

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Side

2022/CRI/bal/No.

BETWEEN

RAYVAUGHN PINDER

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Mr Senior Justice Bernard Turner

APPEARANCES: Mr Nathan Smith for the Applicant
Ms Abigail Farrington for the Respondent

HEARING DATE: 7 July 2022

RULING

1. The applicant, Rayvaughn Pinder, applied for bail by way of a summons supported by an affidavit filed on 23 June 2022. The applicant is charged with the offence of armed robbery contrary to the Penal Code section 339(2) which is alleged to have been committed on 4 June 2022.
2. Section 4 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.”

3. Part A of the First Schedule of the Act provides as follows:

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

- (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.”**

4. The provisions above sets the framework relative to the question of bail. The standard of proof is that the prosecution must prove why bail should be refused and the factors as outlined at paragraph 3 and 4 respectively, assist with determining that issue.

5. Counsel for the respondent opposed the grant of bail on the grounds that the evidence against the applicant is cogent and that he is not a fit and proper candidate for bail at this time. Counsel further submitted that due to the nature and cogency of the evidence, the applicant would be a danger to society if granted bail.
6. Counsel for the respondent relied on an affidavit in response filed on 6 July 2022. The affidavit exhibits two named witness statements and a police officer's statement.
7. Each of the statements contain accounts of what is alleged to have occurred on the date and time in question and the circumstances surrounding the identification of applicant during the commission of the offence and then subsequently at the Criminal Investigation Unit.
8. At this stage, a forensic examination of the evidence presented by Counsel for the respondent is not required but, what is necessary is to decide whether the evidence raises a reasonable suspicion of the commission of the offence by the applicant such as to justify the deprivation of his liberty, see **Cordero McDonald v. Attorney General** SCCrApp No. 195 of 2016 [34].
9. In relation to the applicant's antecedents, the respondent's affidavit in response exhibits his antecedent form marked "**Exhibit S. S. 4**" dated 5 July 2022. It informs that the applicant has previous convictions for

possession of a firearm and possession of ammunition, violation of condition of bail (44 counts) and causing harm.

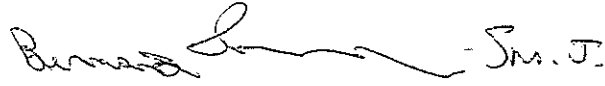
10. From the antecedent form exhibited, the applicant was on bail for pending charges of possession of a firearm and possession of ammunition when the alleged armed robbery occurred.
11. Although the antecedent form does not advise on the nature of the violations, it demonstrates that the applicant has a proclivity to violate bail conditions and did so on 44 occasions in 2021, resulting in being sentenced for a period of one year in August 2021. In therefore also stands before the Court as a person charged with another offence within a matter of weeks of being released from serving a previous sentence.
12. This information weighs heavily against the applicant. Though it is not the only consideration codified by the Bail Act, it remains an area of concern in considering whether to grant bail.
13. Having regard to this information, a determination would need to be made as to whether there are conditions which can be imposed that would reasonably ensure his presence at his trial; as well as the safety and protection of the public and the safety of the alleged victims.
14. As indicated in **Toni Sweeting v. Commissioner of Police** MCCrApp No. 133 of 2018 and **Attorney General v. Bradley Ferguson et al** SCCrApp No. 57, 106, 116 of 2008; the test is that there must exist sufficiently probable grounds that the applicant would

abscond the jurisdiction of the court or fail to appear for trial on the date and time set down by the court.

15. Under the conditions of bail dated 4 February 2021 in respect of the charges of possession of unlicensed firearm and possession of ammunition, the applicant was required to have two sureties, to report to the Police Station every Monday, Wednesday and Friday before 6:00pm, surrender of passport, fitted with an electronic monitoring device, refrain from witness interference and observe a curfew between the hours of 7:00pm to 5:00am.
16. Beyond these types of conditions, which his conviction for violation of bail conditions clearly indicates that he has breached on multiple occasions, there are no other conditions which could reasonably be considered to ensure his attendance to take his trial.
17. By his continual violations, the applicant has demonstrated his willingness to contravene conditions of bail. I am unable to disregard this in light of the provisions of the Act and I conclude that no conditions can be imposed that could reasonably ensure his appearance at trial, or the other concerns as outlined above.
18. In these circumstances, I am of the view that the applicant is not a fit and proper candidate for bail at this time.
19. The applicant is therefore denied bail at this time.

20. The applicant is advised of his right to appeal the decision of the court.

Dated the 21st day of July, A.D. 2022.

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

Bernard S A Turner

Senior Justice