

COMMONWEALTH OF THE BAHAMAS CASE NO. 2019/CRI/BAL/FP/00023
IN THE SUPREME COURT
Criminal Division

B E T W E E N

DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

AND

MESHACK NEWTON

Respondent

Before: The Honorable Mr. Justice Andrew Forbes
Appearances: Attorney Sean Novell Smith c/o Director of Public Prosecutions
Hearing Date: 31st October, 2024

RULING

FORBES J,

BACKGROUND

[1.] Having heard the Applications of both the Crown and the Sureties, the Court gave an oral decision to revoke the bail of the Respondent, remand the Respondent to the Bahamas Department of Correctional Services, and release the Sureties from their obligations. The Court indicated it would condense its reasons into writing and does so now.

[2.] The Respondent, along with another, was arrested on 22 July 2016 and charged with Armed Robbery, contrary to Section 339(2) of the Penal Code. He appeared before Madam Justice P. Hanna Adderley on 22nd August 2019 on a Bail Application. Bail was granted in the sum of Nine Thousand Nine Hundred Dollars (\$9,900.00) with one or two sureties. The Respondent was required to report to the Central Police Station every Wednesday and Friday before 6 pm. The Respondent was not to have contact or interfere with any of the Crown's witnesses, either by himself or through his agents.

[3.] That Antoinette Cartwright and William Cash were approved as sureties for the Respondent. On the 8th June 2020, Ms. Cartwright wrote advising the Court that the Respondent was engaging in threats directed at her. Ms. Cartwright then completed a Revocation of bail form again confirming that the Respondent threatened her with a cutlass. No hearing commenced on either request. The Crown subsequently filed a Summons to Revoke Bail filed on the 8th and 16th October 2024, respectively.

[4.] The Crown filed an Affidavit in Support of the Application on 16 October 2024, sworn by Police Corporal 3913 Harris Cash, who avers that he is a liaison Officer at the Director of Public Prosecutions. He noted that the Respondent was charged with Armed Robbery and duly granted bail. He further avers that the Respondent appeared before the Court seeking assistance in having an Attorney appointed and was ordered to return to Court on the 30th September 2024 for Case Management. The Respondent failed to appear and, as a result, a bench warrant was issued. On September 14, 2024, the Respondent was arrested by United States Marine Enforcement Officers and charged with Human Smuggling. The criminal complainant in the Southern District of Florida was duly exhibited. According to the Affidavit of Scott Partin, a Special Agent with the United States Department of Homeland Security, an interview was conducted with the Respondent on September 15, 2024, after the Respondent was read his Miranda Rights and agreed to speak without an Attorney present. The Respondent indicated that he has bounty on him in The Bahamas for a situation involving missing or stolen guns and money, and he wanted to live and remain in the United States of America.

[5.] Officer Cash avers that the Affidavit was sworn in support of the Revocation of Bail and that the Respondent was not a fit and proper person to remain on Bail and that Nine Thousand Nine Hundred Dollars (\$9,900.00) be forfeited to the Crown.

[6.] Ms. Antoinette Cartwright filed and swore on the 28th October 2024, in which she avers that she is the mother of the Respondent. That she and her brother William Cash were sureties for her son. That she and her brother attended the Court on the 8th June 2020, seeking to be withdrawn as suretor, and that they completed the Form as required. On 7th October 2024, she was contacted by Attorney Ntshonda Tynes, who advised her of Meshach's non-appearance, stating that she was unaware that she or her brother was required to do more than fill out the required Form. That she, along with her brother, is seeking to have the Court not penalize them as a result and thereby forfeit their bond. She further avers that they were acting in good faith when submitting the Form. Any forfeiture would be a devastating financial setback.

[7.] The Court heard arguments from the Respondent, who offered no explanation or rebuttal to the contents of the Affidavit filed by the Director of Public Prosecution or that filed by his mother, Ms. Cartwright. The Crown indicated it intended to rely upon the Affidavit.

LAW

[8.] The Application made by the Crown concerns the revocation of bail pursuant to section 12A of the Bail Act. Section 12A of the Bail Act states:

12A.12 (1) Any person released on bail in criminal proceedings who breaches any conditions of bail commits an offence.

(2) Where a person is arrested on reasonable grounds that he committed an offence under subsection (1) and is brought before a Magistrate, the person shall be remanded in custody pending the trial and sentencing for the offence.

(3) Where a person is convicted of an offence under subsection (1), the prosecution shall, within twenty-one days of his conviction, make an application to the court which granted the bail, for the revocation of the bail in respect of which he was convicted.

(4) The prosecution shall give to the convicted person seven days' notice of the hearing of the application. 12B. Penalty for violating conditions of bail. (1) 13 An offence under section 12A is punishable on summary conviction to a term of imprisonment not exceeding five years. (2) In criminal proceedings for an offence under section 12A, a document purporting to be a copy of the part of the prescribed record which relates to granting¹⁴ of bail of the accused person, and duly certified to be a true copy of the record, shall be evidence of the conditions of bail.

[Emphasis added.]

ANALYSIS AND DISCUSSION

[9.] The issues before the Court are whether the Court should consider revoking the Bail of the Respondent and whether the Court should forfeit the bond executed by the sureties to the Crown.

[10.] The current law did not exist at the time the Respondent was initially granted bail. However, this Court is of the view that the Court of Appeal has expressed decisions that are

dispositive of that issue. Firstly, in the more recent case of **Riclaude Tassy v. The Director of Public Prosecutions** SCCrApp. No. 129 of 2022, the Court at paragraph 16 said as follows:

“Nothing in the Bail (Amendment) Act, 2016, and sections 12A and 12B curtailed or modified the provisions of section 12 of the Bail Act and the power of the courts to revoke bail.”

[11.] Further, in the Case of **Bartholomew Pinder v. The Queen** SCCrApp. No. 94 of 2020, where at paragraph 26, the Court said the following:

“In my judgment, there was ample jurisdiction in a judge of the Supreme Court to revoke bail granted by that court. The fact that section 12 was recited in the summons is inconsequential. If the issue of jurisdiction had been raised by the appellant before Justice Turner he could have readily granted leave to the Crown to amend the summons to refer to the courts inherent jurisdiction. This ground has no merit and cannot be the basis for allowing an appeal against the judge’s decision to revoke the bail if the decision was otherwise correct...”

[Emphasis Added]

[12.] Also, the comments from the headnote in the case of **Lindsay Shriver & Terrence Bethel v. The Director of Public Prosecutions** SCCrApp. No. 193 & 194 of 2024, the Court said as follows:

“A court considering an application for bail, or indeed an application seeking to revoke bail, is able to draw conclusions based on the information placed before the court on the likelihood of an accused person appearing for his trial. The requirement in the Bail Act is for there to be ‘substantial grounds for believing’ that the applicant would not appear. The Learned Judge considered what the court found to be instances of each of the two appellants breaching their bail conditions. In these circumstances, the Learned Judge was entitled to consider these instances of breaches of 2 conditions as being substantial grounds for believing that the appellants would not appear to take their trial...”

[13.] The Court also takes into consideration the issue of the safety of the Respondent when questioned by United States law Enforcement. He indicated that there was a bounty placed on him as a result of missing or stolen guns and money. As the Court understands, the colloquial term of bounty suggests or implies that someone is prepared to pay cash for the demise of the Respondent. Again, when confronted by those comments, they were not refuted by the Respondent. The Court, again, takes comments from the **Shriver case**. The Court said:

“A court is able to consider the applicant’s safety and further, that this issue, if the applicant’s life is found to be in danger, is a sufficient basis on its own to deny an applicant bail. There is no legislative prohibition on the scope of the court’s consideration. However, the court is required to consider whether any steps may be taken to allay these concerns...” The Court is unclear how to address these concerns so as to ensure the safety of the Respondent as he has failed to offer any cogent details as to who he believes placed this bounty as he called it. In the view of the Court to ensure the Respondent’s safety his further remand is optimal. The Court takes its direction from the case of **Dentwan Grant v. The Director of Public Prosecutions** SCCrApp. No.69 of 2022, where the Court said as follows:

“25. However, it cannot be gainsaid that the Judge was fully entitled to consider the safety of the Appellant as one of the factors for her to weigh in the scale pertaining to whether or not to grant the Appellant bail based on the strength of the material provided to her by the Respondent, namely, the Appellant’s car had been shot at some days before the murders took place, an event the Appellant admitted occurred in his Record of Interview with the police.

26. Part A of the First Schedule to the Bail Act states, inter alia as follows: 'The Court shall deny bail to a defendant in any of the following circumstances — (b) where the Court is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;'

27. Once there is a basis for the Court to conclude that an accused person's life may be in danger if he is released on bail - and the attack days earlier on the Appellant provides such a basis the Court is obliged by the mandatory "shall", to deny bail to the Applicant. However, a caveat may be applicable here, to wit, if the Applicant is able to demonstrate to the Court that notwithstanding a finding that his life may be in danger if released on bail, he is able to minimize that risk either by relocation to another island or by remaining under house arrest, the Court ought to have regard to such conditions when deciding whether or not to grant bail.....

29. In the premises, the Judge's decision to deny bail to the Appellant on the ground that the Appellant's life may be in danger is explicable and cannot be said to be unreasonable because she has taken into account an irrelevant matter or failed to consider a relevant matter. She was entitled on that basis alone to deny him bail."

[Emphasis Added]

[14.] The final issue for the Court's consideration is whether the Bond ought to be forfeited to the Crown. The Court is of the view that, given the sureties attempted from June 2020 to be removed as surety and the failure on the Administration of the Court to advance the application, the bond ought not to be forfeited.

[15.] The Court notes that Counsel has been appointed for the Respondent and a Pre-Trial Review date of October 2026 has been set. Moreover, the trial date is set for May 2027; it may be necessary to consider a fresh bail application in these circumstances, and the Respondent is invited to reapply.

DISPOSITION

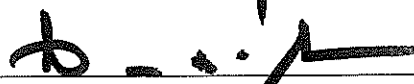
[16.] The bail of the Respondent is revoked, and he is remanded to the Bahamas Department of Correctional Services, both as a consequence of his violation of bail conditions and as a means of ensuring his personal safety.

[17.] The Sureties are released from their obligations, and the bond is not escheated.

[18.] The Respondent is at liberty to reapply.

[19.] Parties aggrieved may file an Appeal.

Dated this 25th day of September, A. D. 2025



Justice Andrew Forbes