

Application for Leave to Apply for Judicial Review (O.53, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

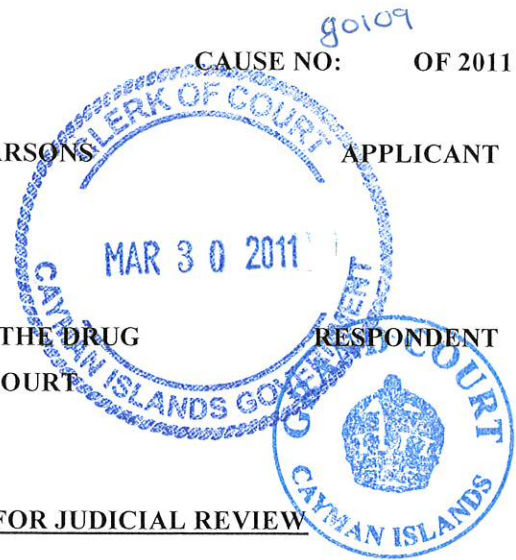
CAUSE NO: 90109 OF 2011

BETWEEN:

RICHARD JOSEPH PARSONS APPLICANT

AND

REGINA ON BEHALF OF THE DRUG REHABILITATION COURT RESPONDENT



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	The Applicant is Richard Joseph Parsons who is currently remanded in custody at Her Majesty's Prison, Northward. The Applicant is 22 years of age having been born on 1 st August 1998.
Judgment, Order, decision or other proceeding in respect of which relief is sought	On 8 th February 2011, the Chief Magistrate, acting in her role as presiding Magistrate within proceedings of the Drug Rehabilitation Court, gave the decision that the Applicant was not 'Suitable' to enter a prescribed treatment programme for drug rehabilitation.
<p style="text-align: center;"><u>RELIEF SOUGHT</u></p> <p>The Applicant requests this Honourable Court to review the decision of the Chief Magistrate and seeks relief in the following:</p> <ol style="list-style-type: none">1. An Order of Certiorari to remove into the Grand Court and quash the said Order of 8th February 2011; or, in the alternative,2. an Order of Certiorari remitting the matter to the Respondent on Directions to reconsider and reach a decision in accordance with the findings of the Grand Court; and/or, in the alternative,3. An Order of Mandamus directed to the Drugs' Rehabilitation Court requiring it to:<ol style="list-style-type: none">3.1 reverse its decision that the Applicant was not 'suitable' for the drug rehabilitation programme; and,	

3.2 admit the Applicant into the prescribed treatment programme as recommended by the aforesaid Mr. Miller on the basis of a Provisional Treatment Order as required under the provisions of S.9 of the Drug Rehabilitation Court Rules; and,

3.3 grant Bail to the Applicant pursuant to the applicant's attendance for the recommended treatment.

4. A Declaration that the said decision of the Respondent was unlawful in that the purpose of the distinctive tests of 'Eligibility' and 'Suitability' was to ensure that once the consideration of 'Eligibility' had been determined, all matters pertaining to the nature of the offences concerned were no longer capable or relevant in the consideration of an Applicant's 'Suitability'; that matter only concerning whether there was available, an appropriate treatment programme for the individual needs of the Applicant AND whether such Applicant had the disposition to apply himself/herself to any recommended treatment;

5. A Direction that all proceedings on the Order be stayed until the determination of the Application for Judicial Review;

6. Such further other relief as this Honourable Court deems fit; and

7. Costs of the Application.

Name and address of Applicant's attorneys, or, if no attorneys acting, the address for service of the applicant:

Stenning & Associates
Unit 8, F & J Building, 58 Mary Street
George Town, Grand Cayman KY1-1102
Ref: JS/KC/1167/001

Signed:



Attorneys for the Applicant

Dated this 24th day of March 2011

NOTE: Pursuant to Order 53, an oral hearing is requested before this Application for leave to apply for judicial review is considered and determined by this Honourable Court.

BACKGROUND FACTS

1. The following is a summary and supplemental to the full factual basis of this Application which is contained within the Affidavit of Richard Joseph Parsons (“the Applicant”).
2. On October 26th 2010, the Applicant was arrested for the possession of an unlicensed firearm and Ganja related offences; the court is specifically referred to paragraph 5 of the Affidavit for complete details of the Charges.
3. The Applicant had no previous convictions and from the accounts of various individuals, the evidence suggested that he was genuinely an individual of previous good character. The commission of the principal offences appeared to be completely ‘out of sorts’ with his temperament and nature.
4. A psychiatric report presented by Professor Jon Shaw of the Miami Hospital confirmed that the Applicant had been diagnosed with Attention Deficit Hyperactivity Disorder as a child. He had generally coped well with his condition and had used Ganja as self-medication to ‘keep himself calm’. However, the Applicant’s increasing dependency on the drug in combination with being the subject of two violent burglaries to his house, had caused and exacerbated previous asymptomatic psychological effects.
5. The conclusions and recommendations of Professor Shaw were unequivocal and as a result, an Application was made for Richard Parsons’ entry into the drug rehabilitation programme upon his plea of “Guilty” to all offences charged on or around 30th November 2010.
6. Both the Crown and the Drug Court were presented with a full bundle of documentation annexed to the appropriate Application Form I for consideration, including:
 - 6.1 The report of Professor Jon Shaw;
 - 6.2 Personal statements from the Applicant, his parents, former employer and former teacher.
7. On 14th December 2011, before a pre-hearing of the Drug Court, the Crown conceded that the Applicant was ‘eligible’ for the Drug Court Programme (“DCP”) within the meaning of S.8 Drug Rehabilitation Court Law, 2006 and as a consequence, the Applicant was also reviewed as part of a joint assessment of his suitability.
8. Having been found *prima facie* suitable for entry, Judith Seymour of the Flagship Centre made arrangements for the Applicant to be interviewed for further in-depth assessment of the Applicant’s ‘suitability’. Notwithstanding, the Crown, despite the concession that the Applicant was ‘eligible’ for the DCP, objected to Bail.
9. On 16th December 2010, the Applicant appeared before Chief Magistrate Ramsay-Hale in the Summary Court for a Bail Application. The Application was refused and she expressed her surprise in open-court that

Richard Parsons had been found 'eligible' for the DCP. She further stated that he [Richard Parsons] '*will not be found suitable*'.

10. Notwithstanding, by the time the Applicant's next appearance before the Drug Court on 11th January 2011, he had already been interviewed by Gregory Miller - an authorised Counsellor of the Cayman Islands Government in the Department of Counselling Services. Further interviews had been arranged in preparation for the full assessment report in which Mr. Miller had been instructed to prepare by the Drug Court.
11. During the hearing, the Chief Magistrate re-iterated her views regarding the Applicant's Application as whole by commenting in front of the CIDRC Team that '*without pre-empting the contents of the report, it is unlikely that the Defendant will be found 'suitable'*'. The matter was then adjourned to 8th February 2011 when it was expected that the assessment report of Mr. Miller would be completed and presented to the Drug Court.
12. The contents of the report were favourable; not only did it recommend the type of treatment the Applicant required, but it also recommended that he attend non-residential Counselling. However, in dismissing the Applicant's application for entry into the DCP, the Chief Magistrate stated that the decision of the CIDRC Team '*as a whole*' was that the Applicant was not 'suitable' for the programme and remitted the case to the Summary Court for sentencing on 22nd February 2011.

LEGAL FRAMEWORK

12. The Drug Court and the corresponding drug court programme was introduced in the Cayman Islands as a recognition that drug addiction was one of the major underlying causes of criminal behaviour.
13. The process of application and entry is set out in the Drug Rehabilitation Court Law, 2006 ("DRCL"), as supplemented by the Drug Rehabilitation Court Rules ("DRCR") which is further augmented by the operations manual entitled "Boundaries that Restore - Drug Rehabilitation Court Operations Manual".¹
14. Entry into the DCP is voluntary and potential applicants must apply for Admission into the programme by way of completion of the pertinent Application Form 1.
15. The following are the various stages of the Application together with the considerations to be taken into account at each applicable phase:

¹ As prescribed in rule 3 DRCR

15.1 **Stage 1: Legal Eligibility and Preliminary Review for Suitability²**

- 15.1.1 The Application form is provided to the Crown who conducts a review of the Application to determine whether the Applicant satisfies legal eligibility for the DCP and to take a preliminary review for suitability. The Crown is 'the gatekeeper' of the programme and must verify that the applicant is appropriate for the DCP and whether there are any reasons that would disqualify him/her from the programme;
- 15.1.2 The Crown will firstly consider whether an applicant is a *prima facie* 'eligible' person by reference to Section 8 of the DRCL. An applicant is an eligible person if:
- (a) the person is not under the age of 17 years;
 - (b) the person is charged with an relevant offence;
 - (c) the person appears to be dependent on the use of drugs; and,
 - (d) the person satisfies such other criteria as may be prescribed.
- 15.1.3 By reference to S.8(4) DRCR, the Crown shall give consideration to:
- (a) the nature of the offence charged;
 - (b) the public interest in the final resolution of the charge in the ordinary way;
 - (c) any concerns of public safety that may arise from the applicant not being remanded in custody while in a prescribed treatment programme;
 - (d) the needs of the applicant;
 - (e) the Crown's view of the applicant's likelihood of success in the prescribed treatment programme.
- 15.1.4 Further 'eligibility' criteria for the Crown to consider is set out in the Application Form and page 17 of the operations manual:
- (a) Are the offences to which the applicant has been charged, offences of violence?
 - (b) Does the applicant have a history of violence?
 - (c) Was the applicant either dealing or trafficking in drugs?
 - (d) Does the applicant suffer from severe developmental deficiencies which would prevent or restrict him from actively participating in the programme?

15.2 **Stage 2: Substance abuse history and early case management³**

This stage identifies an Applicant's substance abuse history and any issues that may arise in case management.

² See Page 20 Operations Manual and Section 8(4) of the DRCR

³ See page 21 of the Operations Manual

15.3 **Stage 3: General eligibility and Suitability³**

The applicant's general eligibility and suitability is discussed in a pre-court meeting. The available information is reviewed as part of a joint assessment of each applicant's suitability.

15.4 **Stage 4: In court review of the Applicant by the presiding Judge³**

This process occurs as part of the applicant's first appearance in the Drug Court.

15.5 **Stage 5: General assessment by the Department of Counselling Services ("DCS")⁴**

15.5.1 An applicant who, having been assessed as 'eligible' for the DCP by the Crown at Stage 1; and, thereafter, the drug court being satisfied of his/her general eligibility and suitability at stages 3 and 4, is referred to the Department of Counselling Services;

15.5.2 By virtue of s.8(6) DRCR, an assessment is undertaken by a therapist from the DCS who *shall assess the suitability of the applicant for admission pursuant to section 12 [DRCL] and shall record the assessment in Form 6 for presentation to the Drug Court;*

15.5.3 By reference to the Operations Manual, *if [the] applicant [is] found to be appropriate, then he/she will become a probationary client in the CIDRC⁵ programme.*

GROUND UPON WHICH RELIEF IS SOUGHT

IN RELIANCE OF THE FACTS stated in the Affidavit in support of the Application and by reference to the legal provisions as set out above, the Grounds upon which relief is sought are as follows:

Illegality

16. In reaching the decision that the Applicant was 'unsuitable' for the DCP, the Chief Magistrate erred in law by misdirecting herself in the interpretation of the distinct questions of 'eligibility' and 'suitability';
17. In so doing, the presiding Chief Magistrate was able to revisit and, in effect, overrule the Drug Court's previous determination of the Applicant's 'eligibility' made on 14th December 2010;
18. Further, that in adopting the approach as set out in the above paragraphs 16 & 17, the learned Judge took into account matters of which she ought not to have taken into account in making the decision that the Applicant was not suitable for entry into the Drug Court programme;

⁴ See page 21 of the Operations Manual and s. 12(1)(a) and (b) DRCL, and, s.8(6) DRCR

⁵ Cayman Islands Drug Rehabilitation Court

19. As a result, the process of the applicant's Application was procedurally flawed and he was denied a fair hearing due to the aforementioned errors in law.

Irrationality

20. That on the proper construction and interpretation of the test for 'Suitability' and upon the basis of the assessment and recommendations contained in the report of Mr. Miller who was appointed by the Respondent court to carry out such an assessment, no reasonable tribunal could have reached the decision that the Applicant was *unsuitable* for the drug court rehabilitation programme;

Breach of Natural Justice

21. That, having succeeded in satisfying the Drug Court that he was *eligible* to participate in the drug rehabilitation programme, the Applicant had a legitimate expectation that once the approved treatment provider determined that:
 - 20.1 there was available, a *suitable* programme of drug treatment to suit his individual needs with a reasonable prospect of success; and,
 - 20.2 that he was of a *suitable* disposition to participate in the recommended programme, his entry into the programme would be permitted.
21. That the Chief Magistrate failed to maintain the appearance of impartiality by virtue of her comments during the summary court proceedings of 16th December 2010 (paragraph 9 *supra*) and in particular, before the drug court team on 11th January 2011 (paragraph 11 *supra*), such comments exhibited an apparent bias as judged by the standards of an objective observer.
22. Further, in stating before the drug court team (which included members from the treatment provider mandated to carry out the report) that: '*without pre-empting the contents of the report, it is unlikely that the Defendant will be found 'suitable'*', the Chief Magistrate - in her capacity and standing as part of the decision making body of the Drug Court - could be objectively construed as seeking to bear influence on the contents of the report and whilst such comments were ignored by the author, the same reflected the Chief Magistrates' pre-disposition to the ultimate decision of the drug court contrary to the rules of natural justice.

Conclusion

23. For all the reasons set out above, the Applicant seeks the leave of this honourable Court to apply for Judicial Review.



Kerrie Cox (Counsel for the Applicant)

Dated this 24th day of March 2010