

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division

2022/CRI/BAIL/FP/00011

BETWEEN

JOHNATHAN MOORE

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Honorable Mr. Justice Andrew Forbes**
Appearances: **Mrs. Ashley Carroll c/o Director of Public Prosecutions**
Mr. Johnathan Moore Pro Se
Hearing Date: **3rd September, 2024**

RULING ON BAIL

FORBES, J

BACKGROUND

[1.] The Court having heard the application and rendered its decision, indicated the intention to provide the written reasons and does so now. Johnathan Moore (“Applicant”) self-filed an application seeking consideration of the Court as to the question of bail on the 11th July 2024. The Applicant stated to the Court during the hearing that he was remanded on the charge of Possession of an Unlicensed Firearm (1 Count) and Possession of Ammunition (1 Count) that he has close ties to the local area in # 167 Grenfell Avenue, Freeport, Grand Bahama. He also stated that he is prepared to comply with any and/or all conditions should bail be granted and that he was previously released on Bail for Attempted Armed Robbery, Shop Breaking and Stealing from a shop. The Charges were withdrawn on the 20th June 2023.

[2.] On 8th August 2024, the Respondent filed an Affidavit in Response sworn by Sargent 2169 Prescott Pinder. He avers that the Applicant when arrested was discovered to be in possession of a firearm and ammunition and exhibited was the arresting officer’s report. The Report of Detective Constable 4528 Mott notes that while on patrol on the 21st May 2024 and acting on information, three males were observed entering a silver Chrysler vehicle with yellow S/d plates and one male was seen brandishing a firearm. That the vehicle was stopped on East Sunrise Highway and two male occupants were ordered out of the vehicle. That the males were searched nothing illegal was recovered and upon searching the vehicle a firearm was recovered with ten (10) live rounds of Ammunition. The Applicant was cautioned and then arrested.

[3.] Sargent Pinder further avers that the Applicant appeared before Magistrate Charlton Smith on the 23rd May 2024 where he was arraigned on charges of Possession of an Unlicensed Firearm contrary to section 5B of the Firearms Act and Possession of Ammunition contrary to section 9(2)(a) of the Firearms Act. The docket was exhibited thereto. The matter is scheduled to commence on 5th November 2024.

[4.] That Sargent Pinder avers that there is cogent evidence as the Applicant was the occupier in the vehicle. He further avers that the Applicant has a pending matter of a similar nature in which that trial is scheduled to conclude on the 5th November 2024. Further, a report of the Officer involved in that matter was exhibited. According to Detective Corporal 3801 Rolle, while on patrol

he observed the Applicant along with other males known to him standing on the side of a building. As he, Detective Corporal 3801 Rolle was approaching, he observed what appeared to be a firearm in the hands of the Applicant. As he closed in, the Applicant dropped the firearm and made good his escape. That Scenes of Crimes Officers attended and processed the scene and the Firearm was collected and contained five live rounds. That the Applicant was later arrested on the 14th December 2022 at his residence. That is cogent evidence of the Applicant's attempt to dispose of a firearm and this matter is scheduled to conclude before the Magistrate on the 5th November 2024.

[5.] That Sargent Pinder further avers that the Applicant has a previous conviction for unlawfully carrying arms where he was convicted on the 20th December 2021 and fined Four Hundred Dollars (\$400.00) or one (1) month at Bahamas Department of Correctional Services (BDOCS). The Antecedents of the Applicant were also exhibited. Further, he avers that the Applicant is not a fit and proper person to be released on bail.

SUBMISSIONS

[6.] The Applicant being unrepresented was unable to provide any submissions save to deny the allegation contained within the Affidavit filed by the DPP and to reiterate that he is innocent of the alleged crime. The Court, however, notes the Court of Appeal decision of *Stephon Davis and the Director of Public Prosecution SCCrApp. No. 108 of 2020.*

[7.] The DPP filed its submissions on the 16th March 2023 and noted the serious nature of the allegations against the Applicant and whether there are any conditions this Court can impose that will restrain this Applicant from committing additional crimes. The DPP refers the Court to the comments made by the Judge at first instance made in *Stephon Davis v the Director of Public Prosecutions (supra)* and the comments made at paragraph 24 by the Court of Appeal in *Tyreke Mallory v. Director of Public Prosecutions SCCrApp. No.142 of 2021* where the Court adopted the comments of the Judge at first instance. Counsel for the DPP submits that the Applicant is unfit person for bail.

THE LAW

[8.] The Court must now consider the rational for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial. The Court must also take into consideration that the suretor now wishes to be allowed to withdraw notwithstanding it is at the

last moment and perhaps motivated by the Crown application of forfeiture. And whether to accede to the Crown's application to revoke the previous bail granted to this Applicant for violating the terms of that bail.

[9.] Section 4 (1) of the Bail Act provides:-

"(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.

[10.] Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 provides:-

"(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;

(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.

(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) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal. (3A) notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule.

[11.] The burden rests with the Crown to satisfy the Court that the Respondent is not a fit and proper person for bail. . The standard of proof is on the balance of probabilities, specifically, that when considering all the evidence the Respondent would not make himself available for trial and no conditions can assist in ensuring the attendance (**Jevon Seymour v The Director of Public Prosecutions** SCCrApp. No. 115 of 2019). Specifically, at para 50 *Crane-Scott JA* stated:

“50. We are satisfied that even if the learned judge found (as he could) that the Crown’s evidence was “cogent” and was prepared to infer (as he did) that given the nature and seriousness of the offences and the likely penalty, that appellant might have a powerful incentive to abscond, that is not the end of the matter. Such a “finding” is not in itself a reason for denying an applicant bail. **Accordingly, if the learned judge concluded that the appellant might be tempted to abscond, in the proper exercise of his discretion, he ought also to have proceeded to consider whether that risk could nonetheless be effectively eliminated by the imposition of appropriate conditions.**”

DISCUSSION/ANALYSIS

[12.] It appears that the Respondent’s submissions are that the Applicant has antecedents; that he has pending matters, the previous matter being a Possession of Ammunition case for which bail was given by the Court of Appeal and that the evidence adduced is cogent and powerful are grounds to deny the Applicant bail.

[13.] The Applicant faces a charge involving Possession of an Unlicensed Firearm contrary to section 5(B) of the Firearms Act and Possession of Ammunition and Firearm contrary to section

((2)(a) of the Firearms Act. These is an offences that has been included in Part D of the First Schedule of the Bail Act and the Bail (Amendment) Act, 2011 which states as follows:

“Possession of prohibited weapons and ammunition — section 30, Ch. 213; Unlawful shortening of guns — section 36, Ch. 213; Any offence mentioned in the Third Schedule to the Criminal Procedure Code, Ch. 91. Unlawful possession of a revolver - section 5, Ch. 213; Unlawful possession of a firearm or ammunition - section 9, Ch. 213; Unlawful possession of a firearm or ammunition with an intent to supply - section 9A, Ch. 213; Unlawful possession of a gun - section 15, Ch. 213; Assault with a deadly or dangerous instrument or means - section 265(5), Ch. 84.”

[14.] Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 permits the grant of bail to those charged with a Part D offence (as stated in paragraph 10 above). Additionally, a Judge hearing an application for the grant or denial of bail for an applicant charged with a Part D offence shall have regard to the following factors as found in Part A of the Bail (Amendment) Act, 2011:-

“(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) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;

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

(e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;

(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.";

[15.] Thus, the question is would this Applicant surrender for trial? The Respondent offered no evidence to suggest that he would not have, in fact, appeared and the Affidavit is totally devoid of any suggestion that the Applicant might not surrender for trial. They, however, focused on the Applicant being a safety concern to the community.

[16.] As stated by the Court in **Stephon Davis v the DPP (supra)** there is no evidence before this Court that the Applicant will refuse to surrender. However, as this Court has noted events have now moved beyond the abstract, as this Applicant was already on bail by this very Court with stringent conditions imposed, specifically curfew conditions. And although those matters were dismissed the Applicant incurred additionally charges again related to Possession of firearms and ammunition. One (1) of these matters is substantially close to resolution and the other is set to commence on the 5th November 2024. The Court is therefore satisfied that the evidence is supportive of this Applicant appears to not be taking the process of the very conditions imposed by this Court seriously and seek to refrain from continual alleged criminal violations. The Court is reasonably certain that there are no conditions it can impose that will ensure the Applicant's compliance with its order. The Court notes the comments made by the Court of Appeal in **Riclaude Tassy and Director of Public Prosecution MCCrApp. No. 129 of 2022**, where the court said: **"A breach of bail conditions may give rise to criminal liability, as well as the risk of revocation of bail."**

[17.] The Court takes note of the comments of the Court of Appeal in **Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016** where President of Appeal Dame Anita Allen said as follows:

"18. As noted in Richard Hepburn v The Attorney General SCCrApp. 276 of 2014, there is a constitutional right to bail afforded by articles 19(3) and 20(2) (a) of the Constitution; and in as much as the right pursuant to article 19(3) is not triggered since there is no element of unreasonable delay in this case, consequently this application is grounded in the provisions of article 20(2) (a).

19. In that regard, the appellant is presumed innocent and has a right to bail, unless after a realistic assessment by the judge of the matters prescribed above, the appellant's

right to remain at liberty is defeated by the public's interest in seeking to ensure “ that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit other offences...” 8 (per Lord Bingham in Hurnam v The State [2006] 3 LRC 370, at 374).

20. The balancing of the applicant’s right to the presumption of innocence and that of the public to be protected are reflected in the above-mentioned factors recognized and prescribed by the Bail Act as matters to be weighed against the grant of bail, and, in so far as they are relevant to the particular application for bail, they must, as previously noted, be assessed by the judge before exercising the discretion. Indeed, section 2B prescribes that in relation to Part C offences: ‘...the character or antecedents of the person charged, the need to protect 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.’”

[Emphasis mine]

DISPOSITION

[18.] This Court given the circumstances will deny the application for bail for the current offence. This Court will note that although the Applicant has no antecedents the comments of the Court of Appeal in Tyreke Mallory v. The Director of Public Prosecutions SCCrApp No. 142 of 2021, will note that this case was a case on Appeal from this Court and the Court of Appeal at paragraph 25 said as follows:

“In my view, having regard to his antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society. Further, the evidence, in my view, raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge, and detention pending trial.”

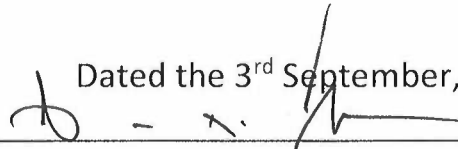
[19.] The Court notes that the Applicant was already on bail and while on bail cogent evidence has been presented that this Applicant has not only violated the terms of his bail, but allegedly committed another offence. This Court is fully aware of the comments Justice of Appeal Evans and of the President Sir Michael Barnett of the Court of Appeal in Stephon Davis case (supra). Those comments are as follows:

“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.”... : “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 show why there are good reasons to deny bail to a person charged with an offence.”

The Court having considered the circumstances of this case and the evidence presented will not accede to the Application. The Court is of the view that the Applicant would surrender for trial. However, the Crown has satisfied its burden in proving to this Court that the Applicant is a danger to society. The Court will invite the Applicant to reapply.

[20.] Parties aggrieved may appeal to the Court of Appeal.

Dated the 3rd September, 2024



Andrew Forbes
Justice of the Supreme Court