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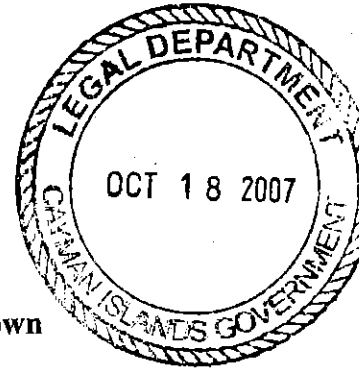
**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

**Ind. #39/1988
Legal Aid No. 56/07**

REGINA

v.

PHILLIP GLENNON EBANKS



Appearances: Mr. Trevor Ward of the Legal Department for the Crown
Ms. Ailsa Williamson of Stuarts for the Applicant

Before: Hon Justice Henderson

Heard: October 5, 2007

JUDGMENT

On August 25th, 1989 Phillip Ebanks was found guilty of the murder of Una Elva Yates. Since he was a young person at the time of 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."

In light of the recent decision of our Court of Appeal in *Hydes v. the Queen* (unreported, C.I.C.A. No. 20/06) on April 18, 2007, his sentence has been changed to one of detention at the court's pleasure. He now applies for his release. At a Case Management Hearing, I heard from both counsel on certain procedural issues; the merits of the application have not yet been determined.

Counsel have requested that I start by determining the appropriate minimum term of imprisonment. Shortly after imposing sentence, the learned trial judge, Collett, C.J., advised the Governor in writing that the minimum term Mr. Ebanks should serve was ten years. Mr. Ebanks has now been in custody for over nineteen years.

The question of whether or not a prisoner held "at the court's pleasure" should have a minimum term fixed by the court is one which I prefer to leave to a case in which it must be decided. Assuming, without deciding, that the fixing of a minimum term is appropriate, it must be obvious in light of the opinion of the Chief Justice that Mr. Ebanks has already served his minimum term.

It follows that Mr. Ebanks is now entitled to a hearing in this court on whether he should be released.

What is the test? Ms. Williamson has brought to my attention the test applied by the Parole Board in the United Kingdom for release of prisoners serving a life sentence: such a prisoner shall be released if "the board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined" (*Crime (Sentences) Act*, 1997 chapter 43 section 28 (6) (b)). She also cited certain Directions to the Parole Board under section 32 (6) of the *Criminal Justice Act*, 1991 which, in section 4, provide:

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

I agree that these provisions express with accuracy and clarity the question to be determined in the case of Mr. Ebanks. This court will order that he be released if the court is satisfied that it is no longer necessary for the protection of the public that Mr. Ebanks should be confined.

Counsel are agreed that, if Mr. Ebanks is released, the court may impose such conditions of release as may be thought reasonable for assisting in the continuing rehabilitation of Mr. Ebanks and his re-integration into Cayman Islands society. Counsel are invited to propose terms for such an order. It follows that if Mr. Ebanks is, after release, shown to have breached one of the conditions of release, his licence to be at large may be revoked.

I accept the contention of both counsel that, if Mr. Ebanks is not released, his continuing detention must be reviewed periodically by the court: see *R. v. Secretary of State Ex-Parte Venables and Thompson* [1988] A.C. 407 (HL). If a further hearing is necessary, counsel are at liberty to suggest the period of time which must pass before the next Release Hearing. I will fix the date of the next hearing in my judgment on the merits if I do not order that Mr. Ebanks be released.

The forthcoming hearing should be an oral hearing held in open court. In determining whether Mr. Ebanks should be released, the court is exercising a function somewhat analogous to sentencing. The presumption is that such a proceeding shall take place in an

open and public forum, although a part of the proceedings may be held in camera if sufficient justification for that is shown.

Clearly, Mr. Ebanks has a right to counsel (and a right to legal aid if he cannot afford to retain counsel privately), a right to present evidence, and a right to make submissions at his Release Hearing. All of that is conceded by the Crown.

There was discussion at the Case Management Hearing about the sort of evidence which can and should be admitted at a Release Hearing. 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:

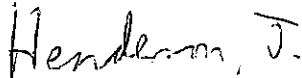
1. the nature and circumstances of the offence;
2. any comments made by the sentencing judge in relation to the need to protect the public;
3. the background of the offender, including the nature and circumstances of any previous offending;
4. whether the offender has made positive and successful efforts to address the attitudes and behavioural problems which contributed to the commission of the offence;
5. 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;
6. the opinion of the Prison Service on the degree of risk to the public which would result from the offender's release;

7. a recent Social Inquiry Report containing the opinion of a probation officer on the suitability of the resettlement plan and the dwelling where the offender proposes to live;
8. a recent psychiatric and/or psychological examination of the offender;
9. 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;
10. whether the offender is likely to comply with any conditions attached to his licence to be at large;
11. any past breaches by the offender of a condition of a licence to be at large.

Counsel are at liberty to agree upon a date for the hearing, bearing in mind the time which may be required to obtain the necessary reports and documents.

Each party is to give the other at least seven days notice of any document or report which will be tendered in evidence.

Dated this 16th day of October, 2007



Henderson, J.
Judge of the Grand Court

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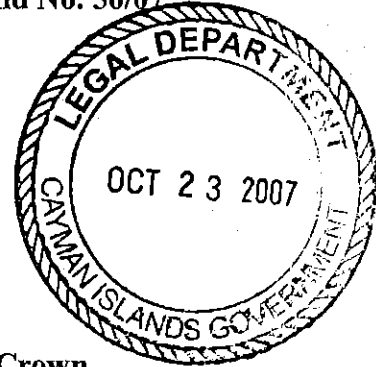
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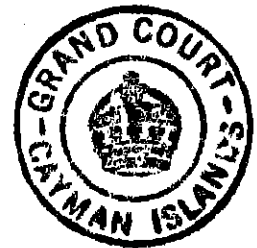
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