IN THE SUPREME COURT OF BELIZE, A. D. 2018

CLAIM NO. 411 OF 2018

IN THE MATTER of a Claim pursuant to Section 20 of the Belize Constitution

IN THE MATTER of sections 3, 5, 6, 7 and 10 of the Belize Constitution

AND IN THE MATTER of section 56 of the Supreme Court (Civil Procedure) Rules 2005

BETWEEN:	**(HILLAIRE SEARS**	**CLAIMANT**
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	(AND	
	(	
	(PAROLE BOARD	**FIRST DEFENDANT**
	(MINISTRY OF NATIONAL SECURITY	**SECOND DEFENDANT**
	(ATTORNEY GENERAL	**THIRD DEFENDANT**

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Ms. Leslie Mendez of Marine Parade Chambers for the Claimant

Ms. Leonia Duncan, Senior Crown Counsel in the Attorney General's Ministry for the Defendants

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J U D G M E N T

Facts

1. The Claimant, Hillaire Sears, was sentenced to 25 years imprisonment at the Belize Central Prison, Kolbe Foundation after being convicted of Manslaughter on December 12th, 2002. Ten years later on December 21st, 2012 he was granted parole on a number of conditions, including a condition not to indulge in the illegal use, sale, possession, distribution, transportation, or be in the presence of controlled drugs. The affidavit evidence of the Chief Executive Officer of the Belize Central Prison reveals that on April 3rd, 2014 Mr. Sears reported to work at the prison's medical center where he had been offered and accepted employment as an Emergency Medical Technician. The Officer in Charge received information about a suspicious transaction that was about to take place between Sears and another inmate. This inmate requested that Mr. Sears attend to his right arm. Shortly after, the inmate was found with a package containing suspected cannabis. Hillaire Sears was then approached and was informed that a search of his person would be conducted and he was asked to give a urine sample for drug analysis. He refused both and began running toward the kitchen. He was pursued and he eventually complied with the orders given to him and agreed to give

the urine sample, which came out positive for drug use. The affidavit evidence of Mr. Sears is that he was detained by prison guards at a holding cell and kept there without any hearing or explanation until May 28th, 2014, when he was informed that his parole had been revoked due to his breach of one of his parole conditions. Mr. Sears has brought this constitutional motion against the parole board alleging breaches of his fundamental rights and seeking declaratory relief. He also seeks immediate release and damages for unlawful detention. The Parole Board resists the application, stating that his detention was lawful and urges this court to dismiss his application. The Court now decides this matter and renders its decision.

Issue

2. Did the Parole Board unlawfully revoke Mr. Sear's parole? Is he entitled to the relief sought?

Claimant's Submissions in support of Application

3. Ms. Mendez argues on behalf of the Claimant that he was detained by prison guards without any lawful authority in clear violation of Section 5 of the Constitution of Belize. The Parole Board arbitrarily revoked the

Claimant's parole without affording him an opportunity to be heard or giving him the chance to engage in any rehabilitation programs. She further argued that the Defendants' arbitrary deprivation of the Claimant's personal liberty deprived him of his right to freedom of movement guaranteed by Section 10 of the Constitution, and that since his detention, the Claimant has been subjected to inhumane and degrading prison conditions including but not limited to access to basic necessities, in clear violation of Sections 3 and 7 of the Constitution. Learned Counsel referred to Rule 266 of the Prison Rules ('the Rules') Chapter 139 Subsidiary Laws of Belize which regulated the detention and revocation of the Claimant's parole. Under these Rules, the Parole Board was given the power to release on parole any offender eligible for parole, as well as the power to decided remission, suspension, variation of any condition of parole, or imposition of any additional condition of parole:

> *"266(1) The Board shall have the power to deal with and to decide as to -*
>
> > *(a)The release on parole of any offender eligible for parole under these rules;*

(*b)The remission, suspension or variation of any condition of parole of any offender, or imposition on any such offender of any additional condition of parole.*

(2) In considering any case for parole under this Part, the Board may request any person to provide information or to make representations which in the Board's opinion may be of assistance in reaching a decision including any information or representation concerning

(a) the safety of the public, and of any person or class of persons who may be affected by the release of the offender;

(b) the welfare of the offender and his reformation and training in the prison in which he is detained;

(c) the sentence imposed by the court and any comments by the court when such sentence was imposed;

(d) any representation made by the Superintendent of Prisons or the Commissioner of Police;

> *(e) any representation made by the offender or any person acting on his behalf;*
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> *(f) the probable circumstances of the offender if released, especially the likelihood of his peaceful reintegration into society;*
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> *(g)the likely response of the offender to supervision by the parole officer;*
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> *(h) the reasonable probability that the offender will live and remain at liberty without violating the law;*
>
> *(i) any other information or representation which the Board may think fit."*

Referring to Rule 272, that rule states that the parole may be revoked for "*reasonable cause*".

> *"272. The Board may for any reasonable cause at any time direct in writing that a parolee be recalled. On the giving of the direction, the parole order shall be deemed to be revoked, and the parolee may be arrested without a warrant, by any police officer, prison officer or a*

parole officer and shall continue to serve his sentence unless he is again released on parole by the Board."

"274. (1) Every parolee who contravenes or fails to comply with any condition of his parole commits an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment; and in addition, the parolee may be required by the court to serve the remaining part of his sentence.

(2) Where a parole or prison or police officer believes on reasonable grounds and has sufficient evidence that a parolee has committed a breach of any condition of his parole he may arrest the offender without a warrant.

(3) The conviction and sentencing of any parolee under this Rule shall not limit the power of recall conferred by this Part.

Ms. Mendez submits that four principles may be extracted from this legislative regime:

(1) The Board clearly had the power to make decisions affecting a person's liberty;

(2) The breach of a condition of parole constituted an offence which did not automatically revoke a parolee's parole;

(3) Parole could be revoked by the Parole Board for "*reasonable cause*". A breach of a condition may or may not be reasonable cause to revoke parole;

(4) The Board may vary or impose additional conditions of the parole of a prisoner.

Right to Personal Liberty

4. Ms. Mendez argues on behalf of the Applicant that the right to personal liberty is one of the oldest recognized rights recognized in the Magna Carta since 1215, and enshrined in Section 5 of the Constitution of Belize. After setting out Section 5 in her arguments, Ms. Mendez then submits that on April 3rd, 2014, the Defendants unlawfully detained the Claimant for a total of 55 days in a manner that was not authorized by any law, and in clear contravention of Section 5 of the Constitution of Belize. Learned Counsel for the Applicant then referred to Rule 274 which authorizes arrest of a parolee without a warrant for reasonable cause. She further

argues that the section provides that the purpose of this arrest would clearly be to charge and bring the parolee before a court of summary jurisdiction, and that this Rule does not authorize any officer to arrest the parolee and detain him indefinitely. A charge for this offence attracts the same protections under Sections 5 and 6 of the Constitution where a person charged with a summary or indictable offence would have to be brought before a court no later than 48 hours after being charged. As this was not done with Mr. Sears, Ms. Mendez characterizes the Claimant's detention (during this period of 55 days from the 3rd April, 2014 to 28th May, 2014) as arbitrary and unlawful. She further contends that the Claimant's detention continued to be unlawful despite the written direction (from the Board) to revoke his parole, because that decision to revoke was not made pursuant to Rule 272, and the failure to afford Mr. Sears an opportunity to be heard prior to the revocation of his parole violated his rights under Sections 5 and 6 of the Constitution for breach of procedural fairness. While the Board is empowered to revoke parole for reasonable cause, decisions from the Caribbean Court of Justice, the House of Lords and the European Court of Human Rights have all accepted and reiterated that the principal consideration in determining

whether or not to grant or revoke parolee is whether the parolee poses a risk to the public. The Parole Board adopted a mechanical approach of automatic revocation upon finding that there was a breach of one of the conditions of parole therefore that decision was not pursuant to Rule 272 and was unlawful and unconstitutional.

5. Ms. Mendez goes on to argue that the House of Lords case of ***Smith, R (on the application) Parole Board*** sets out key principles which are elements of procedural fairness which must be employed by a Parole Board in the execution of its duties:

   i) There is a common law duty to be procedurally fair.

   ii) Even if important facts are not in dispute, they may be open to explanation or mitigation, or may lose some of their significance in the light of other new facts. While the Board's task certainly is to assess risk, it may well be greatly assisted in discharging it (one way or the other) by exposure to the prisoner or the questioning of those who have dealt with him. The prisoner should have the benefit of a procedure which fairly reflects on the facts of his

particular case, the importance of what is at stake for him as for society.

iii) The Parole Board is concerned, and concerned only, with the assessment of risk to the public. It must "*balance the hardship and injustice of continuing to imprison a man who is unlikely to cause serious injury to the public against the need to protect the public against a man who is not unlikely to cause such injury*" *ibid.* The sole concern of the Parole Board is with risk, and it has no role at all in the imposition of punishment: ***R v. Sharkey*** [2000] 1 WLR 160, 162-163, 164.

iv) The freedom enjoyed by a discretionary life sentence prisoner on license is *"more circumscribed in law and more precarious than the freedom enjoyed by the ordinary citizen"* but is, nonetheless, a state of liberty for the purposes of article 5 of the Convention: ***Weeks v United Kingdom*** (1987) 10 EHRR 293, para. 40.

In ***Smith***, the House of Lords held that the right to personal liberty had been infringed by the failure of the Parole Board to offer them an oral

hearing. Ms. Mendez submits that the reasoning of the Board explains the importance of being heard, and she cites Lord Bingham of Cornhill:

> *"While this was a breach of his licence conditions, it is not clear what risk was thereby posed to the public which called for eight months' detention. His challenge could not be fairly resolved without an oral hearing and he was not treated with that degree of fairness which his challenge required*."

Ms. Mendez then draws the court's attention specifically to para. 46 of Lord Bingham's speech:

> *"The resort to class A drugs by the appellant Smith clearly raised serious questions, and it may well be that his challenge would have been rejected whatever procedure had been followed. But it may also be that the hostels in which he was required to live were a very bad environment for a man seeking to avoid addiction. It may be that the Board might have concluded that the community would be better protected by encouraging his self-motivated endeavours to conquer addiction, if satisfied these were genuine, than by returning him to prison for 2 years with the prospect that, at the end of that time, he would be*

released without the benefit of any supervision. Whatever the outcome, he was in my opinion entitled to put these points at an oral hearing. Procedural fairness called for more than consideration of his representations on paper, as one of some 24 such applications routinely considered by a panel at a morning session."

Ms. Mendez points out that in the case of Smith cited above, the House of Lords found that the right to personal liberty of both appellants was breached on the basis that they had not been afforded an oral hearing. She argues that in the instant case, Mr. Sears was afforded no opportunity whatsoever to be heard and as Mr. Murillo mentioned, that is not the practice of the Parole Board. Ms. Mendez submits that by depriving Mr. Sears of any opportunity to be heard and by failing to take into account any consideration other than the sole breach of a condition, the Parole Board arbitrarily deprived Mr. Sears of his constitutional right to personal liberty under Section 5 of the Constitution.

6. Ms. Mendez further argues that the violation of procedural fairness by the Parole Board also violated the Claimant's rights under Section 6 of the

Constitution of Belize. She relies on the Caribbean Court of Justice in ***Attorney General of Belize v. Philip Zuniga et. al.*** CCJ Appeal No. CV8 of 2012 which stated that the protection of the law and the rules of law are inextricably linked so that principles of natural justice and fundamental fairness are encompassed within Section 6 of the Constitution of Belize.

7. Ms. Mendez also raises the issue of the prison conditions in which Mr. Sears was kept which she says further aggravated the breaches of his constitutional rights. These conditions constitute inhuman and degrading punishment in breach of section 7 of the Constitution:

    i. Lack of recreation time;
    ii. Open bathroom lacking any privacy;
    iii. Limited availability of drinking water;
    iv. Foul smell from sewer system;
    v. Required to eat while enduring foul smell;
    vi. Hot and cramp conditions;
    vii. Limited natural light and inadequate ventilation;
    viii. No mattress; sleeping on hard floor
    ix. Unreasonable and excessive restrictions on family visits

The question in deciding whether prison conditions violate section 7 of the Constitution was articulated in ***Darrin Roger Thomas v. Cipriani*** Privy Council Appeal No. 60 of 1998:

> *"The question for consideration is whether the conditions in which the Claimant was kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amount to treatment which went beyond the harsh and could properly be described as inhuman and degrading."*

Ms. Mendez submits that the cumulative effect of the conditions listed exceeded the unavoidable level of suffering in detention, resulting in inhuman and degrading punishment.

8. Learned Counsel also contends that the deprivation of the Claimant's liberty was not done in accordance to the law and was as such completely unjustifiable and unlawful. This breached the Claimant's rights to freedom of movement under section 10 of the Constitution as it limited the Claimant's right to move freely. While the right to move freely is not absolute, any limitation must be in accordance to a law that is justified under the exceptions provided for under the subsections to section 14 of

the Belize Constitution, limitations which are justified as necessary for the peace and good order of Belize. In conclusion, the Claimant therefore seeks the following relief:

(1) An order that the Claimant be released forthwith;

(2) Damages; and

(3) Vindicatory damages.

Respondent's Submissions resisting Application

9. Ms. Duncan contends on behalf of the Respondent that this claim is an abuse of process of the court. She argues that there were alternative remedies available to the Claimant and that the Claimant could and ought to have brought a claim in private law for false imprisonment and/or judicial review of the decision of the parole board. The alleged conditions he complained of are now academic as he speaks of conditions whilst being placed in Tango 10 on April 4th, 2014 almost 5 years ago. The remedy sought by the Claimant of immediate release is a prerogative order which ought properly to be sought by way of judicial review, where leave would have been required to be sought. Ms. Duncan argues that the courts have continually pronounced that the right of persons to apply to the Supreme Court for redress under Section 20 of the Constitution must not be abused by the bringing of claims for

constitutional redress where a normal tort claim would suffice. She cites ***Harrikissoon v the AG of Trinidad and Tobago*** (1979) 31 WIR 348 where the Privy Council stated that not every failure by a public authority entails a contravention of a human right to justify a constitutional claim. In the words of Lord Diplock at page 349:

> ***"The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious****. The right to apply to the High Court under s 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is* ***an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action.*** *In an originating application to the High Court under s. 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the*

subsection, if it is apparent that the allegation is frivolous or vexatious or ***an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom."*** [Emphasis added]

10. Ms. Duncan also relies on ***AG of Trinidad and Tobago v. Luciano Vue Hotel et al*** (2001) 61 WIR 406 where Chief Justice De La Bastide stated:

    "It is time in my view that this abuse of using constitutional motions for the purpose of complaining of breaches of common law rights should be stopped. The only effective way of doing so is for the court at first instance to dismiss summarily any process which on its face seeks to force into the mould of a constitutional motion, a complaint of some tort or other unlawful act for which the normal remedy is an action at common law for damages or injunctive relief."

Ms. Duncan also relies on the Privy Council case of ***Jaroo v. The Attorney General*** [2002] UKPC 5 where a car was purchased by the Appellant and seized by the licensing authorities upon suspicion of being a stolen vehicle,

the Appellant sought constitutional redress alleging deprivation of property. The Privy Council found that the Appellant's case for the return of his vehicle was capable of being dealt with in the ordinary courts in Trinidad and Tobago by means of processes which were available to him under the common law:

> *"…Their Lordships respectfully agree with the Court of Appeal that, before he resorts to this procedure, the applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another procedure is available, resort to the procedure by way of originating motion would be inappropriate as it would be an abuse of the process to resort to it. If, as in this case, it becomes clear after the motion has been filed that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued use in such circumstances would also be an abuse."*

11. Ms. Duncan also cites ***The AG of Trinidad and Tobago v. Ramanoop*** [2005] UKPC 15 where the Appellant sought constitutional relief for his unlawful detention by a police officer. The Privy Council was invited to

clarify its decision in ***Jaroo*** regarding abuse of process in constitutional motions and a subsequent decision of the Court of Appeal of Trinidad and Tobago. After discussing the relevant authorities the Privy Council stated:

> *"In other words where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some features which makes it inappropriate to take that course. As a general rule there must be some features, which, at least arguably, indicate that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a special feature would be a case where there has been arbitrary use of state power."*

Ms. Duncan submits that this claim ought to be dismissed as an abuse of process of the court as there were alternative remedies available by way of private law claim for judicial review and false imprisonment. If the court looks beyond the form of the proceedings and examines the substance, it would be clear that the Claimant is seeking constitutional

redress in order to bypass the leave stage for judicial review, the time for which has long since lapsed. In addition, the relief of an order for release is a prerogative or coercive order, which ought to have been properly sought under judicial review. Finally, Ms. Duncan says that there are no exceptional circumstances in the present claim which justifies the Claimant opting to seek constitutional redress. The other remedies available would have been adequate in the circumstances of this case where the Claimant was given the privilege of parole, he violated one of his parole conditions and had been recalled pursuant to Prison Rules.

12. Ms. Duncan argues that the Claimant's detention is lawful. The grant of parole is a privilege and not a right. The Claimant was granted parole but on conditions, one of which he violated. Condition 11 of his parole stipulated: ***"I will not indulge in the illegal use, sale, possession, distribution, transportation or be in the presence of controlled drugs."***

    Ms. Duncan submits that Rule 272 of the Belize Prisons Act Cap 139 of the Subsidiary Laws of Belize provides that the Parole Board may for any reasonable cause at any time direct in writing that a Parolee be recalled. On the giving of the direction, that Parole Order shall be deemed to be

revoked and the parolee may be arrested without a warrant, by any police officer, prison officer or a parole officer and shall continue to serve his sentence unless he is again released on parole by the Board. This rule empowered the Board to recall the Claimant's parole and there was reasonable cause for the Board to have done so. He was suspected to have been involved with cannabis and was found to be positive for drug use. The Parole Board was given the power to supervise the Claimant while he was on parole and to recall him to detention at any time during his determinate sentence. Ms. Duncan argues that this position is buttressed by Rule 274(3). There was reasonable cause (both subjective and objective) to revoke the Claimants parole. The Board having heard of the Claimant's involvement with drugs, more so whilst being on the prison compound, obviously assessed the dangerous nature of the circumstances. The decision making process of the Board should be challenged and reviewed. Ms. Duncan contends that the jurisprudence cited by the Claimant seem to address the risk to the public as a consideration when determining whether parole ought to be granted, and not when it is being revoked. She argues that the jurisprudence has shown that the opportunity to be heard is afforded before determining

an application for release or for transfer to open conditions; also a parolee has a right to request an oral hearing after revocation but this is done on his request. Learned Counsel relies on ***Gregory August v the Queen*** [2018] CCJ para 115:

> *"The case of Osborn which followed Hussain confirmed that before determining an application for release, the Parole Board was required to hold an oral hearing whenever in the light of the facts of the case the importance of the issues at stake, fairness to the prisoner required it The court listed a non-exhaustive set of considerations that would render an oral hearing necessary…"*

Ms. Duncan also relies on ***Osborn v. Parole Board Re Kelly's Application for Judicial Review (Northern Ireland)*** 2014 NI 154.

> *"In order to comply with common law standards of procedural fairness, the board should hold an oral hearing before determining an application for release, or for a transfer to open conditions, whenever fairness to the prisoner requires such a hearing in the light of the facts of the case and the importance of what was at stake… The circumstances in which an oral*

hearing would be necessary would often include: a) where facts which appeared to the board to be important were in dispute, or where a significant explanation or mitigation was advanced which needed to be heard orally in order fairly to determine its credibility; b) where the board could not otherwise properly or fairly make an independent assessment of risk, or of the means by which it should be managed and addressed; c) where it was maintained on tenable grounds that a face-to-face encounter with the board, or the questioning of those who had dealt with the prisoner, was necessary in order to enable him or his representatives to put their case effectively or to test the views of those who had dealt with him; d) where, in the light of the representations made by or on behalf of the prisoner, it would be unfair for a 'paper' decision made by a single member panel of the board to become final without allowing an oral hearing. In order to act fairly, the board should consider whether its independent assessment of risk, and of the means by which it was to be managed and addressed, could benefit from the closer examination, which an oral hearing could provide. The board

should also bear in mind that the purpose of holding an oral hearing was not only to assist it in its decision-making, but also to reflect the prisoner's legitimate interest in being able to participate in a decision with important implications for him, where he had something useful to contribute. The question whether fairness required a prisoner to be given an oral hearing was different from the question whether he had a particular likelihood of being released or transferred to open conditions, and could not be answered by assessing that likelihood. When dealing with cases concerning recalled prisoners, the board should bear in mind that the prisoner had been deprived of his (conditional) freedom; when dealing with cases concerning post-tariff indeterminate sentence prisoners, the longer the time the prisoner had spent in prison following the expiry of his tariff, the more anxiously the board should scrutinize whether the level of risk was unacceptable. The board must be, and appear to be, independent and impartial; it should guard against any temptation to refuse oral hearings as a means of saving time, trouble and expense… In order to justify the holding of an oral

hearing, the prisoner had to persuade the board that an oral hearing was appropriate, he did not have to demonstrate that the paper decision was or might have been wrong…"

13. Ms. Duncan argues that while the Claimant complains about the prison conditions under which he was kept, the allegations of conditions dating back to 2014 ought to have been raised promptly and without delay. The CCJ in ***Somrah v. The AG of Guyana*** [2009] CCJ 5 (AJ) has held that delay may defeat a constitutional motion.

    She also relies on ***Sealey v. AG of Guyana*** CV No. 4 of 2008 CCJ 11 AJ.

    > *"While no specific limitation period applies to claims under Article 153 [section 120], a claimant cannot wait for as long as he likes before bringing a claim. Kissoon JA held the Appellant's 'undue delay without any explanation ... rendered the proceedings an abuse of the Court's process', while Roy J held such delay to be 'a misuse of the court's constitutional jurisdiction'. The Appellant's counsel could only speculate as to what excuse, if any, there might have been for the undue delay.*
    > *We fully agree with Kissoon JA and Roy J in the light of the inordinate delay of over sixteen years from the time of the*

Appellant's dismissal and of over thirteen years from the petition to the President. We note that in Durity v Attorney General of Trinidad and Tobago the Privy Council considered that undue delay without a cogent explanation in taking legal proceedings for redress for contravention of Constitutional fundamental rights and freedoms could amount to an abuse of the court's constitutional jurisdiction. It then considered that the lapse of five years in seeking such redress amounted to inordinate delay in the absence of any cogent explanation. It is in the public interest that claims do not become stale…"

14. In conclusion, Ms. Duncan submits that the conditions of Claimant's detention are not in breach of the Claimant's right against inhuman and degrading punishment. She further submits that the Claimant is a parolee who has been lawfully recalled, so there has been no restriction of his freedom of movement. Learned Counsel reiterates that the Claimant ought to have brought this claim after seeking leave, by way of judicial review. Seeking constitutional redress when there were alternative remedies available appears to be an attempt to bypass the requisite leave stage after the time for doing so had long since passed. There has been

no breach of the Claimant's rights. The Claimant ought not to be released or awarded damages or costs. The Claim should be dismissed with costs to the Defendant.

Decision

15. Having considered the arguments for and against this application, I must state that I agree with the submissions made on behalf of the Defendant. The Claimant was granted the privilege of parole. He willfully violated that privilege on the very grounds of the prison, no less. He was fully aware of the fact that if he were to breach those conditions, his parole would be revoked. Yet he chose to breach a condition. It is my view that there are many prisoners presently languishing behind prison walls who would have welcomed the golden opportunity given to Mr. Sears by the Parole Board to be free on parole, start a new life, and repay his debt to society. Instead he chose to violate the term of his parole not to engage in the illegal use of drugs. The Parole Board had clear proof of this violation and it is legally empowered under the Prison Rules to revoke the parole. There is no mandatory requirement for an oral hearing to be granted to parolees, and even the authorities cited by the Claimant acknowledge this. In ***Regina v Parole Board ex parte Smith*** [2005] UKHL 1, cited by Ms.

Mendez for the Claimant, Lord Bingham of Cornhill said: "*The common law duty of procedural fairness does not, in my opinion, require the Board to hold an oral hearing in every case where a determinate sentence prisoner resists recall if he does not decline the offer of such a hearing*." Lord Slynn of Hadley in his own judgment in that case stated thus: "*There is no absolute rule that there must be an oral hearing automatically in every case. Where however there are issues of fact, or where explanations are put forward to justify actions said to be a breach of conditions, or where the officer's assessment needs further probing, fairness may well require that there should be an oral hearing.*" In the case at bar, it would in my respectful view send a wrong message to this crime ridden society, if this parolee were allowed to breach the terms and conditions of his parole with impunity and then be rewarded with complete freedom having escaped all the consequences of this breach. In addition, I am of the considered view that the wrong procedure was used in bringing this matter before the court. The substantive case clearly calls for a review of the Parole Board's decision and I therefore agree with Ms. Duncan's submission that the matter should have been brought by way of judicial review, since the substantive relief sought is the quashing of the decision

of the Parole Board and an order for the immediate release of the prisoner. I also consider the delay of four years in bringing this matter to court to be excessive. The Claim is therefore dismissed with costs to the Defendant.

Dated this Tuesday, 11th day of June, 2019

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Michelle Arana
Supreme Court Judge