



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

RDTL

TRIBUNAL DISTRITAL de DILI

Special Panel for Serious crimes

Before:

Judge Sylver Ntukamazina

Case no: 02/2000

The Public Prosecutor

Versus

Julio Fernandes

Decision on the application for conditional release of Julio Fernandes

For the Prosecution:

Ms. Shyamala Alagendra

For the Defense:

Mr. Sergio De Jesus Ormai

Mr. Gancio Xavier

A. Procedural background

- 1 On 22 September 2003, the Counsel for Julio Fernandes filed an application for release of her client pursuant to Section 43 of UNTAET Regulation 2000/30 as amended by UNTAET Regulation 2001/25. The request was brought before the judge on 2 October 2003. The grounds for the release are outlined in the written application on the file.
- 2 On 11 March 2001, the Special Panel found the convict person guilty for murder and sentenced him to 7 (seven) years of imprisonment. The decision of the Special Panel for Serious Crimes was appealed, and on 29 October 2001, the Court of Appeal (majority decision) set aside the conviction of murder and substituted it with a conviction under Section 338 of the Indonesian Penal Code. Julio Fernandes was then sentenced to 5 years of imprisonment.
- 3 The report on the conduct of the Convict person was established by the Becora Prison Manager on 22 September 2003 and filed by the defense.
- 4 Pursuant to Section 43.1 UNTAET Regulation 2000/30, the Court decided to hold a hearing on 9 September 2003 at 2 PM in order to check whether the requirements for the conditional release of the convicted person are met.

B. Submissions of the parties

- 6 During the hearing held on 9 September 2003, the Defense confirmed the written submissions. The Defense bases the request on Section 43.1(a), (b) and (c) UNTAET Regulation 2000/30, and asked the release of Julio Fernandes on three grounds relating to:

(a) The length of the period of detention of the convict: the defense advanced that the convict has served two/third of his sentence. He was arrested on 5 May 2000, released on 11 January 2001, rearrested on 16 January 2001 and stayed in detention until 15 February 2001 when he was again released. He was then after convicted and sentenced on 1 March 2001

when he was again rearrested and has been in custody since that date. On 22 September 2003, he has served two-thirds of his sentence.

(b) The good behavior of the convict in prison: The Defense submitted that a report on the conduct of the convicted Person has been presented to the Court by correctional authorities.

(C) The fact that the convict is not a danger to the society.

5 The Prosecutor told the Court that she does not have any objection with respect to the conditional release of the convict. However, the Prosecutor would like to request that the provisional measures stated in Section 43, in particular an order from the Court prohibiting the convicted person from leaving the jurisdiction of the Court without prior authorization of the Court and certainly to ensure that this condition is being fulfilled. The prosecutor also requested that the convicted person be ordered to report to the nearest CIVPOL police station once a month, and that this condition is to continue until the completion of a full sentence which the convicted person is to serve. The Prosecutor believes that this requirement would ensure the continued good conduct of the convicted person.

C. Relevant provisions of the law with respect to the composition of the Court and the conditional release

8 With respect to the conditional release after trial, Section 43 provides that: " 43.1. Upon request by the convict or his or her legal representative, and after a hearing, a Court may order the conditional release of a convict who has been sentenced to a term of imprisonment where: (a) two thirds of the term of imprisonment has been completed; (b) a favorable report on the conduct of the convict has been presented to the Court by correctional authorities; and (c) the convict poses no danger to public security or safety. 43.2. An order for conditional release under the present section may include any measure that may promote the peaceful integration of the convict into society, including one or more of the following: (a) a prohibition on the convict to appear in specified places; (b) a prohibition on the convict from associating with persons identified in the order; (c) a prohibition on the convict from leaving the jurisdiction of the Court without previous

authorization from the Court; or a requirement that the convict appear regularly before the Court or other designated authorities for a certain period of time."

- 9 With respect to the jurisdiction of a single judge, Section 48 relating to the supervision and the execution of prison sentences provides that: "*48.1 All matters relating to the supervision and the execution of a prison sentence shall be decided by the presiding judge of the Panel or the individual judge who pronounced the sentence. In the event that such judge is no longer available or otherwise unable to exercise his or her functions, the judge Administrator will designate a judge to deal with such matters.*
- 10 This Court will deal first with the **issue of the jurisdiction of a single judge, before going to the substantial matter relating to the conditions for release.**

B. The jurisdiction of a single judge.

- 13 **There is no issue with respect to the jurisdiction of a single judge to deal with the application of conditional release.** The matter on issue in the present case is relating to the supervision and execution of a prison sentence. Pursuant to section 48.1 UNTAET Regulation 2000/30, a single judge shall decide that kind of issue, namely the presiding judge of the Panel or the individual judge who pronounced the sentence. In the event that such judge is no longer available or otherwise unable to exercise his or her functions, the judge administrator will designate a judge to deal with such a matters. In the present case, the Presiding judge of the panel who pronounced the sentence is still available to deal with the present matter. The competence of a single judge to deal with this matter is therefore obvious and it conforms to the jurisprudence of this Court I.

¹ Special Panel for Serious Crimes. Prosecutor Vs. Joni Marques and 9 others, Decision on the application for conditional release of Alarico Fernandes, 17 April 2002; Decision on the application for conditional release of Gilberto Fernandes, 28 February 2003; Decision on the application of the conditional release of Mautersa Monis, 10 September 2003. See also the Case No.4 b/2001 the Prosecutor V. Sabino Gouveia Leite, Decision on the application of the conditional release of Sabino Gouveia Leite 17 December 2002. Case No.8/2000, the prosecutor v. Mateus Tilman. Decision on the application of conditional release of Mateus Tilman, 23 April 2003.

C. With respect to the conditions of release of the convict person

- 11 Pursuant to Sect. 43.1 UNTAET Regulation 2000/30, a convict may be granted conditional release following trial after (a) two-thirds of the term of imprisonment has been completed; (b) a favorable report on conduct; and (c) where there is no danger to public security or safety.
- 12 This Court is of the opinion that those conditions have to be satisfied separately. In enumerating the conditions, Section 43.1 says " *where: (a)...(b)... and (c)*". The reading of the section shows clearly that each and all those conditions have to be fulfilled in order for the Court to order a conditional release.
- 13 It is true that the convicted person was arrested on 5 May 2000, released on 11 January 2001, rearrested on 16 January 2001 and stayed in detention until 15 February 2001 when he was again released. He was then after convicted and sentenced on 1 March 2001 when he was again rearrested and has been detained continuously from that date until now. He has therefore served the two-thirds of his term on 22 September 2003. This was clearly shown in the judgement of the case and in the report from the prison, which mention that two-thirds of the term of imprisonment were served on 22 September 2003. It is therefore obvious that the first condition for release provided by the law is fulfilled.
- 14 The report of the conduct of Julio Fernandes has been submitted to the Court. It says: " *The prisoner Julio Fernandes, is a prisoner who have behaved well(of good conduct) while in prison, he is also a well-mannered man. He respects the prison guards and also all other fellow prisoners, he is always happy. The prisoner Julio Ferandes is always keen to work in the area inside and outside the prison. He is also keen in preparing the garden to plant vegetables. He also keen to attend mass in church and to pray the the rosary in the church. This prisoner is also helping us by giving us information when the other inmates are thinking of making disturbances or to distruction in prison inside Cormarca*". It is not

disputed that the conduct, behavior and attitude of Julio Fernandes has been of a good standard. He has been cooperating with the prison staff and has been following directives and orientations from prison staff. He also worked well during his time in prison. The Court is convinced that the conduct and the behaviour of the convict person in prison has been until now good. The second condition for release of the convict is also fulfilled.

- 15 With respect to the third condition, there is no guarantee that the inmate will not pose any danger to public safety or security. It is not possible to determine in advance what will be the future behavior of the convicted person. However, the good behavior the convict has been exhibiting while serving his sentence, would suggest that he will continue to adopt a good behavior once released, and will cause no danger to public security or safety.
- 16 However, as decided in other similar cases, especially in the case the Prosecutor v. Sabino Gouveia Leite, the prosecutor v. Gilberto Fernandes, the prosecutor v. Mautersa Monis, the prosecutor v. Mateus Tilman, it is necessary, in order to promote the peaceful integration of the convicted person into society, and to prevent any future misconduct, that the court forbid Julio Fernandes to commit any other offence and to pose any danger to public safety or security for a period starting now up to 22 May 2005.
- 17 In order to ensure the good behavior of the convict after release, the Court will prohibit him to leave the jurisdiction of this Court without prior authorization of the same Court, until the completion of the term of his sentence on 22 May 2005. For the purpose of facilitating the control of the respect of the condition, the Court will order Julio Fernandes to report to the nearest civpol once a month.
- 18 Conditional release shall terminate if the convict commits a crime or violates any of the conditions established in the present order for conditional release, in which case he shall immediately continue his original term of imprisonment.

19 For the aforementioned reasons, the Court:

20 Decides that the application for conditional release of Julio Fernandes is granted with the following conditions valid for a period starting today and expiring on 22 May 2005, on which date the penalty of imprisonment of the convict person will expire:

- a) That Julio Fernandes does not commit any other offence and not pose any danger to public safety or security.
- b) That Julio Fernandes resides in Hatulia village, Hatulia Sub District, Ermera District, not leave the jurisdiction of this Court without prior authorization of the Court, and reports to the nearest CIVPOL once a month.

Dili, 9 September 2003

Judge Sylvester Ntukamazina

