COMMONWEALTH OF THE BAHAMAS **CRI/VBI/254/9/2024**

IN THE SUPREME COURT

CRIMINAL DIVISION

IN THE MATTER OF ARTICLE 20(1) and 20(2)(c) OF THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS

BETWEEN

PETER JOHNSON

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Honourable Madam Justice Joyann Ferguson**

Appearances: **Moses Bain of Counsel for the Applicant**
Mr. Timothy Bailey of Counsel for the Respondent

Hearing Date:

RULING ON CONSTITUTIONAL APPLICATION

Constitutional Motion - Constitution of the Commonwealth of the Bahamas – Fundamental Rights and Freedoms – Article 20(1) and 20(2) of the Constitution of the Bahamas – Inhumane Treatment – Fundamental Rights and Freedoms – Right to a fair hearing within a reasonable time- Whether Applicants fundamental rights and freedoms were breached

Ferguson J.

1. The Applicant is charged with Kendrick Clarke with the Attempted Murder and Attempted Armed Robbery of Archimele Atouriste which occurred on Saturday 29th March, 2014. The matter is yet to be tried and the Applicant has filed an Originating Notice of Motion seeking a declaration that his rights guaranteed by Article 20(1) of the Constitution, to be afforded a fear hearing within a reasonable time by an independent tribunal established by law; and further that his rights guaranteed by Article 20(2) (c) of the Constitution, that provides for every person charged with a criminal offence to be given adequate time and facilities to prepare a defence have likewise been breached. The Applicant seeks a declaration to permanently stay the proceedings in his criminal matter.

2. The grounds for the Application are:
    i. That there has been an unreasonable delay in the trial of his matter.
    ii. That the delay is evident of an abuse of process by the Respondents and unconstitutional.
    iii. The delay has adversely affected his ability to obtain meaningful employment.
    iv. That he has experienced extreme difficulty to support his children and family.
    v. That as a result of the matter he has experienced periods of depression and sadness.

3. This application is supported by an affidavit of the Applicant, in which he avers that he was arrested in May 2014 for Unlawful Possession and Stolen Vehicle and arraigned before the Supreme Court. Subsequent to that arraignment, he was remanded into custody, and the matter thereafter was set down before Evans J (as he then was), Fraser J (as she then was), Bernard Turner J (as he then was), and Darville-Gomez J at various stages of its progression. The Applicant further avers that on 7 July 2017, the Defence requested photographs of the crime scene together with the forensic evidence obtained by police officers, which, he says, remain outstanding.

4. The Applicant further states that on 26 August 2022, Turner J (as he then was) indicated an intention to transfer the matter to Darville-Gomez J, who, on 14 September 2022, fixed a back-up trial date for that same day and a substantive trial date for 4 November 2024. He avers that on 5 July 2023 the matter did not proceed as scheduled and was adjourned to 12 July 2023. The Applicant also states that on 30 August 2023 the matter was assigned to this Court and that on 11 October 2023 he was released on bail.

5. The Applicant states that he has been unable to find meaningful employment and has been adversely affected. Stating that it has been extremely difficult to support his children with this matter hanging over his head for the past ten (10) plus years.

6. In opposing the application of the Applicant, the Respondent relied on the affidavit of Shaneka Carey, Counsel for the Director of Public Prosecutions who stated that on 17th October, 2014 the Applicant was scheduled to be arraigned before the Honourable Mr. Justice Bernard Turner (as he then was), however on that date, the matter was adjourned to 7th November, 2014.

7. On 7 November 2014, the Applicant was arraigned on charges of Attempted Murder and Armed Robbery, to which he pleaded not guilty. On that occasion, the Applicant's mother was present, he being a juvenile, and he was represented by Counsel Mr Gendon Rolle. The matter was thereafter transferred to Indira Charles J (as she then was) for mention on 17 November 2014, and on that date a trial was fixed for 27th November 2017. However, on 28th September 2015, the then Counsel for the Applicant informed the Court that he no longer represented him and requested that a court-appointed attorney be assigned. The matter was subsequently adjourned to 25th January 2016.

8. On 25 January 2016, the Court was informed that Mr Moses Bain represented the Applicant; however, Mr. Bain did not appear on that occasion, and the matter was adjourned to 29 January 2016. On the adjourned date, Mr Bain appeared for the Applicant, whereupon the

Court fixed a trial date for 27 November 2017 and adjourned the matter to 10th March 2017 for trial.

9. The Respondent further avers that when the matter was called, the Applicant, along with his co-accused and his attorney appeared however, Counsel for the Applicant did not appear and indicated that he was not in receipt of the Applicants file. The matter was then further adjourned to 16th June, 2017.

10. The Respondent stated that on the adjourned date, when the matter was called before Evans J (as he then was) for case management, both the Applicant and the co-accused were present; however, there was no appearance by either Counsel on their behalf. The Applicant at that time informed the Court that a new attorney represented him, whereupon the matter was adjourned to 7th July 2017.

11. On 22nd September 2017, the matter again came before Evans J (as he then was), at which time a trial date of 27th November 2017 was agreed by both parties and fixed for trial. The matter was adjourned to 27th October, 2017 for mention. On that occasion, a pre-trial review was scheduled for 10th November 2017.

12. The Respondent stated that during the Pre-trial review, the Crown indicated that one of the witnesses listed on the indictment was deceased and as such and Application in this regard would be made. The matter was adjourned to the trial date set for 27th November 2017. However, this date was later vacated due to Counsel for the co-accused having an ongoing trial before another court. The matter was then adjourned to the 1st December, 2017, where trial dates were set for 1st March to 21st March, 2021 and a pre-trial review was set for 27th November, 2020.

13. The Respondents further avers that on 16th January, 2020 the matter was called before Bernard J. (as he then was), while the Applicant nor his counsel appeared, the mother and brother of the co-accused appeared and informed the Court that the Co-accused is now deceased. This resulted in the matter being further adjourned to 7th February 2020. Counsel for the Applicant did not appear on the adjourned date stating that he got the dates mixed up. The Court once again set a new trial date for 15th June, 2020. However, due to the onset of the COVID 19 Pandemic, it made it impossible for the trial to commence as scheduled.

14. The Respondent stated that the matter was called for trial on 10th August, 2022 the matter was called before Bernard Turner J(as he then was), but the Applicant was in custody for another matter and his Counsel was not present. The matter was then transferred to Camille Darville-Gomez J. and the matter was adjourned to 14th September 2022. A pre-trial date was set for 12th April. 2023, a back trial date was set for 5th June 2023 and a substantive trial date was set for 4th November, 2024. On 8th November, 2023, Counsel for the Applicant provided the Crown and the Court with the Constitutional Motion.

15. The Respondent states that on the 8th November, 2024, the Crown informed the Court that one of the witnesses listed was deceased and on the same date, Counsel for the Applicant provided Crown Counsel with a Constitutional Motion.

16. The Respondent avers that the Applicant has not been prejudiced in the preparation of his defence because he was in custody on an unrelated matter since 21st July, 2021 and was serving a three (3) year sentence. That all items requested by Counsel for the Applicant has been served since 13th September, 2023. The Respondents further assert that the delay of the Applicants trial was as a result of no fault of the Crown and the Respondents prayed that the Court would dismiss the Applicants motion and order a trial at the earliest opportunity.

The Applicants Case

17. It is submitted by Counsel for the Applicant, that the case against the Applicant is based on unfounded confessions which is very weak and there is the possibility that the Crowns two main witnesses may not appear in court. That the issues to be considered by the Court are:

    i. Whether the Applicants right to a fair hearing within a reasonable time by an independent tribunal established by Article 20(1) of the Constitution of the Bahamas ("the Constitution") have been infringed? If the answer is yes, then the question is whether the proceedings against the Applicant should be stayed?

    ii. Whether the Applicants' rights to adequate time and facilities for the preparation of his defence per Article 20(2) (c) of the Constitution have been infringed? If so, what is the appropriate remedy?

    iii. Whether the Voluntary Bill of Indictment ("the VBI") contains any evidence that shows that the Applicant committed or was involved in committing the offence for which he now stands before the Court?

    In relation to point three, I say from the outset that the issue of whether the Applicant committed or was involved in committing the offence for which he stands before the Court does not arise within the ambit of a Constitutional Motion but rather these are trial issues should the Court move in favour of the Respondent.

18. The Applicant further stated on paragraph ten (10) of the case of **Taylor v The Attorney General of the Commonwealth of the Bahamas [2013] 1 BHS J No. 218**, the Court spoke to the first of four factors that should be assessed in determining whether a particular Defendant has been deprived of his right due to the length of the delay and that at page 430 of ***Barker v Wingo*** 407 U.S. 514 (1972) (U.S. Supreme Court), Powell J. stated:

    > "Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors which go into the balance. Nevertheless, because of the impression of the right to speedy trial, the length of the delay that will provide such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge."

19. The Applicant has stated that in the instant case, there has been a passage of at least twelve (12) years since the Applicant was arrested relative to the matter, that a substantive trial date was set for 4th November, 2024; thus when you calculate the length of the delay, from then to now the citation within the earlier decision of Taylor where Senior Justice Jon Isaacs, as he then was found that a delay of over five years was inordinate.

20. The Applicant further considered, that the second factor to be determined, is the deliberate attempt to delay the trial in order to hamper the Defence. To wit, in the present case, the Crown did not offer any explanation for the delay since charging the Applicant in May, 2014.

21. The Applicant relied on, in support of the third factor the dicta of Powell J. at page 531 in **Barker (supra)**

> Whether, and how a defendant asserts his right is closely related to other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain."

22. The Applicant further relied on page 532 of **Barker (supra)** in support of the fourth factor identified by Counsel as prejudicial to the Applicant where it is stated that:-

> Prejudice, of course, should be assessed in light if the interest of the Defendants which the speedy trial was designed to protect. This Court has identified three such interest: (1) to prevent oppressive pre-trial incarceration; (ii) to minimize anxiety and concern of the accused: and (iii) to limit the possibility that the Defence will be impaired. Of these, the most serious is the last … if witnesses die or disappear during a delay the prejudice is obvious. There is also prejudice if the defence witnesses are unable to recall accurately events of the distant pass. Loss of memory however, is not always reflected in the record, because what has been forgotten can rarely be shown.

23. Counsel for the Applicant submits that such prejudice was experienced by the Applicant and is reflective in his affidavit at para. 14. That he was beaten and told to confess to the offences for which he now stands before the court. That he was beaten about the head and the body and a plastic bag placed over his head.

24. Counsel for the Applicant prays for the Court grants the declaration and orders sought by the Applicant on the basis of the aforementioned.

The Respondents Case

25. The Respondent concedes that there has been some delay with bringing the matter to trial. However, it is submitted that the delay, if any, cannot be solely faulted to the Respondent. Further, it does not adversely affect the Applicants ability to have a fair trial. The Respondent asserts that where the Applicant alleges that there has been some unreasonable delay in the

prosecution of the case, the prosecution is required to explain the reason for the delay. In determining this factor, the commencement of the period considered must be determined.

26. The Respondent cited in support of their submission the case of ***AG's Reference (No. 2 of 2001) [2004] 2 AC*** at para 26 highlighted the courts Judgment in the case of ***Eckle v Federal Republic of Germany 5 EHHR I, 27*** para, 73 which said that the period commences *" as soon as a person is charged; this may occur on a date prior to the case coming for trial, such as the date of arrest, or the date when the person concerned was officially notified that he would be prosecuted."* That the offences are alleged to have been committed on the 29th March, 2014. The applicant was arrested on the 5th May, 2014. So, the time in question then from May 2014 to present is just under 12 years.

27. The Respondent submits that the offences of **Attempted Murder and Attempted Armed Robbery** in which the Applicant stands charged before the Court, are serious offences and that the public interest would not be satisfied if the Court were to issue a stay of proceedings. Adversely a permanent stay of these proceedings may serve as a reward to the guilty, who would escape being brought to justice. The evidence which the Respondent relies on is that Mr. Artouriste Archimele and Mercillin Simon where at their residence when the Applicant and his Co-accused entered his premises. They then held them at gun point while inquiring for money. Before leaving the males fired a shot which hit Mr. Artouriste in the upper left shoulder. The Applicant was duly arrested and in the Record of Interview in the presence of his mother admitted to committing the offence.

28. In determining whether a particular Defendant has been deprived of his right, the Privy Council in the case of ***Bell v Director of Public Prosecutions and Another [1985] 1 AC 937*** referred to the case of ***Barker v Wingo 470 US 514 (1972) 407 US 52*** which identified four factors for the court to take into consideration:
    i. The length of delay
    ii. The reason for the delay.
    iii. The responsibility of the accused for asserting his right
    iv. Prejudice to the accused.

29. The Respondent submits that the length of the delay is over ten (10) years and in considering length of the delay the court should consider whether the delay is presumptively prejudicial. This was the position of the court in ***Barker v Wingo (supra)*** where Powell J at page 530 said, *"Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."*

30. The Respondent concedes to the first factor that the Applicant has been presumptively prejudiced insofar as the matter has taken over ten (10) years to proceed to trial. However, the Respondents further submits that this alone is insufficient to warrant a permanent stay of the proceedings. According to Powel J in ***Barker v Wingo (supra)*** at page 531, *"a deliberate attempt to delay the trial in order to hamper the defence should be weighed heavily against the Government."*

31. The Respondent submits that they have not made any deliberate attempt to hamper the defence of the Applicant. The matter was set for trial on the 27th November, 2017 however it could not commence because the Applicant's co-accused Attorney was in trial before another court. Furthermore, the court was engaged in another matter. The matter was then re-fixed for the 1-21st March, 2021 and then later re-fixed for the 15th June, 2020 in both instances the trial could not commence owing to the uncertainty surrounding the COVID-19 pandemic and the court closures as a result of same.

32. The Respondent submits that the Applicant does have a responsibility to assert his right as per Powel J in ***Baker v Wingo (supra)*** at page 528 to 529 said that *"the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right."* …. This rule permits the *"court to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in a long delay without adequately informing his client."*

33. Respondent further submits that there is no record of the Applicant asserting his right either deliberately or through his or his counsel. There is not even a scintilla of proof that anything was done by this Applicant outside of the filing of this motion.

34. The Respondent contends that there has been no prejudice to the Applicant. As stated by Lord Lane in ***Attorney General's Reference (No. 1 of 1990) - [1992] Q.B. 630*** at page 643 held that, *"stays imposed on the grounds of delay or for any other reason should only be employed in exceptional circumstance."* Lord Lane further proffered at page 644 that *"no stay should be imposed unless the defendant shows on the balance of probabilities that owing to the delay, he will suffer serious prejudice to the extent that no fair trail can be held."*

35. That the Court of Appeal in ***Kingsley Adderley v The Director SCCrApp No 212 of 2018*** at paragraph 30 states that,

> **"There is a fundamental principle of law which says, in effect, that he who alleges must prove. The principle is memorialised in section 82 of the Evidence Act. The appellant alleged that he would not be able to receive a fair trial due to the delay in bringing his case to that stage of the proceedings. Therefore, the onus of demonstrating the reason(s) for his allegation rested on him."**

36. The Respondent submits that this case does not fall within the exceptional circumstances which warrants a stay. That the Applicant has failed to adequately show on the balance of probabilities that owing to the delay, he has been prejudiced and will suffer serious prejudice to the extent that no fair trial can be held.

37. The Respondents further submitted that Applicant has not been prejudiced. The Applicant has not been unlawfully deprived of his liberty. The applicant was arrested on the 5th May, 2014. He was granted bail on or before the 7th November, 2014. The Applicant was convicted for the offence of possession of unlicensed firearm and ammunition and currently serves a three (3) year sentence as at the 21st July, 2021. Thus, prior to his conviction the Applicant

cannot say that he has been subjected to any form of oppressive pre-trial incarceration. In any event the Applicant has failed to show by way of a professional psychologist or otherwise that he has suffered *"periods of depression, and sadness."* For the reasons stated herein, the Respondent submits that the Applicant has failed to show that he has been prejudiced as a result of the delay, if any. The Applicant is capable of proceeding to trial and in the circumstances, we submit that a fair trial can be held.

38. The Respondent further submitted that the trial judge can employ the safeguards enshrined in our Judicial System and exercise their discretion to cure the presumptive prejudice, if any that the Applicant alleges may arise and cited the decision of the Honourable court in the case of ***Salathiel Thompson v The Director of Public Prosecutions [2020] 1 BHS J No. 60*** at para 20 referenced Lord Bingham in the case of ***Dryer v Watson [2004] 1 A.C. 379*** at para 52-52 and said that, "*it is necessary for court to look at the detailed facts and circumstances of the particular case"*…In doing so the court identified three areas of inquiry:
    i. The complexity of the case.
    ii. The conduct of the defendant.
    iii. The manner in which the case has been dealt with by the administrative and judicial authorities.
39. The Respondent submits that this case is not complex. The evidence which the Crown will rely on is that the Applicant, during the Record of Interview and while in the Applicant's mother Sherry Babbs admitted to the offence. That special weight ought to be given to the fact that although the Applicant alleges that the confession was given involuntarily, he was a minor at the time and during the Record of Interview the Applicant's mother was present. Therefore, it is highly unlikely that the Applicant would have confessed to the crime as he did if he did not commit in the presence of his mother. It is further submitted that the distinct circumstance of this case, a permanent stay is not an appropriate remedy and other remedies ought to be implored.

40. The Respondent submits that, Lord Bingham in ***Dryer v Watson (supra)*** said that, *"in almost any fair and developed legal system it is possible for a recalcitrant defendant to cause delay by making spurious applications and challenges, changing legal advisers, absenting himself, exploiting procedural technicalities, and so on. A defendant cannot properly complain of delay of which he is the author."* It is submitted that the Applicant is seeking to further frustrate due process by making this spurious application which seeks to further delay the chances of the Applicant being brought to trial or having a new trial date set before the Court.

41. The Respondent submits that this application by the applicant is an abuse of the court process. In **Stephen Ronel Stubbs v The Attorney General SCCrApp No.153 of 2013** at para 25 the Court of Appeal referenced Lord Lane in **Attorney General's Reference (No 1 of 1990)** and said that, *"the power to stop a prosecution arises only when it is an abuse of the process of the court."* It is submitted that there has been no abuse of process. The Respondent has not manipulated or misused the process of the court to deprive the Applicant of protection provided by law. Furthermore, the Applicant is still capable of preparing an adequate defence.

42. The Respondent submits that the interest of justice so requires the expedited prosecution of this matter. Further, that to allow a permanent stay of these proceedings would inexplicably reward the Applicant by allowing him to escape being brought to justice. It is also submitted that the Applicants right to trial without undue delay does not automatically afford him a natural recourse of a permanent stay as it is still possible at the discretion of this Honourable court for him to be tried even after the delay, if any.

43. That the Court of Appeal in **Stephen Ronel Stubbs v The Attorney General (supra)** said at para 37 that it was, *"loathe to say that the "normal remedy" when delay has resulted in a breach of an applicant's constitutional right is a permanent stay." Also in* ***Prakash Boolell v The State (supra)*** adopted the test laid down in ***Attorney General's Reference (No 2 of 2001) [2004] 2 WLR 1*** which said that *"the appropriate remedy would not necessarily be a stay but would depend on all circumstances of the case."*

44. ***Prakash Boolell v The State (supra)*** at para 31 provides that where the breach is established before the hearing the *"appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the Defendant is in custody, his release on bail."*

45. The Respondents a submitted that taking into consideration the circumstances of this case that a permanent stay of these proceedings is not an appropriate remedy. The Applicant is still capable of having a fair trial. A competent Court is fully capable of properly directing a jury in relation to any delay in this matter.

Law and Analysis

46. The Applicant invokes Articles 20(1) and 20(2)(c) of the Constitution, alleging infringement of his right to trial within a reasonable time and to adequate facilities for the preparation of his Defence, and seeks the exceptional remedy of a permanent stay.

47. **Article 20 (1)** of the Constitution of the Bahamas provides that:

> **"If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."**

Further**, Article 20(2) (c)** provides:

> **Every person who is charged with a criminal offence shall be given adequate time and facilities for the preparation of his defence;**

48. It is well settled that such relief is not an automatic process. The Court is required to engage in **a balancing exercise**, weighing delay, attribution, assertion of rights and prejudice, together with the public interest in the prosecution of serious crime.

49. The Applicant and the Respondent have agreed that the Privy Council in ***Bell v Director of Public Prosecutions and Another*** **[1985] 1 AC 937** reaffirmed the four-factor approach distilled in ***Barker v Wingo*** **407 US 514 (1972)**:

    i. length of delay
    ii. reason for delay
    iii. assertion of the right
    iv. prejudice to the accused

    This analytical structure governs the present inquiry.

50. The Respondent properly accepted, by reference to **AG's Reference (No. 2 of 2001) [2004] 2 AC 26** and ***Eckle v Federal Republic of Germany***, that the relevant period commenced on the Applicant's arrest on **5 May 2014,** yielding an elapsed period of over ten **years.** In ***Barker (supra)***, Powell J observed at p. 530 that:

    > **"Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."**

51. The Respondent correctly conceded that such a period crosses the **threshold of presumptive prejudice**, thereby triggering further scrutiny. However, as Powell J immediately cautioned at pg. 531, such presumptive prejudice is **not determinative**. It merely opens the door to a fuller examination of responsibility, assertion and forensic disadvantage which this Court further undertakes.

52. The Second matter the Court must inquire is the reason for the delay. The affidavit evidence of the Respondent discloses a chronology marked by:

    i. repeated changes of defence counsel
    ii. non-appearances Defendant or counsel for the Defendant
    iii. Counsel being unprepared or without file
    iv. adjournments occasioned by the death of the co-accused
    v. court closures due to the COVID-19 pandemic
    vi. Appearance conflicts involving co-accused's Counsel

53. This evidential record demonstrates that the passage of time **cannot be laid solely at the feet of the prosecution.** In ***Barker*** at p. 531 Powell J made plain:

    > **"A deliberate attempt to delay the trial in order to hamper the defence should be weighed heavily against the Government.**

    No such deliberate conduct was disclosed here, I also take judicial notice of the fact that for approximately eighteen (18) months during 2020 to 2021 no criminal trials occurred in this jurisdiction due to the Covid 19 Pandemic. On perusal of the file the materials reveal repeated fixing of trial dates 2017, 2020, 2021, 2023 and 2024 which were disrupted by factors external to *prosecutorial inertia***.** There is no record of contemporaneous protest or application to expedite, or

objection to adjournments by the applicant. This prolonged acquiescence weighs heavily against the Applicant in the constitutional balance.

54. The Third issue concerns the Applicant's assertion of his right as identified by Powell J in ***Barker*** at pp. 528 to 529 which emphasised that the Court must "attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in a long delay" The Respondent's unchallenged evidence is that **no complaint of delay** was raised until the filing of this constitutional motion in November, 2023 when the matter was called up and the Crown informed the Court that it would proceed to trial. Lord Bingham's guidance in ***Dyer v Watson*** **[2004] 1 AC 379 at para 52**, adopted locally in ***Salathiel Thompson v DPP*** **[2020] 1 BHS J No. 60 at para 20**, is directly relevant when it was stated *"a defendant cannot properly complain of delay of which he is the author."*

55. The Applicant contends at paragraph 14 of his Affidavit, that he has suffered irreparable prejudice. That he was beaten and told to confess to the offences for which he now stands before this Court. Further, that after being arrested and appearing before the Court some thirty-five times the matter has not proceed. Further, that the Applicant was not given, upon request the photographic and forensic evidence necessary to prepare his defence which violates his right afforded under **Article 20(2) (c)** of the Constitution. Based on this assertion, the Court point decisive. Adopting the dicta of Lord Lane in ***Attorney General's Reference (No. 1 of 1990)*** **[1992] QB 630 at 643–644** articulated the governing test is:

> **"No stay should be impose unless the defendant shows on the balance of probabilities that owing to the delay, he will suffer serious prejudice to the extent that no fair trial can be held."**

Added to that this burden lies squarely upon the Applicant. In ***Kingsley Adderley v The Director*** **Public Prosecution SCCrApp No. 212 of 2018 at para 30**, the Court of Appeal reaffirmed that **"He who alleges must prove… The onus… rested on him."**

56. The medical record provided by the Applicant indicates clearly a "no" response to questions of whether injuries sustained by police arrest and or injuries sustained from police interrogation. Further, there is no evidence that the Applicant was not provided with the necessary forensic evidence requested. Full disclosure was completed by September 2023. It behoves me also to mention that one of the objections raised by the Applicant is that he has suffered depression as a result of the delay. The Court notes that no actual medical evidence has been proffered by the Applicant to support this medical claim. The Applicant was on bail from November 2014, and thereafter incarcerated only on **an unrelated conviction.** Accordingly, **no evidence has been presented** that the fairness of the eventual trial has been compromised.

57. The Court relies on the decision of ***Prakash Boolell v The State*** adopted in **AG's Reference (No. 2 of 2001)** where it was held that where delay is established, the remedy may include public acknowledgement, expedition of bail, but not necessarily termination of the Prosecution. Given the seriousness of the offences alleged, Attempted Murder, and Attempted

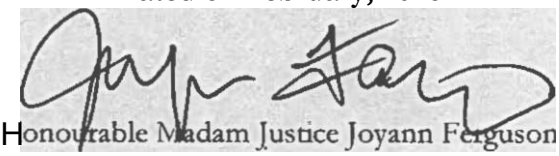
Armed Robbery, and the existence of confession evidence referenced by the Respondent, the public interest in this matter is paramount. The Applicant has not established the **exceptional circumstances** as contemplated by Lord Lane in aforementioned decision

CONCLUSION

58. Having weighed the length of delay, and the varying causes that contributed to the delay together with the Applicant's acquiescence, and the public interest in the prosecution of trial; I find that no exceptional circumstances have been demonstrated such as to render the imposition of a criminal stay appropriate. The Court is concerned with trial fairness not mere hardship or inconvenience. Having made the determination not to stay the proceedings, the Respondent is urged to expedite the trial of this matter and this Court directs that the matter be listed for trial at the earliest p racticable date. Any further unreasonable delay attributable to the State may result in the imposition of a permanent stay.

Constitutional Motion dismissed.

Dated 6th February, 2026



Honourable Madam Justice Joyann Ferguson