

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

2010/CRI/BAL/00022

Between

BRINTON THOMPSON

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns

Appearances: Ms. Cassie Bethell appearing for the Applicant
Mr. Uel Johnson with Ms. Tennielle Bain appearing for the Respondent

Hearing Date: 14 August 2024

RULING – BAIL VARIATION DECISION

Criminal Law – The Constitution – Bail Act, Chapter 103 (as amended) – Application for bail variation – Request for removal of electronic monitoring device (EMD) – Murder contrary to 291(1)(b) of the Penal Code, 84 (as amended) – Whether the Court ought to exercise its discretion and order the removal of the Applicant’s electronic monitoring device (EMD) – Application for bail variation refused – Not a proper case for bail variation

Chapter

INTRODUCTION

[1.] Brinton Thompson, the Applicant named herein, is a 35-year-old Bahamian male who stands charged with Murder contrary to the relevant provision of the Penal Code, Chapter 84 (as amended), which said offence is purported to have occurred on 12 November 2011.

[2.] The Applicant was arraigned on the Murder charge before the Magistrate’s Court on 29 October 2013. The matter was adjourned and the Applicant was remanded to Her Majesty’s Prison (now The Bahamas Department of Correctional Services) pending the service of his Voluntary Bill of Indictment (“VBI”).

[3.]The Applicant was presented with his VBI in Magistrate Court No. 9 on 18 February 2014. The Applicant was arraigned in the Supreme Court before Mr. Senior Justice Jon Isaacs (as he then was) on 21 March 2014.

[4.]The Applicant made several unsuccessful applications for admission to bail, which were the subject of several unsuccessful appeals.

[5.]The Applicant applied for and was admitted to bail by the Honourable Mr. Justice Roy Jones (as he then was) on 2 December 2015 and subject to the following conditions, that

- i. bail is granted in the sum of thirty-five thousand dollars (\$35,000.00) with one or two suretors;
- ii. the Applicant is to report to the Wulff Road Police Station every Monday, Tuesday, Wednesday, Thursday and Friday before 6 pm;
- iii. the Applicant is to reside with his mother Rochelle Davis at No. 24 Culmer's Alley off Kemp Road and is to remain in the residence between the hours of 6 pm to 6:30 am every night;
- iv. the Applicant is to be fitted with an Electronic Monitoring Device prior to his release on bail and must agree to be bound by the 2010 Regulations; and
- v. a breach of any of the conditions renders the Applicant liable to further remand.

[6.]Since being admitted to bail for the Murder charge, the Applicant was subsequently charged with Possession of an Unlicensed Firearm and Possession of Ammunition, which said offences were purported to have occurred on 17 September 2017. The Applicant was arraigned before the Magistrate Court on 18 September 2017.

[7.]The Applicant applied for and was admitted to bail in relation to the Possession of an Unlicensed Firearm and Possession of Ammunition charges by the Honourable Mr. Senior Justice Stephen Isaacs (as he then was) on 2 November 2017 and subject to the following conditions, that –

- i. bail is granted in the sum of five thousand dollars (\$5,000.00) with one or two suretors;
- ii. the Applicant is to report to the Wulff Road Police Station every Monday, Tuesday, Wednesday, Thursday and Friday before 6 pm;
- iii. the Applicant is to reside with his mother Rochelle Davis at No. 24 Culmer's Alley off Kemp Road and is to remain in the residence between the hours of 6 pm to 6:30 am every night;
- iv. the Applicant is to be fitted with an Electronic Monitoring Device prior to his release on bail and must agree to be bound by the 2010 Regulations; and
- v. a breach of any of the conditions renders the Applicant liable to further remand.

[8.]The Applicant now seeks to move the Court in relation to the Murder charge on an application for bail variation by seeking the removal of his electronic monitoring device. The Applicant purported to move the Court on the present application for bail variation by way of a Summons, which was supported by an

Affidavit-In-Support sworn by the Applicant himself. However, due to an inadvertent slip on the part of Counsel for the Applicant and unbeknownst to the Court, the Summons and Affidavit-In-Support were not filed until 21 August 2024.

[9.] The Respondent did not oppose the present application.

[10.] The Court has reviewed and considered the Applicant's Affidavit and has heard the submissions made by Counsel for the Applicant and the Respondent.

THE APPLICANT'S AFFIDAVIT EVIDENCE

[11.] The Affidavit of Brinton Thompson principally stated, that –

- i. I am the Applicant in this matter;
- ii. I was born on 10 October 1988 in the Commonwealth of The Bahamas and I am 35 years of age;
- iii. I was granted Bail before Justice Roy Jones in 2015. My Bail is set at thirty-five thousand dollars (\$35,000.00) with two (2) suretors. I am [required] to sign in at the Wulff Road Police Station on Mondays and Fridays before 6 pm, a curfew from 6:30 pm to 6:30 am and I am outfitted with an electronic monitoring device.
- iv. Since I was granted Bail in 2015 (nine years ago), I have complied with all rules and regulations of the Honourable Court;
- v. I am humbly requesting a Bail Variation to have my electronic monitoring removed. I am a candidate for gainful employment at M&M Virgo Ltd., Virgo Car and Scooter Rental located at No.11 Kemp Road, Nassau, The Bahamas. Attached is a job letter from M&M Virgo Ltd., Virgo Car and Scooter Rental which is self-explanatory and entered as "Exhibit B.T.1" of the Affidavit of Brinton Thompson.
- vi. I do have a previous conviction before the Courts in the Commonwealth of The Bahamas;
- vii. I do have a pending matter before the Court in the Commonwealth of The Bahamas;
- viii. Should the Honourable Court vary my bail, I will have accommodations at Kemp Road, New Providence, The Bahamas;
- ix. If I am granted a Bail Variation, I will continue to abide by all rules and regulations of the Honourable Court;
- x. I am a citizen of the Commonwealth of The Bahamas;
- xi. I respectfully request that the Honourable Court vary my bail pending further court appearances for the following other reasons, that –
 - a. I will be disadvantaged in my ability to receive an employment opportunity which is greatly needed to support myself and assist my family; and
- xii. I am a fit and proper candidate for bail variation.

ISSUE

[12.] The issue that arises for the Court's consideration is whether the Court ought to exercise its discretion and order the removal of the Applicant's electronic monitoring device.

LAW AND DISCUSSION

[13.] The concept of bail derives from the Constitution, Bail Act, Chapter 103 (as amended), and judicial authorities. Bail has its roots in the constitutional tenets that every person is presumed innocent until he pleads guilty or is convicted by a competent Court and ought not to have his liberty curtailed except where authority prescribed by law permits such curtailment: **see Articles 20(2)(a) and 19(1) and (3) of the Constitution of The Bahamas.**

[14.] It is now trite law that the Court has the inherent jurisdiction to grant or deny persons charged with criminal offences (even the most heinous criminal offences) admission to bail. This is inclusive of the Court's jurisdiction to vary and/or revoke bail.

[15.] With respect to an application for bail variation, **section 9(6) of the Bail Act, Chapter 103 (as amended)** is the starting point. It provides as follows –

“(6) Where a Court has granted bail in criminal proceedings, the Court may on application –

- (a) **by or on behalf of the person to whom it was granted;** or
- (b) by the prosecutor or a police officer,

vary the conditions of bail or, in respect of bail which has been granted unconditionally, impose conditions.”

[Emphasis added mine]

[16.] The Court, in determining the present application, must consider the primary concern for detaining an accused person pending trial and/or proceedings preliminary thereto, which is to ensure that the ends of justice are not thwarted by his flight to avoid trial or perverted by his interferences with any of the prosecution's witnesses or his proclivity to commit further offences if admitted to bail. If the primary concern could be alleviated by the imposition of appropriate conditions, the accused person should be admitted to bail: **see Jervon Seymour v The Director of Public Prosecutions SCCrApp. No. 115 of 2019.**

[17.] The Applicant stands charged with Murder. The Court, in determining the present application, is also cognizant of the inference of flight and/or interference of the prosecution's witnesses inferred on the Applicant by him being charged with a serious offence such as Murder and facing a serious penalty if convicted. Judicial deference is given to the dicta espoused by Lord Bingham of Cornhill in the Board decision of **Hurnam v The State (Mauritius) [2005] UKPC 49** wherein it was pronounced at paragraph 15 as follows –

“15. It is obvious that a person charged with a serious offence, facing a severe 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 drug 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.”

- [18.] Jones J (as he then was), in considering whether the Applicant ought to have been admitted to bail in relation to the Murder charge, undoubtedly considered that the primary concern for refusing the Applicant admission to bail could have been alleviated by the imposition of appropriate conditions. Therefore, he exercised his discretion and admitted the Applicant to bail subject to the above-mentioned conditions. Among the conditions imposed, the Applicant was to be outfitted with an electronic monitoring device and must abide by the regulations thereto.
- [19.] The Applicant has now moved the Court on the present application for bail variation seeking the removal of his electronic device. The Applicant advanced, through his Affidavit, that the electronic monitoring device is inhibiting his ability to receive a gainful employment opportunity, which is greatly needed to support himself and his family. The Applicant exhibited to his Affidavit a letter dated 19 April 2024 purportedly from an establishment known as M&M Virgo Ltd./Virgo Car and Scooter Rental, which requested the Court to consider removing the Applicant’s electronic monitoring device. The letter states that there is an employment opportunity for the Applicant that aligns with his skills and experience. However, due to the nature of the business, particularly, working around tourists, the presence of an electronic monitoring device will hinder the Applicant’s ability to perform his duties effectively. While being signed and dated, the letter did not state the name and position of the author nor did the letter state with guarantee that the Applicant would be employed.
- [20.] Notwithstanding, the Court is not satisfied that the present application for bail variation warrants the Court to exercise its discretion and order the removal of the Applicant’s electronic monitoring device. The electronic monitoring device should in no way affect the Applicant’s ability to seek gainful employment provided he adequately advises his prospective employer of his circumstances and takes the necessary steps to obscure the presence of the electronic monitoring device such as the wearing of long pants.
- [21.] Irrespective of public perception, electronic monitoring devices serve a fundamental purpose in the management and supervision of accused persons admitted to bail. These devices not only ensure the exact geographical location of the accused person at a given time and his attendance at trial and/or proceedings preliminary thereto but also ensure that public safety and public order are maintained. For instance, electronic monitoring devices serve as a deterrent for accused persons not to engage in further alleged criminal activity. This is because accused persons are aware that their location could be readily detected. It is also through these electronic monitoring devices that adherence to other bail conditions such as curfew are maintained.
- [22.] The Applicant, through his Affidavit, further advanced, *inter alia*, that he has a previous conviction before the Courts in the Commonwealth of The Bahamas, he has a pending matter before the Courts, and should the Court vary his bail,

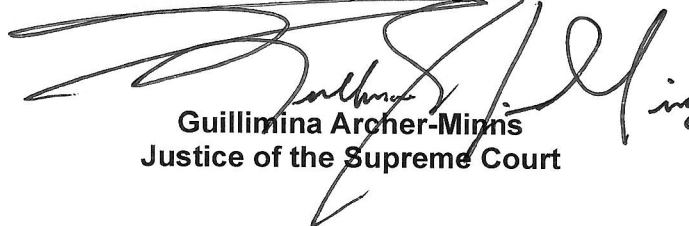
he will continue to abide by all rules and regulations imposed by the Court. A perusal of the Applicant's bail file, particularly, the Affidavit of Inspector Monique Turnquest filed on 30 October 2017, indicates an allegation of a breach of the Applicant's curfew bail condition when he was arrested in relation to his Possession of an Unlicensed Firearm and Possession of Ammunition charges. It is rather unfortunate that the Respondent was not in the position to assist the Court in ascertaining whether the Applicant was compliant with his bail conditions in relation thereto.

[23.] The Applicant further advanced, through his Affidavit, that his Murder charge matter has been pending for some nine (9) years. However, if the Applicant is being forthcoming, he would recognize that such delay was collectively on the part of himself and the Respondent. As a result, numerous of his trial dates had to be vacated. The Applicant now has a backup trial date and fixed trial date scheduled for 1 December 2025 and 1 February 2027, respectively. If the Applicant is so aggrieved by the length of delay in his Murder charge matter, he should exercise the appropriate legal avenues available to him. The present application for bail variation is certainly not the appropriate legal avenue.

CONCLUSION

[24.] All relevant factors considered, the Court is satisfied that it ought not to exercise its discretion and order the removal of the Applicant's electronic monitoring device. The present application for bail variation is hereby refused.

Date this 28th day of August 2024



Guillimina Archer-Mirns
Justice of the Supreme Court