

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CRIMINAL DIVISION

IND. NO. 39 of 1988

REGINA

v.

PHILLIP EBANKS



**Appearances:** Ms. Candia James-Malcolm, Crown Counsel  
Ms. Lee Halliday-Davis for Phillip Ebanks

**Before:** Hon. Justice Richard Williams

**Heard:** 22 October 2018

**Ex Tempore Ruling:** 22 October 2018

**Transcript of Ruling:** 23 October 2018

HEADNOTE

*Murder - detention at Grand Court's Leisure - further application for release on licence - questions upon which evidence is needed for Court to determine application - in the absence of any statutory provisions relating to licence applications in the Cayman Islands the English provisions found at s.28 (6) (b) Cr (Sentences) Act 1997 Chapter 43, as they relate to the Parole Board in the United Kingdom, are appropriate in considering an application - the principle is that a prisoner shall be released if the Court is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined - the test is whether the level of risk to the life and limb of others is considered to be more than minimal*

EX TEMPORE RULING

**The Background**

1. On 25 August 1989 Phillip Ebanks was found guilty of the murder of Una Elves Yates on 13 December 1982. As Mr. Ebanks was only 17 years of age when he committed the offence he was sentenced in accordance with Section 22(2) of the Penal Code (Law 12 of

1975) to be detained 'during the Governor's pleasure.' The trial judge, Collett, C.J., advised the Governor in writing that the minimum term Mr. Ebanks should serve was 10 years. Mr. Ebanks has been in custody for 28 years and he is now aged 53.

2. Following the Court of Appeal decision that such a sentence was impermissible in *Hydes v the Queen* [2007] CILR 152, Mr. Ebanks' sentence was altered to one of detention during the Grand Court's pleasure at his appeal against sentence on 20 July 2007.
3. In April 2008, Mr. Ebanks' application for release on licence was refused by Henderson J., a decision which was upheld by the Court of Appeal in April 2009.
4. On 14 May 2013 he successfully applied to me for his release on licence. The Crown took a neutral position, having not been supportive of the previous application for release.
5. Following his release on licence there followed regular review hearings before me. Most regrettably, whilst on licence, Mr. Ebanks re-offended and he pled guilty to two counts of domestic burglary for which he was sentenced to four years in custody on 30 May 2016. The Summary Court had remanded him in custody for the offences on 4 November 2015. Whilst on licence he tested positive for cocaine on 22 May 2015, 27 May 2015 and 12 October 2015. It appears that on 18 February 2016 the Drugs Court refused to accept jurisdiction due to the violent nature of Mr. Ebanks' earlier conviction.



6. As a consequence of these breaches of his licence, Mr. Ebanks' matter came back on before me. He was not produced for the hearing on 19 January 2018, but was produced on 25 January 2018. At the first hearing, the Court was informed that he was serving four years for burglary and that he was to come before the Conditional Release Board ("the Board") in March 2018. The Court indicated that it had not revoked the licence earlier because it had been awaiting the outcome of the decision by the Drug Court. The Court indicated that if Mr. Ebanks was granted release by the Board then it would be willing to consider releasing him on licence afresh and, with that in mind, it would be sensible to give directions for updated reports and set a hearing date shortly after the Board had sat and made its decision.

7. On 25 January 2018 Mr. Ebanks was produced. His licence was revoked, and the Court indicated that this would have been done sooner if the details of his conviction had been provided to the Court in 2016. The following directions were given:



- (i) Updated Psychiatric Report from Dr. McGill (last report 17 April 2013) to be filed by 23 March 2018;
- (ii) Updated Psychological Report from Dr. Kirchenheim to be filed by 23 March 2018;
- (iii) Updated HMP Prisoner Profile to be filed by 23 March 2018;
- (iv) Assessment Report from Counselling Services in relation to drug assessment to be filed by 23 March 2018;
- (v) Case Management/SIR Report from Yvonne D'Aguilar to be filed by 13 April 2018; and

- (vi) List for thorough Case Management Hearing on first open date after 4 May 2018 before Williams J. for half-day

8. The following reports and written evidence were then filed:

- (i) 12 February 2018 - HMCIPS Unit Report - D. Newland;
- (ii) 15 February 2018 - Unit Report - Cathy Gomez;
- (iii) 22 February 2018 - Employment confirmation - Devils Hangout Gift Shop;
- (iv) 22 February 2018 - Housing confirmation Bodden Town Road - Olivia Aashikpelokhai;
- (v) 12 March 2018 - Psychiatric Report – Dr. McGill;
- (vi) 16 March 2018 - HMCIPS Unit Report - Helen Reynolds;
- (vii) 21 March 2018 - Psychological Report – Dr. Kircheneheim;
- (viii) 13 April 2018 - Department of Community Rehabilitation Report/SIR - Yvonne D’Aguilar;
- (ix) 17 May 2018 - Dean Miller - Assessment Report to Conditional Release Board;
- (x) 6 October 2018 - Letter of Employment/HMCIPS Unit Report - D. Newland;
- (xi) 17 October 2018 - Statement of Ivan Farrington;
- (xii) 17 October 2018 - Statement of Ivan McLean;
- (xiii) 18 October 2018 - Statement of Katrina Jurn; and
- (xiv) 18 October 2018 - Affidavit from Phillip Ebanks.



## Today's Hearing and the Crown's Position

9. I am tasked, at the conclusion of this oral hearing held in Open Court, to determine whether Mr. Ebanks should now again be released on licence.
10. Having regard to the nature of the hearing, it is clear that Mr. Ebanks has a right to legal representation, and he has been ably represented by Ms. Lee Halliday-Davis.
11. It appears that the Crown believe that Mr. Ebanks has responded positively to his latest term of incarceration and that his application may be considered favorably by the Court. At paragraph 22 of the Crown's Written Submissions on Review of Sentence submitted by Ms. James-Malcom she concludes following her review of the written evidence:

*"In light of the above, it is submitted that while there is a risk of the Applicant re-offending which is attributed to his addiction to drugs, it is not a risk that cannot be managed in the community should the Court exercise its discretion to grant a further release on licence with appropriate conditions in place."*

12. If Mr. Ebanks is released on licence, the Crown invite the Court to consider making the type of conditions recommended by Mrs. D'Aguilar, the Probation Officer, in her report dated 12 April 2018. Mr. Ebanks has made clear that he would be willing to comply to such conditions if they were imposed. He understands that, if released, the conditions will be more onerous at this time, but will gradually change if there are no issues when he is back in the community.

13. The recommended conditions are set out in the "*action plan*" found at the end of Ms. D'Aguilar's report, where she wrote:

*“If the Honourable Court is considering the possibility of another period of release on license this Officer would have suggested to the Court that a step - by - step programme be implemented for his continued rehabilitation in the community. This would have initially involved Release on Temporary License (ROTL). However, ROTL is not available to those serving indeterminate sentences. Likewise this Officer has not put forward that he is placed in the residential centre or a half-way house as it is likely that he will fail in his endeavours given his reluctance. Instead the following conditions propose alongside those that are standard:*

- Reside at an address approved by the Assigned Probation Officer*
- Report to the Probation Officer any proposed change of circumstance*
- That Mr. Ebanks be electronically monitored for a period to be determined by the Honourable Court*
- That the Client be subject to a curfew from 9:00 PM to 6:00 AM*
- That the client attend Alcoholics/Narcotics Anonymous twice per week’*
- That he makes himself available for random drug screens and tests negative for all substances*
- That he continues with group or individual drug counselling at The Counselling Centre*
- That he maintains employment or undertakes Community Service if unemployed*
- That he attends any group has indicated by his Probation Officer and/or counsellor*
- That quarterly up-date report are provided to the Honourable Court*
- Be of good behaviour and keep the peace.”*



It has been confirmed to me by the Crown that these resources will be made available when required.

14. The Crown reminds me of the length of time that Mr. Ebanks has served as a consequence of the relevant conviction and highlights that the term he has served may be greater than the term he would have served if he had been an adult at the time of commission of the offence. With this in mind, it is recommended that the Court consider whether there should be a cut-off date for the licence and the conditions attached thereto. When that was first raised, I indicated that, if he was released on licence today, I would not be willing to give a cut-off date today, as I would wish to satisfy myself that he was able to conduct himself in the community in a proper manner whilst on licence. However, it is something that I will be considering at the future review hearings. Ms. Halliday-Davis aptly summarised the position at the close of her Written Submissions submitted on behalf of Mr. Ebanks when she wrote at paragraph 20 therein:

*"It is hoped that in the future, with compliance the court will see fit to relax the conditions and will eventually consider whether the licence can be terminated after a period of compliance. The licence under the 'Court Pleasure was not meant to be a life licence. It is accepted that the court will only be able to consider such an action after a period of compliance."*



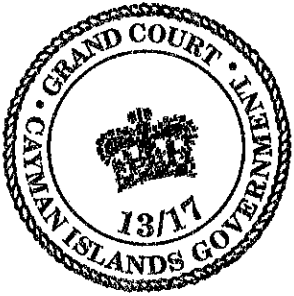
#### **Information Required by the Court and Factors to be Considered**

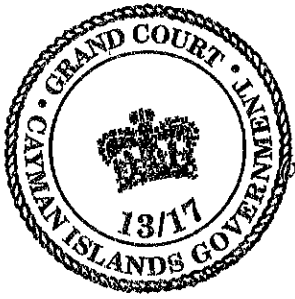
15. In my Ex Tempore Ruling delivered on 14 May 2013 I set out the information required by the Court and the factors to be considered. I referred to paragraph 6 of the judgment delivered by Forte J. (*P.G. Ebanks v R* [2009 CILR 449] on 2 September 2009 wherein the approach taken by Henderson J. at a case management hearing on 5 October 2007

was approved by the Court of Appeal. Similarly, when the matter came back on before me in January 2018, I had regard to Henderson J.'s guidance as to what sort of evidence can and should be admitted at this type of hearing. Henderson J. stated:

*“Since this is a proceeding which takes place after conviction, hearsay evidence should be admissible and may be given such weight as the court thinks fit, always having regard to the source of the evidence and the way in which it was obtained. The following list, although not intended to be exhaustive, identifies many of the questions upon which evidence is needed;*

- (i) the nature and circumstances of the offence;*
- (ii) any comments made by the sentencing judge in relation to the need to protect the public;*
- (iii) the background of the offender, including the nature and circumstances of any previous offending;*
- (iv) whether the offender has made positive and successful efforts to address the attitudes and behaviour problems which contributed to the commission of the offence;*
- (v) the offender's attitude towards and behaviour with other prisoners and prison staff, including the nature of any offences against prison discipline committed by the offender;*
- (vi) the opinion of the prison service on the degree of risk to the public which would result from the offender's release;*
- (vii) a recent social enquiry report containing the opinion of a probation officer on the suitability of the resettlement plan and a dwelling where the offender proposes to live;*
- (viii) a recent psychiatric and/or psychological examination of the offender;*
- (ix) any indication of predicted risk as determined by a validated actuarial risk predictor model or any other structured assessment of the risk to the public which would result from the offender's release;*
- (x) whether the offender is likely to comply with any conditions attached to his license to be at large;*





(xi) any past breaches by the offender of a condition of a licence to be at large.”

16. With the above in mind, I gave the earlier mentioned directions in January 2018.<sup>1</sup> I have reviewed all of the afore-mentioned filed material and the oral evidence from Mrs. Aashikpelookhai, Dr. Katrina Jurn and Mr. Ebanks. Ms. D’Aguilar was not able to attend the hearing, but her recommendations were confirmed by members of the Probation Team in attendance at Court. The Probation Team has not sought to vary them following the additional evidence recently filed and following the oral evidence delivered today.

### **Principles to be Applied**

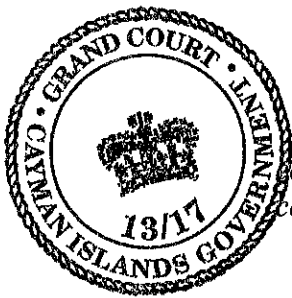
17. In my 2013 ex tempore ruling, I noted that the Court of Appeal highlighted, at paragraph 10 of Forte J. A’s judgment, that there were no statutory provisions relating to licence applications in the Cayman Islands. I then commented:

*“Accordingly, the Court of Appeal agreed with Henderson J that the English provisions found at s.28 (6) (b) Cr (Sentences) Act 1997 Chapter 43, as they relate to the Parole Board in the United Kingdom, would be appropriate in considering an application. Therefore, the principle is that such a prisoner shall be released if the Court is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined. The Court of Appeal also reiterated the reference relied upon by Henderson J to the directions to the Parole Board under section 32 (6) of the Criminal Justice Act 1991 which in section 4 provides:*

*“the test to be applied by the parole board in satisfying itself that it is no longer necessary for the protection of the public that the prisoner should be*

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<sup>1</sup> See paragraph 7 above.



*confined, is whether the lifer's level of risk to the life and limb of others is considered to be more than minimal.""*

18. I am still satisfied that I should follow the same principle, namely that this Court will order Mr. Ebanks' release if I am satisfied that it is no longer necessary for the protection of the public that he should be confined. When doing so, I have regard to the eleven items set out by Henderson J. and which were commended by the Court of Appeal.

### **Factual Background – Placing Current Application into Context**

19. As I did back in 2013, during my present determination, it is important to place the recent reports filed since January 2018 in context with the background of the case.

20. As outlined by Henderson J. in his Ruling on April 18, 2008, Mr. Ebanks was committing a burglary at the premises of Mrs. Yates when he was either discovered in the act by her or, in any event, encountered her. The victim was shot once in the head and once in the neck. She was found dead in the bathroom the following morning. Early Social Inquiry Reports informed the Court that Mr. Ebanks had been raised in West Bay in a large family, that he was introduced to drug consumption at an early age and that he had a history of drug abuse. Due to his incarceration at a young age he has no significant history of employment.

21. Henderson J. noted, when the matter came before him, that Mr. Ebanks had already served the trial judge's recommended 10 year minimum term of imprisonment. Henderson J. reminded himself that Mr. Ebanks had been released by the Governor on 14

June 2000 and that his licence at that time contained a number of terms and conditions. Regrettably, Mr. Ebanks did not grasp that opportunity, and committed a number of burglary offences after returning to his drug habit. During the relevant period of that release he committed nine offences of burglary, for which he received a sentence of 7½ years' imprisonment. His licence was rightly revoked, and Mr. Ebanks was returned to custody in February 2001.

22. The Court of Appeal upheld Henderson J.'s decision. The Court of Appeal noted Henderson J.'s comments after his review of the psychiatric and psychological evidence as to the appellant's risk of offending, namely;

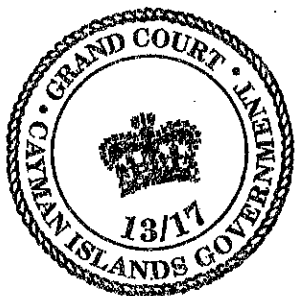
*“Overall, the evidence suggests a prisoner who is just beginning to take steps he must take before release is justified. He must accept responsibility for what he has done and absorb counselling and other programs available to him so as to convince those around him - prison officers, social workers, counsellors - that he is truly ready to live a law-abiding life in the community. He must do more, much more, than simply serve time. He must embrace a moral life. Mr Ebanks is not ready for release. If released he would present a substantial risk to the public. He would be likely to reoffend. I believe that Mr Ebanks can qualify for release, but he will need to make much greater effort and it will take time. The application for release is denied. Mr Ebanks' is at liberty to fix a date for a new release hearing which is approximately 2 years away.”*



23. Upon finding that Henderson J.'s assessment could not be faulted the Court of Appeal made the following important observations:

*“It appears that the appellant's behavioural pattern is as a result of drug abuse and that over the years, not been truly able to exist without drugs, he has made it difficult to reach a stage in his character and personality to make it reasonable*

*safe to release him. We note, however that sufficient has been heard in this hearing to demonstrate that the appellant is not without hope and can be rehabilitated if he takes advantage of the opportunities available to do so. He has served enough time in prison to satisfy the penalty he deserves for the crime he committed but as the learned judge found, his circumstances have to be such that the court can feel satisfied that he's been rehabilitated to the extent that he would not be a risk or even a stage above a minimal risk to the public if he were released.<sup>2</sup> The court below was correct in finding that the appellant had not reached that stage. He appears however to be in the process of rehabilitation, they are delayed by his lack of motivation. We see no reason to interfere with the learned judge's decision to deny the appellant's release but find that the evidence heard, reveals a possibility that the appellant could be sufficiently rehabilitated within a shorter time than two years from his last application. ...”*



24. These insightful observations delivered by Forte J. clearly spelt out to Mr. Ebanks that there was work to be done if he was to put himself in a position where a court might consider his release. They are equally applicable in 2018 in light of Mr. Ebanks' further relapse, in May 2015, whilst released on licence.
  
25. By 2013 Mr. Ebanks had thirty two previous convictions, twenty of those for offences committed prior to the relevant conviction in 1989 for murder, nine for burglary convictions committed during those months of his earlier opportunity in 2000. I note he also has one conviction for escaping custody and two for matters of no real consequence. To these previous convictions, we can now add the recent convictions that resulted in my revoking his licence in January 2018. The common thread is the nature of the offences, namely burglary committed when abusing drugs.

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<sup>2</sup> My emphasis by underlining.

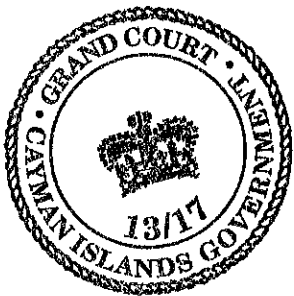
26. When conditionally releasing Mr. Ebanks' on Court's pleasure on licence dated 14 May 2013 I considered whether he had sufficient insight and was motivated to positively respond. I remind myself, when considering Mr. Ebanks' position in 2013, what his position was at the time of his last application for release in 2008 and how he had then moved forward.

27. I found that there "*was a viable resettlement plan*" and that the conditions recommended by the Probation Officer were "*sensible and would be necessary*". I commented that:

*"I have regard to the fact that Mr Ebanks is a talented artist, who has been offered employment with his brother, and can reside also with his sister in West Bay. This support from family members would be important if he is to be reintroduced to the community, which he has visited on short day release with no incident from last year. ...I am satisfied that there is a network of relatives who will play a positive and supportive role in his rehabilitation.*

*The recent psychiatric and psychological examinations conclude that he has no psychiatric disorder. Dr McAlpine indicated that there is "no immediately obvious benefits for his continued incarceration. There are no identified needs, other than the participation in drug counselling, and this can be undertaken whilst he is in the community: indeed the community is a more appropriate venue for that work to take place." The reports do flag up that there may be some poor impulse control, but the reporters seem satisfied that these could also be monitored in the community. As I have already mentioned, Dr. Von Kirchenheim felt that this impulse was something that Mr. Ebanks can control to the level of his intelligence.*

28. I then went on to conclude that he could be released on licence with the conditions imposed.



## Post-Release on Licence in 2013

29. Following his release on licence in 2013, regular reviews were conducted by the Court. For quite some time Mr. Ebanks responded well to the rigors of being back into the community and consequently there was a gradual reduction in the conditions attached his release. At the review hearing on 17 December 2014, there was only one issue that needed review and my notes reflect that it was hoped that, if all remained well, the next six month review would be the last one. Regrettably, when his review came on before the Court on 17 June 2015, the Court was informed about his positive drugs tests and his re-offending.



## New Reports/Evidence

30. Ms. D'Aguiar in her report made reference to the Assessment Report submitted by the Caribbean Haven Residential Centre (CHRC) in which there was a recommendation that Mr. Ebanks receives residential treatment or alternatively resides at a halfway house with outpatient treatment. I note that Mr. Ebanks disagreed that he "*lacks insight*" or that he is "*in need of residential treatment or a halfway house.*" She noted in the report that he was adamant that he would not relapse again. He explained to the Probation Officer that he had been at a halfway house before and relapsed there and that also, when at the CHRC, he had been discharged due to behaviour which they had characterised as being inappropriate. I accept his reasoning and I am satisfied that if he were compelled to attend these facilities it would prevent him being able to take on full-time employment in Bodden Town. It appears that the Probation Officer is not overly concerned about this position by Mr. Ebanks and believes that the conditions that she has suggested should be

sufficient. She notes that if he were required to attend pursuant to the recommendation of CHRC then he would likely fail due to his resistance to reside at these facilities.

31. The Probation Officer outlined in the report the discussions that she had had with Mr. Ebanks concerning drug use. She commented that he is:

*“adamant that he is now in control of the triggers involving people and places and reportedly intends to keep to himself and not party. It is his intention that if released to live away from his West Bay roots where he developed much of his abusive behaviour ..... and keep himself busy with work, and in his free time with his art.”*

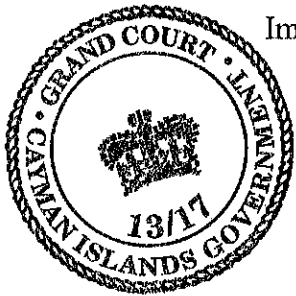
Importantly she then added:

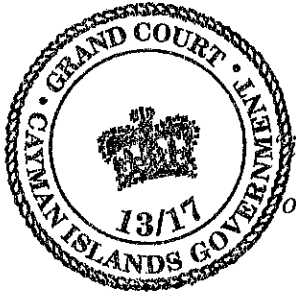
*“how realistic such an assertion is when living a ‘normal’ life in the community amongst people, who do not have to hold themselves accountable, is questionable. Psychiatric and Psychological reports also suggests difficulty.”*

32. Despite the above concerns, it is evident from the indication of the Probation Team in attendance at the hearing today that they are in agreement with the conclusion at paragraph 22 in Crown Counsel’s Written Submissions.<sup>3</sup>
33. In relation to her Re-Offending Assessment, Ms. D’Aguilar concluded that he was assessed as a medium risk of re-offending. The Prison Service, on the degree of risk to the public which would result from his release, place Mr. Ebanks in the D Category (low supervision). Ms. D’Aguilar noted that:

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<sup>3</sup> See paragraph 11 above.





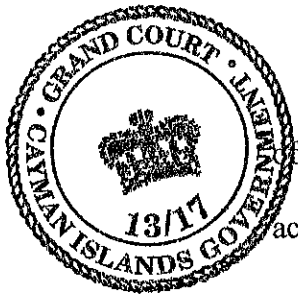
*It would appear that some choices made by the client...should be addressed in order for his risk of reoffending to be reduced."*

34. The Probation Officer indicates that Mr. Ebanks has functioned positively whilst incarcerated. He maintained his enjoyment of artwork. He received a number of diplomas and certificates. In 2017 he successfully completed a number of courses. He studied the Offender Responsibility Life Skills Course, Behaviour Modification, and the Sycamore Tree Project, and the National Drug Council basic and intermediate courses. He received a certificate for his involvement in making the Literacy Day a success. The Probation Officer believes that these courses would have given him some insight into his drug abuse/relapse/triggers and also have contributed to him becoming more pro-social in his general involvement with other people whose intentions are positive.
  
35. In her report the Probation Officer noted that Mr. Ebanks has found independent accommodation in Bodden Town. That is appropriate accommodation and she highlights that it is away from the West Bay area where he had previously offended. Although the Court has been told that property is no longer available as it has been sold, Mrs. Aashikpelokhai confirmed that alternative accommodation close to his proposed place of employment is being located and will form a part of the employment package.
  
36. He has been offered full-time employment, which will include maintenance and looking after animals in a petting zoo. He will likely be able to sell his artwork from the shop on the premises. The work hours could be from around 6:00 AM to 7:00 PM. Any curfew condition should be set having regard to his employment hours. I have heard from the

prospective employer, Mrs. Aashikpelokhai, who filed a statement dated 6 October 2018. I found her to be an impressive witness. Mr. Aashikpelokhai, who has qualifications as a medical doctor and thus has some insight into the warning signs of drug use, was in Court and he indicated that he fully supported his wife's evidence. It appears that she and her husband saw some potential in Mr. Ebanks when he worked at their property, under supervision from November 2017 to February 2018. As a consequence of what they saw, including his talent for art, they wish to offer him employment at their site in Bodden Town. I am satisfied that it is highly suitable employment, especially as it involves his interests in artwork and animals. That is important as it will enable him to use his strengths and talents when rejoining the wider community. I am also satisfied that Mr. and Mrs. Aashikpelokhai will, to a degree, monitor Mr. Ebanks if he is released and will be able to note and appropriately respond by reporting any warning signs in his behaviour. If he is released, I do hope that Mr. Ebanks will not let them down.

37. Another useful part of the supportive network for Mr. Ebanks would come from Dr. Katrina Jurn. She appears to be an upstanding member of the community and she played a fundamental role in setting up the Coalition For the Rights of Incarcerated Persons in the Cayman Islands. She met Mr. Ebanks through her husband who is currently serving at HMP and due to Mr. Ebanks' involvement on Literacy Day. She therefore has some insight into the plight of those in custody. She was impressed by his talent for art and intends to assist him with marketing his artwork if he is released. In addition, she stated that she would be able to help him with a re-settlement package, including the provision





bedding, sheets, kitchenware and small items needed to settle into new accommodation.

38. Mr. Ivan McLean has filed a statement dated 17 October 2018. Mr. McLean was not at Court today. He said he would act as a supporter for Mr. Ebanks in the community. He is a recovering drug addict and feels that his insight gained since he has been sober for over 6 years would place him in a good position to guide Mr. Ebanks.
39. Mr. Ebanks has also been offered employment at the Hell Gift Shop by Mr. Farrington, who filed a statement on 17 October 2018. Mr. Farrington was not at Court today. I note that this shop is in the area where Mr. Ebanks previously lived and in which he re-offended. I also note that Mr. Farrington, the proprietor of that business, says that he will assist him to keep out of trouble. The Court was told that this offer of employment would not be taken up by Mr. Ebanks as he would be working and living in Bodden Town.
40. Ms. D'Aguilar noted in her report that Mr. Ebanks has remained in contact with family and friends whilst incarcerated by using the telephone, although he has chosen not to have them visit him. When he was in custody, he did go into the community to undertake supervised community projects and it appears that this was a successful and positive experience for him, as seen in the evidence of Mrs. Aashikpelokhai. His sister, Rhonda Ebanks-Fernandez, who played an active role in his supervision at the initial stage of his release in 2013 appears, from Ms. D'Aguilar's Report, still to be supportive of her brother.

41. The Probation Officer reported that the Unit Report submitted from the prison for the period February 2016 is “*very positive*”. She highlighted that the report stated that he had:



“*consistently portrayed good behaviour and has not been adjudicated.*” The report highlighted that he was “*deemed to be a hard worker, committed to rehabilitative programmes in order to contribute positive change.*”

42. In a Unit Report submitted by D. Newland in February 2018, he stated that Mr. Ebanks’ attitude and behaviour towards staff or fellow inmates was consistently good over the review period and that he had never been reprimanded or placed on any disciplinary report by staff since when he was incarcerated in November 2015. He is reported to be reliable, hard-working and very helpful. The author of the report mentioned that he:

“*seems very determined to make a positive change*” and that there were “*no security concerns.*”

43. Dr. A.L. McGill filed a Psychiatric Report dated 7 March 2018. She had also filed a report on 17 April 2013, which I had reviewed when I granted the licence at that time. In the 2013 Report she concluded that her testing did suggest some problems with impulse control, but these were mild. She recorded that there was no past history of psychiatric disorder or significant medical or surgical illness. Dr. McGill concluded in that report that:

“*it is my professional opinion that Mr Ebanks is a middle-aged man who was brought up in an atmosphere of real deprivation. Due to the problem of poor impulse control and the lack of much responsibility, in his family of origin, as a “youngest” in birth order, he drifted into antisocial behaviour. He does not demonstrate evidence of any major psychiatric disorder. However, he will be*

*lacking in self control and the ability to defer gratification under stress, as such close monitoring by the probation service may be helpful.”*

44. In Dr. McGill’s latest report, which is brief, her conclusion is similar to the one reached by her in April 2013. Under the heading “*Impression*” at the end of the report Dr. McGill wrote:



*“It is my professional opinion that Mr Ebanks is a middle-aged man who does not demonstrate evidence of any major psychiatric disorder. However, he will be lacking self-control and his ability to defer gratification under distress, which is typical of chronic cocaine users. He is less likely to use if he can keep occupied in a healthy lifestyle and have some form of established ongoing accountability, possibly through the court or a sponsor.”*

45. Dr. Von Kirchenheim, a Psychologist, gave oral evidence and provided a report for the last licence hearing in 2013. In that written report he stated there continues to be no evidence of a major psychiatric disorder. He said that he did not find any evidence suggesting that Mr. Ebanks had a personality disorder, but did say that he would benefit from ongoing attention to impulses and the effect his mood state may have on his decision-making upon release. He concluded by saying that the findings of his previous assessment remain the same. He noted that the conditions that were suggested in the Probation Officer Report were the type of conditions which he felt would be appropriate to assist and monitor Mr. Ebanks in the community. He indicated that, although Mr. Ebanks may act on impulse on occasion, if he wished to he was intelligent enough to prevent this from taking place. It did not appear that the potential to act on impulse was sufficient for him to feel that it made Mr. Ebanks a risk to the community if released.

46. In his latest report, dated 21 March 2018, Dr. Von Kirchenheim indicates that:

*"The testing does not reveal any significant changes from his previous personality assessment. The measure of current distress indicates that he is functioning well psychologically and emotionally. He does have some mild symptoms. There is slight evidence of some suspiciousness in the respondent's responses, but not at all out of the ordinary.*

*In summary, Mr Ebanks based on this assessment is relatively well adjusted and does not pose a threat to himself or others<sup>4</sup>. However, as indicated in the previous report, his difficulty managing his impulsiveness and predilection to certain substance use will need to be monitored and he would benefit from ongoing supportive therapy."*

47. I have also considered the affidavit evidence filed by Mr. Ebanks, as well as his oral evidence given this morning. At paragraph 8 of the affidavit he stated:

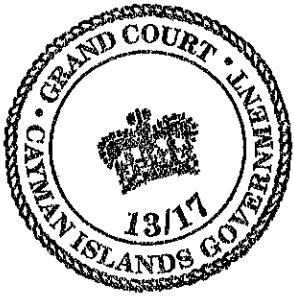
*"I suppose one of the questions the Court will ask is what is different this time. The difference is that my mindset is different. I accept that I need continued help and support in the community. When I was released in 2013, I believe that I did well. I was working, doing my art and looking after my pigeons. I had a sense of achievement and began to see the how live (sic.) could be in the community. Then it all went wrong. I pleaded guilty to my offences and accept full responsibility. I have had time to consider what went wrong. I have been able to identify the source of my difficulties with help."*

48. In his oral evidence today and at paragraph 9 of his affidavit, Mr. Ebanks agreed to submit to all of the conditions mentioned by the Probation Officer. He then added at paragraph 10 in his affidavit:

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<sup>4</sup> My emphasis by underlining.





*"I fully accept that I will require close supervisions (sic.) when I am released because it is my intention not to enter HMP Northward ever again as an inmate. I will do anything required of me and accept help from the professionals in order to achieve, maintain my sobriety and to be successful in the community."*

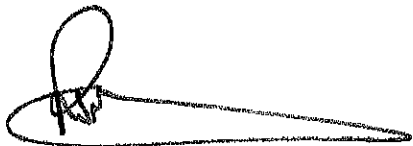
49. When I consider the reports and the oral evidence from Mr. Ebanks, it is evident that he has again worked hard to address the issues which led to his re-offending. He recognises the cause of his problems and he has made some positive and successful efforts to address the attitudes and behavioural problems that contributed to the commission of the offences. It is clear from the reports filed since his last application that his attitude towards and behaviour with other prisoners and prison staff has been good. It appears that from 2015 he has been an exemplary prisoner.
50. There is a viable re-settlement plan, importantly with full-time employment and accommodation in Bodden Town. I am satisfied that, with the conditions which I have already mentioned herein, the insightful support and monitoring that will come in a community setting from the impressive Mr. and Mrs. Aashikpelokhai will be important. I am satisfied that there is a network of members of the community, including Dr Katrina Jurn, who will play a positive and supportive role in his rehabilitation.
51. The recent psychiatric examination again concludes that he has no psychiatric disorder. The report does flag up that there may be some poor impulse control, but the reporter seems satisfied that these could also be monitored in the community. Dr. Von Kirchenheim stated that, based on his assessment, Mr. Ebanks is:



*"relatively well adjusted and does not pose a threat to himself or to others."*

52. Having regard to the evidence and if all of the conditions recommended by the Probation Officer are put into place, I am satisfied that Mr. Ebanks has been rehabilitated to the extent that he would not be a risk to the public if he were released. Mr. Ebanks should not be released until the condition concerning the accommodation is met and this will require the accommodation to be found and deemed to be appropriate by the Probation Officer. The curfew hours are to be set by the Probation Officer and she should have regard to Mr Ebanks' employment hours when she does so.
  
53. Accordingly I will order that Mr. Ebanks be granted conditional release on licence. I have had regard to the public interest and the need to protect the public when reaching this decision that it is now appropriate to release Mr. Ebanks again. However, as I said to him in 2013, Mr. Ebanks should have no doubt that the conditions attached to my order must be fully complied with and that any diversion from them would likely result in his licence being revoked and him returning to custody.
  
54. The quarterly review reports should be submitted before me for me to review administratively. If I then require the parties to attend, or any party seeks to address the content, or the continuation/variation of conditions, then a hearing may be set before me. It would be appropriate for Mr. Ebanks to again have legal representation to enable him to conduct an informed review of the quarterly probation reports, for advice to be given

to him on the same, for him to be given advice in relation to any change/variations of the conditions and in relation to any applications that may then be required to be made.



.....  
**The Honourable Mr. Justice Richard Williams**  
**JUDGE OF THE GRAND COURT**

