

COMMONWEALTH OF THE BAHAMAS

2018

IN THE SUPREME COURT

CRI/BAL/00253

CRIMINAL DIVISION

BETWEEN

TYRON NEELY

Applicant

V

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Madam Justice Cheryl Grant-Thompson

APPEARANCES: Mr. Ian Cargill of Ian D. Cargill & Co. for the Applicant

Ms. Janet Munnings of the Office of the Director of Public Prosecutions for Respondent

HEARING DATES: 20th October 2021, 27th October 2021

BAIL JUDGMENT

Bail - Bail Act - Application for Bail – Part C Offences - Part A First Schedule- Regard to relevant factors – Section 4(2)- Primary Considerations on a bail application - s. 4 (2) (2B) – Section 4(2)(a)- Whether there has been unreasonable delay - Section 4(2)(c)- Whether applicant is a fit and proper candidate for bail-Juvenile Applicant

GRANT THOMPSON, J

1. The Applicant, seventeen (17) year old Tyron Neely is charged with Murder, contrary to section 291 (1)(b) of the Penal Code, Chapter 84 and Attempted Murder contrary to section 292 of the Penal Code, Chapter 84. These offence are alleged to have taken place on the 17th July, 2021.
2. The Applicant's Summons for bail was by an Affidavit citing, inter alia, that:
 - a. The Applicant was born on the 11th day of August, 2004, in the Commonwealth of The Bahamas and is presently 17 years of age;
 - b. The Applicant pleaded not guilty and will be defending these charges at trial;
 - c. The Applicant does not have any pending matter(s) before the Court(s) in the Commonwealth of The Bahamas;
 - d. The Applicant has a medical illness, he is asthmatic;
 - e. Prior to the incarceration of the Applicant he was a grade 10 student at L.W. Young Sr. High School; and
 - f. The Applicant is a fit and proper candidate for Bail.
3. The Respondent has objected to the grant of bail by Affidavit of ASP Nathan Mackey citing, inter alia, that:
 - a. The Applicant is a Juvenile with pending matters;
 - b. There is strong cogent evidence which points to the Applicant being identified for the death of the deceased;
 - c. Given the severity of the penalty for the offences for which the Applicant stands charged, the Respondent verily believed the likelihood of being convicted provided within itself sufficient incentive for the Applicant to abscond;
 - d. There has been unreasonable delay as the Applicant has been arraigned before the Magistrate Kara Turnquest Court No. 2 on the 28th June, A.D., 2021;
 - e. If granted bail, the Applicant will commit further offences ; and

- f. There is a need to protect public safety and public order and the Applicant should be kept in custody for his own safety.
4. Having read the Affidavits and having considered the oral submissions of Counsel for Applicant and Respondent, I find that the Respondent has not satisfied me that the Applicant **ought not to be granted bail pending his trial.**
5. I therefore exercise my discretion **to grant to the Applicant bail** for the following reasons:
- a. **The Applicant has just turned eighteen (18) years old and was just previously a Juvenile. He is a young person. This factor weighed heavily in favour of the Applicant having regard to our international obligations relating to children and young persons. I accept 18 is now an adult but I still consider him a young person;**
 - b. **The Applicant according to his Criminal Records and Antecedent Form has other matters pending however he has no previous criminal convictions;**
 - c. **I am satisfied if granted bail the Applicant will return for trial due to his strong ties to The Bahamas; and**
 - d. **I am of the view that extremely strict terms and conditions of bail can be implemented to ensure his return for his trial.**

THE APPLICABLE LAW

6. Ordinarily, Parliament has set general standards for the court's consideration when deciding the issue of bail. Article 19(3) of the Constitution, provides for reasonable conditions to ensure the appearance of the person for trial, as was recognized by **Sawyer P. in Attorney General v Bradley Ferguson et al SCCr No. 57, 16, 108 and 116 of 2008.**

7. So far as is applicable in the instant case the 2011 amendment provides:

“3. Amendment of section 4 of the principal Act.

Subsections (2) and (3) of section 4 of the Bail Act are repealed and replaced as follows-

“(2) Notwithstanding any other provision of this Act or any other law any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged-

- (a) has not been tried within a reasonable time;***
- (b) is unlikely to be tried within a reasonable time; or***
- (c) should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B.), and where the court makes an order for the release, on bail, of that person it shall include in the record a written statement giving the reasons for the order of the release on bail.***

(2B) For the purpose of subsection (2)(c), in deciding whether or not to grant bail to a person charged with an offence mentioned in Part C of the First Schedule, the character or antecedents of the person charged, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.

PART A

In considering whether to grant bail to a defendant, the court shall have regard to the following factors-

- (a) whether there are substantial grounds for believing that the defendant, if released on bail, would-***
 - (i) fail to surrender to custody or appear at his trial;***
 - (ii) commit an offence while on bail; or***
 - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;***
- (b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;***

- (c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;*
- (d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;*
- (e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;*
- (f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;*
- (g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.*

8. The Applicant is presumed to be innocent of these charges contained in the Indictment. In this regard Article 20(2)(a) of The Constitution of The Bahamas provides:

“20.(2)Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty.”

9. The presumption of innocence afforded by the Constitution arguably entitles the Applicant to bail in the absence of the Respondent not merely asserting but rather proving the relevant factors specified in Part A of the First Schedule has been met.

10. In the case of **Jeremiah Andrews v The Director of Public Prosecutions Appeals No. 163 of 2019**, the Court of Appeal considered the issue of the evidence required by all parties in bail applications. Evans JA. at paragraph 26 of the judgment stated:

“26. In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4 (2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he

will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence.”

TRIAL WITHIN A REASONABLE TIME

11. The Applicant is entitled to a trial within a reasonable time. In this regard Article 19(3) of The Constitution of The Bahamas states:

“19(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions including in particular such conditions, as are reasonable necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.”

12. Furthermore, section 3(2)(A)(a) of the Bail (Amendment) Act 2011 (the Act) states:

“2(A) For the purpose of subsection (2)(a) and (b)—

(a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;”

13. In **Duran Neely v The Attorney General Appeals No. 29 of 2018**, Evans JA at paragraph 17 stated:

“17. It should be noted that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown. As I understand the law when an accused person makes an application for bail the Court must consider the matters set out in Section

4(2)(a), (b) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time he can be admitted to bail as per (a) and (b). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail.”

CHARACTER OR ANTECEDENTS OF THE APPLICANT

14. The Applicant according to his Criminal Records Antecedent Form has no previous convictions. The Applicant however does have other matters pending inclusive of an Assault charge which allegedly occurred on the 28th March, 2019 in which he is awaiting trial.
15. Section 4(2B) of the Bail (Amendment) Act, 2011, mandates that the character of antecedents of the person charged is a **primary consideration** in determining whether or not to grant bail.
16. At present, the Applicant has no previous convictions on his record which means he is presumed to be of good character.

LIKELIHOOD OF THE APPLICANT TO ABSCOND

17. There is no information before this Court which indicates that the Applicant will abscond and not appear for his trial. Due I do note however, the findings of the Privy Council in the case of *Hurnam v The State (Privy Council Appeal No. 53 of 2004) (Hurnam)*. Lord Bingham of Cornhill, in delivering the judgment of the Board said:

“It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have an incentive to abscond or interfere with witnesses likely to give evidence against him”

18. In this regard, Murder is an extremely serious offences. Upon conviction the Court may impose a term of imprisonment for life. It follows therefore that

the Applicant facing these serious charges for which he is liable to a severe penalty, if convicted, may well in my view have an incentive to abscond.

19. Due to the severity of the charges in conjunction with the evidence against the Applicant, it is possible that he may be tempted to abscond and not appear to face the charges of Murder for which he is before the court. The Court is however mindful of the conditions that are at its disposal to ensure the Applicant returns for his trial and will ensure the strictest conditions are implemented in the circumstances.

INTERFERE WITH WITNESSES OR OTHERWISE OBSTRUCT THE COURSE OF JUSTICE

20. While it is true that the Board did express the view that the seriousness of the offence and the severity of the penalty may be an incentive to interfere with witnesses, the Board in the case of *Hurnam* also expressed the view that there must be reasonable grounds to infer that there is a likelihood of interference with witnesses or to obstruction of the course of justice. In this regard, Lord Bingham stated:

“...Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail”

21. There is some onus upon the Crown to satisfy the Court that the Applicant is likely to interfere with witnesses if bail is granted. In other words, the prosecution has the burden of providing the Court with sufficient information from which the Court can reasonably conclude that there is a likelihood of the Applicant interfering with witnesses.

22. In the Bahamas Court of Appeal case of **Jonathan Armbrister and The Attorney General SCCrApp No. 145 of 2011 (Jonathan Armbrister)**, John JA at paragraph 11 stated:

“11. A good starting point in reviewing the principles applicable where an appellant has been charged but not yet put on trial is the statement of Lord Bingham of Cornhill in Hurnam v The State (Supra) where he said at paragraph 1:

“In Mauritius, as elsewhere, the courts are routinely called upon to consider whether an unconvicted suspect or defendant should be released on bail, subject to conditions, pending trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. But the community has a countervailing interest, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence, and that he does not take advantage of the inevitable delay before trial to commit further offences”

NATURE AND SERIOUSNESS OF THE OFFENCE

23.As indicated earlier, Murder is a serious offences. In the event that the Applicant is convicted of these offences there is a possibility that the maximum sentences may be imposed. The Applicant may be sentenced to imprisonment for life. The seriousness of the offences and the severity of the punishment may be viewed as an incentive for the Applicant to abscond and not return for his trial in the event that he is released on bail. **However I have determined to ensure the Applicant returns to answer the allegations against him the strictest conditions of bail will be implemented.**

24.I accept that the hearing of a bail application is not the appropriate place for assessing or determining the strength or weaknesses of the evidence that the prosecution proposes to present at trial. The Court of Appeal of The Bahamas expressed this view in the case of **A.G. and Bradley Ferguson**. Osadebay JA said at page 61 of the Judgment:

“It seems to me that the learned judge erred in relying on his assessment of the probative value of the evidence against the respondent to grant him bail. That is for the jury at the trial. As stated by Coleridge J. in Barronet’s case earlier – the defendant is not detained because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial” (emphasis provided).....The learned trial judge also took into consideration matters that he ought not to have taken into consideration by relying on his own assessment of the probative value of the evidence against the respondent”

25.I am guided by the Judgment of the Court of Appeal and I therefore make no findings on the probative value of the witness statement laid before me save to say that the evidence is more than merely frivolous. Article 19(1)(b) of the Constitution guarantees that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committed a criminal offence. Although personal liberty is guaranteed by the Constitution, the law authorizes the taking away of that personal liberty upon reasonable suspicion of a person having committed a crime.

26.I accept that it is not the duty of a judge, during bail applications to decide disputes of evidence as was seen recently in *Richard Hepburn v Attorney General SCCRAPP & CAIS No 276 of 2014*. I also accept that whether the evidence against the Applicant is strong or weak is yet to be determined.

DECISION

Bail is therefore granted for the reasons following:

- 1. The Applicant was seventeen (17) years old when he made the Application and a Juvenile. He is now an adult but I consider him a young person who according to International Conventions and Norms is entitled to favourable consideration of his welfare. .**

The Court is of the view that he should be allowed to await his trial on bail as opposed to languishing in jail pending trial;

- 2. The Applicant according to his Criminal Records Antecedent Form has other matters pending however he has no previous convictions;**
- 3. I am satisfied if granted bail the Applicant will return for trial due to his strong ties to The Bahamas; and**
- 4. I am of the view that extremely strict terms and conditions of bail can be implemented to ensure his return for his trial.**

The terms and conditions of bail are to be as follows. Bail is to be granted in the amount of \$20,000 with two suretors and under the following terms:

1. The Applicant is to be fitted with an Electronical Monitoring Device (EMD) and is required to comply with the regulations for the use of such a device;
2. The Applicant is required to sign in at the Central Police Station on Mondays, Tuesday, Wednesdays, Thursday and Fridays before 6:00pm;
3. The Applicant is required to keep a curfew and to stay at his place of residence between the hours of 7pm to 6am daily;
4. The Applicant is not to come into any deliberate contact with any of the Prosecution witnesses in this matter either by himself or through an agent, nor come within 100ft of them;

5. The Applicant is to surrender his travel documents; and
6. The Applicant is to surrender into custody on the Monday of his trial.

Dates this 27th day of October A.D. 2021

Mrs. Justice Cheryl Grant-Thompson
Justice of the Supreme Court