COMMONWEALTH OF THE BAHAMAS **CASE NO. CRI/BAIL/FP/00032/2024**

IN THE SUPREME COURT

Criminal Division

B E T W E E N

LEON LLOYD SPENCE

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	**The Honorable Mr. Justice Andrew Forbes**
Appearances:	**Attorney Mrs. Ashely Carroll c/o Director of Public Prosecutions**
	Attorney Mr. Osman Johnson c/o Spence
Hearing Date:	**3rd September, 2024**

RULING

FORBES J,

BACKGROUND

[1.] The Court heard the Application on the 3rd September 2024 and denied the Application and indicated it would provide reasons and does so now. The Applicant filed an application on 29th July, 2024, and sought consideration of the Court as to the question of bail. In support of this application the Applicant has filed an Affidavit on the 20th July, 2024. In the Affidavit the Applicant avers that he was remanded on the charges of Possession of Unlicensed Firearm with intent to supply. 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. That he is a teacher having previously taught at Knockalva Technical High School situated in Westmoreland, Jamaica. And that if granted bail he intends to return to his children and provide normalcy to their lives. That the Applicant further avers that he is nursing a back injury and he is suffering hardships while in prison. That he has no criminal convictions whether in The Bahamas nor in Jamaica. That he has no pending criminal cases in any jurisdiction nor is he involved with any gangs. That he avers that he will comply with the terms of bail and not interfere with witnesses and that he is not a flight risk.

[2.] The Respondent filed an Affidavit in Response dated 14th August, 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 28th June, 2024 with Offences of Possession of Unlicensed Firearm with intent to supply contrary to section 9 A (2) (b) of the Firearms Act Chapter 213. That the Applicant was arraigned before Senior Magistrate Charlton Smith the charge sheet was exhibited thereto. That the Applicant pleaded not guilty to the charge and was remanded to the Bahamas Department of Correctional Services (BDOCS) with the trial date set for the 30th September 2024.

[3.] Sergeant 2169 Pinder further avers, that there is cogent evidence against the Applicant as the Applicant was an occupier within a vehicle in which the firearms were discovered. That the report of Detective Constable 4288 Ashton Hanna is exhibited to the Affidavit. That the Respondent avers that the Applicant is a Jamaican National who is resident in the United States and has no ties to The Bahamas. And that he is a flight risk. That the Respondent contends that the Applicant entered the Bahamas illegally, that his passport has expired and a copy of the Record of Interview is exhibited. The Respondent contends that there are no conditions that would ensure the Applicant's attendance at court.

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 opposed to seeking to summarize them. The Attorney for Spence argued that:

a. 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 Neilly v Attorney General SCCrApp No. 29 of 2018 & Attorney General v. Bradley Ferguson et. al. SCCrApp. No 57,106,108,116 of 2008**. Also the Case of **Mendez and Ayo v. COP [210] 4 BHS J No.34.** 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 Senior Magistrate Charlton Smith on the 30th September 2024 there has been no delay. They further contend that given the Applicant is a flight risk as he is a Jamaican national who has entered the country illegally with an expired passport. The Crown cited the Court of Appeal decisions of **Stephon Davis v. Director of Public Prosecutions** SCCrApp No. 108 of 2021, **Toni Sweeting v. Commissioner of Police** MCCrApp. No. 133 of 2013, **Donovan Collie v. Director of Public Prosecutions** SCCrApp. No. 132 of 2023 **& Donna Vasyli v. The Attorney General** SCCrim. App & CAIS No. 82 of 2015.

[6.] Taking the Respondent's case at its highest, it does provide some evidence that the Applicant will not attend for his trial. Furthermore, the evidence provided has not been rebutted

and, in fact, in his Affidavit the Applicant failed to advise the Court as to his status in the country although paragraph 1 of his Affidavit in Support speaks to being a resident of Freeport, Grand Bahama originally from Westmoreland, Jamaica, nor does his Counsel in his argument addresses this issue.

[7.] 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..."*

[8.] 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."*

[9.] 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."*

[10.] 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

[11.] 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's arguments are that the Applicant is a flight risk and that this should be grounds to deny the Applicant bail. The Applicant faces charges involving Possession of an Unlicensed Firearm with intent to Supply, an offence that has been included in Part D of the First Schedule of the Bail Act Part D states, *inter alia* as follows:-

> **"PART D (Section 4(2))** "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."

Also to be considered is Part A of the First Schedule which said as follows:

> "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) 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 purpose of taking the decisions required by this Part or otherwise by this Act;

(e) whether having been released on bail 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.

(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. Ch. 211."

ANYALSIS & DISCUSSION

[12.] Thus the issue to be determined is whether the Applicant would surrender for trial? The Respondent offers reasonable evidence to suggest that the Applicant would not, in fact, surrender. The burden rests with the Crown to prove to 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 herself 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."**

[13.] The Affidavit exhibits a statement of the Applicant which indicated that the Applicant illegally entered the Country on a vessel traveling according to the Applicant from the United States of America to Bimini then onto to Grand Bahama. The Applicant is clearly able to enter and exit multiple countries undetected and bypass their immigration and border controls. The Affidavit of the Applicant appears to suggest that he is originally from Westmoreland, Jamaica but now resident in Grand Bahama and his Counsel sought not to offer an explanation raised by the Crown. The Crown rightly focuses on the fact that given the ease with which the Applicant entered the Country and the fact that his trial is scheduled to commence on the 30th September 2024, he is a likely flight risk. Additionally, the Court has considered whether conditions can be imposed to ensure attendance. It appears unlikely to this Court there an Applicant can evade Border regulations and Authorities that either the Electronic Monitoring Device, or Reporting Conditions in anyway ensures compliance. This Applicant has no tangible connection with this country.

DISPOSITION

[14.] 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 there has been 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 evidence to support that the Applicant would not surrender for trial. In the circumstances, this Court will deny the Application of the Applicant's bail application.

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

Dated the 3rd September, 2024

Andrew Forbes
Justice of the Supreme Court