

**THE EASTERN CARIBBEAN SUPREME COURT  
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE  
(Civil)**

**SLUHCV2013/0425**

**BETWEEN:**

**IN THE MATTER of the Saint Lucia Constitution Order 1978**

**and**

**IN THE MATTER of an application by MICHAEL STEPHENS  
alleging that his rights guaranteed to him under section 1(a), 3(1) (a) and 3(7) of the  
Saint Lucia Constitution Order 1978 are being or likely to be contravened in relation  
to him and for redress in accordance with section 16 of the said Constitution.**

**MICHAEL STEPHENS  
an inmate of the Bordelais Correctional Facility**

Claimant

**and**

**THE ATTORNEY GENERAL OF SAINT LUCIA**

Defendant

**Before:**

The Hon. Mde. Justice Rosalyn E. Wilkinson

High Court Judge

**Appearances:**

Mr. Andie George Counsel for the Claimant

Mrs. Brender Portland-Reynold, Solicitor General for the Defendant

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2017: June 30<sup>th</sup>.

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## JUDGMENT

- [1] **WILKINSON J.:** Mr. Stephens filed his fixed date claim form and affidavit in support on May 14<sup>th</sup> 2013. Therein he alleged that he had been unlawfully detained and thus his constitutional right to liberty had been infringed and so he sought the following relief: (i) a declaration that the sentence handed down on October 9<sup>th</sup> 1979, in criminal case no.19/1979 that he be detained in custody in the Royal Goal until the Governor General's pleasure be known was inconsistent with the common law doctrine of the separation of powers; (ii) a declaration that as a result of (i) above the sentence handed down on October 9<sup>th</sup> 1979, was also inconsistent with his rights under sections 1)(a), 3(1) (a) and 3 (7) of the **Constitution of Saint Lucia ('the Constitution')**; (iii) a declaration that section 1021 of the **Criminal Code of Saint Lucia 1957 ('the Criminal Code')** ought to be modified so as to bring it into conformity with the **Constitution**, to ensure that the lawfulness of his detention must be determined by an appropriate judicial authority and not by the State; (iv) a declaration that it was an essential characteristic of his sentence that his detention ought to have been kept under periodic review by a court; (v) a declaration that the failure to periodically review his sentence was a breach of his rights under section 1(a) and section 3(1) of the **Constitution**; (vi) that he be awarded damages to be assessed by the court for the infringement of his constitutional right, (vii) that he was entitled to the costs of his claim, and (viii) any further relief which the court deems fit in the circumstances.
- [2] Mr. Stephens also sought the following interim relief (i) that his detention be reviewed by a judge in the criminal division of the high court as soon as possible; (ii) that a report on his period of detention be provided by the authorities of the Bordelais Correctional Facility; (iii) that he be examined by a mental health practitioner at the expense of the State as soon as is practicable and that the reports be disclosed on him and or his counsel; (iv) that the reports ordered in (ii) and (iii) be made available for the review of his detention in the criminal division of the High Court.

[3] The interim relief sought is now of no moment because of the events which unfolded between 2013 and 2015 in the criminal division of the High Court and as a result of which Mr. Stephens is no longer incarcerated.

[4] The matter came on for hearing on a number of occasions before this Court but it was adjourned because Mr. Stephens' criminal suit had been brought up before a judge in the criminal division of the High Court for review and so the Court was awaiting the outcome of that review. On July 9<sup>th</sup> 2015, Cumberbatch J. delivered his judgment on sentencing and made the following orders:-

- i. The defendant shall attend and successfully complete the 6 week programme at Turning Point for his substance abuse to be addressed.
- ii. The defendant shall be released from the Bordelais Correctional Facility upon his successful completion of the substance abuse programme aforesaid.
- iii. The defendant shall upon his release attend the out-patient clinic at the Wellness Centre as directed by the medical staff therein,
- iv. The defendant shall attend all subsequent counselling classes intended to assist him with his substance abuse issues as recommended.

[5] This Court was also given sight of a further order made the said July 9<sup>th</sup> 2015, and which read as follows:

- i. IT IS HEREBY ORDERED that the Defendant shall be released into the custody of Mary Theresa Stephens and Michael Paul;
- ii. IT IS FURTHER ORDERED that the Defendant shall be enrolled at Turning Point Rehabilitation Centre forthwith.

[6] Following Cumberbatch J.'s orders there were affidavits filed by both parties. On October 28<sup>th</sup> 2016, when this matter came on for hearing a consent order was made and wherein Mr. Stephens discontinued a number of the declarations sought, a number were conceded and there remained only 3 orders of relevance to this Court's decision. The 3 orders were:

“(3) Counsel for the Defendant to file written submissions on the issue of damages on or before the 30<sup>th</sup> December 2016.

(4) That the respective parties agree that the only matters to be determined by the Court are the Claimant's entitlement to damages, the quantum of these damages and the issue of costs.

(5) That the respective Parties also agree that the Court is to determine the matters referred to in paragraph 4 above on the written submissions filed by the respective parties without the need for a trial."

### **Issue**

- [7] The sole issue is measurement of award - (a) how much compensation ought to be awarded for infringement of Mr. Stephens' constitutional right to liberty, and (b) how much general damages at common law ought to be awarded for the unlawful detention of Mr. Stephens.

### **The Evidence**

- [8] Evidence was by way of affidavits from Mr. Stephens, the Director of Public Prosecutions, Mrs. Victoria Charles-Clarke, the Director of the Bordelais Correctional Facility Mr. Verne Garde, the Deputy Director of the Bordelais Correctional Facility, Ms. Victoria Alcide, a clinical social worker Mr. Rowland Browne and reports produced by consultant psychiatrist Dr. Eve Felicien, probation officer Mrs. Alina Auguste and the former Director of the Bordelais Correctional Facility Mr. Hilary G. Herman under order in the criminal division of the High Court. There being no cross examination of any of the witnesses, Mr. Stephens' evidence stands unchallenged.
- [9] On October 2<sup>nd</sup> 1978, at approximately 4.20 p.m. at Rose Hill in the City of Castries, Mr. Stephens, a 23 years old young man, was arrested and charged with murder to wit unlawfully causing the death of Ms. Cecilia Flavier by unlawful harm contrary to section 178 of the **Criminal Code**. He was detained at Her Majesty's Prison situate in the City of Castries from October 2<sup>nd</sup> 1978.

- [10] The preliminary inquiry into the offence for which Mr. Stephens was charged took place on December 6<sup>th</sup> 1978, and he was committed to stand trial in the High Court. He remained in custody until his trial some 10 months later on October 8<sup>th</sup> 1979.
- [11] The trial commenced on October 8<sup>th</sup> 1979, before Justice Renwick and a jury and was completed on October 9<sup>th</sup> 1979. The jury returned a verdict of guilty but insane pursuant to section 1021 of the **Criminal Code**. On the said October 9<sup>th</sup> 1979, Justice Renwick ordered that Mr. Stephens be detained in custody “until the Governor’s pleasure shall be known”. There was no appeal against the sentence.
- [12] From October 9<sup>th</sup> 1979, until January 29<sup>th</sup> 2003, Mr. Stephens was incarcerated at Her Majesty’s Prison on Bridge Street, in the City of Castries, and then he was transferred and incarcerated from January 29<sup>th</sup> 2003 until his release on July 9<sup>th</sup> 2015, at the Bordelais Correctional Facility in the Quarter of Dennery. He having been arrested and detained from October 2<sup>nd</sup> 1978 at age 23 years and released at July 9<sup>th</sup> 2015, at age 60 years, Mr. Stephens was incarcerated for 36 years 9 months.
- [13] Historically as seen from Mr. Stephens’ affidavits and the social inquiry report prepared at September 4<sup>th</sup> 2014, by the probation officer, Mr. Stephens was born on March 31<sup>st</sup> 1955, and was originally from the community of Palmiste in the Quarter of Soufriere, a farming community. He assisted his father with his farming activities. When he was about 14 years of age his family moved to the City of Castries. He was the 4<sup>th</sup> child of his parents, Mr. Harry Joseph and Mrs. Judith Joseph. He recalls that his childhood was not an easy one as his father’s earnings were meagre and so there was a financial strain within the family. Mr. Stephens attended primary school though not on a regular basis because of financial difficulties first at the Soufriere Boys Primary School and then the St. Aloysius Catholic Boys Primary School in the City of Castries. He started working at about the age of 17 years, first, as a mason earning approximately \$18.00 per month,

then as a porter with LIAT (1974) Ltd. and finally as a porter on the wharf. While incarcerated he worked in the maintenance department for \$0.10¢ per day.

[14] Mr. Stephens said that prior to him being incarcerated, he remembered going to the Golden Hope Hospital once where he spent 2 weeks. It was his brothers who brought him there.

[15] Mr. Stephens is single and the father of 2 sons, Mr. Alva Flavien and Mr. Marion Stephens who were born prior to his incarceration. At the time of interview with the probation officer, he did not have any contact with his sons and had never received a visit while he was incarcerated from his first son. He said that while his siblings and himself had not been in contact, he did not have any problem with them; his sister, Ms. Margaret Joseph, her difficulty with visiting him was her inability to make transportation arrangements to the prison which is located in the Quarter of Dennery.

[16] According to the probation officer, Ms. Margaret Joseph in an interview with her stated that she loved Mr. Stephens and she and her common-law partner of over 30 years, Mr. Michael Paul, were willing to help him in any possible manner and they were willing to allow him to reside in their home at Castries.

[17] As to the matter of his health, Mr. Stephens told the probation officer that he currently suffers with throat problems because he consumed urine during periods of frustration.

[18] Mr. Stephens said that during the time that he was incarcerated that he made every attempt to stay out of trouble and serve his time in relative peace. He did not get into any trouble and he attempted to live peacefully with all persons that he interacted with.

- [19] Despite the nature of the verdict ‘guilty but insane’, during the time that Mr. Stephens was incarcerated, he was not visited by any mental health practitioners nor evaluated in any way. Further, during that time, there was no review of his sentence by any court.
- [20] According to Mr. Stephens he has reflected on his actions of October 2<sup>nd</sup> 1978, and deeply regrets what transpired. He expressed remorse about his actions. He still remembers the day and often wishes that he could undo what he had done. Over the years, he did not remember much about his trial and what the verdict was, he only knew that he was sent to prison but was not told for how long he would be incarcerated. He understood that the jury found him insane at the time that he committed the murder and he understood that the judge had given him a sentence which meant that he was to be in prison at the Governor’s pleasure.
- [21] At May 2013, Mr. Stephens with the assistance of counsel filed this suit. 3 months after the filing of his suit, for the very first time, at August 14<sup>th</sup> 2013, and September 13<sup>th</sup> 2013, a psychiatric evaluation was conducted of Mr. Stephens by consultant psychiatrist Dr. Eve Felicien.
- [22] Mr. Stephens in his affidavit filed September 1<sup>st</sup> 2016, this being just over 1 year since his release, said that since his release, he has been living with his sister, Ms. Margaret Joseph and her common-law husband because he is unemployed and it has been difficult to get a job after spending so much time in prison. He does not want to be a burden on his sister, Ms. Joseph and her common-law husband, Mr. Michael Paul. He is happy to be released from prison but he is finding it difficult to go from day to day with no income after being incarcerated for so long.

### **Life Incarcerated**

- [23] Mr. Stephens’ time incarcerated was spent between 2 different prison locations. First, he was incarcerated from October 2<sup>nd</sup> 1978 to January 29<sup>th</sup> 2003, in Her Majesty’s Prison in the City of Castries and then on January 29<sup>th</sup> 2003, he was

transferred to the new prison, the Bordelais Correctional Facility where he remained from January 29<sup>th</sup> 2003, until the order of July 9<sup>th</sup> 2015.

- [24] Mr. Stephens described his life in prison in some detail. At Her Majesty's Prison when he first arrived he was the only person in a cell for a few months and then more persons were placed in the cell together with him. At some point, there were 4 to 6 persons in the cell at a time. They slept on sponges. At the time the prison was full of bugs and insects and so it was very uncomfortable. Eventually they were provided with bunk beds in the cell. Although there were several persons in 1 cell, there was a single bucket in a corner for prisoners to urinate and 'poo' in. It was an uncomfortable situation. They showered in the prison yard.
- [25] On a daily basis Mr. Stephens and the other prisoners were let out of their cells and led into the prison yard at 6.00 a.m and put back into their cells at 4.00 p.m. There was not much to do in the yard but sometimes Mr. Stephens did prison work like carrying sand and blocks but overall he spent most of his time by himself.
- [26] According to Mr. Stephens, when he first entered Her Majesty's Prison, it was not crowded but over the 20 years that he spent there, the prison became very crowded. He describes the overall conditions of Her Majesty's Prison as very bad and a very sad place. Prisoners made several attempts to burn down the prison by lighting the sponges on fire. There were 2 major fires at Her Majesty's Prison during his time.
- [27] On the move to the Bordelais Correctional Facility, Mr. Stephens was more comfortable but the cells were overcrowded, there were 6 prisoners placed in a cell built to accommodate 4 prisoners. Instead of a bucket, there was a toilet in the cell and sometimes the prisoners had to use the toilet with everyone in the cell watching.



[28] Mr. Stephens said that although Bordelais was more comfortable that Her Majesty's Prison, he again spent a lot of time by himself. He was getting older and did not have much hope of being released from prison. He saw most people come and leave the prison and after a while he had no idea how long he was meant to stay in prison. He had lost hope that he would ever be released and thought that he would stay in prison for the rest of his life. Life in prison was especially hard because he did not know if he would ever be released. Over the years he did not get any family visits and so he spent most of his time feeling sad.

[29] According to Mr. Stephens, during his time incarcerated, he faced harassment from other prisoners but overall the prison officers were not unkind to him.

[30] While at the Bordelais Correctional Facility a few years ago, a clinical social worker, Mr. Rowland Browne began speaking with him and this made him feel better having someone to talk to. They spoke about his situation, a situation which he considered to be hopeless because he had been in prison for so long. Mr. Browne promised to help him. Sometime in 2012, attorney-at-law, Mr. Ermin Moise visited him, asked him some questions and promised to return to see him. Mr. Moise returned a few weeks later with a promise to help him by filing a claim so that he could be eventually released. He said that Mr. Moise explained a lot of things to him which he did not know before.

[31] Mr. Stephens said that from the time he had his discussion with the clinical social worker, Mr. Browne, he began to feel some hope of being released.

### **The Clinical Social Worker**

[32] Mr. Rowland Browne said that as a clinical social worker at the Bordelais Correctional Facility, his work entailed diagnostic assessments of prisoners under his care and this also included making contact with the prisons' families with a view to assisting with reintegration of prisoners into society upon their release. Mr. Stephens would not normally have been on his list, but one of the prison officers asked him one day to look into the situation of a prisoner who had been

incarcerated for a very long time as he seemed lost in the system. He went in search and found Mr. Stephens in his cell. Initially on interaction he found Mr. Stephens to be no more than a “shadow”, a person who kept out of everyone’s way and mostly to himself, he was socially alienated and spent most of his time in his cell. He came out of his cell for basic necessities like meals. He was very respectful of other prisoners and prison officers tended to be very kind to him.

[33] Mr. Stephens he observed had a very hard time believing that anyone would show an interest in his situation. He initially did not open up to Mr. Browne as he did not hold out hope that his situation could change. He said to Mr. Browne that he had seen so many people come into the prison and eventually be released that he lost hope of ever being released. He eventually started to share with Mr. Brown a little about his life, his 2 sons, his life and circumstances in prison. Mr. Browne promised to help him and to try and find an attorney-at-law to help him.

[34] Mr. Browne attempted to reach Mr. Stephens’ family and eventually made contact with Mr. Paul, the common-law husband of Mr. Stephen’s sister, Margaret Joseph. Initial interaction with Ms. Joseph was difficult.

[35] Mr. Browne spoke with a number of attorneys-at-law but none seemed interested in assisting Mr. Stephens until he spoke with Mr. Ermin Moise who agreed to assist. He knew Mr. Moise to have visited with Mr. Stephens in prison.

[36] Mr. Browne has met Mr. Stephens since his release walking around in the City of Castries and spoken with him. Mr. Browne was very pleased to see him. Compared to the person who was in prison, Mr. Browne observed that Mr. Stephens was much improved. He was much more interactive and when he spoke with him, he seem happy to have his freedom, he had reconnected with his sons. Mr. Stephens informed him that he was living with his sister and her common-law husband because he was still unemployed.

### **The Psychiatric Evaluation**

- [37] The Court was provided with a psychiatric evaluation report prepared by consultant psychiatrist, Dr. Eve Felicien. Dr. Felicien met with Mr. Stephens on 3 occasions after he filed this suit. She met with him on August 14<sup>th</sup> 2013, September 13<sup>th</sup> 2013, and approximately 1 year later, August 6<sup>th</sup> 2014. She states that she conducted the evaluation pursuant to the order of Cumberbatch J.
- [38] Dr. Felicien records that historically, Mr. Stephens had been seen by a mental health team at the Golden Hope Hospital but his file was not found upon a search of the archives, only an index card was found. He had not been placed on a mental health care list for the prior 10 years while at the Bordelais Correctional Facility.
- [39] Dr. Felicien on her mental status examination found Mr. Stephens to be presently free from acute symptomatology of mental illness. She did find that there was a history of cannabis use, even while incarcerated. For this reason only, she made the recommendation that she did.
- [40] Dr. Felicien recommended that Mr. Stephens should complete a substance abuse rehabilitation program before release into the community due to his history of using cannabis when it became available even at the Bordelais Correctional Facility. She recommended that Mr. Stephens should stop all use of cannabis. Upon completion of the substance abuse rehabilitation programme then Mr. Stephens should be followed up periodically by a mental health team for approximately 2 years after release into the community.

### **The Director of Corrections Report**

- [41] The former Director of Corrections at the Bordelais Correctional Facility, Mr. Hilary G. Herman, at July 23<sup>rd</sup> 2014, prepared a report about Mr. Stephens. He recorded that Mr. Stephens had been remanded to Her Majesty's Prison on November 16<sup>th</sup> 1978, for the offence of murder and that he began serving his sentence at Her

Majesty's Prison. He was transferred to the Bordelais Correctional Facility on January 29<sup>th</sup> 2003, from Her Majesty's Prison.

[42] The Director said that Mr. Stephens while incarcerated participated in 2 programs, a self-esteem workshop at July 2011, and a "Be smoke free" programme at July 10<sup>th</sup> 2013. He noted that Mr. Stephens voluntarily participated in these workshops.

[43] The Director said that during his entire incarceration at the Bordelais Correctional Facility that Mr. Stephens had experienced no disciplinary sanctions nor had he been the subject of any disciplinary proceedings with reference to any Prison Rules violations. Mr. Stephens' behaviour he said could be characterized as very cooperative and unobtrusive.

[44] The Director described Mr. Stephens as being of a very reserved personality, and a person who made every attempt to stay out of trouble and endeavoured to serve his time in relative peace and quiet. He developed a harmonious relation with both staff and fellow inmates.

### **Law**

[45] On this assessment the starting point is the **Criminal Code** under which Mr. Stephens was sentenced. It provides:-

"1020. Where, in any 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 action at the time when the act was done or omission was 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 was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or omission.

1021. (1) Where any person is found to be insane under the provisions of section 1019, or has a special verdict found against him, under the provisions of the 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 the Governor's pleasure shall be known.

(2) The judge 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 person of unsound mind under the laws of this Colony for the time being in force for the care and custody of persons of unsound mind, or otherwise as he may think proper." (My emphasis)

[46] The Court believes that Justice Cumberbatch's judgment on sentencing in **SLUCRD1979/0019 THE QUEEN V. MICHAEL STEPHENS** provides the interpretation of section 1020 of the **Criminal Code**. There Cumberbatch J. said:

"[8] In **Greene Browne v. The Queen** Privy Council Appeal No. 3 of 1998 the Board considered and adjudicated on the constitutionality of the provision 'detention during Her Majesty's pleasure' in the context of the **Children and Young Persons Act 1933**. The Board approved and applied dictum of Lord Browne-Wilkinson in **Regina v. Sec of State for the Home Dept ex parte Venables and Thompson** (1998) A.C. 407 and found the prevailing view was that this is a wholly discretionary sentence. The underlying policy is to maintain flexibility and to enable the duration of the defendant's detention to take into account his welfare, the desirability of reintegrating him into the society and his developing maturity through his formative years. It was however also accepted that punishment was a part of the sentence.

[9] ....

[10] The Court is reminded of the peculiar provisions of section 1020 of the **Criminal Code 1957** aforesaid which on one view would distinguish it from the provisions of the **Children and Young Persons Act 1933** the construction of which was the object of the Board's consideration in the **ex parte Venables** and **Green Browne** decisions.

11] That section provides inter alia that the special verdict herein must be given by the jury upon them finding that the defendant did the act alleged but '**...was insane, so as not to be responsible, according to law, for his actions at the time when the act was done...**'

[12] The question therefore arises as to whether the defendant can be punished for committing an act whilst insane and not responsible for his actions according to law. In other words could the court read into or so interpret the provisions of s.1020 of the **Criminal Code** to find a punitive intention in the order for safe custody at the Governor General's pleasure.

[13] It is common ground that the purposes to be served by punishment are retributive, deterrent, preventative and rehabilitative. This defendant by the jury's verdict was at the time of commission of the offence insane and hence not responsible for his actions according to law. Thus to apply those principles or seek to satisfy those purposes in respect of this defendant would in my view be absurd. Accordingly I find no punitive intention in the order made herein pursuant to the provisions of section 1020 of the Criminal Code 1957.

[14] ....

[20] I have already decided aforesaid that the defendant cannot be subjected to any form of punishment and as such I find that notwithstanding his detention at the Bordelais Correctional Facility he does not fit into the definition of "prisoner" within the provision of the **Convicts License Act**. Accordingly, the court does not concur with crown counsel's submission for the defendant to be released on license." (My emphasis)

- [47] The take away from Justice Cumberbatch's judgment is that based on the special verdict pursuant to section 1020 of the **Criminal Code**, there could be no punitive sanction as part of the incarceration of Mr. Stephens and the Governor General's pleasure merely meant that there was no prescribed time-frame for which Mr. Stephens was to be incarcerated, it was discretionary.
- [48] Mr. Stephens has grounded his relief on the **Constitution** which at section 1 provides that every Saint Lucian is entitled to certain fundamental rights and freedoms including the right to liberty and by section 3, that liberty could only be circumscribed by certain described instances such as in Mr. Stephens' case, where he was found guilty of an offence but insane when he committed the offence - section 3(7).
- [49] It was also not contested that the **Constitution** at section 16 provides that Mr. Stephens could seek relief by way of a variety of declarations and orders to support an enforcement of his rights under the **Constitution**.

[50] Moving on to the assessment of compensation for breach of Mr. Stephens' constitutional right to liberty, and damages at common law for unlawful detention, it is agreed between counsel that Mr. Stephens is entitled to both compensation and damages under the 2 limbs. The dispute between the parties is (i) for how long Mr. Stephens' unlawful detention ought to be estimated to be in all the circumstances? and (ii) the rate of both compensation and damages to be allocated for the period calculated to be the unlawful detention?

[51] On the issue of whether or not this Court ought to award a sum of compensation for infringement of Mr. Stephens' constitutional right to liberty and if this Court found that it should do so, in this instance there is already agreement on the infringement, how much should such an award be, the Court considered and found instructive the principles guiding such an award in **Fuller (Doris) v. Attorney General**<sup>1</sup>, **Christopher Lezama & Ors. v. Attorney General of Trinidad & Tobago**<sup>2</sup>, **The Attorney General of Trinidad & Tobago v. Siewchand Ramanoop**<sup>3</sup> and **Everette Davis v. The Attorney General of St. Christopher and Nevis**<sup>4</sup>. The cases say that once the constitutional breach has been found by this Court, in Mr. Stephens' case the unlawful detention, then this Court must uphold the **Constitution** and vindicate Mr. Stephens' constitutional right by way of declaration/s or order/s or compensation or it could be a combination. This Court believes that Lord Nicholls of Birkenhead in **The Attorney General of Trinidad & Tobago v. Siewchand Ramanoop**<sup>5</sup> summarises the position when he said:-

"18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section

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<sup>1</sup> (1998) 56 WIR 337

<sup>2</sup> HCA Civ.2098 of 2002

<sup>3</sup> 2005 UKPC 15 (23 March 2005)

<sup>4</sup> SKBHCV 2013/0220

<sup>5</sup> Ibid.

14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily substantial in size may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not the object...." (My emphasis)

[52] As to the actual figure for award of compensation per day for infringement of the constitutional right, there appears to be a wide variance. An example of the variance is seen where in **Everette Davis v. The Attorney General of St. Christopher and Nevis**<sup>6</sup> Ramdhani J(ag) awarded \$30,000.00 for 230 days (approximately \$130.00 per day) and Remy J in **Mark Smith & Anr. V. The Attorney General of Antigua and Barbuda**<sup>7</sup> awarded \$10,000.00 to each defendant for 143 days (approximately \$70.00 per day). This Court will use the average of \$100.00 per day.

[53] On the issue of general damages at common law for unlawful detention, both counsel referred the Court to **Everette Davis v. The Attorney General of St. Christopher and Nevis**<sup>8</sup> amongst others. The Court believes that this case presents a very good summary of the distilled principles and analysis to be applied for a rate to be applied to common law damages for unlawful detention (without consideration of job loss or prospects) and adopts its principles. The Court will therefore use the average of \$500.00 per day for general damages at common law for unlawful detention.

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<sup>6</sup> Ibid.

<sup>7</sup> ANUHCV 2010/0521

<sup>8</sup> Ibid.



## Findings and Analysis

- [54] This is indeed a most unfortunate case and it is a clear example of how people can fall through the cracks and get lost in the prison system. Mr. Stephens entered prison as a young man of 23 years and left as a middle aged man of 60 years with no skills. It was the prison officer who cared enough about Mr. Stephens' plight to ask Mr. Browne to look into Mr. Stephens' case that got the ball rolling. Mr. Browne was also concerned enough and he was finally able to find an attorney-at-law who also cared enough about Mr. Stephens' plight. Both attorneys-at-law Mr. Ermin Moise who commenced this matter and Mr. George who brought it to conclusion must be recognized and commended for their efforts in trying to ensure that the laws of Saint Lucia were upheld and in doing so helped a person who felt hopeless until his conversations with Mr. Browne and Mr. Moise.
- [55] After the consent order was made on October 23<sup>rd</sup> 2016, it was not contested the declarations sought and which were that:- (i) it was an essential characteristic of Mr. Stephens' sentence that his detention ought to have been kept under periodic review by the court and (ii) the failure to periodically review Mr. Stephens' sentence was an infringement of his rights under sections 1(a) and 3(1) of the **Constitution**, and (iii) that Mr. Stephens was entitled to damages and costs. Notwithstanding that the court will make the declarations at (i) and (ii), the Court believes that it ought to set out a couple of its observations.
- [56] Against the background of Cumberbatch J.'s judgment that there could be no punitive sanction attached to the sentence of Mr. Stephens, then in regard to the first relief sought and which is that it was an essential characteristic given the special verdict under which Mr. Stephens was committed that he ought to have been kept under periodic review by a court and it being agreed by the Attorney General that same ought to have happened, this Court believes that Mr. Stephens ought to have been either placed in the Golden Hope Hospital or if incarcerated in Her Majesty's Prison and the Bordelais Correctional Facility, then the conditions and standards including treatments under which he would have been detained at

the Golden Hope Hospital, ought to have been applied at Her Majesty's Prison and the Bordelais Correctional Facility so far as he was concerned. Indeed the **Criminal Code** section 1021 (2) provides that in the instance of such a special verdict the Governor General was to order that Mr. Stephens be dealt with as a person of unsound mind under the laws of Saint Lucia.

[57] Dr. Felicien in her report stated that there was found in the archives of the Golden Hope Hospital an index card pertaining to Mr. Stephens. She never says what was written on the card. The card is therefore on no moment in this Court's considerations. The only status the Court therefore has of Mr. Stephens' mental health between October 9<sup>th</sup> 1979, and July 9<sup>th</sup> 2015, (3 months short of 36 years) is from the rather recent report of Dr. Felicien made at August 7<sup>th</sup> 2014, and wherein she found Mr. Stephens to be at that time free for acute symptomatology of mental illness and there was an observation that he had a history of cannabis use.

[58] The State failed miserably in how it was to provide mental health care to Mr. Stephens pursuant to the **Criminal Code** section 1021(2). For consideration here also is Mr. Stephens' description of the deplorable conditions of Her Majesty's Prison where he spent the majority of his incarceration before transfer to the Bordelais Correctional Facility and at the Bordelais Correctional Facility where though the conditions were better, he was subjected to matters of overcrowding in the cell and once again failure to provide mental health care.

[59] Moving on to the assessment of what period should be considered to be the unlawful detention of Mr. Stephens, the Solicitor General in her submissions at paragraph 43 urged on the court that with Mr. Stephens continued use of cannabis that it begs the question that had there been continuous review whether he would have been released after the last entry on the index card (nothing revealed about the card details) and whether there would have been need for a rehabilitation program, and for how long would he have been required to undergo that program? She further submitted that the fact that Mr. Stephens enrolled in the "Be Smoke

Free” program in 2013, was indicative of the fact that he knew he had a problem with cannabis and was still using cannabis.

[60] This Court does not deal in speculation. Since there were no details on the index card and no mental health checks made on Mr. Stephens, this Court believes that then the next best thing is to look at the evidence of those who observed Mr. Stephens on a day to day basis or could read his record at the prison over time and in this regard, who better than the former Director of Corrections, Mr. Hilary G. Herman. The former Director’s report is indeed instructive of Mr. Stephens’ behaviour for at least the period 2003 to 2014, 11 years. Not a single infraction against prison rules. Not a single comment about any mental health issues being exhibited. He had a harmonious relationship with both staff and fellow inmates. Indeed the former Director’s report supports Mr. Stephens’ own account on how he behaved and conducted himself while incarcerated. The Court believes that it would not be far off to describe Mr. Stephens as a model prisoner.

[61] A question arising about Mr. Stephens’ cannabis use, is this, Mr. Stephens it is all agreed was in prison, no family visits, no evidence of visits by friends, did not the Director of Corrections and those in authority under him in operating the Prison not have a duty to ensure that illegal drugs did not enter the prison?

[62] Wikipedia describes cannabis as: “Cannabis also known as marijuana among several other names, is a preparation of the cannabis plant intended for use as a psychoactive drug or medicine.” Today, it is well recorded in the public domain that there are 26 States and the District of Columbia in the United States of America which currently have laws broadly legalizing marijuana in some form. The forms being either recreation or medicinal.

[63] The bottom line is this, even if Mr. Stephens was using cannabis from time to time, he remained a model prisoner from at least January 29<sup>th</sup> 2003, to July 23<sup>rd</sup> 2014, when the former Director of Corrections wrote his report, and between July 23<sup>rd</sup> 2014 and July 9<sup>th</sup> 2015, when he was released pursuant to Cumberbatch J.’s

order, this Court did not receive any evidence that he continued to be anything but a model prisoner.

[64] In conclusion, this Court can only deal with the facts before it. For the reasons cited above, the Court will use January 29<sup>th</sup> 2003, as the start date and July 8<sup>th</sup> 2015, as the end date since Mr. Stephens was released on Jul 9<sup>th</sup> 2015, for the calculation of the awards of both compensation for infringement of Mr. Stephens' constitutional right to liberty at \$100.00 per day and general damages at common law for unlawful detention at \$500.00 per day. The Court fixes the number of days including leap years at 2004, 2008 and 2012 at 4544 days.

[65] **Court's Order:-**

1. The Court declares that it was an essential feature of Mr. Stephens' special verdict and subsequent sentence that his detention ought to have been kept under periodic review by a court.
2. The Court declares that the failure to periodically review Mr. Stephens' sentence was a breach of his rights constitutional rights pursuant to sections 1(a) and 3(1) of the **Constitution of Saint Lucia**.
3. Mr. Stephens is awarded compensation at the rate of \$100.00 per day for a total award of \$454,400.00 for breach of his constitutional right to liberty for the period July 29<sup>th</sup> 2003 to July 8<sup>th</sup> 2015.
4. Mr. Stephens is awarded general damages at the rate of \$500.00 per day for a total award of \$2,272,000.00 for unlawful detention at the Bordelais Correctional Facility for the period July 29<sup>th</sup> 2003 to July 8<sup>th</sup> 2015.
5. Mr. Stephens' is awarded interest at the rate of 6 percent on both sums awarded from May 14<sup>th</sup> 2013 until payment in full.

6. Prescribed costs up to the stage of pre-trial review is awarded to Mr. Stephens.

**Justice Rosalyn E. Wilkinson**  
High Court Judge

**By the Court**

**Registrar**