

IN THE SUPREME COURT

Criminal Division

Between

**BRIAN GRAY**

**Applicant**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**Before:** The Honourable Madam Justice Guillimina Archer-Minns  
**Appearances:** Mr. Nathan Smith for the Applicant  
Ms. Janet Munnings for the Respondent  
**Hearing Date:** 21 February 2024

**RULING**

**Criminal Law – Bail – The Constitution – Bail Act, Chapter 103 (as amended) – Successive application for bail – Attempted Murder contrary to section 292 of the Penal Code, Chapter 84 (as amended) – Possession of an Unlicensed Firearm contrary to section 5A of the Firearms Act, Chapter 213 (as amended) – Possession of Ammunition contrary to section 9(2)(a) of the Firearms Act, Chapter 213 (as amended) – Whether the Applicant is a fit and proper candidate for the admission to bail – Application for bail granted – Stringent conditions imposed**

**INTRODUCTION**

1. Brian Gray, the Applicant herein, is a 31-year-old Bahamian male, who stands charged with three (3) counts of Attempted Murder, four (4) counts of Possession of an Unlicensed Firearm, and two (2) counts of Possession of Ammunition contrary to various provisions of the Statute Laws of the Commonwealth of The Bahamas. It is alleged that the Applicant, being concerned with others and while at New Providence, The Bahamas, committed the offences on 27 October 2023.
2. The Applicant was arraigned before Acting Chief Magistrate Roberto Reckley on 2 November 2023. The matter was adjourned to 4 April 2024 for the service

of a Voluntary Bill of Indictment and the Applicant was remanded to The Bahamas Department of Corrections.

3. The Applicant previously applied to the Court for bail by way of a Summons and Affidavit-In-Support sworn by himself, collectively filed on 7 November 2023. The previous bail application was heard on 13 December 2023. The written decision of the Court was rendered on 20 December 2023. The previous bail application was dismissed for reasons stated in the written decision. The Court was satisfied that the previous bail application was premature and not a proper case for bail at that time.
4. The Applicant made the present application by way of a Summons and Affidavit-In-Support sworn by himself, collectively filed on 16 January 2024.
5. The Respondent opposed the present application by way of an Affidavit-In-Response sworn by Sgt. 235 Allan Ferguson, a Police Officer attached to the Court Liaison Office at the Respondent's Office, filed on 20 February 2024.
6. The Court has read the Affidavits of the Applicant and Respondent and has heard their respective submissions.

## **AFFIDAVIT EVIDENCE**

### **The Applicant's Affidavit Evidence**

7. The Court finds it useful to mention the contents of the Applicant's Affidavit in its entirety. It reads as follows, that –
  - i. I am 31 years old and a citizen of the Commonwealth of The Bahamas, having been born on 8 August 1992;
  - ii. I have two(2) children;
  - iii. I am single;
  - iv. I am a landscaper and employed with Aircraft Maintenance, Bahamasair;
  - v. I was arraigned on 2 November 2023 at the Magistrate's Court, Nassau, and South Streets before Acting Chief Magistrate Roberto Reckley, on the charges of Attempted Murder (3 Counts), Possession of an Unlicensed Firearm (4 Counts), and Possession of Ammunition (2 Counts), where I was not required to enter a plea. I rely on the exhibit filed in my Affidavit on 7 November 2023;
  - vi. My matter was adjourned to Thursday 4 April 2024 for the service of a Voluntary Bill of Indictment;
  - vii. I have no pending matters;
  - viii. I have a previous conviction for Possession of Dangerous Drugs with the Intent to Supply in which I was fined \$500.00 or three months in prison. The fine has since been paid;
  - ix. I am innocent of the said charges. I know nothing about attempting to murder anyone or having possession of any unlicensed firearms or ammunition;
  - x. I am a hardworking man and the provider of my family;
  - xi. My detention puts my family in further hardship to support me and deal with my incarceration;
  - xii. I am eager to be with and help support my family in these difficult times;

- xiii. I am not a flight risk and if granted bail I shall appear before the Court for my trial; and
- xiv. The statements contained herein are made from my personal knowledge and are to the best of my knowledge, information, and belief correct and true.

### **The Respondent's Affidavit Evidence**

8. The Court finds it equally useful to mention the contents of the Respondent's Affidavit in its entirety. It reads as follows, that –
- i. the Applicant Brian Gray (D.O.B 8 August 1992) is charged with the offences, namely: Attempted Murder (3 Counts), contrary to section 292 of the Penal Code, Chapter 84; Possession of an Unlicensed Firearm (4 Counts), contrary to section 5A of the Firearms Act, Chapter 213; and Possession of Ammunition (2 Counts), contrary to section 9(2)(a) of the Firearms Act, Chapter 213;
  - ii. the Respondent is relying on its previous Affidavit filed and sworn on 11 December 2023 by Xandrell Bain. There is now produced and shown to me a copy of the Affidavit-In-Response filed on 11 December 2023 marked as Exhibit "AF-1"
  - iii. bail was denied before Justice Guillimina Archer-Minns on 20 December 2023 and the Respondent avers that there has been no change in the Applicant's circumstances;
  - iv. the Applicant is charged with serious offences and given the severity of the penalty that is attached, if the Applicant is admitted to bail, coupled with the cogency of the evidence, the Respondent verily believes that the Applicant would either abscond or fail to appear for his trial;
  - v. there has been no unreasonable delay as the Applicant was arrested on 27 October 2023 and he is expected to be presented with his Voluntary Bill of Indictment on 4 April 2024;
  - vi. the Applicant has a previous conviction for Possession of Dangerous Drugs with Intent to Supply;
  - vii. the nature of the offence is serious and in the interest of the public ought to be considered;
  - viii. the Applicant for the above reasons is not a fit and proper candidate to be considered for the grant of bail and in the circumstances should not be admitted to bail; and
  - ix. the contents of this Affidavit are true to the best of my knowledge, information, and belief.

### **ISSUE**

9. The issue that the Court must consider is whether the Applicant is a fit and proper candidate for the admission of bail?

### **LAW AND DISCUSSION**

10. In **Hepburn Jr. v The Attorney General (No.2) [2017] 1 BHS J. No. 84**, the Court of Appeal provided guidance for the Court in considering successive bail applications. Allen P at paragraph 4 pronounced –

"4. Hall, J's decision in **Keith Patton et al v Commissioner of Police** has since been overtaken by the decision of this court in **Michael Mackey and Edward Johnson v Regina SCCrApp Nos. 288 and 289 of 2015** where the Court, differently constituted, held in three separate judgments that the

approach described by Hall, J namely that fresh applications for bail would only be heard if the applicants could show that the circumstances have changed was, in light of the Constitution and Bail Act, inherently wrong. Every application for bail pending trial should be considered afresh. A judge considering the application should cast his or her mind to the usual considerations pertinent to the decision to grant bail. The judge must "have regard to the previous finding on the application for bail, consider whether there is any new material relevant to the question of bail; and also consider whether there were existing circumstances at the time of the previous application which were not brought to the court's attention and [are] relevant to the grant of bail."

11. As indicated, this is the Applicant's second time applying for bail. With regard to the Court's previous written decision, the Court having considered all of the facts presented by the parties summarized the reason for dismissing the previous bail application at paragraphs 35 and 36 as follows –

"35. Notwithstanding the Court's findings and the Respondent not adducing any evidence to support that the Applicant should be kept in custody for public safety, his own safety, and protection, the Court is satisfied that this is not a proper case for bail at this time.

36. On 2 November 2023, the Applicant was fined \$500.00 or three months in prison for the Possession of Dangerous Drugs with the Intent to Supply. Unless it can be shown that the imposed fine was paid or that the sentence expired, the Applicant's application for bail is premature and consequently dismissed. Should the circumstances change in the interim, the Applicant is at liberty to reapply to the Court for bail."

12. The Affidavit filed by the Applicant in support of the present bail application disclosed a change in circumstances. The Affidavit advanced that the \$500.00 fine relative to the Applicant's Possession of Dangerous Drugs with the Intent to Supply conviction had been paid. Learned Counsel for the Applicant, Mr. Nathan Smith, produced a receipt dated 13 December 2023 evidencing the payment.

13. The Affidavit filed by the Respondent opposing the present bail application did not differ substantially from the Affidavit filed by the Respondent in the previous bail application. The Affidavit filed by the Respondent opposing the present application for bail advanced that the Respondent relies on its previous Affidavit.

## **CONCLUSION**

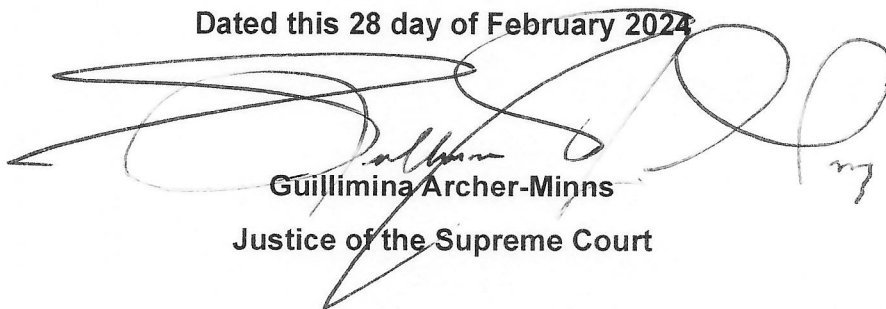
14. The Court, having regard to its previous written decision, the Applicant's change in circumstances, and the lack of evidence to the contrary, is satisfied that the Applicant is a fit and proper candidate for the admission of bail. Therefore, the Court, in the exercise of its discretion, accedes to the Applicant's bail application subject to the following stringent conditions, that –

- i. bail is to be fixed in the amount of \$20,000.00 with one or two suretors to be approved by the Registrar of the Supreme Court;

- ii. the Applicant is to report to the South Beach Police Station every Monday, Wednesday, and Saturday on or before 6:00 pm;
- iii. the Applicant is to surrender his passport and/or all travel documents to the Registrar of the Supreme Court;
- iv. the Applicant is to be outfitted with an Electronic Monitoring Device and comply with all conditions thereto;
- v. the Applicant is to be placed on curfew in which the Applicant must remain at his registered address between the hours of 7:00 pm to 5:00 am Monday to Sunday;
- vi. the Applicant is to appear to Court each and every adjourned date until the completion of the matter; and
- vii. the Applicant is to surrender himself into custody at the Central Police Station, New Providence, The Bahamas on or before 6:00 pm the day before the scheduled trial date of this matter and thereafter to remain in custody during his trial unless further ordered.

15. Breach of any of these conditions, the Applicant's bail is subject to being revoked and render him liable to further remand at The Bahamas Department of Corrections.

**Dated this 28 day of February 2024**



**Guillimina Archer-Minns**

**Justice of the Supreme Court**