

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT

CRIMINAL DIVISION  
No. CRI/BAL/00018/2010

ERROL KNOWLES

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: Her Ladyship The Honourable Madam Justice Jeanine Weech-Gomez

Appearances: Applicant appearing Pro Se  
Ms. Davina Pinder for the Respondent

Hearing Date: 09 April 2024

Stealing – Receiving - Bail - Constitutional rights – Nature and Seriousness of Offences – Public Safety and Order – Strength of Evidence

**BAIL RULING**

**Background**

1. Antonio Thompson (“**Applicant**”) was charged with one (1) count of Stealing contrary to section 345 of the Penal Code, Chapter 84 (“**Penal Code**”); one (1) count of Receiving contrary to section 358 of the Penal Code; and one (1) count of deceit of a Public Officer contrary to section 243 of the Penal Code (“**Offences**”).
2. On 14 February 2024, the applicant filed a Summons and supporting affidavit (“**Applicant’s Affidavit**”) requesting bail.
3. The Respondent filed an Affidavit in Response on 12 March 2024 (“**DPP Affidavit**”).

## **Issue**

4. The issue for this Court to consider is whether the applicant should be granted bail?

## **Evidence**

### **Applicant's Evidence**

5. The Applicant's Affidavit provides that: (i) the Applicant was born on 23 December 1967 in the Commonwealth of The Bahamas and is a Bahamian national; (ii) prior to his arrest, he was a self-employed Electrician working on a construction project; (iii) he was charged with the Offences; (iv) he maintains his innocence; (v) he has no matters pending before any court and he is not on bail; (vi) the Applicant has several convictions between 2010-2018, but have no other convictions since; (vii) he was granted bail by this Court in 2022, but failed to appear in court on two (2) occasions because (i) he had a kidney infection and did not inform the Court of such absence; and (ii) his Aunt died and he was in no state to attend court; (ix) the Applicant if admitted to bail, he will be present to every court hearing, notwithstanding what situations might arise; (x) while in prison, he is unable to support his ailing mother and his grandchildren; (xi) while in prison, the Applicant has endured hardship, oppression and abuse as there is no light in the cells and this has affected his eyes; (xii) he was on bail on previous matters and in none of the matter has he breached bail conditions nor has a warrant of arrest been issued against him; (xiii) his negligence and circumstances caused him not to appear and he will be responsible going forward; (xiv) he has written a letter to the Magistrate apologizing for his action; and (xv) the Applicant humbly requests to be admitted to bail.

### **Respondent's Evidence**

6. The DPP Affidavit provides that: (i) the Respondent opposes the Applicant's bail application; (ii) the Applicant was recently charged with the Offences (the Applicant's Charge Sheet is exhibited to the affidavit); (iii) during the Applicant's arrest, he lied about his name, telling the officer that his name was James Knowles. The AS400 System was made, it was discovered that the Applicant's actual name was Erol Knowles. After being cautioned with respect to the offence Deceit of a Public Officer, the Applicant replied "I only lied because I didn't thief anything" (this evidence is contained in a police report exhibited to the affidavit); (iv) when questions in connection to the Stealing charge, the Applicant allegedly admitted to being one of two males involved in the alleged Stealing of scaffolding (the Record of Interview of the Applicant is exhibited to the affidavit); (v) there is reasonable suspicion of the Applicant's involvement in being concerned with his co-accused in the Stealing charge; that the Applicant five (5) pending fraud

charges in Magistrates Court; that the Applicant was granted bail with respect to those matters in July of 2022 and missed ten (1) court dates while on bail; (vi) as a result of the Applicant's non-appearance as indicated, he was remanded into custody on 05 February 2024; (vii) the Applicant has previous convictions for similar offences of dishonesty (the Applicant's Criminal Record of Antecedent Form is attached); and (ix) the Respondent objects to bail being granted as: (a) the Applicant has pending matters, and previous convictions for offences of dishonesty; (b) the Applicant is a threat to public order; and (c) the Applicant has a history of not appearing on court dates, which is a major breach of his previous grant of bail.

### Law

7. The Court notes that the Applicant is shrouded by the presumption of innocence until his guilt is proven. The Court, however, also acknowledges the need to protect the general public from crime and violence. One's right to freedom and the presumption of innocence are preserved and expressly protected in our Constitution. **Articles 19(1)(d), (3) and 20 of the Constitution of The Bahamas** provide:

*"19 (1). No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases-*

*...*

*(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;"*

*"19(3). Any person who is arrested or detained in such a case as is mentioned in subparagraph 1(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph 1(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions including in particular such conditions, as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.*

*20. Every person who is charged with a criminal offence —*

*(a) shall be presumed to be innocent until he is proved or has pleaded guilty"*

8. The Court's power to grant bail is located at **section 4 of the Bail Act, 1994 ("Act")**. **Section 4(1) of the Act** which states:

*"(1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being*

*dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail:*

*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.”*

9. Section **4(2) of the Bail (Amendment) Act, 2011** provides:

*“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; or*~~

*(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 in the record a written statement giving the reasons for the order of the release on bail.....*

*(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...”*

10. The First Schedule, Part A of the Act provides factors which a Court must consider in a bail application. It reads:

*“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) *.....;*

(d) *whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;*

(e) *.....;*

(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...”*

11. Also, it is for the Respondent to prove, through evidence that the Applicant would likely fail to surrender to custody, appear at trial, commit an offence while on bail and/or interfere with witnesses or otherwise obstruct the course of justice. This was expressly provided in the Bahamian Court of Appeal decision of **Attorney General v Ferguson et al SCCrApp Nos. 57, 106, 108 and 116 of 2008** (“**Ferguson**”) where the Court opined:

*“35. In a bail hearing it is for the prosecution to produce evidence to show why the defendant should not be released on bail. The prosecution is not required to prove beyond reasonable doubt that the defendant would not report for his trial or to produce formal evidence to that effect. A prosecutor objecting to bail may state his opinion based on the evidence produced that if bail is granted the defendant, because of the circumstances, may fail to appear to take his trial or that given bail the defendant is likely to interfere with witnesses. A bail application is an informal inquiry and no strict rules of evidence are to be applied: R. v. Mansfield Justices, ex parte Sharkey [1985] QB. 613, Re Moles [1981] Crim. L. R. 170.”*

12. The significance of evidence provided by the Respondent was also highlighted in the case of **Jeremiah Andrews v The Director of Public Prosecutions Appeal No. 163 of 2019**, (“**Jeremiah Andrews**”) Evans JA expressed the following at paragraph 26:

*“In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4 (2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence.”*

13. Also, in the Bahamian Court of Appeal decision of **Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016** (“**McDonald**”), Allen P (as she then was) explained the extent to which a judge is to consider evidence at a bail application. There, the learned President opined:

*“34. It is not the duty of a judge considering a bail application to decide disputed facts or law and it is not expected that on such an application a judge will conduct a forensic examination of the evidence. 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.”*

14. In the Privy Council decision of **Hurnam v. State of Mauritius [2006] 1 WLR 857** the board made the following observations:

*“15. It is obvious that a person charged with a serious offence, facing a serious penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail....The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well...provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given...”*

15. The need to protect society is an important consideration. This was expressly stated in the Court of Appeal decision **Dentawn Grant v The Director of Public Prosecutions SCCrApp No. 59 of 2022 at paragraph 42** where, the Court opined:

*“I am also of the view that having regard to the material before the Court that this murder appears to have been in retaliation to a previous attack on the Appellant. There is not only a risk of the Appellant’s safety if granted bail, but also a risk to the public’s safety. Any retaliation against the Appellant puts members of the public at risk who may be in the area where any attack on the Appellant may take place. In the present case, the material before the Court does not suggest that the victim Brianna Grant was the object of the retaliation but was shot because she was with the intended victim at the time.*

## **DISCUSSION AND ANALYSIS**

### ***Whether the Applicant should be granted bail?***

16. The Court has reviewed the evidence in relation to this matter. The evidence presented by the Respondent is quite compelling and overwhelming. The evidence places the Applicant on the scene where the alleged Stealing took place and evidence states that he admitted to stealing the scaffolding. In addition, the Applicant has admitted to missing court days, which is also mentioned in the Respondent's affidavit. Shockingly, he has missed more than one court hearing while on bail, hence him presently being on remand pending his trials. The evidence provided against the Applicant is very strong and his past behavior suggests that he may not appear in court if granted bail. I am quite concerned at the number of times that the Applicant has failed to appear in court while on bail.
17. The nature and strength of the evidence is very strong and quite compelling.
18. Furthermore, the nature of the Offences are serious, being Stealing, Receiving and Deceit of a Public Officer. This speaks to the character of the Applicant. Furthermore, the Respondent's Affidavit states that there are pending matters in relation to Fraud, which again, are very serious.
19. The need to protect public safety, order and peace are factors the Court is entitled to consider in bail applications. The Applicant's past behavior and current Charges leads me to believe that he is not a fit and proper candidate for bail. In the circumstances, I am not satisfied that the Applicant ought to be granted bail.

### **Conclusion**

20. Having regard to all the circumstances I refuse to grant bail to the Applicant.
21. He is to be remanded until the trial of this matter.

**Justice Jeanine Weech-Gomez**

**Dated this 09 day of April 2024**