

COMMONWEALTH OF THE BAHAMAS

2025/CRI/CON/00014

IN THE SUPREME COURT

Criminal Law Division

**IN THE MATTER OF Articles 2, 19,20,28 of the Constitution of the Commonwealth of The
Bahamas**

BETWEEN

TERRY SWEETING

The Applicant

AND

ATTORNEY GENERAL

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondents

Before: The Honourable Mr. Justice Dale Fitzpatrick

Appearances: Ms. Donna Dorsett Major for the Applicant

Ms. Jacklyn Burrows for the Respondent.

Heard on the Papers

**Criminal Law – Constitutional Redress – Whether there has been a breach of the
Applicant’s right to a trial within a reasonable amount of time - Whether the Respondents
have established a reasonable suspicion, that the Applicant committed the offence with
which he is charged**

DECISION

Fitzpatrick J

Introduction

1. Delay in progressing criminal cases to trial has been a long standing challenge faced by courts worldwide. In 1868, then British Prime Minister William Gladstone in a House of Commons speech famously said “justice delayed is justice denied”. The phrase has since often been repeated as the rallying cry of those seeking timely justice. Delay in bringing criminal charges to trial is a significant concern in The Bahamas and the focus of the Application brought here by Mr. Sweeting (the “Applicant”) for constitutional relief in this case.
2. The Respondents allege that, on February 25, 2017, the Applicant murdered Leslie Rolle Jr. while acting in concert with Mr. Philano Williams and Mr. Kenrick Riley, both of whom are now deceased. The murder is alleged to have occurred in the context of the illegal drug trade in Nassau.
3. The Applicant was arrested on March 29, 2017. He was charged two days later on March 31st with murder contrary to section 291(1)(b) of the *Penal Code, Chapter 84*.
4. The Applicant was granted bail in 2018.
5. The DPP filed the pathologist’s report relating to the late Mr. Rolle on June 11, 2025 (the “Pathologist’s Report”).
6. The Applicant’s trial is presently listed to commence on February 22, 2027, namely just under ten years following his arrest.
7. The Applicant contends that the delay in bringing him to trial has violated his constitutional rights to a hearing within a reasonable time and to personal liberty. He, accordingly, seeks a stay of the prosecution.

Analysis

Has the Applicant’s Right to a Trial Within a Reasonable Time Been Violated?

8. The central issue here is whether the Applicant has been afforded a fair hearing within a reasonable time, as guaranteed by Article 20(1) of the *Constitution*.
9. The following is the timeline for the progression of this case:
 - a. The Applicant was arrested on March 29, 2017;

- b. The Applicant appeared before the Magistrates' Court and was charged with one count of murder on March 31, 2017;
- c. The Applicant was remanded at the Bahamas Department of Corrections ("BDOC") on April 3, 2017;
- d. The Applicant and his two co-accused were arraigned before the Supreme Court for the charge of murder on July 21, 2017;
- e. The matter returned before Justice Hilton (as he then was) on August 10, September 7, and September 14, 2017 for case management. On September 14th, Justice Hilton set August 6, 2019 as the trial date with a pre-trial to be held July 18, 2019;
- f. The matter continued for ongoing case management dates in 2017, 2018 and 2019 all before Justice Hilton;
- g. The matter returned before Justice Hilton on August 6, 2019 where he noted that the Pathologist's Report remained outstanding. On that basis, the trial date was vacated;
- h. The matter next returned before Justice Hilton on August 22, 2019 where he set January 18, 2021 as the back up trial date and a substantive trial date of April 18, 2022;
- i. The matter continued for ongoing case management dates in 2019 and 2020. On October 29, 2020, Justice Hilton noted that one of the Applicant's co-accused, Kenric Riley had died (he died on June 30, 2020) and a pre-trial was set for December 17, 2020;
- j. On December 17, 2020, Justice Hilton noted the Pathologist's Report remained outstanding and set another pre-trial for January 14, 2021;
- k. On January 14, 2021, Justice Hilton noted the Pathologist's Report remained outstanding, the back up trial date of January 18, 2021 did not proceed and a case management date was set for May 13, 2021;
- l. The case was managed on several dates in 2021 and 2022. On March 31, 2022, Justice Hilton set another pre-trial for April 13, 2022;
- m. On April 13, 2022, Justice Hilton noted the Pathologist's Report remained outstanding, the substantive trial date of April 19, 2022 did not proceed and April 21, 2022 was scheduled to fix a new trial date;
- n. On April 21, 2022, Justice Hilton set a new trial date of August 14, 2023;
- o. The case was case managed on several dates in 2022 and 2023 returning for another pre-trial on July 13, 2023. On July 13th, another pre-trial was set for August 3, 2023;
- p. On August 3rd, Justice Hilton noted the Pathologist's Report remained outstanding, vacated the trial date of August 14, 2023 and August 24, 2023 was scheduled to fix a new trial date;
- q. On August 24, 2023, Justice Hilton set a new trial date of August 6, 2024;
- r. On January 25, 2024, Justice Hilton noted that the Applicant's co-accused, Philano Williams had died (he died on August 23, 2023) and a case management date was set for June 6, 2024;
- s. On July 25, 2024, Justice Hilton noted the Pathologist's Report still remained outstanding, vacated the August 6, 2024 trial date and September 12, 2024 was scheduled to fix a new trial date;

- t. On September 12, 2024, Justice Hilton noted the Pathologist's Report remained outstanding. He then set May 26, 2025 as the new trial date peremptory against the Prosecution with a pre-trial to be held April 3, 2025;
 - u. On April 3, 2025, the matter was before this Court (Justice Fitzpatrick) for the first time. The Respondent on that date acknowledged that the trial scheduled for May 26, 2025 was marked peremptory against the Prosecution. The Respondent also then confirmed that Pathologist's Report remained outstanding and was necessary for the trial to proceed. The case was scheduled to return on May 1, 2025 for mention regarding the status of the Pathologist's Report;
 - v. The Pathologist's Report remained outstanding on May 1st and the case was set to return on May 8th. On May 8th, the Respondent again confirmed that the Pathologist's Report remained outstanding, that the Report was relevant and that it had to be produced for the trial to proceed. The matter was then scheduled to return May 22, 2025;
 - w. The Applicant's counsel could not make the May 22, 2025 date. The matter returned the next day instead. On May 23rd the Respondent confirmed that the Pathologist's Report remained outstanding. That day, the Applicant's counsel advised of instructions to bring a constitutional application. The May 26th trial date was vacated. A schedule was set for the exchange of materials for the Applicant's intended application and a hearing date of August 8, 2026 was set. A new back up trial date of June 22, 2026 was scheduled along with a substantive trial date of February 22, 2027;
 - x. The Respondent filed the Pathologist's Report on June 11, 2025;
 - y. The matter returned before the Court on several occasions throughout 2025 and early 2026 as the parties sought to progress the intended application. The Applicant did not file his Application with supporting materials until March 9, 2026;
 - z. On April 7, 2026, the matter was before this Court when the Respondent was given a deadline of May 8, 2026 to file a response to the Application.
 - aa. The matter returned before the Court on May 15, 2026, when the Respondent sought an adjournment to determine whether the principal witness was willing to participate in the proceedings and, if not, whether the prosecution should continue, before the Application was addressed;
 - bb. The matter was next before this Court on June 25, 2026 when the Respondent advised of its intention to continue the prosecution of the case. The Respondent was then given a deadline of July 1, 2026 to file a response to the Application, which was filed on July 2nd. As a consequence, the June 22, 2026 back up trial date did not proceed;
 - cc. The Applicant's trial date remains scheduled for February 22, 2027.
10. The Respondent does not challenge the timeline noted above. Indeed, the Respondent concedes that the trial in this case was deferred, at least in part, because of its failure to disclose the Pathologist's Report until June, 2025. The Respondent also acknowledges that the proceedings were paused pending its determination as to whether it would continue the

prosecution. That said, the Respondent submitted that it has a viable case against the Applicant despite the death of the two co-accused noting its intention to rely on the eyewitness identification evidence of Godfrey E. Dean. The Respondent argues that the Applicant has suffered no breach of his rights and that he can have a fair trial.

11. The terms delay and reasonable time to trial are too often conflated such that some clarification at the outset will hopefully be of assistance. The term reasonable time to trial refers to the appropriate or acceptable timeframe to bring a given case to trial. The term delay means the period of time in excess of that acceptable timeframe.
12. The starting point in assessing whether an accused has been denied a trial within a reasonable time is the four-factor balancing test articulated fifty four years ago by the United States Supreme Court in *Barker v Wingo* [1972] 407 US 514 (“*Barker*”).
13. In *Barker*, Justice Powell identified four matters to be considered when determining whether an accused person has been deprived of the constitutional right to trial within a reasonable time: the length of the delay; the reasons advanced by the prosecution for the delay; the extent to which the accused has asserted the right; and the prejudice, if any, suffered by the accused as a consequence of the delay.
14. Justice Powell made it clear that the four factors suggested in *Barker* are neither exhaustive nor to be regarded as either “necessary or sufficient” to the finding of an unreasonable time to trial. The task for the court is to consider and balance these factors along with all other relevant circumstances. In other words, the court must identify, assess and balance all of the relevant circumstances, including but not limited to the factors identified in *Barker*, in the context of the specific case under consideration to determine if the constitutional right to a trial within a reasonable time was violated. The Court in *Barker* provides little additional guidance leaving each case to be decided by this “difficult and sensitive balancing process”.
15. The courts in the Bahamas have and continue to address complaints of trial delay by relying on *Barker*. The Court of Appeal did so recently in *The Director of Public Prosecutions v Howard Edney Rolle*, SCCr/ConApp No. 161 of 2023 (“*Rolle*”).
16. The issue before the Court of Appeal in *Rolle* was whether the right to a trial within a reasonable time was violated where the timeframe under consideration was approximately seven years. Justice Hilton (acting, as he then was) commenced his analysis in that case with reference to the four *Barker* factors. As such, there is no doubt that the *Barker* factors continue to be the framework to be applied in addressing the issue of reasonable trial time in The Bahamas.

17. Justice Hilton also confirmed that Article 20(1) of the *Constitution* provided an accused with three separate, distinct rights, namely to a fair trial, before an independent and impartial court, heard within a reasonable time.
18. We do not have the benefit of hindsight. This is not a case where the trial has been completed and the appeal process exhausted where we can with certainty know the prosecution end date. Where, as here, the court is addressing delay prior to trial, an appropriate measurement of timeliness is from the point that an accused is arrested to the scheduled commencement of trial (see: *Sooriamurthy Darmalingum v The State* [2000] UKPC 30, *R v HM Advocate and Another* [2002] UKPC D3, para 31 and *Prakash Boolell v The State* [2006] UKPC 46).
19. The Applicant's right to be tried within a reasonable time was engaged on March 29, 2017 with his arrest. The Applicant's trial is presently scheduled to begin February 22, 2027 which is expected to take one to two weeks to complete. The gross period of time to trial, therefore, is nine years and eleven months.
20. Any lost time caused by the Applicant must be deducted from the gross total. There was some time that was lost pending the Applicant filing his constitutional application. The Applicant's initial deadline to file was June 16, 2025. The Application was not filed with supporting materials until March 9, 2026. The time lost while awaiting this filing was approximately nine months, which must be deducted from the gross time calculation. The net time to trial in this case is, therefore, nine years and two months.
21. It is trite to note that the prosecution of the Applicant is the responsibility of the Respondent. The Respondent is required to ensure that the Applicant is brought to trial within a reasonable time.
22. The Caribbean Court of Justice in *Frank Gibson v. The Attorney General* [2010] CCJ 3 (AJ) at paragraphs 58, stated that a "finding that there indeed has been unreasonable delay in bringing the accused to trial must be made on a case by case basis. It cannot be reached by applying a mathematical formula although **the mere lapse of inordinate time will raise a presumption, rebuttable by the State, that there has been undue delay** [emphasis mine]. Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the State."
23. In the Privy Council decision in *Dyer v. Watson* [2004] 1 A.C. 379 at paragraphs 52, Lord Bingham stated that "the first step is to consider the period of time which has elapsed.

Unless that period is one which, on its face and without more, gives grounds for real concern it is almost certainly unnecessary to go further...The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which has elapsed is one which, on its face and without more, gives grounds for real concern, two consequences flow. First, it is necessary for the court to look into the detailed facts and circumstances of the particular case...Secondly, it is **necessary for the contracting state to explain and justify any lapse of time which appears to be excessive.**" [emphasis mine]

24. The Parliament of the Bahamas has provided a benchmark to assess whether the time to trial under consideration is reasonable. Section 4(2A) of the *Bail Act* provides that a period of three years from the date of the arrest or detention of the person charged to trial shall be deemed to be a reasonable time. In other words, by enacted statute, the timeframe for any case that has not been tried within three years from the arrest of an accused is deemed to be unreasonable.
25. Even where Parliament's three year benchmark is crossed it would be open to the Prosecution to provide evidence that the case under consideration reasonably required more time. A case may be exceptionally complex such as one involving huge volumes of electronic or other evidence requiring more than three years to reasonably bring to trial. A case may have evidentiary or similar developments close to the scheduled trial date that reasonably push the timeframe beyond three years. Failing such evidence being accepted by the court, Parliament's three year benchmark should otherwise apply.
26. The delay in the Applicant's case is six years more than the outer limit of the three year timeframe to trial that Parliament deems reasonable. There is no evidence before this Court suggesting that the prosecution of the Applicant is complex or otherwise establishing that Parliament's three year benchmark to trial should be extended in this case.
27. In *Shanto Curry v. Attorney General et al* [2006] BS 2006 SC 41, the Court treated a trial timeframe of seven years as sufficiently inordinate to be presumptively unreasonable. In *Quincy Johnson v Attorney General* [2005] BS 2005 SC 85, the Supreme Court held that a trial timeframe of four years was sufficient to engage that presumption.
28. The net timeframe to bring the Applicant's case to trial exceeds nine years. The delay in the Applicant's case exceeds six years. The length of time to trial here is not due to complexity or any other acceptable cause.

29. The Pathologist's Report was filed on June 11, 2025 after the Applicant's back up trial date of June 22, 2026 and substantive trial date of February 22, 2027 were scheduled. The back up trial date did not proceed and the Application was held in abeyance to allow the Respondent time to determine whether the prosecution would continue.
30. The prosecution was stalled for the eight years it took the Respondent to provide the Pathologist's Report in this case along with the additional time subsequently sought to determine whether the case would proceed. The delay in providing the Pathologist's Report in this case is without explanation and completely unacceptable. Unfortunately, the failure to furnish timely pathology reports has been a recurring cause of delay in the progression and determination of many criminal cases in this jurisdiction.
31. The Court of Appeal decision in *Alfred McKinney v The Director of Public Prosecutions, SCCr/Ap. No. 91 of 2025* ("*McKinney*") is also of assistance in evaluating the Application in this case. The issue of bail was before the Court of Appeal in *McKinney*, including whether the failure to provide the pathologist's report at the time the Voluntary Bill of Indictment ("VBI") was filed meant that no prima facie case could be established for the murder charge faced by Mr. McKinney.
32. The decision in *McKinney* is relevant to the Application herein where Justice Evans stated that the "lack of Pathologist's Report at the initial filing of a VBI is a procedural issue that can be rectified later through disclosure, **provided the prosecution has a good reason for the initial omission, and it does not prejudice the accused's right to a fair trial.**" [emphasis mine].
33. The Respondent argues that it took the position before this Court on two case management appearances that the prosecution could proceed without the Pathologist's Report.
34. The first point to note is that the Respondent on two other occasions before this Court, most recently on May 8, 2025, took the position that the Report was necessary and relevant for the trial. Clearly and at best, the Respondent's position in this regard is capricious.
35. The other argument advanced on this Application is that the Pathologist's Report is not relevant given that the Applicant denies involvement in the murder and says he was elsewhere. The Respondent says it can rely on the certificate of death alone. There is no doubt that the Respondent is at liberty to take the position that for its purposes the Report is not necessary. That does not mean it is irrelevant.
36. The Applicant has no obligation to testify at trial. If he exercises his right to remain silent then the only information the jury will have is that the Applicant denies responsibility for the charges confirmed by his expected not guilty plea when arraigned at the start of the trial

prior to jury selection. The jury will not hear from the Applicant about being elsewhere if he exercises his right not to testify.

37. A pathologist's report is relevant regardless of whether an accused testifies or claims a defence, including alibi. The report is a multiple page document prepared by a forensic pathologist providing various details that could be used by the accused's counsel at trial to challenge the testimonial reliability of prosecution witnesses. For example, a pathologist's report can offer details about the location of the injuries, the number of injuries, the force of the injuries, the directionality for the injuries and the proximity of the assailant. Except for the general location of the injuries, none of this information is contained in a death certificate.
38. Simply said, the detailed information provided in a pathologist's report could be used by counsel for an accused to challenge the narrative and memory of prosecution witnesses. Clearly, discrediting the testimony of prosecution witnesses is regularly a part of an accused's defence strategy along with other available defences such as alibi. The information in a report is, at the least, potentially relevant and must be disclosed unless expressly waived by an accused. This potential for relevance becomes increasingly compelling the more prolonged the period between the subject event and the trial with the material risk of fading memories over time.
39. The Applicant has been diligent in the pursuit of a timely trial. This is reflected and demonstrated by the case timeline detailed above. The Applicant retained counsel without delay to represent him. He, with few exceptions, and his counsel attended the many court dates set over the course of this case. The Applicant accepted the trial dates offered by the court, which presumably were the earliest dates available in the court calendar, and thereby undertook to be ready for trial as scheduled. There is not one instance where the Applicant objected to an otherwise available trial date or where a set trial date was adjourned at the behest of the Applicant.
40. The Applicant did what he could do to seek and assert his right to a timely trial. There is nothing further he reasonably could have done or should have done to meaningfully invoke this right. The Applicant did not by agreement or other express means waive any of this delay except for the time lost awaiting the Application being filed.
41. The Applicant does not contend that he has endured conditions comparable to those of a person detained at BDOC. He has been on bail since 2018 and he has, thereafter, been able to participate in society subject to his bail terms restrictions. That said, there is no doubt that the Applicant has suffered real prejudice here.

42. The Applicant has been subject to the criminal process since his arrest in early 2017. This means he has presented himself and paid for his lawyer for the many court attendances required for this case. The Applicant's family, social and work life have been disrupted dealing with this case. He has carried the weight of the allegation of murder against him and the anxiety from the uncertainty of outcome. The Applicant also has borne the stigma of being accused of murder in the relatively small community of Nassau.
43. The Applicant has also faced the risks that a murder allegation brings in The Bahamas. The courts in The Bahamas have regularly referenced the culture of retaliation that exists here. This culture is well recognized by the Respondent who has in other matters before this Court, namely on bail hearings, filed and relied upon reports setting out the statistics for retaliatory violence.
44. All of this prejudice is significant and amplified by the length of time the Applicant's case has taken to come to trial.
45. The Applicant states that "witnesses/defendants, crucial to my case have since been murdered and accordingly are not subject to cross-examination" [see: Affidavit of Terry Sweeting filed March 9, 2026 at paragraph 6]. The Applicant does not specify who these witnesses are. Presumably he refers to his two now deceased former co-accused. The Applicant fails to identify how he is prejudiced by the death of his co-accused. Both, if present for trial, would be entitled to the same right of silence of the Applicant. Neither would be a compellable witness in the defence of the Applicant nor available for cross-examination unless choosing to testify.
46. Prejudice may also be inferred or presumed flowing from the length of time a case has waited for a trial. The inference being made where a case lingers is a reasonable one. It is a matter of common sense and experience that evidence, in particular memories, degrade with the passage of time with related impact on an accused's ability to make a full answer and defence. The longer the wait the more likely the inference will crystalize. The inference though is rebuttable where the Respondent can demonstrate no actual prejudice to an accused. The Respondent has not done so offering only the unsupported assertion that the Applicant has suffered no prejudice.
47. The duration of these proceedings, now exceeding nine years, gives rise to a presumption of prejudice. There is no meaningful doubt that the memories of all 17 of the prosecution witnesses, including the Respondent's primary witness Mr. Godfrey, will have frayed, at least to some degree, over the past decade.

48. The Respondent has not addressed this concern at all. For example, there is no current statement signed by Mr. Godfrey or anything else before this Court to find or even suggest that the Respondent has been in recent contact with Mr. Godfrey to ensure his participation in any trial and his ability to now recall events from 2017. All there is before this Court is a statement given by Mr. Godfrey on March 30, 2017 stating that he was an eyewitness to the murder and the Applicant's participation. This statement does not constitute Mr. Godfrey's trial evidence. If he can be located and is willing to participate, he will be required to give evidence in person as to his recollection of the events of early 2017.
49. In conclusion and with consideration to all of the relevant factors, the Court finds that the Applicant's constitutional right to a fair hearing within a reasonable time has been infringed.

Has the Applicant's Right Not to be Deprived of His Liberty Been Violated?

50. The Applicant also seeks constitutional relief in respect of an alleged breach of his right under *Article 19(1)(d) of the Constitution* not to be deprived of his personal liberty except upon reasonable suspicion that he has committed a criminal offence.
51. The Applicant contends that the charge of murder brought against him was not supported by a reasonable suspicion that he had committed the offence. I am unable to accept that submission for two reasons.
52. The sufficiency of evidence is best suited to a No Case Application following the close of the prosecution evidence. Only then will the Court have the benefit of the whole, tested evidence to undertake the appropriate analysis on the issue of sufficiency (see: *R. v. Chairman, County of London Quarter Sessions ex parte Downes* [1954] 1 Q.B. 1 and *R. v. Rey Rodriguez* and another decided 17 February 2020).
53. Also, the Court has above noted the probative evidence presented by the Respondent when the Applicant was charged going to the issue of identification and the Applicant's involvement in the allegations, namely the eyewitness statement given by Mr. Godfrey on March 30, 2017.
54. The evidentiary materials presented at the commencement of the proceedings, including the statement of Mr. Godfrey, were sufficient to establish reasonable suspicion. Regardless, the sufficiency of the prosecution case is best determined at trial upon fulsome, tested evidence.

55. The Court finds that the Applicant's constitutional right not to be deprived of his personal liberty except upon reasonable suspicion that he has committed a criminal offence has not been infringed.

What is the Appropriate Remedy Where the Applicant's Right to a Trial Within a Reasonable Time Has Been Violated?

56. The Court has a range of possible remedies available to address the violation of the Applicant's right to a trial within a reasonable time, including an order for costs, an expedited trial or a stay of the proceedings in exceptional circumstances.
57. In determining the fit remedy here, the Court must weigh the competing interests of the public in having criminal allegations decided on the merits and the right of the Applicant to a timely trial applying the principles of proportionality [see: *Frank Gibson v. Attorney General* 2010 CCJ 3 (AJ)].
58. The ultimate position of the Respondent is that the Applicant can and will have a fair trial. This is offered as a panacea to any and all issues that have arisen, including any complaint by the Applicant about timely justice. The Respondent offers no evidentiary basis or even suggested details for its assertion that the Applicant will have a fair trial. Simply saying so is not sufficient.
59. A timely trial that takes place while evidence is available and undiminished, including the memory of witnesses, is the foundation of a fair trial. The Applicant's trial has been anything but timely. He has suffered real and presumptive prejudice. The Respondent's inordinate delay in bringing this matter to trial has materially impaired the Applicant's prospects of receiving a fair trial.
60. The net nine year timeframe to bring this matter to trial and six year delay with related impact upon the Applicant is extraordinary. The Respondent has not provided any explanation whatsoever for its failure to bring the Applicant's case to trial in a timely, constitutionally compliant way.
61. The extraordinary delay and absence of explanation direct that a stay be granted. Having weighed the public interest in having the grave allegation in this matter tested on the merits against the Applicant's constitutional entitlement to a hearing within a reasonable time, the Court concludes that no lesser remedy would be fit.

Disposition

62. For the reasons set out above, the Applicant's constitutional motion is allowed. The Applicant's right to a fair hearing within a reasonable time under *Article 20(1) of the Constitution* has been infringed. A stay of the prosecution is the only fit remedy in the circumstances of this case.

Dated this 24th day of September, A.D. 2026

Fitzpatrick J