

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/00815/2018

BETWEEN

EDDINGTON BURROWS

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before: Her Ladyship, The Honourable
Madam Justice Guillimina Archer-Minns

Appearances: Ms. Khrysta A. Mason-Smith for the Applicant
Mr. Basil Cumberbatch and Mr. Levan Johnson for the Respondent

RULING- BAIL

Archer-Minns J

1. Eddington Burrows, the Applicant (hereinafter the “**Applicant**”) in these proceedings has been charged with four (4) counts of Attempted Murder, six (6) counts of Possession of a Firearm With Intent to Endanger Life all said to have occurred on the 10th March, 2019 and one (1) count of Deceit of a Public Officer. He made application for admission to bail via Summons and Affidavit filed on the 29 March, 2022.
2. The Applicant was convicted in 2006 for Grievous Harm which has been spent and has additional pending matters for Possession of an Unlicensed Firearm, Possession of Ammunition with Intent to Supply, Assault with a Deadly Weapon and Threats of Death in 2018.
3. In an Affidavit prepared in support of the Applicant’s application for bail, Marilyn McLouder, Mother of the Applicant asserts that he:
 - i. normally resides at #1 Coral Heights, Coral Harbour with her ;
 - ii. is 37 years of age and is a citizen of The Bahamas;
 - iii. maintains his innocence with respect to the allegations and maintains that the residence that was searched was not his home and that the search was not done in his presence and he cannot say where the weapon or any other illicit items came from;
 - iv. maintains that he told officers he knew nothing about the gun before being taken back into custody and advised them of same during his time of interview. He only knew of charges at the time of his arraignment;
 - v. was granted bail in November 2018 and remained compliant with the conditions concerning the same until early 2020 when his family could no longer locate him;
 - vi. was thought to be dead by family as it was not like him not to come home or communicate and this was communicated to the Chief Magistrate at the time;
 - vii. was reported missing by family two (2) times especially because he was admitted to the Sandiland’s Rehabilitation Center (“SRC”) in 2007;
 - viii. has concerns that the Applicant will not receive the requisite mental health care while at the Bahamas Department of Corrections (“BDOCs”).

- ix. will be cared for by myself, his mother to ensure he receives the requisite mental health care with the help of other family members.
 - x. maintains his innocence to the charges;
 - xi. was a Painter and Custodian before remand;
 - xii. is a Father of six (6) children who need him financially and physically;
 - xiii. only has one previous conviction and the pending matters concern the same complainant who is known for her dishonesty, lies and associating with bad company;
 - xiv. will appear to Court and has the full support of family in this regard;
 - xv. is not a flight risk and has significant ties to the jurisdiction.
4. Counsel for the Applicant principally relied on the contents of the aforementioned affidavit and also advanced that proper consideration ought to be given to an apparent mental condition from which the Applicant suffers. In all of the circumstance of the case, Counsel contended the Applicant should be granted bail and kept in the care and custody of the suretor in order to receive proper treatment for his condition.
5. Counsel for the Respondent objected to the granting of bail supported by an Affidavit of Inspector Demetrius Taylor, filed 11 April, 2022 asserting *inter alia*,
- i. prior to being charged with the 2019 matters, the Applicant was charged with the 2018 matters all of which are pending and involve the virtual complainant Ms. Lithera Bethell (hereinafter the "Virtual Complainant"), the mother of three (3) of his children;
 - ii. the Applicant was granted Bail for the 2018 charges in November of 2018 by Justice Renae McKay in the amount of \$10,000.00 with one (1) or two (2) sureties and given bail conditions including reporting to a police station, curfew at his residence, no contact with prosecution witnesses and be outfitted with an Electronic Monitoring Device. The last condition was inadvertently excluded in the bail bond and the Applicant released without being outfitted with the Electronic Monitoring Device;
 - iii. before the start of the trial in 2019 concerning the 2018 matters the VC reported to police that shortly after the Applicant's release on bail, he visited her residence and after discussions with family members who resided with her and the Applicant's mother (who would constantly advise her to work things out for the sake of the children) she allowed the Applicant to move back in the Applicant often questioned her about the 2018 pending matters and he along with his mother requested she drop the charges to which she refused;

- iv. the relationship between the Applicant and the Virtual Complainant was described as tumultuous and she asked him to leave. On the 10 March 2019, the Applicant woke the Virtual Complainant with advances for sexual intercourse but she declined and a fight is said to have ensued. The Virtual Complainant is said to have gone to the kitchen for a knife to defend herself and upon her return to the bedroom, the Applicant was said to be standing in the door with his hands in his pocket and upon again refusing to sleep with the Applicant, the Applicant is said to have shot the Virtual Complainant several times about the body and shot three additional family members of the Virtual Complainant who resided with her, that is her aunt, a male and female cousin whose statements are included in the Affidavit of the Respondent along with their respective Royal Bahamas Police Force hospital forms. Each form indicate that the four received gunshot wounds;
- v. family members of the virtual complainant aver that they had no issues living with the Virtual Complainant until the Applicant moved in and that everyone was afraid of the Applicant. They all recount the events of that evening of 9 March 2019 and identified the Applicant via a photo lineup, confirming that he was the Virtual Complainant's boyfriend, who shot them;
- vi. the Applicant committed these offences while on Bail for the 2018 matters. A Memorandum from Superintendent James Miller, indicate that the Applicant complied with his reporting conditions for Bail up until the 9 March, 2019, the day before the alleged offences occurred. Since Sunday 10 March 2019, the police made numerous checks for the Applicant with negative results;
- vii. on the 1 April 2019 trial date set before the Magistrate's Court, the Applicant was not present and his Counsel could not speak to the same nor could the Applicant's mother and suretor. A Warrant of Arrest was issued and the matter adjourned to the 20 May, 2019 for a status hearing with further adjournments thereafter due to the non-appearance of the Applicant;
- viii. on the 23 July, 2020 the Applicant was arrested in the area of Faith Avenue South and gave his name as "Alexander Woodside" but upon reviewing his driver's license it beared the name "Eddington Burrows, D.O.B. 27/3/1985";
- ix. the Applicant is a flight risk, having evaded police for approximately one (1) year and four (4) months;
- x. the Applicant was charged with the current offences of Attempted Murder, Possession of a Firearm with Intent to Endanger Life and Deceit of a Public Officer which occurred on 10 March 2019. He was arraigned on the 26 February 2021 and has a backup trial date of the 25 July, 2022 and substantive trial date of the 27 November, 2023. There has been no unreasonable delay in the prosecution of the matter;

- xi. the Applicant is not of previous good character and has a 2006 conviction for causing Grievous Harm, which indicates a propensity for violence;
- xii. the Applicant is a threat to society;
- xiii. the Applicant's Bail was revoked in April 2021 because of his non-compliance with Bail conditions;
- xiv. the psychiatric report cited in the Affidavit in Support of the Applicant's application prepared by Dr. John Dillet indicates that the Applicant does not presently meet formal criteria for a mental health condition and the Applicant's assertion of same is unclear but nonetheless, if any mental health care is required by the Applicant in the future, same can be provided whilst in custody.

In all of the circumstances of the case, the Respondent submits that the Applicant is a not a fit and proper candidate for admission to bail and the court ought not exercise its discretion in favor of the Applicant and should deny bail.

6. Upon review of the affidavits and considering the oral submissions of counsel for the Applicant and Respondent, the court has determined that given the nature and the seriousness of the charges, the strength of the evidence upon which the prosecution intend to rely, previous conduct of the Applicant, bail having been previously granted with conditions which the Applicant failed to adhere to, the Court is of the view that it ought not exercise its discretion to admit the Applicant to bail at this time. The reasons for the exercise of the discretion against the Applicant are given below.

Applicable Law

The Constitution

7. The Applicant enjoys the presumption of innocence and has a right to apply for bail. Article 20 (2) (a) of the Constitution states 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."**

The Bail Act (1994) (as amended) (the "Bail Act")

8. The granting of bail is a discretion exercised by the courts, the Bail Act however, gives guidance on factors that should be considered in cases where Part C offences are before the court. Section 4(2) of the Act provides as follows:

(2) 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;

(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 a written statement giving 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 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.

9. Part A of the Bail Act states 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.

Discussion and Reasoning

The Bail Act

Trial within a Reasonable Time

10. In accordance with the Bail Act and Article 19(3) of the Constitution, a person charged with an offence who cannot be tried within a reasonable time, they should receive bail. However, if they can be tried within a reasonable time, the court should move on to give consideration to sections 4(2B), 4(2C) and Part A of the Act in order to make a determination as to whether an applicant is a fit and proper candidate for admission to bail (*Duran Neely v The Attorney General Appeals No. 29 of 2018*).

11. In the instant case, the Applicant had a trial date for the 2018 pending matters in January 2019 which were adjourned to the 1 April 2019 and thereafter adjourned several times due to the Applicant's non-appearance. Trial dates have since been scheduled for July 2022 and November 2023. Any resulting delay in the progression of the matter is therefore attributable to the Applicant's non-appearance.

Previously granted bail and now charged with similar offences (Character/Antecedents)/Commit an offence while on bail

12. The character or antecedent of the person charged is a primary consideration, but this factor alone does not automatically result in the release of a person on

bail. The Applicant has a previous conviction of causing Grievous Bodily Harm in 2006 and also the pending 2018 charges. Consideration must therefore be given to the fact that the 2019 matters occurred while the Applicant was on bail for the 2018 charges which are of a similar and in some instances, a more violent nature. It is also most unfortunate that the Applicant was not outfitted with an Electronic Monitoring Device which could have mapped and tracked his whereabouts particularly given the breaches in respect to his interaction with the Virtual Complainant and his later locale following his non-appearance for scheduled court appearances so as to effect his arrest.

Failure to surrender to custody or appear at trial

13. Part A of the Bail Act requires the court to consider whether there are substantial grounds for believing that, if released on bail the defendant would fail to surrender to custody or appear at his trial or interfere with witnesses.
14. It is an established practice concerning bail applications that the appropriate test for granting bail is whether or not a court is of the view that the applicant will or will not appear for trial (*Jeremiah Andrews v The Director of Public Prosecutions* [1937] 2 All ER 552).
15. In the Affidavit in Support of the Applicant's application, it is averred that the Applicant will not abscond and will be under the watchful care of his mother and family. It is of note that the Applicant's mother at all material times was one of his suretors and was unable to provide information as to the Applicant's whereabouts or to ensure that he attended court for his trial and status hearing dates. There is great concern that the same may occur again as the Applicant seems to have a violent temper and or suffer from some mental condition resulting in current/potential suretors being able to adequately fulfill their undertakings in respect to the Applicant's attendance to court.
16. The court has also taken into consideration the conditions specified in the case of *Jeremiah Andrews* but these must be considered along with other factors specified when granting bail and not in isolation.

Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

17. The Applicant's previous bail conditions included non interference with the Prosecution witnesses particularly the Virtual Complainant who brought the claim of threats of death against him but the evidence indicate that this notwithstanding, the Applicant sought out the Virtual Complainant and begged her to take him in upon being granted bail for the 2018 matters and also continuously requested the Virtual Complainant to drop the charges concerning the same. The Virtual Complainant is said to have hesitated but eventually allowed him to return for the sake of the children. Having done so, the actions of the Applicant are said to have resulted in the March 2019 events giving rise to the current charges for which bail is being sought. This blatant disregard for the bail conditions imposed by the court is very concerning and had the Applicant stayed away as so ordered, it begs the question as to whether these 2019 offences would have occurred.

The Nature and Seriousness of the Offence and Nature and Strength of the Evidence

18. It is no doubt that the offences of Attempted Murder (four counts), along with six counts of Possession of a Firearm With Intent to Endanger Life and one count of Deceit of a Police Officer are serious offences but they are also bailable offences and not the sole reason to deny bail.

19. Recognizing, that Bail hearings should not constitute mini trials (*Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108, & 116 of 2008*), it is also important that the court considers the strength of the evidence in accordance with the Bail Act. In *Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016*, Allen P stated that:

“The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences such as to justify the deprivation of 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.”

20. There is reasonable suspicion on the evidence before the court as to the commission of the offences by the Applicant. This suspicion arises from the statements of the Virtual Complainant and her three family members, who were all shot about the body on the 10 March, 2019 allegedly by the Applicant and the accompanying hospital forms indicating the nature and seriousness of the injuries. The Applicant was known to all as the Virtual Complainant's children's father who resided with them once granted bail. All of these family members but for the grace of

God are alive and able to give their account of what transpired on the date in question. The witnesses are said to have had no difficulty identifying the Applicant and did so via the 12 man photo gallery. They have all expressed their concern regarding the Applicant's temper and fear of him which the court can't ignore particularly given his past actions.

Conclusion

21. The relevant provisions of The Bail Act having been considered together with the Affidavits of both Counsel and their respective submissions, the court so finds that unreasonable delay is not an issue in the instant case and therefore gave consideration to the additional factors:

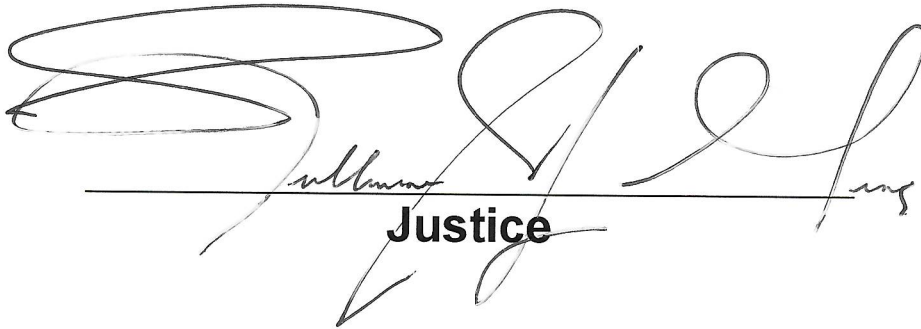
- i. the serious nature of the offences;
- ii. the strength of the evidence against the Applicant;
- iii. the antecedent of the Applicant;
- iv. the competing interests of the Applicant as to his presumption of innocence and right to his liberty with the rights of the public, its safety and security;
- v. the safety of the Applicant himself and the prosecution witnesses, and the familiarity and or close ties of the witnesses with the Applicant ;
- vi. the bail conditions which could be imposed to minimize the risks involved with granting of bail and their previous effect when imposed upon the Applicant.

22. The Court having given consideration to all of the aforementioned factors is of the view that the Applicant should remain incarcerated at this time for (i) the safety and protection of the witnesses as well as the Applicant himself, (ii) the Applicant was previously granted bail and failed to attend upon the court when required so to do without any justification for not doing so (iii) conditions were previously imposed that should have minimized the risks involved with the granting of bail but nevertheless were not sufficient or effective safeguards to ensure the protection of witnesses or the Applicant's voluntary attendance to court, the Applicant's total disregard with respect to adhering to the conditions imposed and seemingly lack of good judgment together with his prior apparent violent temper; also the assessment of the Applicant's mental state were considered. In all of the circumstances of this case, the court is of the view that it ought not exercise its discretion in favor of the Applicant for admission to bail and as such bail is denied.

I am in receipt of a recent Psychiatric report from Dr. Indira Bain with respect to the Applicant and based on the content of the report dated 4 May 2022 I am satisfied that the Applicant currently suffers from no mental conditions.

Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 4 day of May 2022



Justice