

1974 July 4

[STAVRINIDES, J.]

ADAMOS HARITONOS,

Applicant,

v.

CHIEF OF POLICE AND ANOTHER,

Respondents.

(Civil Application No. 11/74).

Habeas Corpus—Lies only in cases of unlawful deprivation of liberty.

Constitutional Law—Human rights—Right to liberty and security of person—Person arrested—Right to have services of an advocate of his own choosing—And right to be brought before a Judge—Article 11 paragraphs 1, 4 and 5 of the Constitution—Applicant escaping from prison whilst serving sentence of imprisonment—In so escaping he committed an offence for which he could be lawfully arrested and prosecuted—Not within the power of the authorities to deprive him of the above rights by undertaking to forgo prosecuting him—Order of mandamus compelling them to allow his advocate to see him.

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Mandamus—Order of mandamus compelling police and prison authorities to allow advocate to see person under arrest—Article 11 paragraphs 1, 4 and 5 of the Constitution.

The applicant escaped from the Central Prisons while serving a term of 14 years' imprisonment. After his arrest he was taken back to that prison and though his advocate repeatedly applied to the prison and police authorities for leave to visit him he was not allowed to do so. Hence this application for "an order of habeas corpus and/or mandamus ordering the production of Adamos Haritonos before the Supreme Court of Cyprus, the facilitating of his advocates to visit him daily and the provision of medical and pharmaceutical treatment in a nursing institution".

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Counsel for the respondents stated before the Court that the

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advocate had not been allowed to see the applicant because, in consequence of the escape, he was in solitary confinement involving prohibition of visits to him; and added that, as he understood, it was not intended to prosecute him for the escape because he was punished under the prison regulations with solitary confinement and he was in prison simply as a person serving a term of imprisonment.

Article 11 paragraphs 1, 4 and 5 of the Constitution read as follows:

- 10 "1. Everyone has the right to liberty and security of person.
.....
4. Every person arrested shall be informed at the time of his arrest in a language which he understands of the reasons for his arrest and is entitled to the services of an advocate of his own choice.
- 15 5. The person arrested shall be brought before the Judge as soon as possible after his arrest, and in any event not later than 24 hours after the arrest, unless earlier released".

20 *Held*, (1) that habeas corpus clearly lies only in cases of unlawful deprivation of liberty; that here the applicant is lawfully confined because the term of imprisonment to which he has been sentenced is still in force; and that, therefore, habeas corpus does not lie.

25 (2) That in escaping from prison the applicant committed an offence under section 128(a) of the Criminal Code the punishment for which was seven years' imprisonment and for that offence he could be lawfully arrested and prosecuted; that even if an undertaking not to prosecute him had been given it would not have availed the respondents, for on his arrest following his escape he became entitled, in respect of that offence, to the benefit of the safeguards laid down by paragraphs 1, 4 and 5 of Article 11 of the Constitution; that since the subject matter of this Article is the right to liberty and security of the person, two fundamental human rights, it cannot be within the power of the authorities to deprive him of those safeguards by the legal or procedural device of undertaking to forgo prosecuting him; that, therefore, the applicant is entitled to the safeguards

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of the provisions of Article 11, paragraphs 4 and 5 of the Constitution; and since, as is stated in the applicant's affidavit and not denied on the other side, the authorities have refused to allow his advocate to see him with a view to giving him the benefit of his professional services, an order of mandamus compelling them to do so must issue. 5

(3) That with regard to the "medical care" there is nothing before this Court suggesting, let alone proving, that the applicant is in such need; and that, accordingly, the prayer for this relief must fail. 10

Application partly granted.

Application.

Application for an order of habeas corpus and/or mandamus ordering the production of Adamos Haritonos before the Supreme Court of Cyprus, the facilitating of his advocates to visit him daily and the provision of medical and pharmaceutical treatment in a nursing institution. 15

P. Demetriou, for the applicant.

S. Georghiadis, Senior Counsel of the Republic, for the respondents. 20

Cur. adv. vult.

STAVRINIDES J. read the following judgment. This is an application for

"an order of habeas corpus and/or mandamus ordering the production of Adamos Haritonos before the Supreme Court of Cyprus, the facilitating of his advocates to visit him daily and the provision of medical and pharmaceutical treatment in a nursing institution". 25

The following facts are undisputed: Adamos Haritonos (hereafter "the person concerned") escaped from the Central Prison while serving a term of 14 years' imprisonment imposed on him in 1970 for attempting with others to kill His Beatitude the President of the Republic. He was arrested a few days ago and taken back to that prison. The applicant, a brother of the person concerned, swore an affidavit in which he said: 30

"3. As I am informed by Mr. Panayotis Demetriou [counsel for the applicant], the police authorities and the prison 35

authorities on various pretexts did not allow him to contact (the person concerned) to this day in spite of his repeated applications.

- 5 4. Mr. Demetriou within my hearing on Saturday, June 29, 1974, asked the prison authorities for a visit by him to (the person concerned) to be arranged and received an answer to the effect that 'it is prohibited to everyone to see him'.
- 10 5. I am informed by other detainees that my brother [the person concerned] is seriously injured as a result of ill-treatment and that he needs medical treatment.
- 15 6. I believe that it is a constitutional right of my brother [the person concerned] to consult an advocate and to be given medical care regardless of whether he is being detained by the police, of which Mr. Savvas Antoniou is Chief, as a prisoner before trial, or by the authorities of the prisons, of which the Superintendent is Mr. Costas Christou, as a convicted prisoner."

20 No affidavit has been filed and no evidence has been adduced on the respondents' side, but Mr. Georghiades, Senior Counsel of the Republic, who appeared for them, said that Mr. Demetriou had not been allowed to see the person concerned because, in consequence of the escape, he was in solitary confinement, involving prohibition of visits to him; and Mr. 25 Georghiades added:

30 "It appears that at the time of his arrest he was armed, but, as I understand, it is not intended to prosecute him for the unlawful carrying of arms, since the punishment for that offence is not greater than the sentence he was serving at the time of the escape. Nor to prosecute him for the escape: for that he was punished under the prison regulations with solitary confinement. Thus [he] is now in prison simply as a person serving a term of imprisonment."

35 I must deal with each of the reliefs sought separately. First, regarding the claim for habeas corpus. Clearly it lies only in cases of unlawful deprivation of liberty. But here the person concerned is lawfully confined because the term of imprisonment to which he has been sentenced is still in force. Therefore, on the facts of this case, habeas corpus does not lie.

Now I come to the claim for mandamus. By Art. 11, paras. 1, 4 and 5, of the Constitution,

“1. Everyone has the right to liberty and security of person.

.....

4. Every person arrested shall be informed at the time of his arrest in a language which he understands of the reasons for his arrest and is entitled to the services of an advocate of his own choice. 5

5. The person arrested shall be brought before the Judge as soon as possible after his arrest, and in any event not later than 24 hours after the arrest, unless earlier released.” 10

In escaping from prison the person concerned committed an offence under s. 128(a) of the Criminal Code the punishment for which was seven years’ imprisonment. For that offence he could lawfully be arrested and prosecuted. Mr. Georghiades relied on his statement about absence of an intention to prosecute the person concerned. It is to be noted, however, that with the frankness expected of an officer of the Legal Department, and indeed of every advocate, he prefaced that statement with the words “I understand”, so that this does not amount to an undertaking not to prosecute. But even if such an undertaking had been given it would not have availed the respondents, for the applicant on his arrest following his escape became entitled, in respect of that offence, to the benefit of the safeguards laid down by the above-quoted provisions; and since the subject matter of that Article is the right to liberty and security of the person, two fundamental human rights, it cannot be within the power of the authorities to deprive him of those safeguards by the legal or procedural device of undertaking to forgo prosecuting him. 15 20 25 30

For the reasons given I hold that the person concerned is entitled to the safeguards of the provisions of Art. 11, paras. 4 and 5 of the Constitution; and since, as is stated in the applicant’s affidavit and not denied on the other side, the authorities have refused to allow Mr. Demetriou to see him with a view to giving him the benefit of his professional services, an order of mandamus compelling them to do so must issue. 35

With regard to "medical care" it is enough to say that there is nothing before me suggesting, let alone proving, that the person concerned is in such need.

5 Order that the Chief of Police and the Superintendent of Prisons permit and facilitate the advocate of the person concerned to visit him with a view to affording him the benefit of his professional services.

The respondents to pay the applicant £20.—costs.

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Application for order of habeas corpus dismissed. Application for order of mandamus partly granted. Order for costs as above.