

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**CRIMINAL DIVISION**

**CRI/BAL/00048/2024**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Prosecution**

**AND**

**SHANDO KING**

**Defendant**

**BERTTINA ROLLE**

**CHRISTOPHER BAIN**

**Suretors**

**Before: The Honourable Madam Justice Jeanine Weech-Gomez**

**Appearances: Ms. Shenicka Carey for the Prosecution**

**Mr. Bjorn Ferguson for the Suretors**

**Hearing Date: 06 November 2024**

**Accused Absconded – Suretors to show Cause - Escheat of Bail – Factors to Consider**

**Introduction**

1. Shando King (“**Mr. King**”) was charged with four (4) counts of Attempted Murder contrary to section 292 of the Penal Code, Chapter 84 (“**Penal Code**”) and four (4) counts of Possession of a Firearm with the intent to endanger life contrary to section 33 of the Firearm Act, Chapter 213 (“**Offences**”).
2. On 07 March 2024, Mr. King filed a Summons and supporting affidavit (“**Applicant’s Affidavit**”) requesting bail.

3. The Prosecution filed an Affidavit in Response and the Affidavit of Inspector Jason Brown on 18 March 2024.
4. This Court granted bail on 09 April 2024 in the following terms:

Bail is therefore granted in the sum of \$30,000.00 with two (2) suretors together with the following conditions:

  - 1) The Applicant is to be fitted with an Electronic Monitoring Device (“**EMD**”).
  - 2) The Applicant is to sign in at the Airport Police Station every Monday, Thursday and Saturday before 6pm.
  - 3) The Applicant nor his agents are to have any deliberate contact with the Prosecution’s witnesses in this matter.
5. On 24 May 2024, Mr. King absconded. His EMD was later recovered. However, to date he has not been located.
6. A Bench Warrant was immediately issued by this Court for the arrest of Mr. King. To date, Mr. King has not been apprehended and his whereabouts are unknown by Ms. Rolle the remaining suretor.
7. The two suretors named for Mr. Shando King are Ms. Berttina Rolle (“**Ms. Rolle**”) and Mr. Christopher Bain (the suretors were father and daughter). Sadly, Mr. Christopher passed away on 10 October 2024 (as seen by his Death Certificate provided to the Court).
8. Accordingly, the Court instructed the Prosecution to have the suretors to either bring the Defendant Shando King before the court immediately or to show cause why the Bail bond ought not be es cheated to the Crown.
9. On 18<sup>th</sup> June 2024 suretor Brettina G Rolle was present with her Attorney and the court was informed by the Attorney that the other suretor Mr. C Bain was ill. The suretors were again given an opportunity to bring the Defendant into the court. The court finally heard arguments on the 6<sup>th</sup> November 2024 by which time a Death Certificate had been produced for Mr. Bain.

### **Evidence**

10. On 06 November, Ms. Rolle was sworn and gave evidence. During her testimony, she provided the following evidence: (i) She is a high school teacher; (ii) Mr. King is her nephew; (iii) on 11 April 2024, she signed a Bail Bond; (iv) Mr, King resides at Imperial Park; (v) Once the bond was signed, she spoke with Mr. King face to face or by telephone; (vi) on a few occasions, she carried Mr. King to sign in to the requisite police station; (vii) one the last occasion she escorted Mr. King to the police station, she did not see anything out of the ordinary. This was the last occasion she saw or heard from Mr. King; (viii) once she learned he absconded, she called Mr. King’s mother and other

family to confirm if it was true; (xi) Ms. Rolle tried to reach Mr. King, but was unable to; and (x) she nor any other family member of Mr. King assisted him in absconding.

11. On cross examination, Ms. Rolle provided the following evidence: (i) when asked how long Mr. Christopher Bain was ill, she could not say; and (ii) she confirmed that the family learned of his diagnosis in May or June of this year.

### Law, Discussion and Analysis

12. Having considered counsel's submissions, I will now provide the law and analysis of this case.

13. **Section 14 of the Bail Act** provides:

“(1) Where a person has given security in pursuance of section 9(4), and the Court is satisfied that the person failed to surrender to custody, then, unless it appears that he had reasonable cause for his failure, the Court may order the forfeiture of the security.

(2) Where a Court orders the forfeiture of a security under subsection (1), the Court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order””

14. Grant-Thompson Snr. J provided a helpful discourse on the law with respect to escheating bail in the case of **The Director of Public Prosecutions v Marissa Rolle** - 2011 CRI/bal/00073 at paragraphs 13 to 15, 18, 20 and 22:

#### *“Functions of a Suretor*

*13 A suretor ensures that the accused person attends Court every time he is instructed by the Court to be present. It is a major undertaking. If a suretor fails to produce the Defendant for his trial or hearings, or if any other condition is broken, the recognisance of the suretor is subject to be forfeited. In order to prevent this the suretor ought to stay in touch with the Defendant to ensure that he appears in Court. The suretors duty is to keep himself informed of the adjourned date of each hearing. They should not rely on the memory of the Defendant or anyone else. This Defendant has missed Court hearings. His trial is in eight (8) weeks and he can not be located.*

*14 The Court cited with approval the consideration of the suretors duties in the case of R. v. Wells Street Magistrates' Court ex parte Albanese [1981] All E.R. 769 at page 776. Paragraph d-g explained the nature of the obligation of a surety on a bail recognisance. The Learned Ralph Gibson, J stated that:*

*“ The first point is that the public duty of the court is to grant bail unless, inter alia, it considers that there are substantial grounds for believing that the respondent will fail to surrender to custody. If there is thought to be risk of his not surrendering, the court may, and will, impose such*

*requirements or conditions as appear to the court to be necessary to secure that he surrender to custody .....*

*Next, the surety on a bail recognisance, as counsel for the respondents submitted, undertakes a special obligation. He does so voluntarily. Failure to fulfil the condition (that is to say, non-appearance of the man bailed) gives rise to a debt which is enforceable like a fine. At common law, if the condition was not fulfilled, the surety automatically forfeited the sum secured by the bond. Forfeiture is no longer automatic but is subject to the discretion given to magistrates .....*

*Apart from that discretion ... the obligation remains in nature the same as it always has been. It is the duty of the surety to stay in touch with the bailed prisoner to see that he will appear at court. The court, in “considering the culpability of the surety in the event of the failure of the bailed man to surrender, will look to what the surety did to see that the man did surrender and what he did to alert the police if there was any known risk of his absconding ...”*

*15 From whom much is given, much is expected. If the suretors had done everything that they were supposed to then the Court would have favourably consider an application not to pay anything. If the suretors made any valid attempts to discharge their duty as surety then the Court would have reduced the amount owed to the Crown on a proportional basis, based on the level of action, involvement and contribution of the suretors. However, these suretors did nothing, therefore, nothing will be reduced. The means of the suretors are relevant. This Court understand that the suretors, are of modest means of a lower middle-income level. Thus, this Court will order the suretors to pay the security in staggered payments...*

*18 As outlined within the case of Wells Street Magistrates' (supra) “Failure to fulfil the condition (that is to say, non-appearance of the man bailed) gives rise to a debt which is enforceable like a fine. At common law, if the condition was not fulfilled, the surety automatically forfeited the sum secured by the bond”. Taking this into consideration, this Court has not been persuaded that any of the suretors acted in a way which would have discharged them of their legal duties as suretor. They did not put their best foot forward to ensure the Defendant appeared before the Court on his mentioned dates, or that the Defendant was adhering to the terms and conditions of his bail. As a result of this, the suretors would have automatically forfeited the sum secured by the bond.*

*Forfeiture of Security*

20 *When it comes to determining what is considered to be reasonable cause the case of Alexander Beckles v. The Magistrate, Mag. App. No. 253/67 denotes the standard which a suretor must attain in order to show good and sufficient cause why the amount of the recognisance should not be forfeited. In this case Wooding CJ stated that:*

*“ In matters such as the present, it would be almost impossible for a bondsman successfully to show cause why his bond should not be forfeited when in fact the condition for the vacation of the bond was breached, and even now nothing has been put forward before us to suggest that there will be the remotest hope of any real cause being shown. If, for example, it could have been shown that the person bailed or any one of them had died some time previous to the matter coming on in court and his death was the reason for his nonappearance, there would then be something which would require us to give the appellant an opportunity to put that before the magistrate. But in the absence of some such compelling circumstance, it would be impossible to show any cause which would be valid in law. It has not been suggested that the appellant may be able to show any such exceptional cause.”*

*There is no apparent reasonable cause for his failure to appear such as to cause the Court to exercise its discretion not to forfeit...*

22 *However, before a Court can order the forfeiture of the recognisance, it must first allow the suretor an opportunity to make representations to the Defendant to surrender himself, in accordance with their obligations, and also to make representations to the Court, as to why the Court should not order the forfeiture of the security. This was seen in the case of R v Uxbridge Justices, ex p Heward-Mills [1983] 1 All ER 530, where the Applicant entered into a recognisance in the sum of £7,000 to secure the Defendant's appearance in Court. The Defendant failed to surrender to his bail and the Applicant was summoned to show cause as to why the recognisance of £7,000 should not be forfeited. At the hearing the Magistrates heard evidence regarding the Applicants culpability for the Defendants non-appearance in Court, but declined to hear evidence or submissions regarding the Applicants means.”*

15. It was incumbent on the suretor to ensure that Mr. King attended trial on every occasion he was required to do so. Ms. Rolle testified that she made every effort to ensure his attendance at court and compliance with the terms of bail, the fact of the matter is Mr. King has absconded and his whereabouts are unknown. The Court must ensure that members of society fully appreciate duties placed upon them. Ms. Rolle elected to be one of the suretors for Mr. King. There is no evidence that she was coerced or otherwise. Of her own volition, she chose to stand as one of the suretors for Mr. King.

16. As Ms. Carey submits, suretors can be held liable to pay the bond jointly or severally. I am of the view that this case warrants the bail being escheated. Despite the valiant efforts that Ms. Rolle has done, the Court must send a powerful message to society – if you elect to stand as suretor for bail and the defendant fails to comply with the terms of bail, there will be consequences for your failure to ensure such compliance.
17. Courts must be robust and steadfast in protecting the administration of justice and ensuring accused persons stand for trial. Consequences flow when orders of the court are disobeyed.
18. In the premises, I order the bail bond to be escheated. Ms. Rolle is hereby ordered to pay the sum of \$30,000.00 for failing to ensure Mr. King’s attendance to Court.

**Conclusion**

19. In the premises and in consideration of the aforementioned principles, I hereby order Ms. Rolle to pay the bail bond in the amount of \$30,000.00. However, as I have been made aware that a cash bond in the sum of \$30,000 was posted by the suretors and is currently being held in the consolidated fund in the Public Treasury. I order that the same be forfeited to the Bahamas Government in full and final settlement of this matter.

**Dated the 20<sup>th</sup> day of November 2024**

**Jeanine Weech-Gomez  
Justice of the Supreme Court**