

COMMONWEALTH OF THE BAHAMAS

CASE NO. CRI/BAIL/FP/00013/2008

IN THE SUPREME COURT

Criminal Side

BETWEEN

**BRIAND TAYLOR**

Applicant

AND

**DIRECTOR OF PUBLIC PROSECUTIONS**

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Attorney Mrs. Erica Kemp c/o Director of Public Prosecutions

Attorney Mr. Wendell Smith c/o Briand Taylor

Hearing Date: 14<sup>th</sup> March 2023

**RULING ON BAIL**

**Forbes. J.**

**BACKGROUND**

1. The Applicant has filed an application seeking consideration of the Court as to the question of bail. In support of the application the Applicant has filed an Affidavit on the 7<sup>th</sup> February, 2023 in which he avers that he appeared before Deputy Chief Magistrate Debbye Ferguson on 8<sup>th</sup> September, 2022 on the charge of murder, that he was not required to enter a plea and was denied bail and subsequently remanded to The Bahamas Department of Corrections (BDCOS). The Applicant further avers that he was advised that he was to be served his Voluntary Bill of Indictment (VBI) on or before 19<sup>th</sup> January 2023, however he has been advised that it will be served on the 28<sup>th</sup> March 2023.
2. The Applicant also avers that prior to his arrest and detention he was employed as a painter and a carpenter; that he was born in Freeport, Grand Bahama and has strong family ties to the community. He states that he is innocent of the charges and that the witness Stephen Duncombe has asserted he was involved in the crime and is now seeking to implicate him. Further, he avers that he is a fit and proper person for bail; that there is no evidence that he is a flight risk or a safety to the public or that the pretrial detention is required for his personal safety. Lastly, he states that he is prepared to abide by any conditions and stipulations imposed.
3. The Director of Public Prosecutions, as the Respondent filed an Affidavit in Response dated the 13<sup>th</sup> March, 2023 and sworn by Woman Corporal 771 Anastasia Rolle who avers that she is attached with the Liaison Section within the Office of the Director of Public Prosecutions. She avers that the Applicant was arraigned on the 8<sup>th</sup> September, 2022 with one count of the Offence of Murder and one count of the offence of Armed Robbery; that the Applicant was arraigned before Magistrate Debbye Ferguson and was not required to enter a plea; that bail was denied and the Applicant was remanded to the Bahamas Department of Corrections

(BDOCS). Corporal Rolle further avers that the Applicant is a person of bad character; that he has been convicted of similar offences and exhibited his antecedents to the Affidavit which are convictions related to Possession of Dangerous Drugs and Housebreaking, Causing Damage, Vagrancy & Threats of Death. These offences began in March 2013 and the last offence occurring in 2020.

## **SUBMISSIONS**

4. The Court requested of the parties to lay over Written Submissions, however to date the Court has only received the Written Submissions of Counsel for the Applicant.
5. The Applicant's Counsel has argued that notwithstanding the allegations, the Applicant has denied the same and maintains his innocence. Counsel argues that the proper test as to whether bail ought to be allowed or refused is whether the Applicant will appear for his trial. Counsel referred the Court to the case of Hurnam v. The State (2005) UKPC 40. The Court will not cite the passage here as it is often cited in many cases in this jurisdiction. Additionally, Counsel referred the Court to the Court of Appeal case of Jevon Seymour v. The Director of Public Prosecutions SCCrApp. No. 115 of 2019 and further referred the Court to the comments of President of Appeal Sir Michael Barnett, in the case of Randy Williams v. Director of Public Prosecutions SCCrApp. No. 25 of 2022. This Court accepts that the comments made by Madam Justice of Appeal Crane-Scott in Seymour (supra) case and President of Appeal Sir Barnett in Williams (supra) case are both the pronouncement as to the law in the Bahamas.
6. The Respondent's submissions are that there has been no unreasonable delay as the Applicant has only been on remand for six (6) months; that the Applicant is a person of bad character because of previous convictions and finally the offence is of such a heinous nature that it is an affront to public safety. In this regard the Respondent relied on Stephon Davis v The Director of Public Prosecution 2014/Cri/bail/00069 where Davis was

charged with Murder and two (2) counts of Attempted Murder. He appeared before a Judge of the Supreme Court and was denied bail on the basis that Davis was a threat to public safety as one of the grounds. On appeal the Court of Appeal addressed each of these arguments. At paragraph 9 the Court said as follows:

***“9. On my reading of the appellant's case, it does not appear that he was applying for bail on the basis of undue delay in bringing his case on for trial. On a reading of the Judge's assessment of the respondent's case, the only real reason for their objection to bail being granted to the appellant, was the cogency of the evidence.”***

7. The substance of the Respondent's submissions are that the Applicant is of such a bad character and has allegedly committed such heinous acts he ought not to be granted bail.

## **THE LAW**

8. The Court must now consider the rationale for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial. It appears that the Respondent's submissions are that the Applicant's antecedents; that he has pending matters and that the evidence adduced is cogent and powerful should be grounds to deny the Applicant bail.
9. The Applicant faces charges involving murder and armed robbery offences that have been included in Part C of the First Schedule of the Bail Act Part C which states, as follows:-

***“PART C (Section 4(3)) Kidnapping — section 282, Ch. 84; Conspiracy to commit Kidnapping — sections 282 and 89(1), Ch. 84; Murder — section 291, Ch. 84; Conspiracy to commit Murder — sections 291 and 89(1), Ch. 84; Abetment to Murder — sections 86 and 307, Ch. 84; Armed Robbery — section 339(2), Ch. 84; Conspiracy to commit Armed Robbery — sections 339(2) and 89(1), Ch. 84; Abetment to Armed Robbery — sections 86 and 339, Ch. 84; Treason — section 389, Ch. 84; Conspiracy to commit Treason — sections 389 and 89(1), Ch. 84.”***

10. Section 4(2) and (3) of Bail (Amendment) Act, 2011 permits the grant of bail to those charged with a Part C offence. Sections 4(2) and (3) state:-

***"(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.***

***(2A) 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;***

***(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.***

***(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 public or public order and, where appropriate, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.***

***(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal.***

***(3A) Notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule."***

11. In considering whether to grant bail to a defendant who has been charged with a Part C offence, the court shall have regard to the following factors (as found in Section 4 of the Bail (Amendment) Act 2011)—

***“(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 purposes 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.”;***

12. The Court of Appeal in **Stephon Davis v. Director of Public Prosecutions** SCCrApp. No. 108 of 2021 cited **Vasyli v. The Attorney General (2015) 1 BHS.J. No 86** where Allen P said: -

***“12. On a true construction of section 4 (2) and paragraph (a) (i) of Part A of the Bail Act, and notwithstanding the 2014 Amendment, I am still of the view that bail may only be denied if the State is able to demonstrate that there are substantial grounds for believing that the applicant would not surrender to custody or appear for trial. In assessing whether there are substantial grounds for such belief, the court shall also have regard to the nature and seriousness of the***

*offence and the nature and strength of the evidence against an applicant as prescribed in paragraph (g) of Part A." [Emphasis added]*

13. There have been multiple decisions by the Court of Appeal which have established what criteria a Court ought to consider when the issue of bail is being reviewed. In the Court of Appeal decision of **Dennis Mather and the Director of Public Prosecution SCCrApp 96 of 2020** the Court of Appeal at paragraph 16 cited a number of cases as the starting point:-

*"16. The main consideration for a court in a bail application is whether the applicant would appear for his trial. In Attorney General v. Bradley Ferguson, et al SCCrApp. No.'s 57, 106, 108, 116 of 2008, Osadebay, JA observed as follows:*

*"As stated by Coleridge J in Barronet's case cited earlier the defendant is not detained in custody 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."*

17. In Jonathan Armbrister v The Attorney General SCCrApp. No.145 of 2011, John, JA said as follows:

*"12. It has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as punishment. The courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as, the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record, if any, and the likelihood of interference with witnesses."*

## **DISCUSSION**

14. Taking the Respondent's submissions and the Affidavit before the Court at its highest, the Court is of the view that there has not been any evidence adduced before it that the Applicant will not attend for his trial.

Furthermore the evidence that was provided is scant and underwhelming and truly did not assist this Court in arriving at the decision it was tasked with. Additionally, the Respondent focused on the Applicant's antecedents which were referenced earlier and were simple drug offences; vagrancy; housebreaking and stealing offences. Moreover, Corporal Rolle in her Affidavit stated that the Applicant's antecedents are similar offences to the one that he is now charged with; however, the antecedents identified in his record are not similar. Further observing the comments of Justice of Appeal Isaacs in **Stephon Davis** (supra) as to the consideration of an applicant's antecedents on a bail application, he stated at paragraph 28:

***"28. The antecedents of an applicant for bail is an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to commit other offences while on bail. Although a court is obliged to have regard to the antecedents of an applicant for bail, little weight should be given to offences that are as trivial as vagrancy. That offence is committed merely by being found to have contravened section 3 of the Vagrancy Act. It is essentially a victimless crime and may be committed by persons who are merely in a penurious state."***

15. This Court would likewise contend that simple possession of drug offences albeit serious given both the local direction and international considerations that drug use is seen more as a disease of addiction and should be decriminalized.

16. The final issue raised was the seriousness of the offense and the cogency of the evidence. In this regard this court refers to the statement of the Court of Appeal in **Davis** (supra) where in the headnote the Court said as follows: -

***"No substantial grounds have been disclosed in this case to support a conclusion that the appellant would abscond and not appear for trial. As stated in Hurnam "the seriousness of the crime alleged and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ..." it follows that there must be***

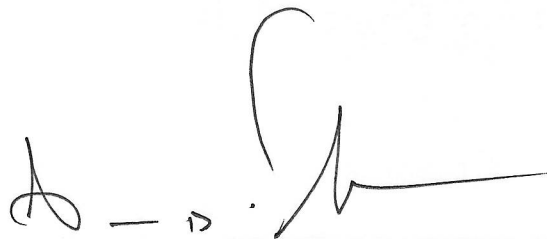


*shown, substantial grounds for believing that the applicant would not surrender to custody or appear for trial. There is no evidence to suggest that the appellant would not appear for his trial. The Judge is required to consider whether there are conditions that may be imposed that would, as far as possible, ensure that the appellant appear for his trial. It is only the severity of the charge and the inference of flight in the instance where no form of bail condition could mitigate or minimize that flight that can support the Judge's refusal of bail."*

17. Likewise in **Davis (supra)**, in the instant case the Respondent has not adduced any evidence before this Court that the Applicant will refuse to surrender. Therefore, the Court will grant the Applicant bail however, to secure his attendance for trial the Court is prepared to consider stringent conditions.

#### **DISPOSITION**

- a. The Court will accede to the Applicants bail application and grant bail in the Sum of thirty Thousand Dollars (\$30,000.00) with 1 or 2 sureties;
- b. The Applicant to be outfitted with an electronic monitoring device and must comply with all conditions established related to the wearing and maintenance of device;
- c. The Court will impose as further condition of the device the Applicant is to be placed on curfew on weekdays 9pm to 5am and weekends 10pm to 5am;
- d. The Applicant is to have no direct or indirect contact with any witness involved with this case; and
- e. The Applicant is required to report to Central Police Station, Freeport, Grand Bahamas each Monday & Friday by 6pm at the latest.
- f. Parties are liberty to reapply.
- g. Parties aggrieved may appeal to the Court of Appeal.



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Justice Andrew Forbes

Dated the 28<sup>th</sup> day of March 2023