

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2012/0393

BETWEEN:

RONALD GEDERON

Claimant

and

PERCY ADAMS
(Acting Superintendent/ Chief Officer of Her Majesty's Prison)

Defendant

Appearances:

Mr. John Fuller and Ms. Nelisa Spencer for the Claimant
Ms. Alicia Aska and Ms. Carla Brookes-Harris for the Defendant

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2012: June 12
August 23
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JUDGMENT

[1] MICHEL, J: On 7th June 2012 Ronald Gederon made an application without notice for issue of a writ of habeas corpus ad subjiciendum directed to the Superintendent of Her Majesty's Prison to deliver him (Mr Gederon) to the Court to state the day and cause of his being taken and detained at the prison so that the Court may examine whether such cause is legal.

[2] In his affidavit in support of his application, Mr Gederon alleged that on 20th July 1994 he was remanded in custody until 11th December 1995 when he was convicted for murder. In November 1996 he appealed to the Court of Appeal against his conviction and on 3rd February 1997 his conviction for murder was reduced to manslaughter. The Court of Appeal sentenced him to 25 years in prison for manslaughter. Neither the Court of Appeal nor the High Court made any order indicating that his time spent on remand was not to be counted (presumably in reckoning his date of release). He is advised and verily believes that, in the light of the foregoing, the time spent on remand from 20th July 1994 to 11th December 1995 should be counted in the calculation of his sentence. He has been generally of good behaviour during his time in prison and has been given a position of responsibility at the prison because of his exemplary behaviour. He is advised that he is entitled (by virtue of Rule 211 of the Prison Rules) to remission of one third of his sentence and was therefore entitled to unconditional release in September 2008.

[3] Mr Gederon concluded his affidavit by swearing that he believes that, in these circumstances, the sentence of 25 years imposed by the High Court and upheld by the Court of Appeal has since expired, that he ought to have been released in September 2008 and that his continued detention is unlawful. He therefore asked the Court to order his immediate release from Her Majesty's Prison.

[4] On 12th June 2012, the Court made an order issuing a writ of habeas corpus directed to the Superintendent of Prisons for Mr Gederon to be brought before the Court at 2 pm on that same day.

[5] The writ was issued and served on the Superintendent of Prisons on the same 12th June. At the appointed time (2 pm) the Superintendent attended at the Court and delivered Mr Gederon to the Court. The Court then ordered the Superintendent to file an affidavit in response to the affidavit of Mr Gederon within 7 days and gave leave to Mr Gederon to reply (if necessary) within 7 days of the service on him of the Superintendent's response. Both parties were ordered to file written submissions (with authorities) on or before 5th July 2012, with judgment to be rendered by the Court based on the affidavits and submissions.

[6] Superintendent of Prison, Percy Adams, filed his affidavit within the 7 days. In his affidavit he pointed out that on 11th December 1995 the High Court had convicted Mr Gederon of murder and sentenced him to death; in November 1996 Mr Gederon appealed the decision of the High Court and on 3rd February 1997, the Court of Appeal substituted a conviction of manslaughter for the murder conviction and a sentence of 25 years in prison for the death sentence; neither the High Court nor Court of Appeal mentioned that the time spent on remand was to be considered as part of Mr Gederon's sentence; the Court of Appeal did not uphold the sentence of 25 years in prison imposed by the High Court; it was the Court of Appeal which imposed the sentence of 25 years.

[7] Mr Adams concluded that Mr Gederon's prison sentence commenced from the date of its imposition by the Court of Appeal and that, taking into consideration his good behaviour in prison and the remission of one third of his sentence, Mr Gederon was entitled to be released on 3rd October 2013.

[8] In the written submissions filed on behalf of Mr Gederon on 4th July 2012, the background facts of the matter were restated and it was submitted that the Court of Appeal gave no indication as to the

date of commencement of the sentence, but that the time spent by Mr Gederon on remand (starting with the date of his arrest and detention on 20th July 1994) should be counted in the calculation of his sentence.

[9] In the written submissions filed on behalf of Mr Adams on 6th July 2012, Mr Adams's position was moved from Mr Gederon's sentence commencing from February 1997 when he was sentenced by the Court of Appeal to November 1996 when he in fact appealed to the Court of Appeal.

[10] I will proceed now to consider the statutory and judicial authorities referred to by Counsel for the parties which are relevant to the facts and circumstances of this case.

[11] The first authority to be considered is the Prison Act of Antigua and Barbuda, section 15 (1) of which provides that a person serving a sentence of imprisonment may be granted remission of such part of that sentence as may be prescribed by prison rules on the ground of his industry and good character. Mr Gederon alleged and the Superintendent admitted that the behaviour of Mr Gederon during his period of incarceration at Her Majesty's Prison was exemplary. He is therefore entitled to remission as provided for by prison rules in Antigua and Barbuda.

[12] Rule 211 of the Prison Rules of Antigua and Barbuda provides that a person sentenced to a term of imprisonment shall become eligible for unconditional release when he shall have completed two-thirds of his term of imprisonment. Mr Gederon, having been sentenced to a term of imprisonment of 25 years, is therefore eligible for release when he shall have completed 16 years and 8 months of his term of imprisonment.

[13] Section 47 (1) of the Eastern Caribbean Supreme Court Act of Antigua and Barbuda provides that “the time during which an appellant is in custody pending the determination of his appeal shall ... be reckoned as part of the term of any sentence to which he is for the time being subject”. Mr Gederon was sentenced to 25 years in prison by the Court of Appeal on 3rd February 1997, but he had been in custody pending the determination of his appeal from an unspecified date in November 1996 when he filed his appeal. Mr Gederon is therefore eligible to be released from prison when he shall have completed 16 years and 8 months from November 1996. He is therefore entitled to be released from prison as of July 2013.

[14] Byron, C.J. - in delivering the judgment of the Court of Appeal of the Eastern Caribbean Supreme Court in consolidated appeals from St. Vincent and Grenadines (numbered 8, 16, 22, 26, 29, 35, 37, 46, and 47 of 2003) – said: “As a general rule we believe that the sentencer should give the accused credit for time spent on remand since effectively the accused has already been deprived of his liberty in relation to that offence. This is by no means an inflexible rule but sentencing Judges would do well to bear it in mind.” This means that the sentencer(s) in Mr Gederon’s criminal case should have at least considered giving credit to Mr Gederon for time spent by him on remand. The two sentencers in Mr Gederon’s criminal case were Benjamin, J. in the High Court and Byron, C.J. in the Court of Appeal; none of them gave credit to Mr Gederon for the time spent by him on remand from 20th July 1994 to 11th December 1995 and I have no authority to do so because I am not the sentencer/sentencing judge.

[15] On the facts of this case, however, there is a grey area which might permit the exercise of discretion by me as the examining judge under the writ of habeas corpus. I have no discretion in the matter of Mr Gederon being eligible to be released from prison 16 years and 8 months after

November 1996; this is provided for in a binding statutory provision. I also have no discretion in crediting Mr Gederon with time spent on remand before his conviction; the credit could only have been given by the sentencing judge; this is provided for in a binding judicial authority. This leaves a period of approximately 11 months between Mr Gederon's conviction on 11th December 1995 and his filing of an appeal on an unspecified date in November 1996; the law neither requires me or prevents me from giving Mr Gederon credit for these 11 months which he served between conviction by the High Court and appeal to the Court of Appeal.

[16] All things considered, including the fact that Mr Gederon has been incarcerated for over 18 years now and has apparently been a model prisoner by virtue his exemplary behaviour whilst in prison, I will credit him with the full 11 months of his incarceration between his conviction and his appeal and order his immediate release from prison (eleven months prior to July 2013, which means August 2012).

[17] I so order.

Mario Michel
High Court Judge