

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**Criminal Side**

**2023/CRI/bal/No. 00051**

**BETWEEN**

**MARVIN SMITH**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**BEFORE:                   The Honourable Mr Senior Justice Bernard Turner**

**APPEARANCES:       Mr Stanley Rolle for the Applicant  
                              Mr Uel Johnson for the Respondent**

**HEARING DATE:       12 June 2023**

**RULING**

## TURNER Snr. J.

1. The applicant herein applied for bail by way of an epistolary application originally submitted pro se through the electronic Bail Management System portal at the Bahamas Department of Correctional Services (BDOCS). After an affidavit in response by the Director of Public Prosecutions was submitted, the Public Defender's Office became involved and eventually an affidavit sworn by the applicant was submitted. The application for bail is in relation of an allegation of murder and conspiracy to commit murder, alleged to have occurred on 24 May 2022.
2. As a result of the sequence of filings, the affidavit of the applicant responds to the affidavit of the respondent. It reads, in part:

**"1. I am the Applicant herein, twenty-four (24) years of age and a Bahamian national, born in the Commonwealth of The Bahamas on the 6<sup>th</sup> day of November, 1998.**

**2. Prior to being arrested I worked on various contract projects in Murphy Town, Abaco, doing drywall work. I have also helped in other areas of the construction industry.**

**3. I applied to be admitted to bail and the Respondent objected. I have read the Affidavit in Response (AIR) and now make my reply.**

**4. I was arrested a week after this incident allegedly took place. I am charged with two others I believe have been admitted to bail already**

**5. Referring to paragraph [9], I was discharged of the offence of Possession of Dangerous Drugs. I have no other convictions and no other pending matters.**

6. Referring to paragraph [11], I am no threat to the public. I am a hardworking young man. I am not a menace to society. I am in no gang or associated with persons in criminal gangs. My family and I attend church, and I have the support of my biological family.

7. Referring to paragraph [12], I was threatened by police officers to give a statement about something I did not do or had any knowledge of. So much was happening during my interrogation that I was indeed in fear for my life and believed that the police would have beat me to death like other people I know die while in police custody.

8 Referring to paragraph [13] I declined to attend an ID-parade. At this point in the interrogations, I did not need anyone to pick me out for anything I did not do because I strongly felt that the police had already put their case together, and I was referred to as the weak link. I expected the police to have the person or persons pick me out.

9. I maintain my innocence in this matter and will vigorously defend my innocence

10. That if I am admitted to bail, I will remain loyal, committed, and steadfast in fulfilling my obligations to the court. I have had bail in the past and fulfilled my obligations under the bail bond.

11. That if I am released, I will have employment to keep me productive and not idle. I am not a flight risk. All my ties are to the Bahamas alone and I have no intention of being a fugitive.

12. That as it relates to witnesses in my case there will be no interference because to this very date, there is no evidence to suggest I did. I will be present for each adjournment until my matter is disposed of.

13. That this Affidavit is filed in support of the Summons filed herein pursuant to the Bail Act, 1994 and I humbly pray that this Honourable Court would see me fit to be admitted to bail.

14. That the contents herein contain are correct and true.”

3. The earlier filed affidavit, objecting to bail, reads:

“... ”

2. That I make this Affidavit in opposition to the Applicant's application for bail by way of an electronic application dated the 30th of January, 2023.

3. That save herein stated, no admissions are made regarding the assertions contained in the Affidavit of the Applicant in this matter.

4. That the Applicant, Marvin Smith is 25 years old. His date of birth is the 6<sup>th</sup> of November 1998. He is charged along with others with Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84 and Conspiracy to Commit Murder contrary to sections 88(1) and 291(1)(b) of the Penal Code, Chapter 84. There is now produced and shown to me marked as “Exhibit TR-1”, a copy of the Charge sheet.

5. That it is alleged that on Tuesday, 24<sup>th</sup> of May, 2022, the Applicant while at New Providence being concerned together with others, by means of unlawful harm, did intentionally caused the death of Robert Lee a.k.a. “Black Boy”.

6. That it is further alleged that on Tuesday, 24<sup>th</sup> May, 2022, the Applicant while at New Providence, being concerned together with others, did agree with a common purpose by means of unlawful harm to intentionally cause the death of Robert Lee a.k.a. “Black Boy”.

7. That the Applicant appeared before Chief Magistrate, Joyann Ferguson-Pratt on the 7th of June, 2022 where he was charged with the offence of Murder and conspiracy to commit Murder and given and adjourned date to appear for the presentation of his voluntary Bill of Indictment and thereafter remanded to the Bahamas Department of Correctional Services.

8. That the Voluntary Bill of Indictment with respect to this matter is presently being prepared and will be presented to the Applicant on the 28th of March, 2023. That there has been no unreasonable delay in the progression of the aforementioned matter as the incident is alleged to have occurred on the 24th of May 2022.

9. That according to the Applicant's criminal Records Antecedent Form the Applicant has a previous conviction for Possession of Dangerous Drugs for which he was given a Conditional Discharge for eighteen (18) months or three (3) months in prison. He was also ordered to attend counselling at Harrison Thompson. There is now produced and shown to me marked as "Exhibit TR-2", a copy of the Applicant's Royal Bahamas Police Force Criminal Records Antecedent Form.

10. That the Applicant now stands charge with two other serious offences and therefore, the Respondent has substantial grounds for believing that the Applicant will reoffend should he be released on bail.

11. Further the Applicant should be in custody in the interest of public safety and public order

12. That the evidence against the Applicant in respect to these present offences are cogent. That during the Applicant's record of interview conducted by lead Investigator D/C 4073 Cameron Ramsey, on the 31st of May, 2022, the Applicant confessed to committing the alleged offences and his involvement in the matter. He also gave a statement under caution in relation to the murder of "Black Boy". There is now produced and shown to me marked as "Exhibit TR-3" "Exhibit TR-4", and "Exhibit TR-5" a copy of the Report of D/C 4073 Ramsey dated the 2nd June, 2022, a copy of the Applicant's Record of Interview, and a copy of the Applicant's Statement under cautioned dated the 31st May, 2022 respectively.

13. That the report of D/C 4073 Cameron Ramsey outlines the events of the investigation and notes that a witness has positively identified this Applicant. The identification is further confirmed by D/Sgt. 2735 Raphael Miller who reported that the Applicant was identified by this witness. There is now produced and shown to me marked as "Exhibit TR-6", a copy of the Report of D/Sgt. 2735 Miller.

14. That the Applicant is charged with two very serious offences and although he has the presumption of innocence, the same is rebutted by the strength of the prosecution's evidence and the Applicant's role played in the same.

**15. That the Respondent further ask this Honourable Court to take Judicial Notice of the number of Applicants charged with murder who when released on bail were themselves murdered, hence this Applicant whose identity was not hidden during the commission of this alleged offence should be kept in custody for his own safety.**

**16. That the Applicant is charged with serious offences and given the severity of the penalties that are attached coupled with the cogency of the evidence, if the Applicant is admitted to bail, the Respondent verily believes that the Applicant will either abscond or fail to appear for his trial.**

**17. That there is nothing peculiar about the Applicant's detention which suggest the same is unjustified or unfair at this time.**

**18. That for the above reasons, the Applicant is not a fit and proper candidate to be considered for the grant of bail.**

**19. In the present circumstances, The Respondent prays that this Honourable Court exercises its discretion in refusing the Applicant's application to be admitted to bail.**

**20. That the contents of this Affidavit are true to the best of my knowledge, information and belief.”**

4. The charged offences are Part C offences and in relation to those types of offences section 4(2) of the Bail Act provides:

**“4. (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,**

**(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 make 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 for the released 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.”**

Part A of the First Schedule of the Act provides:

**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;...
- (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.

5. Relative to the nature and seriousness of the offence of murder, that offence is obviously one of the most serious offences and attracts a severe penalty upon conviction which can give rise to the risks of the applicant absconding or failing to appear for his trial.

6. The Court of Appeal in **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**, stated, at paragraph 66, the following:

**“66. In the absence of evidence, merely listing the relevant factors and using expressions such as “may”; or “is likely to”; or “it is recommended” as was done in the McHardy affidavit, cannot discharge the Crown’s burden. We take this opportunity to stress once again what this Court (differently constituted) said in Armbrister, which is that that is not how the Crown’s burden on a bail application is discharged. Paragraph (a) of the First Schedule**

requires the production by the Crown of evidence capable of supporting a belief that the applicant for bail “would”, if released, abscond, commit new offences or interfere with witnesses. Ritualistic repetition of the Part A factors, in the absence of evidence, is unfair to the accused person and comes nowhere close to discharging that burden.”

7. Paragraph 70 concludes the review of this issue by stating:

**70. Put somewhat differently and at the risk of being unduly repetitive, we are satisfied that given the presumption of innocence and the evidence of the appellant’s good character and the absence of criminal antecedents, there was no evidential basis before the judge in relation to the appellant which is capable of supporting the judge’s ultimate conclusion at paragraph 16(v) of his decision that: “in the circumstances of this Applicant and this application the need for public order and public safety is paramount”. In the absence of evidence that the appellant posed a substantial threat to the Crown’s witnesses or to public safety and public order, the judge’s decision was unreasonable and clearly wrong.”**

8. In relation to this matter, the respondent asserts that the applicant has a criminal record based on a conditional discharge for possession of dangerous drugs. I do not agree. Had the terms of the conditional discharge been breached, then the applicant would have had a criminal conviction for the charge, but a conditional discharge is not such a conviction. Section 209 of the Criminal Procedure Code states:

“209. The court, having heard both the prosecutor and the accused person and their witnesses, shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him, *or may without proceeding to conviction*, if it is of the opinion that it is not expedient to inflict any punishment notwithstanding that it finds the charge against the accused is proved, make an order discharging the accused absolutely or conditionally.”

(Italics provided).

9. The most that can be said is that the legislation contemplates a finding that the charge is proven against the accused, but avoids a conviction. Applied to the facts of this case, the position of the appellant in **Seymour** is not dissimilar to this applicant, being a person who also asserts his good character and absence of criminal convictions. The Crown invites the court to merely find that “...the **Applicant will either abscond or fail to appear for his trial..**” without providing any evidence or other information to come to that conclusion.
10. Without any supporting evidence, the respondent’s invitation to find that there exists a basis for denying the applicant bail (since the cogency of the evidence is not itself a basis for refusing bail) would clearly be unreasonable and wrong, in the Court of Appeal’s analysis.
10. The applicant is therefore granted bail on the following terms:
  1. Bail in the sum of \$20,000.00 with two sureties.

2. The applicant is to be electronically monitored and is required to comply with the Regulations for the use of such a device.
3. The applicant is not to come into any deliberate contact with any of the witnesses in this matter, either by himself or through any agent.
4. The applicant is required to sign in at the Grove Police Station on Mondays and Fridays before 6:00pm.
5. The applicant is required to remain at his identified home between the hours of 8:00pm and 6:00am.
6. The applicant is required to surrender to the Central Police Station, Nassau, New Providence by 6:00pm the evening before the scheduled trial date of his matter and thereafter to remain in custody during his trial, unless further ordered.
7. Any breach of any of these conditions will render the applicant liable to further remand.

**Dated this 15<sup>th</sup> day of June, A D 2023**

A handwritten signature in black ink, appearing to read "Bernard S A Turner Sen. J.", written in a cursive style.

**Bernard S A Turner  
Senior Justice**