

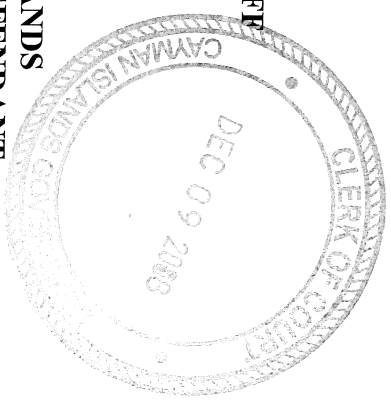
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0575 OF 2008



BETWEEN: GARRY OWEN MULLINGS

PLAINTIFF



AND: THE GOVERNOR OF THE CAYMAN ISLANDS
FIRST DEFENDANT

AND: THE PAROLE COMMISSIONERS BOARD
SECOND DEFENDANT

AND: THE DIRECTOR OF PRISONS
THIRD DEFENDANT

EX PARTE APPLICATION FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW
AND LEAVE TO APPLY OUT OF TIME
AND APPLICATION FOR BAIL PENDING HEARING
(GCR O.53, r.3)

To the Clerk of the Court, Law Courts, George Town, Cayman Islands	
Name, address and description of applicant	(1) <u>GARRY OWEN MULLINGS</u> of, 12 Kensington Drive, George Town, Grand Cayman presently an inmate of HMP Northward, PO Box 1807,

	Grand Cayman.
<p>Judgement, order, decision or other proceeding in respect of which relief is sought</p>	<p><u>DECISIONS/ACTIONS OF FIRST DEFENDANT</u></p> <p>(1) The decision of the First Defendant made on or about the 13th March 2008 to recall the Plaintiff to prison (the “Recall Decision”) under section 31A of the Prisons Law for breach of the licence and conditions thereof dated 18th June 2004;</p> <p>(2) The decision of the First Defendant on or about 18th July 2008 and put in writing dated 24th July 2008 denying the Plaintiff’s “appeal” of the decision to recall the Plaintiff to prison for breach of the terms of his licence;</p> <p>(3) The decision of the First Defendant on a date unspecified in September 2008 and communicated in writing to the Plaintiff on 24th October 2008 to refuse the “application” (italised as (re)consideration of the Plaintiff for release on licence is undertaken as a matter of policy, subject to the Plaintiff’s wish to be reconsidered) for release on licence</p> <p>(4) The decision of the First</p>

Defendant or his predecessor in title to release the Plaintiff on Licence under section 31A of the Prisons Law and the legality or reasonableness of the terms thereof.

DECISIONS OF SECOND DEFENDANT

(1) The decision and subsequent actions of the Second Defendant made on or about the 11th March 2008 to advise, direct, instruct, recommend or otherwise acting so as to influence the First Defendant to revoke the licence of the Plaintiff and recall the Plaintiff to prison to serve the remainder of his sentence;

(2) The decision and subsequent actions of the second Defendant in recommending, advising, instructing, directing or otherwise acting so as to influence the First Defendant to deny or otherwise refuse the reconsideration of the Plaintiff for release on licence on a date as yet unspecified in September 2008 as part of its purported duties during the September 2008 sitting of the Board.

DECISIONS OF THIRD

DEFENDANT

- (1) The decision not to or omission to grant the Plaintiff remission under section 29 of the Prisons Law and section 7 of the Prison Rules and the setting by the Third Defendant of the Plaintiff's earliest date of release, which was taken at the time of my return to custody or at a later date and is continuing or ongoing.
- (2) The decision of the Third Defendant to deny the Plaintiff work release, weekend release or other release contrary to the Prisons Law, the Prison Rules and natural justice, which was notified to me by letter dated 20th June 2008.

DIAMOND LAW ASSOCIATES
4TH FLOOR, CARDINAL PLAZA,
CARDINALL AVENUE, PO BOX 2887 GT,
GRAND CAYMAN, CAYMAN ISLANDS,
TEL: 769-9352, FAX: 769-4352, E-MAIL:
INFO@DLA.KY, (REF DLA/1456).
CAYMAN ISLANDS

Signed:

Dated: 9th December 2008

GROUNDNS ON WHICH RELIEF IS SOUGHT

The Plaintiffs rely on the following grounds:

A. AS AGAINST THE FIRST DEFENDANT

1. Illegality: That the decisions of the First Defendant and his actions in authorising and were unlawful in that the First Defendant had no reasonable grounds to suspect that any breach or any breach justifying the recall of the Plaintiff to prison had been committed by the Plaintiff;
2. Abdication of duty: That the reliance placed on the information provided to the First Defendant in order to exercise the discretion to (a) recall the Plaintiff to prison for breach of the licence; (b) refuse the Plaintiff's appeal to the First Defendant in relation to decision (a); and (c) to refuse the application and/or reconsideration of the Plaintiff for release on licence having been recalled, was an abdication of the duty incumbent on the First Defendant under the Law to conduct his own independent investigation of the alleged breaches and to determine whether any grounds existed for the said recall, refusal of appeal and refusal to release again on licence;
3. Illegality / Abuse of process / Procedural unfairness: That the recall of the Plaintiff by the First Defendant without holding any hearing or giving the Plaintiff an opportunity to be heard and the refusal to release the Plaintiff on licence having been recalled to prison without providing an opportunity to be heard was procedurally unfair and, in the circumstances was necessary,

given the nature of the allegations against the Plaintiff and the general considerations to be taken into account by the First Defendant;

4. Irrelevant consideration: That in taking into account untrue allegations that Plaintiff was guilty of any offences or was otherwise guilty of a breach of any law or had committed any offences or had acted in a manner so as to breach a term or terms of his licence in the Cayman Islands the First Defendant took into account an irrelevant consideration thus rendering his decisions and actions illegal;

5. Unreasonableness and/or irrationality: The decision of the First Defendant to recall the Plaintiff was unreasonable and/or irrational in the circumstances;

6. Unreasonableness and/or irrationality: The decision of the First Defendant to refuse to release the Plaintiff on licence was unreasonable and/or irrational in the circumstances;

6. Failure to give adequate reasons for the decision: The First Defendant failed to give the Plaintiff any or any full and detailed reasons for the decision to recall the plaintiff to prison and the decision not to release the Plaintiff on licence having been so recalled;

AS AGAINST THE FIRST AND SECOND DEFENDANTS

1. Illegality: The decision of the First and Second Defendants was not made in accordance with section 31A (3) of the Prison Law and is therefore illegal and made ultra vires;

2. Procedural unfairness: The First and Second Defendant acted with procedural unfairness by failing to give the Plaintiff adequate or any

opportunity to respond or answer any allegations which were placed before them during its deliberations in Cabinet or the sitting(s) of the Board to determine whether the First Defendant should exercise his discretion in recalling the Plaintiff. The Plaintiff was given no notice that the First Defendant was going to consider a case against him and was not able to meet the charge or challenge the evidence nor was he given any copies of any information or other evidence which went to that question;

3. Irrelevant consideration: That in taking into account the evidence of the plaintiff's parole/probation officer the First and Second Defendants took into account irrelevant considerations and further that the said officer was acting contrary to the Probation of Offenders Law in her supervision of the Plaintiff;

4. Unreasonableness and/or irrationality: The decision of the First Defendant to recall the Plaintiff and thereafter to refuse to release the Plaintiff on further licence was unreasonable and/or irrational in the circumstances and failed to take into account any or any adequate assessment of risk to the public which should have been the overriding consideration in the exercise of the First Defendant's discretion;

5. Failure to give adequate reasons for the decision: The First and Second Defendants failed to give any full and detailed reasons for the decision under section 31A(3) of the Prisons Law as they are required by law to do.

C. AS AGAINST THE THIRD DEFENDANT

1. Illegality: The decision to not grant remission or failure to grant remission to the Plaintiff under section 29 of the Prisons Law upon the Plaintiff's recall to

prison by the First Defendant under section 31A of the Prisons Law is illegal and unlawful.

2. Illegality and Unreasonableness/Irrationality: The decision of the Third Defendant not to permit or grant the Plaintiff “work release” is unreasonable, irrational and illegal and contrary to the Prisons Law, the Prison Rules and any other rules or standing orders made or created pursuant to section 7 of the Prisons Law.

D. OTHER AND FURTHER GROUNDS AND ORDERS

1. GCR Order 53, Rule 4(1) – Time Limit for Application
Save for the decision of the Governor and/or Parole Commissioners Board, the application is made outside of the 3 month time limit imposed by the Grand Court Rules. The Court has to be satisfied that there is good reason for extending the period within which the application must be made and that no prejudice will be caused by granting the application and/or the relief sought. Those reasons are dealt with at paragraphs 47 to 49 of the Plaintiff’s affidavit.
2. The Plaintiff will further rely on the Affidavit of the Plaintiff sworn herein as providing further and other grounds upon which Relief is sought and will apply to or will amend the Notice of Motion in due course as permitted by GCR Order 53, rule 6(2), if necessary, required or ordered by the Court.
3. The Plaintiff makes application for bail pending hearing of the matter.

DIAMOND LAW ASSOCIATES
Attorneys for the Plaintiff

