

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division
2018/CRI/bal/No.00892**

BETWEEN:

ANTONIO THOMPSON

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Camille Darville Gomez
Appearances: Miss Cassie Bethel for the Applicant
Mr. Eucal Bonaby and Ms. Syklar Deveaux for the Respondent
Hearing Date: 3rd May, 2023

BAIL DECISION

Darville Gomez, J.

FACTUAL BACKGROUND

1. The Applicant, 23 year old Antonio Thompson is charged with Abetment to Attempted Murder contrary to Section 86(1) and 292 of the Penal Code, Chapter 84. The particulars are: 'That you on Friday 24th March, 2023, while at New Providence being concerned with others did purposely aid and abet in committing the offence of Attempted Murder, of Theo Williams.
2. The Applicant was arraigned before Magistrate's Court No. 11 on the 30th day of March, 2023. He is currently on remand at the Bahamas Department of Correctional Services ('BDOCS').
3. The Applicant applied for Bail pursuant to section 4 of the Bail Act by way of Summons and supporting Affidavit on the 12th April, 2023.

4. The Respondents filed an Affidavit in Response to Bail on the 2nd May, 2023 objecting to the grant of bail and giving reasons why it ought to be denied.

THE APPLICANT'S CASE

5. At paragraph 8 of his Affidavit, the Applicant admitted to having two pending matters before the Court for Murder and Causing Harm however, that he has no previous convictions.
6. The Applicant swore that he is innocent of the charge and the grant of bail will allow him to adequately prepare his defence and afford him the opportunity to financially support himself and assist his family members.
7. He maintained that if he is granted bail that he would abide by all conditions imposed by the Court and therefore, he is a fit and proper candidate for bail.
8. Counsel for the Applicant submitted that the Crown failed to produce any evidence to suggest that the Plaintiff is a flight risk, will interfere with the witnesses in this matter, or that he will re-offend if granted bail.
9. Defence Counsel also highlighted that the offences listed on the Applicant's criminal records antecedent form are not of a similar nature to the present charge which charges include (i) possession of dangerous drugs; (ii) causing harm; (iii) assault with a dangerous instrument; (iv) unlawfully carrying arms and (v) breach of bail. These convictions were for minor offences when compared to the existing charge.
10. She concluded that while the seriousness of an offence is a consideration for bail, it is not the only consideration a court should take into account when determining whether to grant or refuse bail; that there was no evidence to suggest that the Applicant is a flight risk, will interfere with witnesses or will re-offend if granted bail.
11. Therefore, in the circumstances she submitted that the prosecution has not submitted any evidence to show why the Applicant should not be granted bail.
12. In rebuttal regarding the conviction for breach of bail (3 counts) she pointed out that there was no allegation that the Applicant had not signed in at the police station only that he had failed to charge his device or keep it at the minimum charge. However, if given another chance she submitted that he would comply.

THE CROWN'S CASE

13. The Crown relied on its Affidavit in Response to support its objection to the grant of bail. According to the Crown's Affidavit, bail should be denied because there is cogent evidence in this matter and that the Antecedent Form showed that the Applicant had been convicted of three counts of breach of bail
14. In support of their objection to bail, the Crown submitted a report at Exhibit "TB-2" of its Affidavit which verified that an off duty police officer observed the incident

which took place on the 24th March, 2023, he immediately contacted the police control room and proceeded to follow the vehicle that sped off from the scene. The officer stated in his report that of the three men, one was known to him. He watched them turn into a fenced yard, parked the car and exit the vehicle. A short while after a few marked police vehicles arrived on scene.

15. The Crown also submitted that and the Applicant has previously breached bail conditions on three (3) occasions as evidenced by his Antecedent Form attached to the Affidavit in Response at Exhibit "TB-4". He argued that the Applicant's failure to charge his electronic monitoring device supported their argument that he will not comply with any conditions the court imposed should it grant bail to the Applicant.
16. Therefore, he asserted that the Applicant is not a fit and proper candidate for the grant of bail for the reasons mentioned above.

THE ISSUE

17. The issue at hand is whether the Applicant, Antonio Thompson should be granted or refused bail.

THE LAW

18. **Article 20(1) of the Constitution** provides that:

"If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

19. And at 20 (2)(a) that:

"Every person who is charged with a criminal offence — (a) shall be presumed to be innocent until he is proved or has pleaded guilty; ..."

20. According to the **Bail Act, 1994 (Amendment 37 of 2011)**, Section 4(2) reads:

"Notwithstanding any other provisions 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 purposes 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 the 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."

21. The Amendments to the First Schedule found at Part A outlines some factors that the Court must take into consideration when determining whether to grant bail to an Applicant/Defendant. Part A reads as follows:

"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;

(h) in the case of violence allegedly committed upon another by the defendant, the court's paramount consideration is the need to protect the alleged victim."

ANALYSIS and CONCLUSION

22. The Crown has the burden of proving that the applicant is not a fit and proper person for the grant of bail, in particular, (i) whether the Applicant would 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.

23. Sir. Michael Barnett, P affirmed the law in ***Randy R. Williams and Director of Public Prosecutions SCCrApp. No. 25 of 2022*** at paragraphs 11, 12, and 19 of the following judgment:

" 11. In my judgment a judge in denying bail must have "substantial" grounds for believing the an applicant for bail "would" not "might" or "may" abscond, interfere with witnesses or commit a crime whilst on bail.

12. There is always a possibility that an applicant for bail may abscond, interfere with witnesses or commit a crime. However, if that possibility, nay probability, was not based on evidence then it would be difficult to see how any person charged with an offence would be granted bail.

19. In my judgment, it cannot be a proper exercise of judicial discretion to deprive a person of his liberty on a speculative belief that a person may interfere with witnesses or commit a crime whilst on bail. This is particularly so where an accused has no antecedents."

24. There are a number of factors to be considered when determining whether an Applicant should be granted or refused bail. Such factors encompass the balancing act between an Applicant's freedom and the need to protect society. However, as highlighted in ***Duran Neely v The Attorney General SCCrApp. No. 29 of 2018*** that:

"...The primary purpose of the detention of an accused who is charged with an offence is to ensure his attendance at his trial. It follows then that as the authorities also say, 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.”

25. The Applicant is innocent unless and until he is proven guilty.

26. Undoubtedly, Abetment to Attempted Murder is an offence which is serious in nature. The Court of Appeal in **Jonathan Armbrister v Attorney General SCCrApp No 145 of 2011** pronounced that:

“The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been and continues to be an important consideration determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail.”

27. It is settled law that the seriousness of an offence is likely an incentive for a person charged to fail to surrender to custody or appear at trial. In this regard, it is necessary to take into account the nature of the offence in these circumstances.

28. The court is not expected to delve into the evidence of the matter during the hearing of a bail application but there are circumstances which permit the court to assess evidence produced by the Crown in support of their objection to the grant of bail.

29. In **Cordero McDonald v The Attorney General SCCrApp. No. 195 of 2016** the Court of Appeal at paragraph 34 of the judgment highlighted that:

“...It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail.”

30. The Crown produced three witness statements in support of their objection to bail. The crux of the evidence against the Applicant is that he rented a vehicle which was used by the individuals who shot at Theo Williams. However, the Applicant was not identified in any of the statements as one of the shooters. He was identified by one of the witnesses in one of the statements as the individual who paid to rent the vehicle, a black Nissan Cube during the period when the offence was committed. Another witness confirmed that he saw individuals exit a black Nissan Cube and shoot at Theo Williams.

31. In my view, the evidence before me has raised a reasonable suspicion that the Applicant may have been involved in the commission of the offence committed. Additionally, when this is coupled with the fact that the Applicant has been convicted previously for breach of bail conditions on three (3) occasions, I am concerned that there is no condition that I can impose that would ensure that he is properly monitored while on bail, and would fail to surrender to custody or appear at his trial.
32. In exercising my discretion in accordance with the law and the balancing act, the considering factors places the need to protect society on the higher scale than the accused's freedom.
33. Therefore, I find that the Crown has sufficiently provided this Court with evidence to support their objection to the grant of bail.
34. As such, given all the surrounding circumstances, bail is hereby denied.

Dated this 14th day of June, A. D., 2023



**Camille Darville Gomez
Justice**