

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2024/CRI/bal/00084/

BETWEEN

JAMINE AMADO FERGUSON JR

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Mr. Justice Franklyn K M Williams, KC

Appearances: Wilver Deleveaux for the Applicant

Tabatha Frazer on 30 April 2024 and 7 May for the Respondent

Tamika Roberts on 4 June 2024 for the Respondent

Hearing Dates: 30 April 2024; 7 May 2024; 4 June 2024

RULING

WILLIAMS, J

[1.] The Applicant, charged with four counts of possession of a firearm with intent by means thereof to endanger life, seeks bail. At the time of his arrest and arraignment on the present charges in October 2023, he was on bail on an allegation of attempted murder. The present offences are such, that upon conviction, the Applicant may be imprisoned for twelve months or more.

[2.] The Applicant is now sixteen years. Thus, the (provisions of) the Child Protection Act are engaged. The relevant provisions are set out hereunder:

3. (1) Whenever a determination has to be made with respect to –

- (a) the upbringing of a child; or
- (b) ...

the child's welfare shall be the paramount consideration

(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.

(3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any other person shall have regard in particular to –

- (a) the ascertainable wishes and feelings of the child concerned considered in light of his or her age and understanding;

- (b) the child's physical, emotional and educational needs;
- (c) the likely effects of any changes in the child's circumstances;
- (d) the child's age, sex, background and any other circumstances relevant in the matter;
- (e) any harm that the child has suffered or is at the risk of suffering;
- (f) where relevant, the capacity of the child's parents, guardians or other persons involved in the care of the child in meeting his or her needs.

4. A child shall have the right –

- (a) ...
- (b) ...
- (c) to exercise, in addition to all the rights stated in this Act, all the rights set out in the United Nations Convention on the Rights of the Child (the Convention) subject to any reservations that apply to the Bahamas and with appropriate modifications to suit the circumstances that exist in the Bahamas with due regard to its laws.

113. (1) Any court on remanding or committing for trial a child who is not released on bail shall commit that child to custody in a juvenile correction centre named in the commitment, to be detained there for a period for which the child is remanded or until the child is there delivered in due course of law:

Provided that in the case of a child who has

attained the age of fourteen years –

- (a) the court shall not be obliged so to commit that child if the court based upon sworn information certifies that the child is of –
 - (i) so unruly a character that the child cannot safely be so committed, or
 - (ii) so depraved a character that the child is not a fit person to be so detained; and
- (b) where the court so certifies, the child may be committed to such place, including an adult correctional centre, as may be specified in the commitment warrant.

[3.] I take judicial notice that many recent murders of teenagers are alleged to have been committed by teenagers. (See The Nassau Guardian March 7 2024 “Teens charged with double murder”; The Nassau Guardian May 13, 2024 “Teens shot dead in separate incidents”.) I take judicial notice of the fact of that the Royal Bahamas Police Force have deemed the majority of murders retaliatory and gang related (See Commissioner of Police Clayton Fernander quoted in Tribune Tuesday, February 13, 2024 lmunnings@tribunemedia.net; The Tribune February 29 2024 “Mother believes son’s murder was retaliation for 2022 stabbing”). Further, the majority of killings are committed by use of firearm.

[4.] Section 4 (c) of the Child Protection Act incorporates into Bahamian law the United Nations Convention on the Rights of the Child (“the Convention”), “...subject to any reservations that apply to the Bahamas and with the appropriate modifications to suit the circumstances that exist in the Bahamas with due regards to its laws.” *Allen P in R.B (a juvenile) v Attorney General SC CrimApp No. 205 of 2015*

[5.] ,Inarguably, the welfare of the applicant is the court’s paramount consideration.

[6.] The applicant is presumed innocent.

[7.] There is no evidence before me to suggest that the Applicant will not have trial within a reasonable time.

[8.] The offence with which the Applicant is charged is serious, the evidence (including identification) of which is strong and cogent and raises, in my view the reasonable suspicion of the commission of them by the Applicant, seemingly without provocation. Further, the evidence evinces a *prima facie* case, such as would require the applicant to answer at trial; a conviction thereon is punishable by a term of imprisonment exceeding one year. The complainants here are all teenaged.

[9.] At the time of the alleged commission of the offences for which bail is being sought, the applicant was on bail, it having been alleged that he attempted to murder another teenager. I have perused the evidence submitted by the Director of Public Prosecutions (“the DPP”) in that matter. The allegation is that, without provocation, the applicant stabbed another. Obviously, the offence there is a serious one, the evidence of which (including identification) is strong and cogent. In my view, the evidence evinces a *prima facie* case such as would require the applicant to answer that charge. The applicant was required by the condition of that bail to remain at his identified residence, accompanied by an adult between the hours of 6 pm and 6 am Monday through Friday. The offence with which the applicant is charged is alleged to have occurred on Friday, September 15, 2023 at 7:50 pm, which places the applicant in breach of that condition of his bail.

[10.] In my view, the cumulative effect of the two seemingly unprovoked attacks, twelve months apart, is to evince, in the applicant a threat to the public safety and public order, **in particular to the welfare of other children (male teenagers)**. There is no evidence of a feud or “vibe” between any of the complainants in either matter and the applicant; similarly, there is no evidence of any aggression or physical attacks by the complainants in either matter against the applicant, prior to his assault upon each of them. In my view, the evidence establishes substantial grounds for believing that the defendant, if released on bail, would commit an offence while on bail. I note here that the applicant is of the age at which criminal responsibility may attribute.

[11.] Considering the welfare of this applicant, clearly the prior bail requirements of curfew at his identified residence coupled with adult accompaniment did not avail, and in my view are unlikely to, should bail be granted here.

[12.] Considering the welfare of this applicant, and given my findings at [3.], [9.] and [10.], the possibility of retaliation exists.

[13.] But for the lack of sworn information, I would be inclined to certify this applicant as so unruly **and** so depraved (the evidence suggests an utter disregard of the dignity of others and of the value of human life) so that should bail not be granted, he not be committed to a child correctional centre.

[14.] Having heard and considered the evidence , and having considered the factors relating to and or affecting the welfare of this applicant, I do not consider that there is any condition which may be imposed upon a grant of bail which may ameliorate and or mitigate the threat to the public safety such as I have found or ensure the welfare of the applicant.

[15.] In the premises, bail is refused, the applicant who shall attain seventeen years on 4 July 2024, committed to the adolescent wing of the Bahamas Department of Correctional Services at Fox Hill (“BDOCS”).

Dated the 27th day of June 2024


Franklyn K M Williams, KC

Justice