

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 146 OF 2017

IN THE MATTER OF JUDICIAL REVIEW

Pursuant to section 11 of the Grand Court Law (2015 Revision)

AND IN THE MATTER OF sections 26 and 27 of Part 1 of Schedule 2 to the Constitution of the Cayman Islands

BETWEEN:

O'BRIAN O'DANE ELLIS

APPLICANT

AND:

THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

&

THE CHIEF IMMIGRATION OFFICER OF THE CAYMAN ISLANDS

&

THE GOVERNOR OF THE CAYMAN ISLANDS

RESPONDENTS

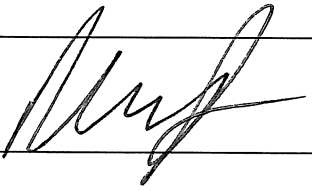


APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant	O'Brian O'Dane Ellis, d.o.b. 19 January 1988, c/o HMP Northward, Grand Cayman, Cayman Islands
Judgment, order, decision or other proceeding in respect of which relief is sought	The Applicant seeks a declaration that his removal, deportation, or otherwise return, to Jamaica would in his case constitute a violation of the Constitution of the Cayman Islands and specifically the right to life, and/or prohibition upon torture or inhuman or degrading treatment or punishment.
Please note the Applicant respectfully seeks an urgent hearing before the Court of this application (pursuant to Ord. 53 r.53.3(3)).	

Relief Sought

- a. An interim order of prohibition preventing the removal by any means of the Applicant from the jurisdiction of the Cayman Islands until proceedings are concluded.
- b. A declaration that the removal, deportation or otherwise return of the Applicant to Jamaica would constitute a violation of the Constitution of the Cayman Islands and specifically the right to life, or prohibition upon torture or inhuman or degrading treatment or punishment.
- c. An order of prohibition preventing the removal by any means of the Applicant from the jurisdiction of the Cayman Islands unless and until further order of the Court.
- d. Such further or other relief as this Honourable Court shall deem appropriate
- e. All necessary and consequential directions
- f. Costs

Name and address of applicant's attorneys	Samson Law Associates, 4 th Floor Harbour Centre, 42 North Church Street, George Town, Grand Cayman, P.O. Box 2255, KY1-1107
Signed 	Dated 1 st September 2017

GROUND ON WHICH RELIEF IS SOUGHT

1. These grounds are supported by an affidavit which verifies the facts relied on.

Interim injunction

2. The Applicant is in custody and has been told by immigration officials that he may be removed and flown to Jamaica, his country of nationality, this week. Therefore the matter is urgent and an injunction is required to ensure no violation of the Constitution of the Cayman Islands.

The substance of the cause of action

3. In Jamaica the Applicant is wanted in connection with a charge of murder which it appears from the factual account of the Jamaican authorities is likely to be classified in sentencing terms as an aggravated murder. For that reason were he to be returned to Jamaica the Applicant is at risk of the imposition of the death penalty pursuant to the provisions of the Jamaica Offences Against the Person Act, sections 2 and 3.

4. Consequently his removal or deportation to a country exposing him to such penalty would be in breach of the Constitution of the Cayman Islands, and specifically the guarantees within the Bill of Rights (the right to life, Schedule 2 Part 1 article 2). By section 24 it is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights; and by section 19 all decisions and acts of public officials must be lawful.
5. Furthermore the prison conditions of Jamaica are such that removal to Jamaica to custody (or certainly to the death penalty or possibly life imprisonment conditions) would also constitute a violation of the prohibition on torture and inhuman treatment (Schedule 2, Part 1, article 3).
6. The Applicant relies also upon the matters set out within the accompanying affidavit. In light of the urgency of this application leave is also sought that the Applicant may, if so advised, file any further affidavit(s) at least 21 days prior to the substantive hearing of the judicial review in the exercise of the Court's powers in O.53 r.6(3) or otherwise inherent jurisdiction to manage its procedures.

Legal framework

7. These proceedings are brought by way of judicial review, and further and alternately incorporate an action pursuant to section 26 of Part 1 of Schedule 2 to the Constitution of the Cayman Islands. That provides that:

Any person may apply to the Grand Court to claim that government has breached or threatened his or her rights and freedoms under the Bill of Rights and the Grand Court shall determine such an application fairly and within a reasonable time.
8. The removal of the Applicant from the Cayman Islands would be contrary to sections 19 and/or 24 of the Cayman Islands Constitution 2009, Bill of Rights, Freedoms and Responsibilities, Part 1 ("the Bill of Rights") as it would constitute, in particular, a violation of the right to life protected by article 2 of the Bill of Rights, and/or the prohibition contained within article 3.
9. By section 27(1) of the Bill of Rights the remedies available to the Court are any that is considers just and appropriate:

In relation to any decision or act of a public official which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
10. By section 11 of the Grand Court Law (2015 Revision) the Court has the like powers of the High Court of England and Wales provided for by the Senior Courts Act 1981 (UK), and accordingly a power, in particular, to grant declaratory and prohibitory relief (on both an interim or final basis).
11. Order 53 of the Grand Court Rules 1995 (revised) provides that a declaration or an injunction may be granted if the Court considers that it would be just and convenient to make the declaration or injunction, having regard to all the circumstances of the case. An

interim injunction may also be made where leave to apply for judicial review is granted (O.53, r.3(10)(b)).

Submissions

12. Absent the grant of this injunction, and judicial review, the Applicant is liable to removal pursuant to section 74 of the Immigration Law (2015 Revision) and may also become liable to a deportation order under section 89 of the same Law.
13. The Applicant is a national of Jamaica. In Jamaica he is wanted in connection with a charge of murder of a Steadman Sterling on 8 December 2016. The documents supplied by an immigration officer of the Cayman Islands (referred to within the final paragraph of the witness statement dated 21 August 2017 of Immigration Officer Thompson) contains a factual account provided by the Jamaican authorities to the immigration service that the offence has certain characteristics that may be classified in sentencing terms as an aggravated murder. The summary refers to a report having been made to police that morning by the deceased, who was later shot. For that reason were he to be returned to Jamaica the Applicant would be at real risk of the death penalty pursuant to the provisions of the Jamaica Offences Against the Person Act, sections 2(1)(c)(i) or (1A) and 3(1)(a).
14. The Order sought is necessary to protect perhaps the most fundamental human right of all: the right to life. The state must not allow a person to be returned to a country where he faces a real risk of the death penalty: Al-Saadoon v United Kingdom (2010) 51 EHRR 212.
15. Furthermore, and in the alternative, the prison conditions there are such that removal to Jamaica to custody (or certainly to the death row or possibly life imprisonment conditions) would also constitute a violation of the prohibition on torture and inhuman treatment (Schedule 2, Part 1, article 3). The immediate information supportive of this is for example within, amongst others, international reports by
 - The Advocates for Human Rights, Jamaica: Submission to the United Nations Human Rights Committee for the 103rd Session (17 October – 4 November 2011), http://www.theadvocatesforhumanrights.org/uploads/jamaica_2011_final.DOCX, last accessed Nov. 23, 2011.
 - James Robottom, Prison Conditions in Jamaica: A Report based on James Robottom's visit in August 2009, The Death Penalty Project & The Independent Jamaican Council for Human Rights, 2011.
 - U.N.G.A. Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Addendum: Mission to Jamaica, U.N. Doc. A/HRC/16/52/Add, Oct. 11, 2010.
16. The following information is taken, as a matter of urgency, from what appears to be a reputable and informed source¹ concerning the conditions of detention for those sentenced

¹ <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Jamaica>

to the death penalty in Jamaica, but time has not permitted at this stage more thorough investigation of prison conditions generally. A copy of the information is exhibited by the Applicant. For the present relevant information includes:

Death row is situated in the two-storey Gibraltar building, located towards the center of the grounds of Saint Catherine Adult Correctional Center in Spanish Town. The prison is old—it was built by the British in 1655 to house slaves – and severely overcrowded. With additions constructed in the nineteenth and twentieth centuries, it can accommodate 691 prisoners, but, in 2011, was at nearly twice its capacity, holding 1285 inmates. The Gibraltar building was built in 1892.

...
Each cell is approximately 5ft by 10ft (1.75m by 3.5m), with almost 10ft high ceilings (3m). There are no windows, but a thin rectangular air vent above head height provides a little daylight. It is also exposed to the elements, and the inmates complain that rain blows into the cells. Little light enters the cells, and without electrical light it would be impossible to read in the cells during the day. There are two electrical sockets on the wall outside each cell, from which inmates may run a live electrical wire into their cell. The prison does not provide light bulbs, so inmates are dependent upon the prison black market or what their families bring them. Inmates are sometimes denied the use of the electrical sockets as a form of punishment.

A 2011 report on Jamaican prison conditions, based on an August 2009 prison visit, provides a very thorough report of the deplorable detention conditions on death row: Each death row cell used to contain a solid concrete cuboid bunk on which the inmates slept. However, at some stage over the past few years, these were all destroyed (apparently due to concerns that inmates were concealing forbidden items in them) and the inmates now place their thin sponge mattresses – if they are lucky enough to possess them – on the stone floor. At the time of the visit, three of the eight condemned inmates were without mattresses, and were forced to sleep on top of either thin sheets, or merely cardboard, which they place on the hard floor. The majority of the mattresses are old and worn, with the sheet covering the sponge coming away; they are often covered in mould and falling apart, reflecting both the dirty and unsanitary conditions in the cells and the inability of the institution to provide new bedding. Whether an inmate possesses a mattress or not, the lack of beds or bunks and the thinness of the mattresses available means that inmates sleep very close to the stone floor, which is invariably dirty. One of the most frequent complaints from inmates is that they are covered in insects, such as cockroaches, ants, and bedbugs, while they sleep, and whilst they are locked down in general.

The sanitation conditions are abysmal. On entering Gibraltar 1, one visitor reported that “the heat and the stench can be overwhelming.” There are no toilets or sinks inside the cells. While there are two toilets on each Gibraltar block, they are not in working order. Prisoners empty their “slop buckets” in the pit toilets outside, in the fenced compound. These are in desrepair, and covered in flies and mould. When the prison sewage system breaks down, which happens regularly, sewage waters can overflow into the small area in which Gibraltar inmates exercise. The inmates use an outside tap to wash themselves and their clothing, and to “catch” water to bring back to their cells for drinking (the cells are unbearably hot in the daytime). Inmates fill whatever receptacles they can find, such as empty soda bottles or buckets. The tap is open to the elements with no privacy. Inmates are allowed out of their cells for about two hours a day. Outdoor recreation space, which must be shared with prisoners on the “punishment block,” is grossly inadequate. There is only a small dirt yard measuring approximately 5 x 10 meters and two other negligibly-sized open spaces.


During a 2010 visit, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that Saint Catherine was a “very old [construction] originally built for “storing” people but ... not suitable for modern correctional purposes, including rehabilitation and re-socialization.” The Rapporteur also found that “basic services such as electricity, the use of toilets and access to medical

attention depended on the goodwill of the warders." Corruption was evident from the fact that "[d]etainees also reported that they could purchase marijuana and mobile phones from the warders." After visiting Gibraltar 1, the Rapporteur reported that death row inmates "were allowed to go outside for one or two hours each day, but were not able to see any other prisoners," except for other death row inmates. Death row prisoners also complained of the presence of maggots in cells. Visits lasted between 3 to 5 minutes, twice a month, and there was no way for death row inmates to contact their families by phone. According to one death row inmate, convicts had access to books from the library, and could play football, dominos and cards with other death row convicts..

Abuse of detainees and prisoners by prison guards and police is a serious problem. "Prison food was poor and wardens were observed serving themselves generously with whatever meat was available, leaving only leftover gravy for the inmates." Prison warders had been known to falsely announce to death row inmates that an execution was imminent.

Prison medical and mental health care is poor or virtually nonexistent, with only three doctors, one psychiatrist and a single full-time nurse for about 5,000 inmates spread throughout 12 facilities. Inmates have died as the result of injuries that—if treated—would be considered minor, and doctors' concerns about individual and prison population health have gone unheeded by prison authorities.

17. It is also to be noted that delays experienced on death row also caused a violation of the prohibition on inhuman punishment (contrary to the Constitution of Jamaica itself) in Pratt v A-G for Jamaica [1994] 2 AC 1, PC. Frequently the courts considering the question of inhumane treatment have regard to the mental state and health of the individual. In this respect it may also be relevant that the Applicant suffered an incident of loss of consciousness on Saturday 26 August 2017, and as a result was taken to hospital for care by the medical staff there. The Applicant was told by the doctor the diagnosis was of claustrophobia. That was the result of his spending time in the conditions of detention he was held in since 19 August 2017 in the police detention centre. The Applicant therefore seems probable to be particularly vulnerable to the poor prison conditions in Jamaica reported in the information able to be obtained on an urgent basis.
18. In light of the above matters regarding the exposure to the death penalty sentence and/or the conditions of detention there, the Applicant's removal or deportation to a country exposing him to such penalty or treatment would be in breach of the Constitution of the Cayman Islands, and specifically the guarantees within the Bill of Rights (the right to life, Schedule 2 Part 1 article 2, and right not to suffer inhuman treatment, article 3). By section 24 it is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights; and by section 19 all decisions and acts of public officials must be lawful.
19. This Honourable Court is invited to grant an Order in the terms of the accompanying draft, or in such other terms as the Court shall deem fit.



Samson Law Associates
Attorneys at Law