

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Law Division
2021/CRI/CON/00173**

BETWEEN

Maikel Rodriguez Jimenez

Applicants

AND

The Hon. Ryan Pinder
(Attorney General of The Bahamas)

1st Respondent

The Hon. Keith Ricardo Bell
(Minister of Immigration)

2nd Respondent

Clarence A. Russell
(Director of Immigration)

3rd Respondent

Fausteen Major Smith
(Officer in Charge of the Detention Center)

4th Respondent

Dr. Raymond King
(Commander of the Royal Bahamas Defence Force)

5th Respondent

BEFORE: The Honourable Mr Senior Justice Bernard Turner

**APPEARANCES: Mr Frederick Smith KC, and Ms Candice Maycock
for the Applicants**

Mr Keith Cargill and Mr Kingsley Rolle for the Respondents

HEARING DATES: 2 December 2021 & 17 February 2022

DECISION

TURNER Snr J

The Applicant applied by way of an ex parte summons filed 16 November 2021 for what is described in the heading of the summons:

“Ex Parte Summons under Order 53 RSC

And

Constitutional Relief under Article 28

[for leave to issue writ of habeas corpus subjiciendum and injunction and for constitutional relief]”

2. On 17 November 2021, at the ex parte hearing, leave was granted with a return date of 2 December 2021, an injunction was also issued to prevent the removal of the applicant from the jurisdiction.

3. The ex parte summons sought the following reliefs:

“1. Leave to issue a writ of habeas corpus ad subjiciendum against the Respondents on the ground that the Applicant has been in their unlawful custody since 7 September 2021 and the Respondents continue to falsely imprison the Applicant in breach of his constitutional rights.

2. An Order under the inherent jurisdiction of this Court and or under Article 28 of the Constitution that the Respondents be restrained and shall not, whether acting by themselves or by any person under them in their chain of command or otherwise by giving any direction, consent, permission or encouragement to any person, remove, deport, expel or repatriate the Applicant from The Bahamas until-

- a. the determination of this Action and/or**
- b. until the Applicant's application for refugee and political asylum status has been determined and/or**
- c. until further order**

3. An immediate Order under the inherent jurisdiction of this Court and or under Article 28 of the Constitution that provision be made by the Respondents at the Carmichael Detention Centre to allow counsel to promptly and without delay speak, receive instructions and communicate as necessary with the Applicant subject to any reasonable and necessary health and safety protocols

4. An Order under Article 28 of the Constitution at the trial of this action, that the Applicant's rights under Article 19 or otherwise having been breached, the Applicant shall be ordered to be immediately released from, the unlawful custody of the Respondents.

5. An Order under Article 19 (4) and 28 of the Constitution at the trial of this action, for compensation to be assessed and paid by the Respondents for their unlawful detention of the Applicant.

6. An Order that the costs of and occasioned by this application be costs in the cause.

7. Under Article 28, such further or other relief as may be granted by the Court on this ex parte summons and or as may be granted at the trial of this action.”

4. I have been advised that the applicant may have filed a separate Writ of Summons in relation to matters which may or may not be related to the instant matter, that Writ is not before me and I am not addressing any issue in relation to any such Writ.

5. This is my decision in respect of the application for costs for a habeas corpus application.

6. The Ex Parte Summons has been laid out in paragraph three (supra). The affidavit in support of the application was not filed by the applicant but by a Shannon Dawkins, described as being a Legal Assistant in the Chambers of counsel for the applicant. The information in the affidavit was said to have been provided as follows:

“I depose to facts herein relating to Mr. Jimenez upon instructions received from Mr. Jimenez’ mother, Deisy Jimenez Cabrera which I believe to be true.”

7. The affidavit asserts that the applicants could not swear the affidavit themselves due to the Covid protocols in place at the Carmichael Detention Centre.

8. This is mentioned, having regard to the decision of The Bahamas Court of Appeal in the matter of **Hon. Carl Bethel et al v Jean-Rony Jean-Charles**

No. 26 of 2018, wherein the Court stated, under the rubric **“Was the Judge Correct to Dismiss the Writ of Habeas Corpus and the Motion for Contempt?”** the following:

“28. In my judgment not only was the judge correct to dismiss or discharge the Writ of habeas corpus on the material that was before him, the judge ought not in my judgment to have caused the writ to be issued.

.....

32. Further, in paragraph 4 of the Clotilde affidavit she states that the affidavit contains statements of facts which are not of her own knowledge. This is impermissible. Order 41 rule 5 states,

“5. (1) Subject to Order 14, rules 2(2) and 4(2), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.”

An application for a writ of habeas corpus is not an interlocutory application.

33. In paragraph 17 she states categorically that her brother is still “unlawfully in prison” this was not a matter of which she had any knowledge at the time she made her affidavit. Her affidavit does not state that she ever saw her brother at the detention camp nor did it state the basis upon which she knew at the time the affidavit was sworn that he was still being detained at the detention camp.

34. These defects illustrate why it was important and why the rules require that an affidavit be made by the applicant himself.”

9. The return to the Writ, filed 1 December 2021 reads:

“The return to this writ on behalf of the Respondents herein appears by Schedule annexed to the said writ as follows:

Schedule

I, FAUSTEEN MAJOR-SMITH, Officer-in-Charge of the Carmichael Detention Centre, declare that I am duly authorized to make this return on behalf of myself and the Respondents named in the writ to which this return is annexed.

I do hereby certify that on Wednesday, 8th September, 2021 at 0900 hrs., acting on the instructions of Chief Immigration Officer Harold Thurston, a team of officers operating under the supervision of Senior Immigration Officer Wyberg Brown, arrived at the Coral Harbor Base for the collection of nine (9) Cuban Nationals that were found on or near Green Cay, located just south-east of South Andros, by the Royal Bahamas Defence Force ("RBDF") Safe Boat.

RBDF Able Seaman Norelus reported that the Safe Boat, under the command of Petty Officer Eric Rolle, was informed by the operators of the fishing vessel 'Reel Deep' of nine (9) Cuban Nationals (8 males and 1 female) that they had rescued off Green Cay after a vessel carrying the Cuban Nationals had capsized. 'Reel Deep' was intercepted by Petty Officer Eric Rolle's Safe Boat at about 0400 hrs, and they arrived at the RBDF base at about 0430 hrs. All of the detainees received a rapid antigen Covid-19 test and medical attention before the processing began. The initial testing indicated that a Cuban male had tested positive for Covid-19. Therefore, he was isolated from the other detainees during transport in order to prevent any further spread of the disease.

At about 0950 hrs., all of the detainees were surrendered into Immigration, in accordance with Article 19 (1) (0 & (g) of The Constitution of The Bahamas and section 25 (4) of the Immigration Act, Statute Law of The Bahamas, and transported to the Department of Immigration Detention Centre for further processing and medical screening by the Surveillance Unit for the Coronavirus.

A check of the border control system and permit issuance reveals that the subjects did not enter The Bahamas legally, nor that there is any application submitted for residence or work permits on their behalf.

The subjects were all found to have illegally landed in The Bahamas contrary to section 19(1) and (2) of the Immigration Act, Chapter 191, Statute Law of The Bahamas.

The Applicant made a claim relating to his refugee status, and he was interviewed by the Refugee Administration Unit of the Department of Immigration.

The Applicant asserted that he was arrested by police (Cuban authorities) after an altercation with a man that led to him striking a police officer in the face knocking out two of his teeth while the officer was attempting to diffuse the situation. This led to his detention and subsequent court appearance to face charges. He spent eleven (11) years in prison for this offence after being found guilty of battery against an officer. The Applicant does not recall his exact release date, but he believes that it was sometime in 2007/2008. He indicated that he was given a conditional discharge. He was ordered to only leave his home for the purpose of going to work.

According to the Applicant, life after prison was not easy for him, and he would periodically be stopped by the police.

In 2012 or 2013, the Applicant said that he engraved the phrase "ABAJO CON FIDEL" on his chest and then proceeded outside of his home, while bleeding profusely due to the extensive self-inflicted wounds. This garnered attention from the police after neighbors and other members of the public began surrounding his home in order to take photos to upload to social media, The Applicant claimed to have been beaten extensively by police officers, and that he was allowed to go to the hospital on the day of the incident for treatment of his injuries. He was detained in police custody for nine (9) days afterwards.

The Applicant further stated that he would receive fines for a number of reasons, including illegal fishing. He said that the Cuban authorities made it difficult for him to earn a living by confiscating his fishing boat. He said that, in Cuba, he is no longer considered a trusted citizen since his multiple arrests, and that this led him to retaliate in multiple ways. One such way was that, in 2019, he went on a hunger strike and sewed his mouth shut in protest. This lasted for eight (8) days. He indicated that his boat was returned to him and fines were reversed.

The Applicant indicated that he joined several organizations who protest against the Cuban Government, and that he is a major supporter of the "Partido Democrata Cristiano". He indicated that he has supported this group and its position for the past four (4) years. He claims to have been summoned to the police station on several

occasions and warned about posting signs and banners and any illegal fishing.

The Applicant indicated that he eventually got fed up with the many altercations with Cuban authorities and decided it was time to leave Cuba in search of a better life. He attempted his first escape by boat approximately five (5) months ago, but was quickly intercepted by the 4 Cuban Coast Guard before he could leave the territory. He said that he was frustrated, but that he did not give up and eventually made good on his plans in August of this year.

The Applicant indicated that he was seeking asylum because he felt like this is his only hope of escaping an unwanted life in Cuba. However, he admitted to being guilty of everything he has been accused of in Cuba.

On 13th October, 2021 and as a result of information gathered during the interview, it was determined that the applicant was not a migrant in need of protection in accordance with the UNHCR's 1951 Convention and its 1957 Protocol.

I do hereby certify and return in obedience to the said writ that MAIKEL RODRIGUEZ JIMENEZ, the subject named therein, at the time of the application for the writ and the issuing of the said writ was detained at the Carmichael Detention Centre pending his removal from the Bahamas.

For the reason above, the Respondents pray that the writ herein be dismissed.”

10. In addition, a further affidavit was sworn and filed on behalf of the Respondents on 1st December 2021, that affidavit reads:

I, FAUSTEEN MAJOR-SMITH of the Western District of the Island of New Providence, one of the Islands of the Commonwealth of The Bahamas, MAKE OATH AND SAY as follows:

- 1. That I am the Officer-in-Charge of the Carmichael Detention Centre located at Golden Isle Road and I have held that position since the 6th of August, 2021**
- 2. That I am duly authorised to make this Affidavit on behalf of the Respondents herein.**
- 3. That I make this Affidavit from information within my personal knowledge, from information obtained by me in my capacity and from sources with whom I work, and I verily believe to be credible and reliable, unless otherwise expressly stated herein.**
- 4. That any matters deposed, belief or information that is not within my own personal knowledge, I have identified the ground and source of the information and I do verily believe that such matters, belief or information are true and correct.**
- 5. That this Affidavit is made in support of the Return to the Writ of Habeas Corpus Ad Subjiciendum filed on the 1st day of December, 2021 on behalf of the Respondents herein.**
- 6. That the Applicant, Mr. Maikel Rodriguez Jimenez is a male Cuban national, born at Camaguey, Cuba on the 8th day of August, 1982.**
- 7. That on the 8th September,2021 a fishing vessel named 'Reel Deep' informed The Royal Bahamas Defence Force Safe Boat that they had rescued nine (9) Cuban nationals (8 males and 1 female, including the Applicant) off Green Cay, located south east of South Andros, after their vessel had capsized.**

8. 'Reel Deep' was intercepted by The Royal Bahamas Defence Force Safe Boat at about 0400 hrs. and arrived to the Royal Bahamas Defence Force base at about 0430 hrs.
9. That all 9 detainees received a rapid antigen Covid-19 test and medical attention before the processing began. The initial testing indicated that a Cuban male had tested positive for Covid-19 and was isolated from the other detainees during transport in order to prevent any further contamination.
10. That at about 0950 hrs., all of the detainees were surrendered into Immigration and transported to the Department of Immigration Detention Centre for further processing and medical screening by the Surveillance Unit for the Corona virus.
11. That all subjects were isolated from the other detainees and placed in quarantine.
12. That once in custody of the Bahamas Immigration Department, a check of the Bahamas Immigration Border Control Management System, Permit Issuing System, Detainee Management Systems and Identity Management System was conducted. The check revealed that Mr. Jimenez did not enter The Bahamas legally, nor that there is any application submitted for residence or work permits on his behalf. There and now produced and shown to me a copy of Senior Immigration Officer, Wyberg Brown's report dated 8th September, 2021 which is hereto exhibited and marked as "F.M.S. 1".
13. That Mr. Jimenez was found to have illegally landed in the Bahamas contrary to Section 19(1) and (2) of the Immigration Act, Chapter 191, Statute Laws of The Bahamas. There and now

produced and shown to me is a copy of the Bahamas Immigration Department's Arrest Report dated 8th September,2021 which is hereto exhibited and marked as "F.M.S. 2"

14. Mr. Jimenez made claim relating to his refugee status, and he was interviewed by the Refugee Administration Unit of the Department of Immigration.

15. Mr. Jimenez was seeking asylum due to what he describes as a bad life in Cuba. Growing up he says, was very bad. He alleges that he suffered from food shortage, hunger, starvation, lack of money and the inability to find work. Although he is an only child, that still didn't make his life any easier,

16. Mr. Jimenez asserted that he was arrested by police after an altercation with a man that led to him striking a police officer in the face knocking out two of his teeth while the officer was attempting to diffuse the situation. This led to his detention and subsequent court appearance to face charges. He spent eleven (11) years in prison for this offence after being found guilty of battery against an officer. Mr. Jimenez does not recall his exact release date but believes that it was sometime in 2007/2008. He was given a conditional discharge. He was ordered to only leave his home for the purpose of going to work. According to Mr. Jimenez, life after prison was not easy for him and he would periodically be stopped by the police.

17. In 2012 or 2013, Mr. Jimenez engraved the phrase "ABAJO CON FIDEL" on his chest then proceed outside his home, while bleeding profusely due to the extensive self-inflicted wounds. This garnered attention from the police after neighbors and other

members of the public began surrounding his home in order to take photos to upload to social media. Mr. Jimenez claimed to have been beaten extensively by the police officers and that he was allowed to go to hospital on the day of the incident for treatment of his injuries. He was detained in police custody for nine (9) days afterwards.

18. Mr. Jimenez further stated that he would receive fines for a number of reasons, including illegal fishing. He said that the Cuban authorities made it difficult for him to earn a living by confiscating his fishing boat. He said that, in Cuba, he is no longer considered a trusted citizen since his multiple arrests, and that this led him to retaliate in multiple ways. One such way was that, in 2019, he went on a hunger strike and sewed his mouth shut in protest. This lasted for eight (8) days. He indicated that his boat was returned to him and fines were reversed.
19. Mr. Jimenez indicated that he joined several organizations who protest against the Cuban Government, and that he is a major supporter of the “Partido Democrata Cristiano”. He indicated that he has supported this group and its position for the past four (4) years. He claims to have been summoned to the police station on several occasions and warned about posting signs and banners and any illegal fishing.
20. Mr. Jimenez indicated that he eventually got fed up with the many altercations by Cuban authorities and decided it was time to leave Cuba in search of a better life. He attempted his first escape by boat five (5) months ago but was quickly intercepted by the Cuban Coast Guard before he could leave the territory. He said that

he was frustrated, but that he did not give up and eventually made good on his plans in August of this year.

21. Mr. Jimenez indicated that he was seeking asylum because he felt like this is his only hope of escaping an unwanted life in Cuba. However, he admitted to being guilty of everything he has been accused of in Cuba.
22. On 13th October, 2021 and as a result of information gathered during the interview, it was determined that the Applicant was not a migrant in need of protection according to UNHCR's 1951 convention and its 1957 protocol.
23. That on 9th November, 2021 the Department of Immigration sought permission from the Ministry of Foreign Affairs to repatriate 109 Cuban Nationals into Havana, Cuba, which included the Applicant. There is now produced and shown to me a copy of a Memorandum from the Department of Immigration to the Ministry of Foreign Affairs dated 9th November, 2021 which is hereto exhibited and marked as Exhibit "F.M.S. 3"
24. That with the permission granted from the Ministry of Foreign Affairs in relation to the aforementioned request, the Department of Immigration scheduled a repatriation flight for all 109 Cuban Nationals (including the Applicant) via Bahamasair Charter Flight UP900 Aircraft Registration C6-BFY to depart Nassau, The Bahamas at 8:30 a.m. and to arrive in Havana, Cuba at 09:55 a.m. on Tuesday, 23rd November, 2021.
25. That by an Ex-Parte Summons supported by an Affidavit of Shawn Dawkins filed 16th November, 2021 and heard on the 17th November, 2021 before the Honourable Justice Bernard Turner, it

was ordered that leave be granted to issue a Writ of Habeas Corpus Ad Subjiciendum against the Respondents, and that the Respondents be restrained from removing, deporting, expelling or repatriating the Applicant from the Bahamas.

26. That on 19th November, 2021 and pursuant to a request by the Director of Immigration the Applicant was removed from the list of persons scheduled for the said repatriation and now remain committed to the Carmichael Detention Centre as a result. There is now produced and shown to me a copy of a Memorandum from the Department of Immigration to the Ministry of Foreign Affairs dated 19th November, 2021 which is hereto exhibited and marked as Exhibit "F.M.S. 4"

27. That there is a Detention and Deportation Order for the Applicant's removal from The Bahamas. There is now produced and shown to me a copy of a Memorandum from the Department of Immigration to the Ministry of Foreign Affairs dated 19th November 2021 which is hereto exhibited and marked as Exhibit "F.M.S.5"

28. The contents of this Affidavit are true to the best of my knowledge, information and belief."

11. The Respondent's contend that in as much as the applicant had been released without a full Habeas Corpus hearing that costs, even if they applied to this matter, should not be awarded.

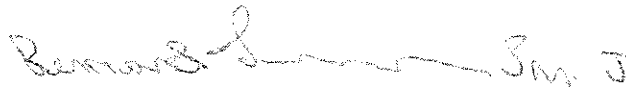
12. The Applicant asserts that he was unlawfully detained and that therefore he should be awarded his costs of applying for Habeas Corpus to seek his

release. They submitted that the Respondents did not seek to justify the detention of the applicant in their submissions.

13. In light of the decision of this court in **Wilkins Garcon v Vonette Flowers et al (2021/CRI/CON/008) 6 October 2022**, I find that, by parity of reasoning, that decision is applicable to this application and in the circumstances constitutes a basis for the rejection of an application for costs.

14. For this reason, I hereby dismiss the application for costs by the applicants, and I order that each party is to bear their own costs.

Dated this 20 day of June AD 2023



**Bernard S A Turner
Senior Justice**

