



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2021: No. 122

IN THE MATTER OF AN APPLICATION FOR HABEAS CORPUS

BETWEEN:

BRITTONIE TAYLOR

Applicant

- and -

COMMISSIONER OF PRISONS

First Respondent

- and -

THE MINISTER OF IMMIGRATION

Second Respondent

JUDGMENT

*Writ of habeas corpus, whether detention lawful pending deportation, leave for
judicial review filed*

Date of Hearing: 21, 22 April 2021

Date of Ruling: 18 May 2021

Appearances: **Victoria Greening, Resolution Chambers, for the Applicant**
Lauren Sadler-Best, Attorney General's Chambers, for the Respondents

JUDGMENT of Mussenden J

Introduction

1. On the 22 April 2021 I gave my decision in respect of the Applicant's application for habeas corpus. I now give my reasons herein.
2. This is an application by Notice of Motion for Writ of Habeas Corpus filed by the Applicant on 13 April 2021 in respect of his detention in the custody of the Commissioner of Prisons pursuant to section 107(2) of the Bermuda Immigration and Protection Act 1956 ("**the 1956 Act**"), subject to a Deportation Order dated 19 November 2020 pursuant to section 106(1)(c) the 1956 Act. It is supported by the First Affidavit of Brittonie Lloyd Taylor ("**Mr. Taylor**") sworn on 18 April 2021 at Westgate Correctional Facility ("**Westgate**") in Sandys Parish. In the case of *Billy Odoch v The Queen* [2017] Bda LR 73 Hellman J said as follows:

"It has been said that the writ of habeas corpus remains of the highest constitutional importance, for by it the liberty of the individual is vindicated and his release from any manner of justifiable detention assured. If on the face of its evidence the Respondent shows a valid authority for the detention, it is for the Applicant to show that the detention is prima facie illegal. R v Governor of Risley Remand Centre, ex parte Hassan [1976] 1 WLR 971, DC.

3. Mr. Taylor states in his evidence that he is a Jamaican national who has lived in Bermuda since 2000. He married a Bermudian 18 years ago here in Bermuda. He has 4 children with his wife, a daughter who is 23 years old (his step-daughter), twins who are 17 years old and a son who is 10 years old, all born in Bermuda. In 2012 Mr. Taylor was sentenced to 16 years imprisonment at Westgate for the offence of serious sexual assault and intrusion

of the privacy of a female. On 9 October 2020 he was released from Westgate. He says that since his release he has had stable living arrangements and has been working for Millwood's Construction and Maintenance. Mr. Taylor further states that he has a close relationship with his children, particularly his 17 year old son, who since his release, he has spent regular and quality time with, fishing and making up for lost time. He states that his son was and is extremely distressed when he learned that he was returned to Westgate pending deportation. He states that he has not been before the Courts since his release into the community from Westgate in October 2020.

4. The First Respondent is the Commissioner of Prisons (or Corrections) who is responsible for the detention of Mr. Taylor in Westgate. The Second Respondent is the Minister with responsibility for Immigration.

Background

5. In the Affidavit of Marita Grimes ("**Mrs. Grimes**"), Acting Chief Immigration Officer, sworn on 20 April 2021 along with Exhibit "**MG-1**" on behalf of the Minister, she sets out a detailed background of the involvement of officials of the Department of Immigration ("**the Department**") with Mr. Taylor. She states that on 14 February 2012 and 12 March 2012, Mr. Taylor was convicted in Supreme Court of serious sexual assault and bodily harm and intruding on the privacy of a female. He was sentenced to 16 years and 12 months imprisonment respectively, which he started serving at Westgate.
6. On 9 October 2020 Mr. Taylor was released from Westgate and on that date he was served with a written notice advising him, that in light of his convictions and in the best interests of the public, the Minister was considering making a recommendation to His Excellency the Governor ("**the Governor**") to have him deported from Bermuda. He was given 14 days to respond.
7. On 13 October 2020 the Department requested a Home Study Report from the Department of Child and Family Services ("**DCFS**") concerning Mr. Taylor's family life, his

relationship with his family and the impact his deportation may have on his family. It sought its views on whether Mr. Taylor would be able to maintain a relationship with his children whilst in Jamaica.

8. On 22 October 2020, the Department received Mr. Taylor's response to the Minister's notice. He had apologized for his actions and indicated a desire to remain in Bermuda to care for his children since he had already missed portions of their lives.
9. On 4 November 2020 the Department received the Home Study Report from DCFS ("**the Report**"). It referred to interviews with Mr. Taylor's wife, his son's mother and his three children. The Report concluded that it did not appear that Mr. Taylor's return to Jamaica would harm his relationship with his wife as she had no plans to reconcile with him, and having recognized the wishes of Mr. Taylor's children to have him remain in Bermuda, it indicated that they would be able to maintain contact with him if he returned to Jamaica. The Report recommended (a) that Mr. Taylor be returned to Jamaica; (b) that he have ongoing contact with his children by electronic means; and (c) that DCFS will ensure that electronic communication with Mr. Taylor and all his children continues.
10. The Minister had received a copy of a Psychological Assessment dated 3 April 2020. He fully and carefully considered the circumstances of Mr. Taylor's convictions including the extremely serious and violent nature of the same, Mr. Taylor's representations on his own behalf, the contents of the psychological assessment and the Report. On 12 November 2020, the Minister recommended to the Governor that Mr. Taylor be deported and placed on the Bermuda Immigration Stop List.
11. On 18 November 2020, Mr. Taylor was served with a letter informing him that the Minister made the recommendation of deportation to the Governor. On 19 November 2020, the Governor issued a Deportation Order which stated.

"WHEREAS His Excellency Mr. John Rankin, Governor of Bermuda acting upon the advice of the Hon. Jason P. Hayward, JP MP, a Minister acting under the general authority of Cabinet, thinks fit to make a Deportation Order in respect of Brittonie

Lloyd Taylor, a person charged within the meaning of section 103 of the Bermuda Immigration and Protection Act 1956 and who is a person in respect of whom the Governor considers it conducive to the public good to make a Deportation Order.

NOW THEREFORE I, Mr. John Rankin, Governor of Bermuda do in exercise of the powers conferred upon me by section 106(1)(c) of the Bermuda Immigration and Protection Act 1956, HEREBY ORDER the said BRITTONIE LLOYD TAYLOR to leave these Islands and thereafter to remain out of these Islands until further order.

AND I DO FURTHER DIRECT that the said BRITONIE LLOYD TAYLOR, may be detained in Her Majesty's Prison, after the expiration of the term of imprisonment which he is presently serving in order to effect the deportation of the said BRITONIE LLOYD TAYLOR. It is reasonable to suspect that the said BRITTONIE LLOYD TAYLOR will make effort to prevent his deportation from the Islands of Bermuda or will commit a further criminal offence, if released. The said BRITTONIE LLOYD TAYLOR may be detained until such time as he can be placed on board any ship or aircraft about to leave these islands, after the service of this Order upon him."

12. Mrs. Grimes states in her evidence that since his release, Mr. Taylor has resided at the Salvation Army's temporary residences ("the Facility") where he is only permitted to remain overnight. Further, there was no indication of employment.
13. Thereafter, there were difficulties in arranging Mr. Taylor's deportation including an expired passport, lack of a visa to travel through the United States, anticipation of US authorities' hesitation, the current Covid-19 situation and delay in scheduling flights from Bermuda. The Department waited to serve Mr. Taylor with the Deportation Order and he was not detained at Westgate. Mrs. Grimes states Mr. Taylor gave indications that he would cooperate with the deportation efforts, including agreeing to be collected to get passport pictures, and expressing to the Department's Officers his acceptance of being deported. Further efforts in securing flights from Bermuda were not successful in November and December 2020.

14. On 26 March 2021 the Department received permission from the US authorities to proceed with the deportation to Jamaica via the US. That evening Mr. Taylor was informed that he would be deported on 29 March 2021 and that arrangements were being made to serve the Deportation Order on him. Mr. Taylor stated his disagreement with being deported, referencing his marriage to a Bermudian, the children of the marriage and that his lawyer was working on appealing the deportation. The Officers noted this and informed him they were prepared to meet him in person to answer any questions. Later that evening, the Officers attended the Facility and met with Mr. Taylor and the manager of the Facility, explaining to him the deportation process. He repeated his reservations about being deported. He informed the Officers that he last had a Covid-19 PCR test a few days earlier when they informed him that he would be required to obtain another one to comply with entry requirements for Jamaica and transit in Miami. Mr. Taylor agreed to a test and was instructed to report for a test the next day on Saturday, 27 March 2021.

15. Later that same night, the Officers learned that (a) there was an alert that Mr. Taylor was the subject to an order to quarantine for 14 days as a result of a close contact with someone who had tested positive for Covid-19; (b) he tested negative for Covid-19 on 22 March 2021; and (c) he was required to take an eighth-day and fourteenth-day test. The Facility Manager was informed so that she could take necessary precautions when she informed the Officers that she was not aware of the order to quarantine and that Mr. Taylor had been leaving the Facility daily.

16. On 27 March 2021 the Officers were informed that Mr. Taylor failed to attend for his PCR test. When contacted, the Facility Manager reported that she was unable to contact Mr. Taylor despite numerous attempts by calls and messages. Further, he failed to return to the Facility that night. The Officers were of the view that he was evading his deportation and that he was in breach of a quarantine order issued under Public Health Regulations. As a result, a combined team of Officers from Corrections, Immigration and the Bermuda Police Service located Mr. Taylor when he engaged the Officers in a vehicle chase, a foot chase and violent physical resistance. He was detained, shown the Deportation Order and conveyed to Westgate where he was read the Deportation Order along with a letter

informing him of his right to sue out a writ of habeas corpus. He destroyed the Deportation Order and told Prison Officers that if they thought he was “*acting up now, wait until they try to deport him on a plane, he would bring the plane down.*” As a result, the threat was taken seriously and a private charter was arranged to depart Bermuda on Friday 23 April with Mr. Taylor to Jamaica.

17. Mr. Taylor was taken before a Magistrate and an order was made confirming the Applicant’s detention.

The Applicant’s Case

18. Counsel for Mr. Taylor informed the Court that on the morning of the hearing, an application for leave for judicial review was filed in the Supreme Court challenging the Deportation Order.

19. Mrs. Greening submits that the decision to order the deportation of Mr. Taylor was statutorily wrong, procedurally wrong and a breach of human rights. In light of these circumstances Mr. Taylor should not be detained.

20. In respect of being statutorily wrong, Mrs. Greening submitted that (a) Mr. Taylor was released from prison without condition; (b) he had stable accommodations at the Facility; and (c) he was a “*belonger*” to Bermuda with strong ties. Therefore, it was clear that the Minister and the Governor had no right to order the deportation of Mr. Taylor. She relied on the 1956 Act section 104(b) on the basis that Mr. Taylor was married to a Bermudian.

21. In respect of being procedurally wrong, Mrs. Greening submitted that Mr. Taylor had clearly stated that he wanted to remain in Bermuda because of his children. Despite that wish, she submits that not enough was done to examine his reasons for staying even though he had informed the Immigration Officers that he had lawyers working on an appeal against the Deportation Order. She relied on the case of *Odoch v The Queen* in that Mr. Taylor was similar to Odoch who had stable living arrangements, did not get into further criminal

trouble and was always contactable by the Department. She submitted that to arrest Mr. Taylor on 28 March 2021, after five months since release without condition was an important factor as to whether the arrest was lawful or not, especially when the Department knew he had a lawyer working on his deportation appeal. Such an arrest flew in the face of the Department telling him that they would meet with him to discuss his concerns. In light of all this circumstances, she submitted that Mr. Taylor has not had a fair hearing in consideration of his concerns and desire to remain in Bermuda because of his children.

22. In respect of the human rights issue, Mrs. Greening submits that it would be inhumane to deport Mr. Taylor to Jamaica where Covid-19 is so widespread and it would be improper to force Mr. Taylor to take a PCR test in Bermuda. She submitted that Bermuda had a higher vaccination rate than Jamaica. She again relied on *Odoch v The Queen* where Odoch relied on applying for asylum because of a fear of persecution if he returned to Uganda.

23. In summary, Mrs. Greening submitted that if the Deportation Order was wrong then the arrest and detention were a nullity. She maintained that what ought to have been done was that Mr. Taylor should have been afforded a fair hearing by judicial review as Part VII of the 1956 Act gave no guidance as to a hearing. She submitted that if Mr. Taylor was allowed to have his judicial review hearing then there were familial connections that could provide accommodations and safe space for any quarantine orders pending the outcome of any judicial review proceedings.

The Respondent's Case

24. Counsel for the Respondent submitted that the Deportation Order was lawful for several reasons. First, she submitted that Mr. Taylor was not a “*belonger*”. She relied on the Privy Council case of *The Minister of Home Affairs and another v Barbosa* [2019] UKPC 41 where it addressed the issue of “*belonger*” in terms of a husband and a wife pursuant to the Bermuda Constitution section 11(5) and that Mr. Taylor did not satisfy the requirements as a husband of a Bermudian. Section 11(5) of the Bermuda Constitution stated as follows:

Protection of freedom of movement

“11 (1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, that is to say, the right to move freely throughout Bermuda, the right to reside in any part thereof, the right to enter Bermuda and immunity from expulsion therefrom.

...

(5) For the purposes of this section, a person shall be deemed to belong to Bermuda if that person—

(a) ...

(b) ...

(c) is the wife of a person to whom either of the foregoing paragraphs of this subsection applies not living apart from such person under a decree of a court or a deed of separation; or

(d) ...

25. In *The Minister of Home Affairs and another v Barbosa* it was stated at para 57 as follows:

57. It only remains to deal with a submission by Mr. Drabble that certain differences in status under the Constitution are anomalous. First, there is a difference between the position of women and men as regards the definition of a person who belongs to Bermuda in section 11(5)(c), in that the wife of a person who possesses Bermudian status or of a person who is a citizen of the United Kingdom and Colonies by virtue of a grant by the Governor of a certificate of naturalisation (like Mrs. Barbosa) is treated as a person who belongs to Bermuda whereas the husband of such a person (like Mr. Barbosa) is not. However, Mr. Drabble rightly accepted that this difference is the result of the clear language of the Constitution and did not suggest that it is open to the Board to try to amend the position by any process of interpretation. The Board considers that it would be desirable if consideration could be given at some point as to whether this apparently discriminatory feature of the Constitution should be revised, but this is not a matter for decision in this case.

26. Mrs. Sadler-Best submitted that a ‘husband’ is not a “belonger” by virtue of being married to a Bermudian, relying on the case of *Davey and Davey v Minister of Home Affairs* [1986] Bda LR 52 at para 8 where it stated:

“8. The Solicitor General then submitted that the provisions of the Bermuda Immigration and Protection Act 1956 follow the scheme provided for in section 11 of the Constitution and that, in fact, section 105 of the Bermuda Immigration and Protection Act expressly exempts the wife of a Bermudian from deportation if she is not living separately and apart from her husband under a decree of a competent court. I agree with the Solicitor General. The provision at section 105 of the Bermuda Immigration and Protection Act, in following the scheme, does not make provision for the alien husband of a Bermudian and therefore he can be deported. He cannot claim the right to have the same privileges extended to him as the alien wife of a Bermudian enjoys.”

27. Mrs. Sadler-Best submitted that the case of *The Minister of Home Affairs and another v Barbosa* [2019] UKPC 41 and the case of *The Minister of Home Affairs et al v Marco Tavares and Paula Tavares* [2018] CA (Bda) 11 Civ settled the issue and their respective applications were refused as they were not ‘*belongers*’.

28. Second, the proper procedure was followed in the making of a Deportation Order by the Governor. Mr. Taylor was a ‘*person charged*’ pursuant to section 103 of the 1956 Act and that the Governor had the power to make a Deportation Order in respect of him pursuant to section 106 of the 1956 Act.

29. Third, Mr. Taylor had a fair hearing and an opportunity to be heard once he had expressed his desire to remain in Bermuda to be with his children. The Minister considered several documents before settling his recommendation to the Governor, namely the Report which had highlighted the emotional challenges with his children, Mr. Taylor’s difficulty in finding employment, that he had no real stable familial support, and there was no updated psychological assessment. Further, once informed about the Minister’s recommendation to

the Governor, Mr. Taylor could have asked for the information that the Minister relied on for his recommendation but did not do so.

30. Fourth, the Governor had the power to have Mr. Taylor detained pursuant to section 107 (2). Therefore the detention was lawful. It was also prudent to place Mr. Taylor before a Magistrate pursuant to section 105 for an order for detention pending deportation.
31. Fifth in respect of habeas corpus, the detention was lawful. Mrs. Sadler-Best submitted that on a writ of habeas corpus, what is in issue is the legality of the detention. If the evidence reveals authority for the detention, it is then for the Applicant to show that detention is prima facie illegal. She relied on the principle in the case of *Odoch* which I have referenced in my opening paragraph where the Court didn't have a timetable available to it for deportation and where *Odoch* was law abiding contrasted with Mr. Taylor who took several steps to evade deportation and was in breach of the quarantine rules.
32. Reliance was also placed on the Turks & Caicos Islands case of *Balasundram and 14 Ors v Derek Been, Director Immigration and Anor* CL44/20 where six months detention was not unreasonable as a period of detention in the circumstances. The Court cited "as a starting point" the dictum of Lord Donaldson MR in *R v Secretary of State for the Home Department ex parte Cheblak* [1991] 2 All ER 319: "A writ of habeas corpus will issue where someone is detained without authority or purported authority or the purported authority is beyond the powers of the person authorizing the detention and so is unlawful". The Court went on to cite what it considered the locus classicus, *R v Governor of Durham Prison; ex parte Hardial Singh* [1984/1 WLR 704, later distilled by Dyson LJ in *R(l) v. Secretary of State for the Home Department* [2002] EWCA Civ 888, where the Court set out as the limits of the power of detaining authority to detain pending deportation (or removal):

"1. The detaining authority must detain only to deport (or remove) the person and can only use the power for that purpose;

2. The detention must be for a reasonable period;

3. *If before the expiry of the reasonable period, it becomes apparent that the removal cannot be effected within that reasonable period, the detaining authority must not seek to exercise the power of detention; and*
4. *The detaining authority must act with reasonable diligence and expedition to effect the removal.”*

Mrs. Sadler-Best submits that all the above requirements have been met in respect of Mr. Taylor.

33. Sixth, Mr. Taylor has only just filed an application for leave for judicial review proceedings when usually it would be filed at the same time as the Notice for Motion for habeas corpus, and evidence could have been filed to show that the Deportation Order was unlawful. Mrs. Sadler-Best had submitted in her written submissions, served on the Applicant the previous day, that the Applicant had not issued judicial review proceedings. By the time of the hearing, the Applicant had filed judicial review proceedings with a supporting affidavit on the same terms of the affidavit evidence of Mr. Taylor in this case. The judicial review application was not exhibited in this Court. However, although the judicial review application was not before the Court, it had been served on the Respondent and according to Mrs. Sadler Best, the evidence is the same, which in essence supports the validity of the Deportation Order. The judicial review is a delaying action of the Deportation Order. If the Court finds that the Deportation Order is not valid then that is the end of the matter. However, if the Court finds that it is valid, then there is no basis to quash it.
34. Seventh, it was submitted that the Applicant’s concerns about his family and his relationship with his children were duly considered in the process of the Minister’s decision to recommend deportation. The considerations were similarly before the Governor. The arguments about proper consideration were similar to the arguments in *Davis and Davis v Governor and the Minister of National Security* [2012] Bda LR 40 at paras 19, 20 and 22 as follows:

“19. The relief sought and appeal are, therefore necessarily, directed only at the Minister’s recommendation for, and the Governor’s order of, deportation, both of

which are challengeable only by a writ of habeas corpus or judicial review as in these proceedings.

20. It is clear that the Minister and the Governor acted in accordance with the relevant provisions of the 1956 Act as to deportation in the circumstances of the case and with the rules of natural justice governing the Minister's consideration of the effect of such an order on Mr. Davis and his family life and the other members of his family. It is clear too from the undisputed evidence of the Acting Chief Immigration Officer, Dr Danette W. Ming that they did so in reliance, in particular, on: 1) the Department of Immigration's notification of 9 June 2008 to Mr. Davis of the Minister's proposal to recommend deportation; 2) Mr. Davis's written representations of 27th June 2008 against that proposal; and 3) the ensuing documentation showing thorough examination by the Department of his family circumstances relevant to the formulation of the recommendation and the making of the order - and a proper balancing of those circumstances and the Bermudian public interest.

...

22. In any event, whatever the level of intensity of review called for here, under the banner of proportionality or otherwise, there can be no reasonable complaint about the Minister's or the Governor's over-all handling of the matter. We agree with the Judge's finding and conclusion in paragraph 42 of his judgment that the incontrovertible evidence showed that the Minister took considerable care to assess the quality of the relationship between Mr. Davis, his wife and their children and all the other relevant circumstances before making the impugned deportation recommendation. His assessment is not therefore open to review on its merits or as to process."

35. Eighth, Mrs. Sadler Best submitted that the arguments about inhumane treatment as a result of returning to Jamaica in the middle of a pandemic were unsustainable as in Jamaica people could get the vaccinations and there were three million people living in Jamaica getting along with their lives. She relied on the Supreme Court judgment of *Barbosa* where Hellman J set out that the treatment of *Barbosa* did not amount to the level of bodily injury, humiliation, debasement, degrading treatment. Likewise, there is no evidence that Mr. Taylor was being treated in this manner.

The Law

36. The 1956 Act sets out relevant provisions as follows:

103 *In this Part, unless the context otherwise requires—*

...

“person charged” means a person in respect of whom it is alleged that there are grounds for making a deportation order, and includes a person in respect of whom a deportation order has been made.

Power of Governor to make deportation order

106 (1) *The Governor may, if he thinks fit, make a deportation order in respect of a person charged—*

(a) *who is a convicted person in respect of whom the court, certifying to the Governor that he has been convicted, recommends that a deportation order should be made in his case, either in addition to or in lieu of dealing with him in any other way in which the court had power to deal with him; or*

(b) *who is a destitute person; or*

(c) *who is a person in respect of whom the Governor considers it conducive to the public good to make a deportation order; or*

(d) *who is a person whose presence in Bermuda is unlawful by reason of a contravention of any provision of this Act.*

Power to detain, etc., person charged

107 (1) *When a court recommends the making of a deportation order in respect of a convicted person such person may, if the court so orders, be detained in such manner as the court may direct for a period not exceeding twenty-eight days pending the decision of the Governor with regard to the making of a deportation order; and any person shall, whilst so detained, be deemed to be in lawful custody.*

(2) *A person in respect of whom a deportation order has been made may be detained in such manner as may be directed by the Governor, and may be placed on*

board a ship or aircraft about to leave Bermuda, and shall be deemed to be in lawful custody whilst so detained and until the ship or aircraft finally leaves Bermuda:

Provided that—

(a) no person shall be detained under subsection (1) for a period exceeding twenty-eight days, and

(b) nothing in this proviso shall derogate from any power mentioned in subsection (2) to place any person in respect of whom a deportation order is in force on a ship or aircraft, or derogate from any provision whereby any such person is to be deemed to be in lawful custody thereafter until such time as the ship or aircraft finally leaves Bermuda.

Duty to comply with deportation order

110 (1) *A person in respect of whom a deportation order is made shall leave Bermuda in accordance with the terms of the order, and shall thereafter so long as the order is in force remain out of Bermuda.*

(2) *Any person who contravenes subsection (1) commits an offence against this Act*

37. When construing the reasonableness of the Governor's decision to detain Mr. Taylor, regard must be had to section 5(1) of the Bermuda Constitution. Breach of that section would be a freestanding ground on which the lawfulness of the order to detain could be challenged. Section 5(1) states as follows:

Protection from arbitrary arrest or detention

“5 (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases:

...

(e) upon reasonable suspicion that he has committed, is committing, or is about to commit, a criminal offence;

...

(h) for the purpose of preventing the unlawful entry of that person into Bermuda or for the purpose of effecting the expulsion, extradition or other lawful removal from Bermuda of that person or the taking of proceedings relating thereto.

Discussion

38. On 13 April 2021 the Applicant filed the Notice of Motion for a writ of habeas corpus. What I have to determine is whether Mr. Taylor was and is lawfully detained against the backdrop of the evidence of the Deportation Order as so helpfully provided and as set out above. It is not my role in the present proceedings to opine about the Deportation Order. In my view, the detention of Mr. Taylor was lawful for several reasons.

39. First, in following the case of *Balasundram and 14 Ors v Derek Been, Director Immigration and Anor* and the line of cases leading to the “start point” as set out in Dyson LJ in *R(l) v. Secretary of State for the Home Department* [2002] EWCA Civ 888, I am satisfied that the requirements to detain pending deportation have been met in that the Governor had the authority under the 1956 Act section 107(2) to include a detention provision in the Deportation Order. The Governor used the language of “*may be detained*” and set out some reasons why it may be necessary to detain Mr. Taylor pending deportation.

40. Second, Mr. Taylor was compliant up to the point that he was informed of his actual deportation. In my view, his conduct thereafter was to evade the deportation, that included fleeing the Officers by vehicle and foot and resisting arrest with some violence. Additionally, Mr. Taylor made serious threats in respect of the aircraft. The effect of that was that arrangements had to be shifted from a commercial flight through the United States to a private charter flight direct to Jamaica. Also, Mr. Taylor was acting in breach of the Covid-19 quarantine regulations and he failed to attend for the PCR test as requested. In my view, I again agree with Mrs. Sadler-Best that the present case can be distinguished from *Odoch* where Odoch was law abiding and in regular contact with the Department. I

do recognise that Mr. Taylor's conduct only deteriorated to criminal conduct once he was aware of the imminent deportation date, however I am obliged to take such conduct into consideration, and I do find that his conduct was unacceptable in the circumstances such that it met the requirement of the Bermuda Constitution section 5(1)(e). Also, I am of the view that the requirement of the Bermuda Constitution section 5(1)(h) is met in light of the pending deportation.

41. Third, in light of Mr. Taylor's conduct, the Officials arrested and detained him pursuant to the Deportation Order for the purpose of deporting him a few days later, due diligence having been exercised in formally arranging passage through the United States for his deportation. In my view, I agree with Mrs. Sadler-Best that the present case can be distinguished from *Odoch* where the Court did not have a timetable available to it for deportation. To my mind, no complaint can be entertained that the Officials were not acting within a reasonable period of time where in *Balasundram and 14 Ors v Derek Been, Director Immigration and Anor* a six month detention before deportation was not unreasonable in the circumstances.

42. Fourth, in following the reference of Hellman J in *Odach* as cited in the opening paragraph above where it cited the test as set out in *R v Governor of Risley Remand Centre, ex parte Hassan*, I am satisfied on the face of the evidence of the Minister that shows that there is a valid authority for the detention. However, in light of all the circumstances, I am not satisfied on the balance of probabilities that that the Applicant has shown that the detention is prima facie illegal. Therefore the Applicant's application fails.

Judicial Review

43. The Applicant filed judicial review proceedings challenging the Deportation Order. In my view, he should be allowed to have those judicial review proceedings determined by the Court. I disagreed with Counsel for the Respondent that he should be able to fight that battle from Jamaica, having been deported. That seems to defeat the purpose of his application.

44. In the premises, I exercised my inherent jurisdiction to stay the execution of the Deportation Order pending the final determination of the judicial review proceedings which I indicated should be on an expedited basis.
45. In respect of the liberty of Mr. Taylor, I considered the conduct of Mr. Taylor both before and after he was informed of his departure date. Before he was informed, he was getting on with his life. Once he was informed, then his conduct deteriorated and was unacceptable – fleeing the police, breaching quarantine and making threats of serious consequences. I also took into account the overnight materialisation of family and the opportunity for employment that was not in place leading up to his detention. I was not satisfied that those arrangements would have provided stability for Mr. Taylor pending the judicial review which could still result in his deportation.
46. In light of those circumstances, I was not prepared to make an order releasing Mr. Taylor from detention.

Conclusion

47. For the reasons above, I granted orders as follows:
- a. Dismissed the Applicant’s application to find that his detention was unlawful;
 - b. Stayed the execution of the Deportation Order pending the determination of the judicial review proceedings;
 - c. Declined to make an order releasing Mr. Taylor from detention pending the judicial review proceedings and deportation; and
 - d. Made no order as to costs in respect of the matter.

Dated 17 May 2021



**HON. MR. JUSTICE LARRY MUSSENDEN
PUISNE JUDGE OF THE SUPREME COURT**