IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Appeal No BZCV2022/001
BZ Civil Appeal No 14 of 2019

BETWEEN

HILLAIRE SEARS	**APPELLANT**

AND

PAROLE BOARD	**FIRST RESPONDENT**
MINISTER OF NATIONAL SECURITY	**SECOND RESPONDENT**
THE ATTORNEY GENERAL	**THIRD RESPONDENT**

Before the Honourable: **Mr Justice Saunders, PCCJ**
Mr Justice Wit, JCCJ
Mr Justice Anderson, JCCJ
Mme Justice Rajnauth-Lee, JCCJ
Mr Justice Burgess, JCCJ

Appearances

Ms Leslie Mendez and Mr Hector Guerra for the Appellant

Ms Samantha Matute-Tucker for the Respondents

Constitutional law – Fundamental Rights – Redress – Constitutional claim challenging the lawfulness of detention of parolee and revocation of parole – Breach of fundamental rights - Whether wrong procedure used to bring claim – Whether alternative remedy available – Whether claim by judicial review appropriate - Constitution of Belize 1981, s 20.

Constitutional law – Fundamental Rights - Right to personal liberty and equal protection of the law – Breach - Unlawful arrest and detention - Revocation of Parole - Whether re-incarceration breached right to personal liberty - Whether revocation of parole breached right to personal liberty and equal protection of the law - Whether oral hearing necessary - Constitution of Belize 1981, ss 5, 6 – Parole Act, s 9 - Prison Rules rr 272, 274.

SUMMARY

Shortly after the hearing of this appeal, this Court gave judgment in favour of Hillaire Sears ('the appellant'), allowing his appeal. The Court declared then that the reincarceration of the appellant on 3 April 2014 had breached his constitutional right to personal liberty, and that the revocation of his parole by the Parole Board on 28 May

2014 had breached his constitutional rights both to personal liberty and equal protection of the law as guaranteed by ss 5 and 6 respectively of the Constitution of Belize. The Court also quashed the order of the Parole Board dated 28 May 2014 and ordered the appellant's immediate release from prison. Costs orders were made in his favour. The Court now delivers its Reasons.

The appellant was charged with the offence of murder and convicted and sentenced on 12 December 2001. The Court of Appeal quashed his conviction and substituted a conviction of manslaughter, sentencing him to a term of 25 years imprisonment. He served his sentence until he was granted parole and released from prison on 21 December 2012. One of the conditions of parole to which he agreed was that 'he will not indulge in the illegal use, sale, possession, distribution, transportation or be in the presence of controlled drugs.' He also agreed that if he violated any of the said conditions of parole, he would be subject to arrest, revocation of his parole and return to prison. On 3 April 2014, while working at the prison, the prison authorities suspected that he was involved in a transaction with an inmate involving cannabis. He was detained and instructed to provide a urine sample for the purpose of a drug test, which he provided. He was re-incarcerated and spent the night of 3 April 2014 in a prison holding cell. Thereafter, he was taken to a cell block where he remained detained. On 28 May 2014, he was informed by a Memorandum from the Chairman of the Parole Board that the result of the urine analysis drug test was positive for cannabis and as such the Parole Board had made the decision to revoke his parole.

In June 2018, the appellant filed a constitutional claim challenging the lawfulness of his detention and the revocation of his parole. He applied for declarations that his rights to personal liberty, due process, equal protection of the law and right against inhuman and degrading punishment guaranteed under ss 5, 6 and 7 of the Constitution had been breached. He also sought an order that he be released forthwith, damages, vindicatory damages and costs. Arana J dismissed his claim, finding that the Parole Board had clear proof of the violation and was legally empowered under the Prison Rules to revoke his parole. The judge also found that there was no mandatory requirement for an oral hearing to be granted to parolees, and that, in any event the wrong procedure was used by the appellant to bring the claim as it should have been brought by way of judicial review. The delay in bringing the claim was also found to be excessive.

The appellant appealed. The Court of Appeal affirmed the decision of the trial judge. In its view, the appellant pursued the wrong procedure and should have sought relief through judicial review. In any event, the court held that his claim was brought four years after the Parole Board's decision and this delay was excessive. Further, the court stated that the appellant's claim for unlawful detention should properly have been pursued by the alternative remedy of false imprisonment.

The appellant then appealed to this Court resulting in the Orders mentioned above. Justice Wit, JCCJ and Justice Rajnauth-Lee, JCCJ delivered the Reasons of the Court. To the question of whether the appellant utilized the wrong procedure in bringing his claim, relying on *Marin v R* and *Lucas v Chief Education Officer*, the Court found that the appellant had alleged the arbitrary use of state power; incarceration without legal authority and the revocation of his parole without due process. These were genuine claims of infringements of his fundamental rights and they were not filed with the sole purpose of avoiding the normal judicial remedy for unlawful administrative action. In fact, in 2014, there was no possibility of judicial review of these decisions. After the amendment of the Prison Rules in 2010 was effected, r 267(7) excluded the right to apply for judicial review against the Parole Board's decision to recall or revoke parole. This provision remained in effect until the enactment of the Parole Act in 2017. There was also no merit in the argument that the Supreme Court was not empowered to quash the Parole Board's decision under a constitutional claim, given the discretion and wide powers provided under s 20 of the Constitution. Additionally, the Court did not agree that the appellant should be shut out because of excessive delay as the alleged constitutional breaches complained of were serious and their consequences were ongoing.

The Court next considered whether the appellant's re-incarceration on 3 April 2014 was a breach of his constitutional right to personal liberty guaranteed by s 5 of the Constitution. Rules 272 and 274 of the Prison Rules specified two sets of circumstances in which a parolee who was suspected of having breached the conditions of his parole could be arrested or detained. In both situations, the law provided important constitutional safeguards and the appellant was not afforded any of these safeguards when he was arrested and detained. In this case, the appellant's arrest could not have been based on either of these Rules. The Court was therefore satisfied that the appellant's arrest and detention on 3 April 2014 was arbitrary, without any legal authority and without due process. He was deprived of his fundamental right to personal liberty for at

least those 55 days, that is, from 3 April until 28 May 2014, when the Parole Board revoked his parole.

As to whether the revocation of the appellant's parole by the Parole Board on 28 May 2014 breached his constitutional rights to personal liberty and equal protection of the law, the Court noted that it had on several occasions discussed the broad and pervasive scope of the right to the protection of the law. After considering the parole regimes of several jurisdictions, the Court concluded that the acceptable approach for recall and revocation of parole seems generally to allow for (a) the parole to be revoked on the papers and in writing by order of the relevant authority (b) the parolee to be arrested or detained upon the execution of such revocation or recall order, and, (c) upon return to the prison, the parolee to be given the opportunity to object to the revocation or recall by making written or oral representations. Ultimately, the overarching consideration must be an assessment by the Parole Board of the possible effect of its decisions on the safety of the public. Where possible, these decisions should be focused on the proper and effective management of a parolee's future conduct.

Once the revocation process has begun, the Parole Board has to determine whether the parolee has in fact acted in violation of a condition of their parole, and if so, whether, when and under what conditions it would be justified or appropriate to consider releasing the parolee once more, despite the earlier violation. At the very least, the prisoner should be allowed to make written representations or be heard by the Parole Board. Moreover, where it is deemed necessary or desirable to hear from the prisoner personally, there ought to be an oral hearing. In the appellant's case, no hearing was afforded to him. Nor was he afforded an opportunity to give any written explanation. He was simply informed in writing that the Parole Board had revoked his parole 55 days after he was unlawfully detained, and a urine sample taken from him. Accordingly, the appellant was denied the procedural fairness required by the Constitution and his constitutional right to protection of the law had been infringed.

Cases referred to:

A-G v Joseph [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104 (BB), *A-G v Ramanoop* (2005) 66 WIR 334 (TT PC), *Association of Concerned Belizeans v Prime Minister and Minister of Finance* (Belize CA, 13 March 2008), *August v R* [2018] CCJ 7 (AJ) (BZ), [2018] 3 LRC 552, *Belfonte v A-G* (2005) 68 WIR 413 (TT CA), *Harrikissoon v A-G of Trinidad and Tobago* (1979) 31 WIR 348 (TT PC), *Jaroo v A-G* (2002) 59 WIR 519 (TT PC), *Lucas v Chief Education Officer* [2015] CCJ 6 (AJ) (BZ), (2015) 86 WIR 100, *Marin v R* [2021] CCJ 6 (AJ) BZ, *Morrissey v Brewer* (1972) 408 US 471, *Observer*

Publications v Matthew (2001) 58 WIR 188 (AB PC) , R (*Osborn) v Parole Board* [2014] AC 1115, *R (Smith) v Parole Board* [2005] 1 WLR 350, *Sears v Director of Belize Central Prison* (Belize CA, 8 April 2021), *Maya Leaders Alliance v A-G of Belize* [2015] CCJ 15 (AJ) (BZ), (2015) 87 WIR 178.

Legislation referred to:

Australia – Crimes Act 1914 (Cth); **Belize** – Belize Constitution Act 1981, Cap 4, Parole Act 2017, Interpretation Act, Cap 1, Prison Rules, Cap 139, Supreme Court (Civil Procedure) Rules 2005; **Canada** – Corrections and Conditional Release Act & Regulations, SC 1992 c 20; **Guyana** – Parole Act, Cap 11:08; **Jamaica** – Parole Act 1978; **New Zealand** – Parole Act 2002; **United Kingdom** – Criminal Justice Act 2003.

REASONS FOR DECISION
of
The Honourable Mr Justice Saunders, President and The Honourable Justices Wit, Anderson, Rajnauth-Lee and Burgess

Delivered by
The Honourable Mr Justice Wit and Mme Justice Rajnauth-Lee
on 5 August 2022

Introduction

[1] This appeal raises important issues concerning the constitutional rights of a parolee within the penal system of Belize. On 29 June 2018, the appellant Hillaire Sears commenced a constitutional claim alleging that his detention on the 3 April 2014, while he was on parole, and the subsequent revocation of his parole on 28 May 2014 by the Parole Board, breached his fundamental rights under the Constitution of Belize. The respondents, namely, the Parole Board, the Minister of National Security and the Attorney General, resisted the claim, and argued that the appellant should have brought a claim for judicial review, and had therefore utilized the wrong procedure. Both the Supreme Court and the Court of Appeal ruled against the appellant.

[2] The Court heard the matter on 3 May 2022. On 20 May 2022, the Court issued an order allowing the appeal with reasons to follow. The Court declared that the appellant's reincarceration on 3 April 2014 breached his constitutional right to personal liberty, and that the revocation of his parole by the Parole Board on 28 May 2014 breached his constitutional rights to personal liberty and equal

protection of the law as guaranteed by ss 5 and 6 respectively of the Constitution of Belize. The Court also quashed the order of the Parole Board dated 28 May 2014. The Court ordered the appellant's immediate release from prison. Costs orders were made in the appellant's favour.

[3] In addition, the Court directed that the respondents make an assessment of the date by which the appellant would have served his sentence bearing in mind; (a) his incarceration from 21 March 2001[1] and (b) any eligibility for remission that the appellant may have earned. The Court ordered that the respondents file a report with this Court with respect to the results of the assessment on or before 3 June 2022.

[4] On 3 June 2022, the Respondents filed the report as directed by the Court. The report revealed that the appellant will have served his sentence in December 2027. The report continued: "However, if a calculation is done of his twenty-five-year (25) sentence starting from March 2001, he will serve twenty five years in 2026." It has therefore been made clear that the status to which the appellant reverted as a consequence of the order of the Court dated 20 May 2022 was that of a parolee. The normal conditions that attend that status shall therefore apply.

[5] The following are the reasons of the Court.

Background

[6] On 18 March 2001, the appellant was charged with the offence of murder. On 12 June 2003, the Court of Appeal quashed the conviction of murder recorded in the Supreme Court against the appellant, set aside the sentence of life imprisonment imposed by the Supreme Court and substituted a conviction of manslaughter. The Court of Appeal imposed a sentence of 25 years to run from 4 December 2002, the date of his conviction for murder.

[7] The appellant served his sentence at the Belize Central Prison until he was granted parole and released from prison on 21 December 2012. One of the conditions of his parole to which he agreed was that he would "not indulge in the illegal use, sale, possession, distribution, transportation or be in the presence of controlled

[1] The date of the commencement of the appellant's pre-trial detention on the charge of murder.

drugs". He also agreed that if he violated any of the conditions of his parole, he would be subject to arrest, revocation of his parole and return to prison.

[8] While on parole, the appellant was allowed to work as an Emergency Medical Technician at the Belize Central Prison. On 3 April 2014, the appellant was working at the prison when the officer in charge received information that the appellant was involved in a suspicious transaction with an inmate. Shortly after, that inmate was found in possession of a package containing suspected cannabis.

[9] Prison guards approached the appellant intending to search and question him, but he fled. He was subsequently detained by prison guards and instructed to provide a urine sample for the purpose of a drug test. After he provided the sample, the appellant was informed that he would remain at the prison until further notice. He spent the night of 3 April 2014 in a prison holding cell, and on 4 April 2014, he was taken to a cell block "Tango Ten" where he remained until 28 May 2014.

[10] On 28 May 2014, the appellant was informed by a Memorandum from the Chairman of the Parole Board that the result of the urine analysis was positive for drug use, and consequently, a decision had been made to revoke his parole. The appellant's incarceration continued until 20 May 2022 when this Court ordered his immediate release.

[11] On 4 September 2017, Attorneys acting on behalf of the appellant wrote to Mr Virgilio Murillo, Chief Executive Officer of the Kolbe Foundation, Director of Prisons and *ex officio* member of the Parole Board. The Attorneys complained that the appellant had been imprisoned without being brought before the Parole Board and that, unlike many other inmates, he was not given the option of completing a 90 days' rehabilitation program in order to be granted parole once more. The Attorneys complained of a "rather alarming situation of the practice of parole at Kolbe". They therefore sought the assistance of Mr Murillo to grant the appellant an audience before the Parole Board. There was no response to this letter.

Supreme Court Proceedings

[12] On 29 June 2018, the appellant filed a Fixed Date Claim and affidavit in support seeking declaratory relief, an order that he be released forthwith, damages, vindicatory damages and costs. He contended that:

(a) he was detained by prison guards without any lawful authority in violation of s 5 of the Constitution;

(b) on 28 May 2014, the Parole Board arbitrarily revoked his parole without affording him an opportunity to be heard or giving him a chance to engage in any rehabilitation program in accordance with the practice adopted by other parolees thereby violating ss 5 and 6 of the Constitution;

(c) the arbitrary deprivation of his personal liberty also deprived him of his right to freedom of movement guaranteed by s 10 of the Constitution;

(d) he had been and was being subjected to inhuman and degrading prison conditions in violation of ss 3 and 7 of the Constitution.

[13] The matter was heard before Arana J in the Supreme Court, and the decision was given on 11 June 2019. The trial judge found that the appellant was granted the privilege of parole and that he wilfully violated that privilege on the very grounds of the prison. She also found that the appellant was fully aware of the fact that if he were to breach those conditions, his parole would be revoked. The judge expressed the 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 judge found that the Parole Board had clear proof of this violation, that it was legally empowered under the Prison Rules to revoke the appellant's parole, and that the Parole Board was under no obligation to afford the appellant an oral hearing.

[14] Arana J was also of the view that it would send a wrong message to "this crime ridden society" if the appellant (a 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.

[15] In addition, Arana J found that the wrong procedure was used in bringing the matter before the court. She considered that the substantive case clearly called for a review of the Parole Board's decision and that the matter should have been brought by way of judicial review. The substantive relief sought the quashing of the decision of the Parole Board and an order for the immediate release of the

appellant. The judge also found that the delay of four years in bringing the matter to the court was excessive. The claim was therefore dismissed with costs to the respondents.

The Proceedings Before the Court of Appeal

[16] Being dissatisfied with the judgment of the trial judge, the appellant appealed. The Court of Appeal, at the request of Counsel for the appellant, confined itself to two procedural issues:

(a) Whether the trial judge erred in law in finding that the appellant pursued the wrong procedure in bringing the matter before the court; and

(b) Whether the trial judge erred in law in finding that the delay of four years in bringing this matter was excessive in the circumstances.

[17] The Court of Appeal (Hafiz Bertram P (Ag), Awich and Ducille JJA) in a judgment delivered by Hafiz Bertram P (Ag), on 8 April 2021, on written submissions, agreed with the trial judge on both issues. The court was of the view that 'the appellant was mistaken when he placed all his woes in one basket as the order sought by him to be released from prison requires the quashing of the decision of the Parole Board'.[2] The court was of the further view that although a person may seek declarations for constitutional redress or judicial review[3] this was not the position in relation to an application for a quashing order which had to be made under Rule 56.1(3) of the Supreme Court (Civil Procedure) Rules 2005 ('the CPR') – by way of judicial review for the remedy of *certiorari*.[4]

[18] In addition, the Court of Appeal noted that in such circumstances, the appellant would have been required to seek leave to apply for judicial review under r 56.5(3) of the CPR. Such an application had to be made promptly and in any event within three months from the date when the grounds for the application first arose, unless the court considered that there was good reason for extending the period within which the application should have been made. The court therefore observed that when the appellant brought his claim for constitutional relief, this was four years after the Parole Board had made its decision. Such a delay would

[2] *Sears v Director of Belize Central Prison* (Belize CA, 8 April 2021) at [30].
[3] *Association of Concerned Belizeans v Prime Minister and Minister of Finance* (Belize CA, 13 March 2008).
[4] *Sears* (n 2) at [31] and [32].

have been excessive if the appellant had brought an application for judicial review.[5]

[19] As to the appellant's argument in relation to alternative remedies, that the old rigid approach to the exercise of the court's jurisdiction changed with the repeal of the proviso in s 20 of the Constitution, the Court of Appeal considered the repeal unhelpful to the appellant's case since in the court's view, a quashing order could not have been made under a claim for constitutional redress.[6]

[20] The Court of Appeal relied heavily on the dicta of Lord Nicholls of Birkenhead of the Privy Council in the case from Trinidad and Tobago of *Harrikissoon v Attorney General of Trinidad and Tobago*[7]. The Court of Appeal did not agree with Counsel for the appellant that there were genuine and rational bases for considering that the constitutional claim was the most appropriate avenue to redress the various violations committed against the appellant. The court was of the view that there was no arbitrary use of state power by the Parole Board. Accordingly, an application could have been made by the appellant within three months of the decision of the Parole Board to review its decision-making process and the lawfulness of that decision.[8] In addition, the court found that the claim for unlawful detention should properly have been pursued by the alternative remedy of false imprisonment.[9]

[21] As to the appellant's contention that the prison conditions violated his fundamental human rights, the court was of the view that this challenge should have been brought as a stand-alone claim and not wrapped up with these other reliefs.

Appeal to the Caribbean Court of Justice

[22] The appellant appealed to this Court. The following issues arose for determination:

(a) Whether the appellant utilized the wrong procedure in bringing his claim for constitutional relief before the Supreme Court?

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[5] ibid at [34] and [35].
[6] ibid at [36].
[7] (1979) 31 WIR 348 (TT PC).
[8] *Sears* (n 2) at [37]-[39].
[9] ibid at [40].

(b) Whether the appellant's reincarceration on 3 April 2014 was a breach of his constitutional right to personal liberty guaranteed by s 5 of the Constitution of Belize?

(c) Whether the revocation of the appellant's parole by the Parole Board on 28 May 2014 breached his constitutional rights to personal liberty and equal protection of the law guaranteed by ss 5 and 6 respectively of the Constitution of Belize?

(d) What were the appropriate remedies which ought to be granted to the appellant?

Whether the Appellant Utilized the Wrong Procedure in Bringing His Claim for Constitutional Relief Before the Supreme Court?

[23] Both the Supreme Court and the Court of Appeal concluded that the appellant utilized the wrong procedure in bringing his claim. They were firmly of the view that the appellant ought to have sought leave to apply for judicial review, since an order to quash the decision of the Parole Board could not have been made under a constitutional claim.

[24] The respondents argued before us that the warning enunciated by Lord Diplock in *Harrikissoon*, that not every failure by a public authority to comply with the law, entailed necessarily the contravention of some human right or fundamental freedom guaranteed by the Constitution, was still pertinent today. They further argued that the appellant's pursuit of constitutional relief notwithstanding the fact that there were available remedies both in public and private law was a clear abuse of process. They therefore argued that the appellant's claim brought pursuant to s 20 of the Constitution was misconceived and the Supreme Court and the Court of Appeal were correct to have struck it out.

[25] Section 20 sub-ss (1) and (2), of the Constitution of Belize provides:

> (1) If any person alleges that any of the provisions of ss 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction,

(a) to hear and determine any application made by any person in pursuance of sub-s (1) of this section; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of sub-s (3) of this section, and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of ss 3 to 19 inclusive of this Constitution.

[26] In the case of *Marin v R*[10], this Court had to determine as a preliminary point whether the Court of Appeal and this Court had jurisdiction to decide the constitutional issue of the breach of Marin's fundamental right to a fair hearing within a reasonable time, where the alleged breach did not arise out of and was not bound up with the substantive criminal proceedings, but arose from post-conviction delay. The State had argued that Marin was required to file a separate originating application before the Supreme Court seeking constitutional redress under s 20(1) of the Constitution.

[27] This Court in a judgment authored by Jamadar JCCJ held that the Court of Appeal can, in certain circumstances, grant relief and a remedy for a breach of an individual's fundamental rights where the breach arises during a case before it, even if not directly related to the issues which may or do arise from the substantive criminal trial. Jamadar JCCJ discussed the 'contemporary judicial mindset' to such procedural objections, and the purposive and generous approach to the interpretation and application of fundamental rights and freedoms in order to facilitate flexible access to courts for the fullest vindication of those rights.[11] In addition, Jamadar JCCJ considered the case of *Observer Publications v Matthew*[12] from Antigua and Barbuda. At [172] of *Marin*, Jamadar JCCJ noted that in *Observer Publications*, Redhead JA in the Court of Appeal expressed himself as having great difficulty in agreeing, "that by merely shrieking breach of a fundamental right one can knock on and disturb the sanctity of the constitutional door." When the matter got to the Privy Council, Lord Cooke made these important observations at [53]:

> With respect, the image of the Constitution as secluded behind closed doors is not one which their Lordships adopt. Nor would it be right to

[10] [2021] CCJ 6 (AJ) BZ.
[11] ibid at [70].
[12] [2001] 58 WIR 188 (AB PC).

> think of the Constitution as if it were aloof or, in the famous phrase of Holmes J, 'a brooding omnipresence in the sky'. On the contrary, human rights guaranteed in the Constitution of Antigua and Barbuda are intended to be a major influence upon the practical administration of the law. Their enforcement cannot be reserved for cases in which it is not even arguable that an alternative remedy is available. As Lord Steyn said, delivering the advice of the Privy Council in *Ahnee v DPP* [1999] 2 AC 294 at 307 '... bona fide resort to rights under the Constitution ought not to be discouraged'. Frivolous, vexatious or contrived invocations of the facility of constitutional redress are certainly to be repelled.

[28] As regards the proper procedure for bringing a claim for constitutional relief, the Belizean case of *Lucas v Chief Education Officer*[13], which was heard before the Court, is also instructive. In *Lucas*, the appellants (principal and vice-principal of a secondary government school) had commenced a claim for judicial review of the decisions to suspend them made by the Chief Education Officer. Included in their judicial review application was a claim that their constitutional rights under s 3(a) (right to protection of the law), s 6(1) (right to equal protection of the law), s 6(7) (right to a fair hearing), and s 15(1) (right to work) had been infringed. Even though the members of the Court were divided on their views on the substantive issues, that is, whether there were indeed violations of the appellants' constitutional rights, there appeared to be no divergence of views as to the correctness of the procedure employed by the appellants.

[29] Saunders JCCJ examined the issue of procedure. He noted the principle as restated in the cases from Trinidad and Tobago of *Jaroo v Attorney General*[14] and *Attorney General v Ramanoop*[15], that where there was a parallel remedy, a citizen should not be given constitutional relief, unless the circumstances of which complaint was made, included some feature which justified resort to a claim for breach of a fundamental right. Saunders JCCJ further noted that this principle was buttressed in some Caribbean constitutions by a specific proviso that mandated the court to decline constitutional relief where a parallel remedy existed. Even though the Constitution of Belize had no such proviso, Saunders JCCJ observed that few would doubt that Belizean courts were still expected to disapprove needless resort to the redress provision contained in s 20 of the Constitution.[16]

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[13] [2015] CCJ 6 (AJ) (BZ), (2015) 86 WIR 100.
[14] (2002) 59 WIR 519 (TT PC).
[15] (2005) 66 WIR 334 (TT PC).
[16] *Lucas* (n 13) at [132].

[30] Saunders JCCJ observed, however, that that principle could not be applied to the circumstances of the *Lucas* case, where the judicial review claim included allegations of constitutional violations. Part 56 of the Supreme Court (Civil Procedure) Rules 2005 indeed permitted a litigant to seek constitutional relief in a judicial review application.[17]

[31] In addition, Saunders JCCJ agreed with Sharma CJ in the Trinidad and Tobago case of *Belfonte v Attorney General*[18] heard in the Court of Appeal that the determining factor in deciding whether there had been an abuse of process was not merely the existence of a parallel remedy, but also, the assessment whether the allegations grounding constitutional relief were being brought "for the sole purpose of avoiding the normal judicial remedy for unlawful administrative action".[19]

[32] The Court adopts the effective and just approach of assessing the appellant's claim to satisfy itself that it is a genuine recourse to constitutional redress under s 20. The appellant's claim alleges credible, serious and multiple breaches of his fundamental rights. In summary, the appellant alleges the arbitrary use of state power; incarceration without legal authority and in breach of his fundamental rights to liberty and protection of the law; and the revocation of his parole without due process. These are genuine claims of infringements of the appellant's fundamental rights which require the Court to examine carefully those claims, and to determine whether the appellant is indeed entitled to constitutional redress. It follows that the appellant's fixed date claim was not filed with the sole purpose of avoiding the normal judicial remedy for unlawful administrative action.

[33] There is also no merit in the argument that the Supreme Court was not empowered to make an order to quash the decision of the Parole Board under a constitutional claim. This Court has pointed out that constitutional relief is always a matter of discretion and that a court has wide powers under the redress clause of the Constitution, that is to say, s 20, to create or fashion a remedy to ensure effective relief, given the unique features of the particular case.[20]

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[17] ibid, at [134] and [135].
[18] (2005) 68 WIR 413 (TT CA) at [18].
[19] *Lucas* (n 13) at [134]
[20] *Marin* (n 10) at [147]; *Maya Leaders Alliance v A-G of Belize* [2015] CCJ 15 (AJ) (BZ), (2015) 87 WIR 178 at [6].

[34] In addition, the Court does not agree with the findings of the courts below that the appellant should be shut out because of excessive delay in the filing of his claim. The appellant has been incarcerated for more than eight years - since April 2014. The alleged constitutional breaches of which he complains are serious and their consequences were ongoing. In the Court's view, the delay which has been condemned in the courts below is of no relevance given the important and continuing constitutional infringements which have been alleged by the appellant.

[35] The Court continues to caution against the unnecessary reliance on strict rules of procedure to shut out citizens from seeking constitutional relief, especially in the face of serious allegations of constitutional violations. The focus of this Court, as is the clear intention of the Constitution, is to provide flexible and effective access to justice for the peoples of Belize so that they can seek full vindication of their constitutional rights.

[36] There is also a more mundane and practical reason for concluding that in this case the claim for constitutional relief was not only possible but also perhaps the most appropriate procedure. After the amendment of the Prison Rules in 2010, r 267(7) provided:

> There is neither right of appeal nor right to apply for judicial review by a prisoner against the Board's decision (a) to refuse to grant parole, (b) to recall a parolee or revoke the order granting such parole, and the Board's decision for parole consideration or recall of parolee, as the case may be, is final.

This provision was in effect until the enactment of the Parole Act in 2017[21] when it was repealed and not re-enacted. It is clear therefore that in 2014, when the appellant was recalled, it would not have been possible for him to file for judicial review of the Board's decision. This only became a possibility in 2017, three years after the recall. What would have been possible for him to do, was to file a constitutional claim.

Were the Appellant's Constitutional Rights to Liberty and Protection of the Law Infringed?

[37] The Court moves on to the appellant's allegations that his constitutional rights were infringed. It is recalled that the trial judge found that the Parole Board had

[21] The enactment of the Parole Act in 2017 repealed Part VI of the Prison Rules Cap. 139. The Parole Act was assented to by the Governor General on 29 March 2017. By virtue of s 41 of the Interpretation Act Cap 1, the Parole Act took effect and came into force on this date.

clear proof that the appellant had violated his parole, that the Board was legally empowered under the Prison Rules to revoke that parole, and that the Board was under no obligation to afford him an oral hearing. The Court of Appeal, however, did not embark upon a determination of those substantive issues. At the request of Counsel for the appellant, the Court of Appeal focused on whether the decision of the trial judge on the procedural issues was correct. We need only remind that the appellant had been incarcerated since 3 April 2014. In those circumstances, the Court was of the firm view that it was not in the interest of justice that this appeal should be remitted to the Court of Appeal for that court to determine the substantive issues.

The Appellant's Arrest and Detention on 3 April 2014

[38] The Court considers first the effect of the appellant's incarceration on 3 April 2014. Did that incarceration breach the fundamental right to liberty under s 5 of the Constitution? Section 5(1) of the Constitution provides that a person shall not be deprived of their personal liberty except in the specific cases set out in the section. For example, a person can be deprived of their personal liberty in execution of the order of a court made to secure the fulfilment of any obligation imposed on that person by law.

[39] Part VI of the Prison Rules, enacted under s 17 of the Prison Act,[22] specified at the time the general conditions applicable when an offender was released on parole.[23] The Rules prescribed that the parolee shall comply with the general conditions set out at r 271(1) as well as such other conditions as the Parole Board may direct from time to time. One of the special conditions to which the appellant agreed was that he would "not indulge in the illegal use, sale, possession, distribution, transportation or be in the presence of controlled drugs". This is the condition which it is alleged that the appellant breached, and for which his parole was recalled.

[40] The Prison Rules provided at r 272 for the recall of an offender whilst on parole. At r 274, which appears not to have been re-enacted, the offence of breaching conditions of parole was set out. These Rules are important to this appeal and are set out in full:

[22] Cap 139.
[23] Rule 271 of the Prison Rules, Cap 139.

> 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.

[41] These Rules therefore specified two sets of circumstances in which a parolee who was suspected of having breached the conditions of his parole could be arrested or detained. First, under r 272, once the Parole Board had for reasonable cause directed in writing that the parolee be recalled, the parole order was deemed to be revoked, and the parolee could be arrested without a warrant, by a police, prison or parole officer. Second, under r 274, sub-r (1), if the parolee contravened or failed to comply with any condition of his parole, he committed an offence and was liable on summary conviction to a fine or to a term of imprisonment not exceeding twelve months, or to both such fine and imprisonment. In addition, the parolee could be required by the court to serve the remaining part of his sentence. It is in the context of sub-r (1), that sub-r (2) of r 274, came into play, and a parolee could be arrested without a warrant. The sub-rule provided that where a parole, prison or police officer believed on reasonable grounds and had sufficient evidence that a parolee had committed a breach of any condition of his parole, he was allowed to arrest the offender without a warrant on suspicion of having committed a summary jurisdiction offence.

[42] It follows that the powers of arrest contained in sub-r (2) of r 274 could only be employed where a parole, prison or police officer believed on reasonable grounds and had sufficient evidence, that an offence contrary to sub-r (1) had been committed. The parolee's arrest under sub-r (2) therefore preceded his being

charged with the commission of an offence contrary to sub-r (1). In other words, the parolee was arrested with a view to bringing him before the magistrate's court to answer a charge of breaching any condition of his parole. We are reinforced in our view by the language of sub-r (3) of r 274, which provided that the conviction and sentencing of any parolee under this Rule shall not limit the (Parole Board's) power of recall conferred by this Part. It is clear therefore that r 274 must be read as a whole. It provides a cohesive approach to dealing with the alleged commission of an offence of breaching a condition of a parole.

[43] In both situations the law provided important constitutional safeguards. A person arrested or detained pursuant to r 272 would have been deprived of his personal liberty in execution of an order of the Parole Board, which is deemed to be an independent and impartial body established by law and to that extent comparable to a court[24] such in any event for the purpose of returning him to the prison[25], which order could only be made for reasonable cause and must be in writing. A person arrested or detained under r 274 was deprived of his personal liberty upon reasonable suspicion of his having committed a criminal offence, and thus had to be brought before a court without undue delay and in any case not later than 48 hours after such arrest so that the lawfulness of that arrest or detention could speedily be evaluated.[26]

[44] The appellant was not afforded any of these safeguards when he was arrested and detained. Even assuming that at the time of his arrest there was a reasonable suspicion and sufficient evidence that he had violated one of his parole conditions, he was never brought before a magistrate and for 55 days remained in prison without even a real possibility of any effective judicial evaluation of the lawfulness of his detention. In this case, the arrest of the appellant could not have been based on r 274 as he was not brought promptly before a Magistrate. Nor could it have been based on r 272 as the Parole Board had not (at least for 55 days) directed in writing that the appellant's parole should be revoked. In the circumstances, the Court is satisfied that the appellant's arrest and detention on 3 April 2014 was arbitrary, without any legal authority and without due process. The appellant was therefore deprived of his fundamental right to personal liberty

[24] *August v R* [2018] CCJ 7 (AJ) (BZ), [2018] 3 LRC 552 at [103].
[25] Although, interestingly, not for the purpose of bring the parolee before the Board, see s 5(1)(d) of the Constitution of Belize 1981.
[26] See s 5(3)(b) of the Constitution.

protected by s 5 of the Constitution of Belize for at least those 55 days from 3 April until 28 May 2014, when the Parole Board made its decision to recall his parole. He was, during that period, incarcerated neither by order of the Parole Board nor that of a judicial officer.

The Revocation of the Appellant's Parole by the Parole Board on 28 May 2014

[45] The Court considers next whether the process employed by the Parole Board, in revoking the appellant's parole on 28 May 2014, violated his fundamental rights to liberty and protection of the law. Section 3(a) of the Constitution of Belize provides:

> 3. Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely,
>
> (a) life, liberty, security of the person, and the protection of the law;

[46] Further, s 6(1) of the Constitution provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Section 6(2) provides for any person charged with a criminal offence, the right to be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. Section 6(3) sets out certain detailed rights to which a person charged with a criminal offence is entitled.

[47] In *Lucas*, Saunders JCCJ made some important observations about the intersection between ss 3 and 6 of the Constitution and its impact on the right to the protection of the law. He remarked at [137] that apart from its treatment in s 6 of the Belize Constitution, the right to the protection of the law was referenced in s 3 which did more than merely pave the way for the succeeding detailed rights. He noted that the text of s 20 of the Belize Constitution suggested that the rights declared in s 3 were specifically enforceable. Even without that suggestion, however, Saunders JCCJ noted that since the Constitution was to be read as a whole, s 3 should be construed in harmony with the detailed rights in s 6. Section 3 therefore contextualised the detailed rights and so assisted in illuminating, clarifying and even supplementing their content. In particular, Saunders JCCJ noted, resort may be had to s 3 in order to appreciate the scope of the rights detailed in s 6.

[48] The appellant argued that his right to the protection of the law was violated by the failure of the Parole Board to afford him any opportunity to be heard prior to the revocation of his parole. On the other hand, the respondents contended that it was not the practice of the Parole Board to give a parolee an opportunity to make representations after a blatant violation of a parole condition. In particular, the respondents submitted that parole was a privilege and not a right; a privilege to be enjoyed strictly on the conditions set by the Parole Board.[27] Several cases were cited to the Court on the issue whether the appellant, a parolee, was entitled to be heard by the Parole Board before his parole was revoked.

[49] In *R (Smith) v Parole Board*,[28] the House of Lords examined the procedure which ought to be followed by the parole board when a prisoner released on licence seeks to resist the subsequent revocation of his licence. The appellants' argument was that a prisoner upon his return to prison should be offered an oral hearing at which he can appear, either on his own behalf or through a legal representative and present his case, unless he chose to forgo such a hearing. The House of Lords (per Lord Bingham) was of the view that while the common law duty of procedural fairness did not require the parole board to hold an oral hearing in every case where a determinate sentence prisoner resisted recall, that duty should not be confined to cases where important facts were in dispute. Even if important facts were not in dispute, they might be open to explanation or mitigation, or might lose some of their significance in the light of other new facts. While the parole board's task certainly was to assess risk, it might 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.[29]

[50] At [66] of the judgment, Lord Hope commented on what he regarded as a "long-standing institutional reluctance" on the part of the parole board to deal with cases orally. He noted that he would not be surprised if a "consequence of that reluctance was an approach, albeit unconscious and unintended, which undervalued the importance of any issues of fact that the prisoner wished to

[27] Attorney General of Belize, 'Submissions on behalf of the Respondents', Submission in *Sears v Parole Board*, BZCV2022/001, 1 April 2022, [18].
[28] [2005] 1 WLR 350.
[29] ibid at [35].

dispute". He observed further that if the system were such that oral hearings were hardly ever held, there was then a risk that cases would be dealt with on the basis of assumptions. Assumptions based on general knowledge and experience tended to favour the official version of events as against that which the prisoner wished to put forward. Lord Hope therefore observed that denying the prisoner the opportunity to put forward his own case might lead to a lack of focus on him as an individual and could result in unfairness to him.

[51] In *R* (*Osborn) v Parole Board,*[30] the UK Supreme Court considered *Smith.* The Supreme Court concluded that it was impossible to define exhaustively the circumstances where an oral hearing would be necessary before the parole board. The court nevertheless set out certain circumstances where such an oral hearing should be held. The court also made the point that the parole board must be and appear to be independent and impartial and that it should guard against any temptation to refuse oral hearings as a means of saving time, trouble, and expense. The parole board should also bear in mind that the prisoner was being deprived of his freedom, albeit conditionally.

[52] This Court has on several occasions discussed the scope of the right to the protection of the law. This Court has observed that the right to the protection of the law is broad and pervasive.[31] In the Barbadian case of *Attorney General v Joseph*[32] the Court expressed the view that protection of the law included access to administrative tribunals with power to affect constitutional rights or rights under the Constitution of an individual.

[53] Further, in the Belizean case of *Maya Leaders Alliance v Attorney General,*[33] this Court pointed out that the right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. The Court observed that the right went beyond questions such as access to the courts, and included the right of the citizen to be afforded "adequate safeguards against irrationality,

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[30] [2014] AC 1115.
[31] *A-G v Joseph* [2006] CCJ 3 (AJ) (BB), (2006) 69 WIR 104 at [60] (de la Bastide PCCJ, Saunders JCCJ)*; Maya Leaders Alliance* (n 20) at [47]; *Lucas* (n 13) at [138].
[32] *Joseph* (n 31) at [59].
[33]*Maya Leaders Alliance* (n 20) at [47].

unreasonableness, fundamental unfairness or arbitrary use of power."[34] The right to protection of the law also requires the availability of *effective* remedies. And, as this Court has stated before, s20 of the Constitution provides the courts with a broad discretion to fashion those remedies. Where a citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen's rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law.

[54] In the view of the Court, parole must not be characterised as a mere privilege. Both Part VI of the Prison Rules, now repealed and its successor, the Parole Act, have laid out a rules-based system for the revocation of parole. No rules-based system would or could properly allow parole to be revoked without the prisoner being afforded access to the decision-maker, and without any opportunity being presented to the prisoner to be heard in one way or the other.

[55] The Court has considered the parole regimes in several Commonwealth jurisdictions and beyond.[35] The acceptable approach seems generally to allow for (a) the parole to be revoked on the papers and in writing by order of the relevant authority, and (b) the parolee to be arrested or detained upon the execution of such revocation or recall order, and, (c) upon return to the prison, the parolee to be given the opportunity to object to the revocation or recall by making written or oral representations. As this Court indicated in *August,* the overarching consideration in matters of parole must ultimately be an assessment by the Parole Board of the possible effect of its decisions on the safety of the public. Where possible, these decisions should be focused on the proper and effective management of a parolee's future conduct.[36]

[56] Once the revocation process, initiated by the Parole Board's direction or order, to recall the parolee has begun, and the parolee is returned to custody on the authority of that direction or order, two questions have to be determined by the Parole Board. The first is whether the parolee has in fact acted in violation of a condition of their parole. The fact that there was sufficient evidence to constitute

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[34] *Joseph* (n 31) at [20] (Wit JCCJ).
[35] Criminal Justice Act 2003 (UK); Parole Act 2002 (NZ); Corrections and Conditional Release Act & Regulations (CA); Crimes Act 1914 (Cth) (AU); Parole Act, Cap 11:08 (GY); Parole Act 1978 (JM). See also *Morrissey v Brewer* (1972) 408 US 471.
[36] *August* (n 24) at [109] – [110].

a reasonable cause, which is *an essential condition* to get the process started, is not enough. The violation has to be definitively established. The second and more complex question, which only arises if there is a positive determination with respect to the first, is what to do with the parolee: whether, when and under what conditions it would be justified or appropriate to consider releasing the parolee once more, despite the earlier violation.[37] Decisions like these usually require the involvement of the parolee. In other words, at the very least, the prisoner, who so desires, should be allowed to be heard by, or to make written representations to, the Parole Board as to whether their parole ought to be revoked. Moreover, in circumstances where it is deemed necessary or desirable to hear from the prisoner personally, even where the prisoner has not indicated an intention to present the case orally, there ought to be an oral hearing. It should be noted however that it is not possible to set out an exhaustive list of the circumstances where the prisoner should be afforded an oral hearing.

[57] We want to emphasise, though, that the hearing before the Parole Board is not to be equated with a criminal trial. The hearing may be quite informal. In order to be Constitution-compliant, however, parolees, upon their return to prison, should be notified of the date and time of the hearing and their right to make written or oral representations themselves or with the assistance of counsel; if not already notified of the reasons for the recall by the recall order, they should be so notified and there should be full disclosure of the material upon which the re-detention is premised.[38] In order for the process to be effective, the hearing should be held as quickly as practicable, but in principle no longer than a month[39] from the parolee's return to prison and a final determination should be taken soon thereafter and should be in writing; if that determination is negative for the parolee, the written document should apprise the parolee of their right to file for judicial review within three months. These are of course mere minimum due process guarantees. A more comprehensive procedure should be worked out in the Regulations envisioned in s 13 of the Parole Act.

[58] In the instant case, no hearing, oral or otherwise, was afforded to the appellant. He was simply informed in writing that the Parole Board had revoked his parole

[37] See s 9(3) of the Parole Act 2017 which provides that "The Board shall determine, having regard to the nature and circumstances of the recall, whether the particular offender shall again become eligible for parole at a later time."
[38] *August* (n 24) at [114]
[39] See *Morrissey* (n 35), Parole Act 2002 (NZ).

55 days after he was unlawfully detained, and a urine sample taken from him. The appellant was not made aware of the information that was before the Parole Board, or the considerations the Board took into account in coming to its decision, save that the urine sample taken from him was positive for drug use. There seems to have been no further evaluation of the appellant's situation and for years, he was totally kept in the dark.

[59] Accordingly, the Court is of the view that the appellant was denied the procedural fairness required by the Constitution of Belize. The process of the Parole Board was arbitrary and fundamentally unfair. His constitutional right to protection of the law has therefore been infringed. In the circumstances, we are of the firm view that the decision of the Parole Board made on 28 May 2014 ought to be quashed.

Other Relief Claimed Under the Constitution

[60] In the circumstances of this case and broadly for the reasons given by the Court of Appeal, we do not consider it necessary or desirable that the Court should entertain the appellant's claim to inhuman and degrading punishment or to damages. We note that the claim alleging inhuman and degrading punishment is of a very different character than the main issue before us. It would seem that the alleged facts to support this claim are mostly not specific to the appellant but of a more general character. To effectively address those kinds of issues, it would require a differently structured constitutional procedure with ample opportunity for the gathering of evidence, among other things through judicial visits to the prison.

Disposition

[61] It was for these reasons that the Court ordered and declared the following:

(a) The appeal is allowed.

(b) The judgment of the Court of Appeal be set aside.

(c) The Appellant's re-incarceration from 3 April 2014 breached his constitutional right to personal liberty as guaranteed by s 5 of the Constitution of Belize.

(d) The First Respondent's revocation of the Appellant's parole breached his constitutional right to personal liberty and equal protection of the law as guaranteed by ss 5 and 6 respectively of the Constitution of Belize.

(e) The order of the First Respondent dated 28 May 2014 be quashed.

(f) The Appellant be released from prison forthwith.

(g) All other reliefs sought by the Appellant are refused.

(h) The Respondents shall pay to the Appellant Seventeen Thousand Five Hundred United States Dollars (US $17,500.00) in costs in furtherance of the agreement between the parties.

(i) The Respondents shall pay the Appellant's costs in the Courts below to be agreed by the parties or in default, to be decided in accordance with the Supreme Court (Civil Procedure) Rules 2005.

/s/ A Saunders

The Hon Mr Justice Saunders (President)

/s/ J Wit

The Hon Mr Justice Wit

/s/ W Anderson

The Hon Mr Justice Anderson

/s/ M Rajnauth-Lee

The Hon Mme Justice Rajnauth-Lee

/s/ A Burgess

The Hon Mr Justice Burgess