



In The Supreme Court of Bermuda

CRIMINAL JURISDICTION

2021 No: 33

IN THE MATTER OF MID-ATLANTIC WELLNESS INSTITUTE ADMINISTRATION
FOR DONNA WILLIAMS
AND IN THE MATTER OF SECTION 5 OF THE ADMINISTRATION OF JUSTICE
(CONTEMPT OF COURT) ACT 1979

Before: The Hon. Mr. Justice Mark Pettingill, Assistant Puisne Judge

Appearances: Mr. Ben Adamson of Conyers, Dill & Pearman Limited for Mid-Atlantic
Wellness Institute Administration for Donna Williams

Mr. Adley Duncan for the Prosecution

Ms. Elizabeth Christopher for the Defendant

Dates of Hearing: 19 & 20 April 2023

Date of Ruling: 20 April 2023

RULING

*Contempt of Court for Failure to Disclose Psychiatric Report as per Viva Voce Order of the
Court*

PETTINGILL AJ

1. This matter arose out of Criminal proceedings which were scheduled to commence on April 17, 2023. Prior to that date there had been a Case Management hearing on March 21, 2023 at which time Ms. Christopher for the Defendant clearly raised the issue that she had not received a “mental health report” related to the complaint, Perry Smith, that she had requested from the Crown as a matter of disclosure from the Mid Atlantic Wellness Institute (MAWI). The Court was notified on April 14, 2023 that as of that date there had been no disclosure. On the morning of the commencement of the trial it was indicated by the Crown that they were encountering difficulties in acceding to the disclosure request from MAWI. Consequently, I made a vive voce Order requiring disclosure of a psychiatric report. The Court was informed late that afternoon that despite the Order and the communication of the same to MAWI nothing had been received. On the morning of April 18 Mr. Dincan for the Crown informed the Court that both he and the DPP had e mailed MAWI exepressing the urgency of a receiving the report . It was reported that there had also been direct telephone conversations in this regard, but these were never properly raised in evidence by way of Affidavit. On the basis that it clearly appeared that MAWI Adminsitration was aware of the Court’s Order, I indicated that that this raised an issue of Contempt with which the Crown agreed. Consequently, I requested that the MAWI administrator, Ms Donna Williams, appear before me and offer some explanation which she did a short time later.
2. I made some enquiry of Ms. Williams with regard to the issue of non compliance with the Court Order. She wsa quite clear in indicating that she was aware that an Order had been made and that she had been giving directions as to how to deal with it. At this juncture Mr. Ben Adamson appeared in Court in order to represent MAWI on the issue and I adjourned the proceedings to the following morning in order to be addressed fully on the matter.

3. On April 19, 2023 I heard submissions from Mr. Adamson and Mr. Duncan and I ultimately adjourned the matter to April 20, 2023 on the basis that Mr. Duncan would need to file an Affidavit related to any evidence of conversations he purportedly had with the MAWI Administration. Later that day the Court was informed via email that the DPP took the position that they would not file an Affidavit, unless directed to do so further, on the basis that they did not in the circumstances now wish to pursue or submit that there was a Contempt by MAWI.
4. Consequently, I find that in accordance with the provisions of section 5 of the Administration of Justice Act (Contempt of Court) Act 1979, I am not satisfied in the circumstances that either the Mid-Atlantic Wellness Institute (“MAWI”) or their employee Ms. Donna Williams, the Registrar of the records at MAWI, who was asked to appear in Court in relation to the raised issue, are in Contempt of Court.
5. The Court does take the view that in all of the circumstances related to the Smith criminal trial there are serious issues that have arisen which warrant further enquiry by the various Administration Departments involved. I cannot properly make an Order in this regard but in all the circumstances the Court strongly advises this course.
6. The trial was ultimately nullified by the Director of Public Prosecutions after the Complainant in the case gained access to the jury room on the morning of April 18 and behaved in an extremely threatening manner towards jurors. It was reported that he had previously attended outside of the offices of the Department of Public Prosecutions, and had behaved in a similar threatening manner, armed with a pipe. The Court is advised he has since been arrested, charged and bailed.
7. It was, indeed, the complainant about whom Ms. Christopher, for the defendant Smith, had raised for some period of time, and during the case management hearing in March before me, that she wished to have the “mental health records” of the complainant as a matter of disclosure with regard to the preparation of the defence case. She was in my view entirely entitled to this relevant information and her current concerns were made pellucidly clear with what transpired on the morning of April 18, 2023 with a clearly

troubled individual accosting a jury in the jury room of Supreme Court 1which must always be protected as a sacrosanct place for the jury alone.

8. The issue of timely disclosure in criminal trials is essential to the Administration of Justice and the Constitutional rights of defendants to be able to fully prepare for their hearings.
9. It appears from submissions made to the Court, including Mr. Adamson that there were a plethora of reasons why the disclosure requested was not given over to the crown in a timely manner. Leaving aside for the moment what could have or should have been done during the course of the weeks leading up to the trial in order to ensure that disclosure was made, the Court was placed in the position on the morning of April 17, 2023 at the start of the trial to have to make an Order for MAWI to disclose a “psychiatric report” (which as it transpired did not exist, but rather there was a “release report” related to the complainant) immediately in order that the Crown could serve it on the defence and that the trial could proceed. It was, in my view, entirely unsatisfactory that an Order of this ilk should have to be made at this particular juncture of proceedings in a criminal matter.
10. The court takes a view that it is fundamental and essential that orders of the court are either immediately acted upon and complied with or if they are considered to be imperfect or wrong or invalid that an immediate application is made to the court to have them set aside. An Order simply cannot be ignored or delayed without proper communication to the Court. Regrettably this did not begin to occur until Ms. Williams attended the Court late on the morning of April 18, 2023.
11. It is not satisfactory that in the circumstances, where an order of the Court is communicated to a relevant party to whom it is directed by an officer of the court, that it somehow is deemed to not carry weight unless it is served as a written order. It was made clear to the court by Ms. Williams when she appeared before me that early on the morning of the 18th that she was aware that the Court had made a viva voce Order with regard to the disclosure of psychiatric records and that she took direction from someone

in the administration at MAWI to not take any action unless she received an Order in writing.

12. It is not satisfactory in my view that communicated Order of the court, even in the circumstances where it is not formally served and signed, as was the case here, can somehow be obviated by an administration process of the served entity that prevents prompt action in dealing with the Court Order, either by way of promptly obeying it or by indicating to the court that the Order is being challenged and an application is being made to set it aside.
13. Unlike Civil proceedings with clearly annunciated timelines at every turn, proceedings in a criminal matter, particularly during a trial have the propensity to be more dynamic, and often involve Orders being made “on the fly” as it were, requiring immediate action. The current case is entirely a reflection of this type of circumstance.
14. Whilst I reiterate the Court is not satisfied that there was a contempt, and certainly finds that there is no evidence of mens rea to not comply with the Order or contemptuously ignore it, the Administration of Justice was regrettably, potentially placed in the position of having the appearance of being brought into disrepute, which can never be acceptable. It is essential that the public, and in this instance, a jury, have full confidence in the system.
15. The Court is of the view that there were clearly breakdowns that occurred with regard to the disclosure of evidence in this case to the defence in a timely fashion. This, in my view, warrants a fulsome departmental enquiry both by the Crown and the Hospital Administration to ensure that required disclosure of records happens in a timely manner and that there is full and prompt cooperation between parties bearing in mind, always, the paramount consideration that the Constitutional requirements of ensuring a fair trial are essential and in the public interest.

Dated the 20th day of April 2023



THE HON. MR. JUSTICE MARK PETTINGILL
ASSISTANT PUISNE JUDGE
