COMMONWEALTH OF THE BAHAMAS **CASE NO. CRI/BAIL/FP/02342/2024**

IN THE SUPREME COURT

Criminal Division

B E T W E E N

MONTY PHILLIP SEVIL

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Honorable Mr. Justice Andrew Forbes**

Appearances: **Attorney Mr. Sean Norvell Smith c/o Director of Public Prosecutions**

Attorney Mr. I.A. Nicholas Mitchell

Hearing Date: **21st May 2024**

RULING

FORBES J,

BACKGROUND

[1.] The Applicant has filed an application on 22nd March 2024 which was originally set to be heard before my sister Judge Madam Justice Weech Gomez seeking consideration of the court as to the question of bail and in support of this application the Applicant has filed an Affidavit also on the 22nd March 2024 in which the Applicant avers that he was remanded on the charge of Burglary. That he is currently serving a sentence for the offense of stealing for which he plead guilty before the Magistrate. That this sentence is set to expire according to the Applicant on the

24th May 2024.That he does not intend to plead guilty to the current case and that the case against him is not fair. The Applicant avers that he has a family to support financially and his being in custody affects them as they reside in Abaco. And that if granted bail he intends to return to Abaco. That the Applicant further avers that he is not a flight risk and is prepared to surrender his passport and only seeks leave to reapply should he require to visit his mother who resides in Andros.

[2.] The Respondent filed and affidavit in response dated 25th May 2024 and sworn by Sargent 2169 Prescott Pinder who avers that he is the Liaison Officer of the Director of Public Prosecutions and that the Applicant was charged on 26th May 2022 with Offences of Burglary and Stealing (3 counts). That the Applicant was arraigned before Magistrate Ancella Evans the charge sheet was exhibited thereto. That the Applicant plead guilty to the three counts of Stealing and was subsequently convicted and sentenced to three years at the Bahamas Department of Corrections (BDOCS).

[3.] Sargeant 2169 Pinder further avers that the antecedents are exhibited to the affidavit. That the Respondent avers that the Applicant was previously convicted of Burglary and sentenced to five (5) years with effect from the 18th April 2016 again this antecedent is exhibited. These convictions related to Burglary where the Applicant was sentenced before the Supreme Court to Five (5) years in 18th April 2016; Causing Damage on the 28th August 2020, where the Magistrate ordered the Applicant to compensate the virtual complainant; then Housebreaking on the 21st September 2015 sentenced by the Magistrate for Two (2) years on each count to run concurrently; and Stealing (3 counts) on 26th May 2022 where the Magistrate sentences the Applicant to three (3) years on each count to run concurrently. The Respondent further avers that there is no unreasonable delay as the matter is set before this Court for a trial scheduled for the 2nd to the 13th October 2028 and as a backup trial for the 27th through 31st March 2025. A copy of the Voluntary Bill of Indictment (VBI) was exhibited.

SUBMISSIONS

[4.] The Applicant's Counsel has laid over arguments for the Court and for the ease of convenience the Court will attach those arguments as oppose to seeking to summarize them. The Attorney for Sevil argued that:

a. The Applicant will complete this sentence on May 21st, 2024.

b. In the interest of full and frank disclosure, the Applicant has a previous conviction for Burglary stemming from an incident in 2016 for which he has already served his time at The Bahamas Department of Corrections.

c. Previous conviction notwithstanding, the Applicant is a fit and proper candidate for bail, and the Court should grant bail on such conditions as it deems fit and just in the circumstances of the application.

d. There is a presumption of innocence is always a convenient starting point to contextualize a bail application. Every applicant is presumed to be innocent of the charges brought against them. Counsel cited the Court of Appeal decision in **Duran Neely**, Counsel further noted the decision of **Hurnam v. The State** (Privy Council Appeal No.53 of 2004) and the Court of Appeal decision in **Jevon Seymour v. Director of Public Prosecutions** SCCrApp. No. 115 of 2019. The Court accepts that both Judgements have been cited in multiple decisions in the Courts of the Bahamas affirmatively and are accepted by this Court as directives on the principles to be considered by a Court.

[5.] The Respondents likewise laid over arguments which for efficacy the Court will summarize where the Crown argued that because the trial is set before Justice Andrew Forbes for the 27th through 31 March 2025 there has been no delay. They further contend that given the Applicant is currently serving a sentence for Burglary he ought to be regarded as a threat to public safety and good order. The Crown cited the Court of Appeal decision of **Jonathan Armbrister v. The Attorney General SCCrApp. No 45 of 2011** where the Court said as follows: *"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 in determining whether bail should be granted or not."*

[6.] Taking the Respondents case at its highest, it does not provide any evidence that the Applicant will not attend for his trial. Furthermore, the evidence provided is scant and underwhelming and truly did not assist this court in arriving at the decision it was tasked with.

[7.] The issue as to whether there has been any delay was not raised by the Crown but was raised by the Applicant noting the period of time the Applicant will likely be in custody between his eventual release from BDOCS on his sentence and his trial on the burglary. The Court does

note that the Applicant was arrested and convicted and sentenced by the Magistrate in May 2022, and is serving a three (3) year sentence which the Applicant says expires on the 24th May 2024.

[8.] The Court would note there was no independent evidence that verifies this. The Applicant now applied for bail in March 2024 in anticipation of his release. In the opinion of the Court, the delay would only manifest should the Applicant be denied bail and the case not be heard before 2025 or as late as 2028, thus the question of delay would not therefore arise.

[9.] The Court does take note of the comments made by *Justice of Appeal Evans* in **Neely Case,** where he said the following at paragraph 17:

> *"It should be noted that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown. As I understand the law when an accused person makes an application for bail the Court must consider the matters set out in Section 4(2) (a), (b) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time he can be admitted to bail as per (a) and (b). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail..."*

[10.] There have been multiple decisions by the Court of Appeal of recent vintage and not so recent 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 cited a number of cases as the starting point. *"The main consideration for a court in a bail application is whether the applicant would appear for his trial."*

[11.] 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."

[12.] 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."

LAW

[13.] The Court must now consider the rational for the denial of bail to the Applicant and consider whether the Applicant will refuse or fail to surrender for trial. Additionally, it appears that the Respondent arguments are that the Applicant's antecedents that he has pending matters and that this should be grounds to deny the Applicant bail. The Applicant faces charges involving Burglary, an offence that has been included in Part B of the First Schedule of the Bail Act Part B states, *inter alia* as follows:-

"PART B (Section 4(1)) Causing grievous bodily harm — section 270, Ch. 84; Causing maim or any dangerous harm — section 272, Ch. 84; Manslaughter — section 293, Ch. 84; Robbery — section 339(1), Ch. 84, or Attempted Robbery; Conspiracy to commit Robbery — sections 339(1) and 89(1), Ch. 84; Housebreaking — section 362, Ch. 84; Burglary — section 363, Ch. 84; Conspiracy to commit Burglary — sections 363 and 89(1), Ch. 84; Unlawful Entry by Night — section 364, Ch. 84; Unlawful Shortening of guns — section 36, Ch. 213".

ANYALSIS & DISCUSSION

[14.] Thus the issue to be determined is whether the Applicant would surrender for trial? The Respondent offers no evidence to suggest that the Applicant would not, in fact, surrender. The Affidavit is devoid of any evidence that the Applicant might not surrender for trial. They, however, focused on the Applicant's Antecedents which were referenced earlier. The only one which might

give the Court pause is the conviction in 2016 and sentence for Burglary. Here the Applicant engaged in the entry of a residence between the hours of 10pm and 5am. These are the hours that occupants are typically at home making it highly probable that the Applicant would have met the occupier at the residence. The question is what was the intent of should that encounter have occurred. In this current charge, similar allegations are being made that the Applicant entered a residence between the hours of 10pm to 5am. The Crown focuses on this fact that given the previous incidents, the Applicant is a threat to society.

[15.] The Court takes note of the comments of the Court of Appeal in **Stephon Davis v. The Director of Public Prosecutions** SCCrApp No. 108 of 2021 noting, in particular, the statements made in the headnote by the *President of Appeal Sir Michael Barnett* and *Justice of Appeal Evans* where they commented as follows:

> *per Evans, JA: A judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new offence is alleged to have been committed while the defendant was already on bail for a similar offence. There is a requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge. We must recognize that every individual charged before the Court is presumed innocent until proven guilty. We walk a tight rope of having to protect the interest of society and the constitutional rights of individuals brought before the Courts. This system only works if all stakeholders do their part. As such the Crown is not at liberty to hold information to its bosom and not provide the Courts with sufficient information to make proper decisions; nor are they permitted to deprive individuals of their liberty based only on suspicion of involvement in criminal activity.....*
>
> *per Barnett, P: This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail to should why there are good reasons to deny bail to a person charged with an offence."*

The final issue raised was the serious of the offense and the cogency of the evidence. In this regard this court will noted the statement of the Court of Appeal in **Davis case (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."

[16.] As stated in **Davis case (supra)** there is no evidence before this Court that the Applicant will refuse to surrender. The Crown also argues that given the Applicant's previous conviction for burglary which occurred in 2016, that under the proviso found at section 4(1) of the Bail Act which reads:

"Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody...."

The contention being that the Applicant ought not to be granted bail and ought to remain in custody. The issue is however the mathematical calculations of the Crown are somewhat off. Firstly the Applicant was convicted in April 2016 and released sometime in 2019, which means the Applicant served Three (3) years of his Five (5) year sentence. And if the Court does the basic math, 2019 to 2024 is exactly five (5) years, which means that the argument of the Crown falls just short. The Court also notes the comments made by Madam Justice of Appeal Crane Scott In **Jevon Seymour v. D.P.P. SCCrApp No.115 of 2019**, where she stated at paragraph 65:

"It is obvious from the above paragraph that the evidence which the Crown placed before the learned judge in an effort to discharge its burden of satisfying the court that the appellant should not be granted bail was woefully deficient. Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e.

substantial grounds) which is capable of supporting a belief that the applicant for bail "would", if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown's burden is only discharged by the production of such evidence."

DISPOSITION

[17.] Therefore, in weighing the presumption of innocence given to the Applicant with the need to protect the public order and the public safety the Court is of the opinion that it is satisfied that no reasonable evidence has been lead so as to cause this Court to have justifiable reasons for refusing the Applicant's bail application. There has been no evidence to support that the Applicant would not surrender for trial, reoffend while on bail, obstruct the course of trial, or interfere with witnesses. In the circumstances, this Court will accede to the Application and grant the Applicant bail.

[18.] Bail is granted in the sum of Nine Thousand Five Hundred Dollars ($9,500.00) with one (1) or two (2) suretor. The Applicant is required to be outfitted with an electronic monitoring device (EMD) with the following curfew conditions. The Applicant is required to remain within his registered address between the hours of 10 pm and 5 am and all conditions related to the EMD are to be fully complied with. The Applicant is to report to the Marsh Harbour, Abaco Police Station each Monday, Wednesday and Friday on or before 7 pm at the latest. The Applicant is to have no contact with any of the prosecution witnesses and violation could result in possible revocation of bail.

[19.] Parties aggrieved by the decision may appeal to the Court of Appeal within the statutory time.

Dated the 21st May, 2024

Andrew Forbes
Justice of the Supreme Court