on Letters and Visits.

[35] Counsel for the Applicant submitted that the Applicant was denied visitation rights contrary to the Prison Rules. The Applicant alleged that there has been two occasions when his mother and his sister came from Barbados to visit him and they were refused permission by the prison authorities. In addition, the Applicant alleged that he is not permitted to communicate with other prisoners.

[36] By an amended affidavit, the First-named Respondent stated that he had no knowledge of the allegations made by the Applicant but there was one request over the telephone from one Sharon Wade from New York who sought a guarantee of a visit by telephone and she was refused. There is documentary evidence from the Respondents to support their allegation that the Applicant does receive letters.

[37] I see no justifiable reason why the Respondents will deprive the Applicant the visitation rights as alleged. I therefore do not believe the Applicant.

[38] Counsel for the Applicant submitted that a further question which has been considered in recent cases is whether a prisoner who has been lawfully committed to prison and whose term of imprisonment has not expired may in circumstances maintain an action for false imprisonment, arising out of the conditions in which he was detained. In this regard, Counsel cited a number of authorities to substantiate his point including the cases of Middleweek v Chief Constable of the Merseyside Police [1990] 3 All ER 662 and Weldon v Home Office [1990] 3 All ER 672 where it was held that an action could be maintained where conditions were or became intolerable. Counsel went into a comprehensive analysis of these cases comparing the decision of the House of Lords with the Constitution of Saint Lucia and submitted that the Constitution of Saint Lucia favours the Court of Appeal decision. Learned Counsel for the Respondents vehemently challenged the Court of Appeal decision and argued that the House of Lords decision is applicable to Saint Lucia. While I am in agreement with the submissions of Learned Counsel for the Applicant on this point, I am of the firm view that these cases are merely of academic interest based on my findings [supra].

[39] Learned Counsel for the Applicant also alluded to the legitimate expectation of the Applicant in that he will be subjected to the Rules of the Prison. I do not disagree with Learned Counsel on this either but I am reluctant to venture into somewhat unvirginal territory when it is unnecessary to do so for the purpose of deciding the case.

(b) SECTION 5 OF THE SAINT LUCIA CONSTITUTION ORDER 1978

[40] The second issue for consideration is whether the treatment meted out by the Applicant amounted to torture, inhuman and degrading punishment or other treatment as envisaged by Section 5 of the Saint Lucia Constitution Order 1978?

[41] Section 5 of the Constitution reads:

> "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment."

[42] Counsel for the Applicant submitted that the *locus classicus* on the meaning of torture, inhuman and degrading punishment or other treatment is the case of Ireland v United Kingdom European Court HR, Series A, Vol. 25 Judgment of 18 January 1978 quoted at page 269 in the Treatise, Civil Liberties: Cases and Materials. In this case, twelve persons arrested on 9 August 1971 and two persons arrested in October 1971 were singled out and taken to one or more interrogation centres. There, between 11 to 17 August and 11 to 18 October respectively, they were submitted to a form of 'interrogation in depth' which involved the combined application of five particular techniques. In the Commission's estimation, the five techniques constituted a practice not only of inhuman and degrading treatment but also of torture. The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3. The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.

[43] Counsel for the Applicant, referring to Resolution 3452 (xxx) adopted by the General Assembly of the United Nations on 9 December 1975, which declares:

> "Torture" constitutes an aggravated and deliberate form of cruel, inhuman and degrading treatment or punishment."

[44] Mr. Francois, in fortifying this limb of his arguments referred to the case of Reynolds Peters v Superintendent of Prisons et al [supra] and submitted that the Reynolds Peters' case bears close affinity to the instant matter. The facts are as follows: The Applicant, Reynolds Peters was serving a term of 12 years

imprisonment for manslaughter, imposed on 12th day of June 1988 at the State Prison for men in Kingstown, St. Vincent. On 26th day of August 1996 he is alleged to have assaulted Senior Prison Officer Linus Goodluck hitting him at the back of his head with a 3 foot length of 2" x 2" wood, rendering him unconscious for several hours. Even while Officer Goodluck was unconscious and was being dragged from the Prison, Mr. Peters pursued him with a length of wood attempting to strike him again. There is no suggestion that he succeeded in striking Officer Goodluck more than once. Nor is there any indication what sparked the assault. He was charged by the police for causing actual bodily harm.

[45] On 26th day of August; that is the day of the incident, the Applicant was additionally charged as a result of the incident with various contraventions of the Prison Rules. The charges were heard by the Superintendent of Prisons. The Applicant was found guilty of all the charges. As a punishment, he was ordered to receive 10 strokes with the Cat-o-nine tails and to cellular confinement. He was also kept shackled in solitary confinement in a single cell. He had to sleep with the foot-leggings and handcuffs. The shackles were sometimes removed for short periods of time, for example, when he showered. Mr. Peters as a result of his continuously being shackled had suffered abrasions and contusions to his lower legs. He was shackled for a period of approximately 6 months. The shackles were finally removed on 10th day of January 1997, after the intervention by Mr. Peters' Solicitor to the Prime Minister in his capacity as Minister of Justice.

[46] Mitchell J. in his rather comprehensive judgment found that the actions of the Superintendent of Prisons were in breach of the Prison Rules. On the question of shackling, he found that it amounted to a form of torture. He also found that solitary confinement was a form of torture, repugnant to the values and attitudes of Vincentian society.

[47] Counsel for the Respondents, Ms. Mathurin referring to the Peters' case, urged the Court to find that it was distinguishable from the instant matter. According to

her, the Superintendent of Prisons, Mr. Pierre had not applied the treatment as applied by the Superintendent of Prisons in the Peters' case. She stressed throughout her address that there was no *male fides* on the part of the Superintendent of Prisons and she urged the Court to consider the motives by which the shackles were placed on the Applicant and to find that the placing of mechanical restraints on the Applicant did not amount to torture, inhuman or degrading punishment or treatment.

[48] Counsel submitted that what amounts to 'inhuman or degrading treatment or punishment' depends on all of the circumstances of the case. She asserted that cellular confinement and occasional shackling with the exception of the permanent shackling were not done with the intention of breaking his physical or moral resistance, feelings of fear, anguish and inferiority capable of humiliating and debasing the Applicant.

[49] In this context, Counsel cited the Trinidadian case of Thomas v Baptiste (Commissioner of Prisons), Privy Council Appeal No. 60 of 1998. Lord Millett at page 9 of the Judgment in dealing with Prison conditions said:

> "The appellants were detained in cramped and foul smelling cells and were deprived of exercise and access to the open air for long periods of time. When they were allowed to exercise in the fresh air they were handcuffed. The conditions in which they were kept were in breach of the Prison Rules and thus unlawful. It does not follow that they amounted to cruel and unusual treatment. In a careful judgment de la Bastide C.J. found that they did not.
>
> The expression is a compendious one which does not gain by being broken up into its component parts. In their Lordships' view, the question for consideration is whether the conditions in which the appellants were kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amounted to treatment which went beyond the harsh and could properly be described as cruel and unusual. Prison conditions in third world countries often fall lamentably short of the minimum which would be acceptable in more affluent countries. It would not serve the cause of human rights to set such demanding standards that breaches were commonplace. Whether or not the conditions in which the appellants were kept amounted to cruel and unusual treatment is a value

judgment in which it is necessary to take account of local conditions both in and outside prison. Their Lordships do not wish to seem to minimize the appalling conditions which the appellants endured. As the Court of Appeal emphasized, they were and are completely unacceptable in a civilized society. But their Lordships would be slow to depart from the careful assessment of the Court of Appeal that they did not amount to cruel and unusual treatment…It would be otherwise if the condemned man were kept in solitary confinement or shackled or flogged or tortured. One would then say: " enough is enough". "

CONCLUSIONS

[50] Having considered the submissions of both Counsel, and applying the clear and unambiguous provisions of the Prison Rules and the legal principles in respect to torture, inhuman or degrading punishment or treatment, I come to the following conclusions:

(a) Shackling of the Applicant for an extended period of ten months and fifteen days, including while he slept and ate, without the order of the Visiting Justices was brutal and a severe assault on the person and psyche of the Applicant. Mercifully, it was only the intervention of his Counsel that led to its permanent removal of the shackles. This is a clear breach of the Prison Rules. It amounted to a form of torture.

(b) The occasional shackling of the Applicant whenever he visits the bathroom or he is visited by his legal adviser is also a violation of the Prison Rules. Shackling is permissible but in *very limited circumstances*. While the Superintendent may order a prisoner to be placed under mechanical restraints in order to prevent him injuring himself or others, or damaging property, or creating a disturbance, he ***must notify forthwith a Visiting Justice and the Medical Officer.*** If the latter is not done, then the shackling of the prisoner becomes unlawful.

(c) The cellular or solitary confinement of the Applicant to a cell for ten months and fifteen days is also a breach of the Prison Rules and is a form

of torture or inhuman or degrading punishment. Cellular confinement is permissible only with the authorization of the Board of Visiting Justices and may last only for a month unless renewed by the Visiting Justices. Even if there were good reason to confine a prisoner to a cell, he must be allowed reasonable access to exercise and sunlight.

(d) On the allegation that the Applicant was placed in a wet cell with two inches of water, this is a factual issue and I do not believe him. I have already given my reasons for arriving at this conclusion.

(e) Based on the evidence, I do not believe the allegation made by the Applicant that he was denied visitation rights. I further conclude that even if he was and it was contrary to the Prison Rules, it could not amount to torture, inhuman and degrading punishment or treatment to justify a contravention of section 5 of the Constitution. See: Thomas v Baptiste [supra] and specifically page 9 of the Judgment of Lord Millett.

THE AWARD

[51] I therefore award the Applicant the following reliefs:

(a) A Declaration that the mechanical restraint with chains secured with two padlocks tied to the ankles of the Applicant on 31st day of August 1999 for a continuous period of ten (10) months and fifteen (15) days until 15th day of June 2000 without any removal amounted to torture or inhuman or degrading punishment contrary to Section 5 of the Constitution of Saint Lucia.

(b) A Declaration that the removal of the said mechanical restraint and its replacement whenever the Applicant visits the bathroom or whenever the Applicant is visited by his legal adviser amounted to torture or inhuman or degrading punishment contrary to Section 5 of the Constitution of Saint Lucia.

(c) A Declaration that the cellular confinement of the Applicant since 31st day of August 1999 and continuing to the present time without break and ordered by the Superintendent of Prisons amounted to inhuman or degrading punishment contrary to Section 5 of the Constitution of Saint Lucia.

(d) The Applicant is entitled to Damages to be assessed and Costs to be taxed if not agreed.

ASSESSMENT OF DAMAGES

[52] I now turn to the assessment of damages. The Applicant claims compensatory, aggravated, exemplary and punitive damages of $500,000.00.

[53] In assessing damages for breach of constitutional rights, there is a dearth of authority in the Commonwealth Caribbean on the principles or guidelines by which such damages are to be assessed. In the Privy Council case of Maharaj v Attorney General of Trinidad & Tobago [1978[ 2 All ER 670, at page 680, Lord Diplock had this to say:

> "Finally, their Lordships would say something about the measure of monetary compensation recoverable under section 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by the due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone. Such compensation would include loss of earnings consequent on the false imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration. "

[54] So, in Maharaj's case, the court took into consideration as matters relevant to the computation: (1) loss of earnings consequent on the false imprisonment and (2)

inconvenience and distress suffered by the victim. No claim was made for exemplary or punitive damages.

[55] In the Privy Council case of Attorney General of St. Christopher and Nevis v Reynolds [1980] A.C. 637, a small sum of exemplary damages was awarded.

[56] Counsel for the Applicant submitted that exemplary damages ought to be awarded to the Applicant for the high-handed and oppressive conduct by officers of the State. In this regard, Counsel cited the leading authority of Rookes v Barnard [1964] 1 All ER 367. In this case it was held that English Law recognized the awarding of exemplary damages, that is, damages whose object was to punish or deter and which were distinct from aggravated damages (whereby the motives and conduct of the defendant aggravating the injury to the plaintiff would be taken into account in assessing compensatory damages); and there are two categories of cases in which an award of exemplary damages could serve a useful purpose, namely: in the case of oppressive, arbitrary or unconstitutional action by the servants of the government, and in the case where the defendant's conduct had been calculated by him to make a profit for himself.

[57] Mr. Francois declared that this is a fitting case for the award of exemplary damages to the Applicant. He referred to a number of authorities to support his contention including the cases of:

(1) Fuller v Attorney General of Jamaica [Civil Appeal No.91 of 1995] [unreported];
(2) Ramnarine Jorsingh v Attorney General of Trinidad & Tobago [Civil Appeal No.41 of 1991] [unreported];
(3) Tynes v Barr (1992) 45 WIR 7; and
(4) Reynolds Peters v Superintendent of Prisons et al [supra].

[58] In the case of Tynes v Barr [supra] a lawyer was subjected to a body search by the defendant including the "patting" through his clothing of his private parts. He

was then taken handcuffed in an open jeep clearly visible to the public, to the police station where he was forcibly strip-searched while handcuffed, then fingerprinted and placed in a cell. He was denied the use of the telephone to call a lawyer but was later released on bail and charged with the offence relating to trespass at the airport tarmac contrary to the Civil Aviation Act and for failing to move contrary to s. 212(8) of the Penal Code. The Plaintiff instituted proceedings for damages for the torts of assault, false imprisonment, malicious prosecution and the breach of the citizens right to personal liberty as guaranteed under Article 19 of the Constitution. The Plaintiff was awarded $40,000.00 for breach of his constitutional rights. In relation to the sum paid for breach of the Plaintiff's constitutional rights, the court expressed the view that the conduct of the Defendant fell precisely in the category of oppressive, arbitrary or unconstitutional action by servants of the State giving rise to exemplary damages. At page 24 of her judgment, Sawyer J. [as she then was] said:

> "I have already held that the Plaintiff is entitled to damages to compensate him for the wrongs done to him by officers of the Crown (the State). In my view, those damages should include an amount for humiliation, i.e. the injury to the Plaintiff's dignity and pride, which he endured. In addition, he is entitled to be compensated for the loss of his personal liberty, mental suffering and the loss of his reputation."

[59] The Court in awarding exemplary damages in Tynes v Barr stated that no apology was offered to the Plaintiff until a suggestion was made by the Plaintiff's Counsel in the course of his closing address. The Learned Judge said that she could only characterize the conduct of the police as arrogant indeed, as well as abusive and outrageous.

[60] Counsel relied heavily on the quantum of damages awarded in Reynolds Peters v Superintendent of Prisons et al from the neighbouring jurisdiction of Saint Vincent and the Grenadines. In that case, Adams J. in assessing damages awarded $50,000.00 for shackling which he considered as appropriate compensation for such a tragic imposition on the human personality. For solitary

confinement for a period of about six months, he awarded another $50,000.00 and for flogging $ 50,000. He also awarded the sum of $75, 000.00 for exemplary damages. In awarding the latter, the learned Judge took into consideration that up to the very moment, no apology was forthcoming from the State concerning the admitted breach of the Applicant's constitutional rights.

[61] Counsel for the Applicant urged the Court to assess damages in the instant case by using the principles enunciated by Adams J. The State has appealed the Judgment of Adams J. The appeal was heard by the Court of Appeal on Wednesday of last week. Unfortunately, the Court of Appeal has reserved its Judgment to September of this year.

[62] I am however grateful for the enlightening judgment of Adams J. But, as Counsel for the Respondents rightly suggested, the instant case is indeed distinguishable from the Reynolds Peters' case and for that matter, from all of the cases cited by Learned Counsel for the Applicant.

[63] In computing damages, the Court has to take into account the following factors as relevant to the computation:

(1) Loss of earnings consequent upon imprisonment.

(2) Injury to the Applicant's dignity and pride.

(3) Distress and inconvenience that inevitably followed.

(4) The disgrace and humiliation which accompanied the treatment meted to him.

(5) Pain and Suffering.

[64] In the instant case, I am of the considered opinion that the only factor relevant to the computation of damages is the pain and suffering endured by the Applicant as a result of being placed in mechanical restraints for an extended period of time. There was evidently no loss of earnings consequent upon the imprisonment for the Applicant was a prisoner serving a term of imprisonment when the Prison Rules

were violated. I cannot see what injury the Applicant could have suffered to his pride and dignity. Or the disgrace and humiliation meted out to him. After all, the Applicant is a notorious Criminal. He is now 51 years old and has spent the greater part of his life in prison. His conviction card shows that he started committing crimes since he was 12 years old. The Respondents also presented documentary evidence to prove that the Applicant is wanted in Barbados for attempted murder. In assessing damages, I must also take this factor into consideration.

[65] This leads me to consider another issue: whether the actions taken by the Superintendent of Prisons amounted to insolent and arrogant behaviour. Counsel for the Respondents argued that if the Court finds *male fides* on the part of the Superintendent of Prisons, then the Court could award damages. Mr. Francois, however submitted that the intention of the Superintendent is irrelevant as the case is against the State. I disagree with Mr. Francois. It is important to consider whether the Superintendent of Prisons was arrogant as well as abusive and outrageous in his action. There is no such evidence on the part of the Superintendent of Prisons. As I iterated earlier in my judgment, I am of the view that the Superintendent of Prisons felt that he had a dangerous criminal on hand and he did not know how and where to confine him in his already over-populated and antiquated prison. There were too many incidents of escaped prisoners at the prisons so the Superintendent took no chances with the Applicant. He decided to shackle him and place him in solitary confinement from the inception. But I have also concluded, the shackling and solitary confinement were in breach of the Prison Rules and amounted to torture, inhuman and degrading punishment to warrant an award of damages.

[66] It is important to mention that the Constitution of Saint Lucia by section 16(2) expresses in very broad terms the discretion given to the Court for the purpose of enforcing the provisions enacted for the protection of constitutional rights. The provision gives authority to the Court to:

> "make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution."

[67] Chief Justice de la Bastide commenting on this provision in the case of Jorsingh v Attorney General of Trinidad & Tobago [supra] relevant to the enforcement of constitutional provisions – Section 16(2) expressed the view:

> "it is not readily apparent to me in making an order for payment of damages as a consequence of a breach of a constitutional right the court should be either (a) limited to providing compensation for the injured party or (b) bound necessarily by the rules which govern the assessment of damages (including exemplary damages) at common law."

[68] Chief Justice de la Bastide was somewhat concerned with the case of Reynolds v Attorney General of St. Christopher and Nevis [supra] where the Privy Council seems to have been saying that exemplary damages were nor recoverable as part of an award of damages for breach of constitutional right. I also share that view and as a consequence, refrain from making any award of exemplary damages in the instant case.

[69] In the result, I would assess damages for the shackling and solitary confinement of the Applicant. I award a global figure of $25,000.00 with costs to be taxed, if not agreed.

Indra Hariprashad-Charles
High Court Judge