

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Criminal Division**

**2022/CRI/bal/No.00189**

**BETWEEN:**

**SOLOMON LAMEECH WILLIAMS A.K.A SOLOMON HIGGS**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

Before: The Honourable Madam Justice Camille Darville- Gomez  
Appearances: Solomon Lameech Williams aka Solomon Higgs appearing pro se.  
Ms. Cashena Thompson for the Respondent  
Hearing Date: 30<sup>th</sup> August, 2022

**BAIL DECISION**

**Darville Gomez, J.**

**FACTUAL BACKGROUND**

1. The Applicant, 32 year old Solomon Lameech Williams a.k.a Solomon Higgs is charged with the offence of Armed Robbery contrary to 339 (2) of the Penal Code Chapter 84. The particulars are: 'That you on Saturday 18<sup>th</sup> June, 2022, while at New Providence, and armed with an offensive instrument to wit: a handgun, did rob Emmanuel Armbrister of a Black Samsung S 21 valued at \$250.00, a Black TCL cellphone valued at \$130.00 and a Silver 2013 Nissan Tiida Latio L/P#SN#1492 VALUED AT \$5,500. Property of Shon Missick'. The Applicant is currently in custody at the Bahamas Department of Correctional Services ('BDOCS'). He was arraigned on the above mentioned charge sometime in June, 2022 before the Magistrate's Court and is likely to be served with his Voluntary Bill of Indictment ('VBI') on the 5<sup>th</sup> October, 2022.

2. The Applicant applied for bail pursuant to section 4 of the Bail Act by way of Summons and supporting Affidavit both filed on the 12<sup>th</sup> August 2022. He followed up with a letter dated the 26<sup>th</sup> August, 2022 addressed to this Court requesting the grant of bail.
3. The Respondent filed an Affidavit in Response on the 22<sup>nd</sup> August, 2022 outlining their reasons for objecting to the Applicant's application for Bail.

#### THE APPLICANT'S CASE

4. The Applicant claimed that prior to his incarceration, he worked in maintenance repairing buildings. He averred in his Affidavit that he has been mistaken, claiming in essence that he is innocent of the charge of Armed Robbery against him. He swore in his Affidavit that he has no previous convictions nor any pending matters before any courts in this jurisdiction. With that said, he added that he is not a flight risk as all of his ties are to The Bahamas and stated that he will refrain from any interference with prosecution's witnesses in this matter. The Applicant submitted that there are adequate conditions which this Court can impose should it exercise its discretion and grant bail; and that such grant will permit him to retain legal counsel to appropriately prepare his defence.

#### THE CROWN'S CASE

5. The Crown relied on its Affidavit in Response to support its objection to the grant of bail. To support their objection, Crown Counsel submitted that the Applicant has a past criminal history and directed the court to the Applicant's Criminal Records Antecedent Form at Exhibit "TF-2" of their Affidavit. Counsel elaborated on the argument that the Applicant's history reflects convictions for similar offences to that of Armed Robbery such as stealing/receiving and threats of death which portrays violent behaviour. Therefore, the Applicant will commit offences if released on bail and it is not in the interests of public safety to grant bail.
6. Crown Counsel also averred that that the Applicant is not trustworthy as he deceived the Court by swearing at paragraph 5 of his Affidavit that he has no pending matters in any court nor convictions. In addition, Counsel pointed out that the Applicant was convicted sometime around 13<sup>th</sup> March, 2007 for Deceit of a Public Officer to support the argument that he is dishonest. To further support the argument, Crown Counsel pointed out paragraph 6 of the Applicant's Affidavit concerning the Identification Parade and Exhibited a form marked "TF - 6" where the Applicant allegedly noted that he is not willing to attend an identification parade.
7. Crown Counsel submitted two cases for the court's consideration when determining whether the Applicant should be granted or denied bail: **Hurman v The State [2005] UKPC 49 and Jevon Seymour and The DPP SCCrApp No. 115 of 2019.**

## THE ISSUE

8. The issue at hand is whether the Applicant, Solomon Lameech Williams a.k.a Solomon Higgs should be granted or refused bail.

## THE LAW

9. Article 20(1) of the Constitution 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.”*

10. And at 20 (2)(a) that:

*“Every person who is charged with a criminal offence — (a) shall be presumed to be innocent until he is proved or has pleaded guilty;...”*

11. According to the Bail Act, 1994 ( Amendment 37 of 2011), Section 4(2) reads:

*“Notwithstanding any other provisions of this Act or any other law, any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged –*

*(a) Has not been tried within a reasonable time;*

*(b) Is unlikely to be tried within a reasonable time; or*

*(c) Should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B)*

*And where the court makes an order for the release, on bail, of that person, it shall include in the record a written statement giving the reasons for the order of the release on bail.”*

*(2A) For the purposes of subsection 2 (a) and (b) –*

*(a) Without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;*

*(b) Delay which is occasioned by the act or the conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.*

*(2B) For the purpose of subsection (2)(c), in deciding whether or not to grant bail to a person charged with an offence mentioned in Part C of the First Schedule, the character or antecedents of the person charged, the need to protect the safety of the public or public order and, where appropriate, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.*

*(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal.*

*(3A) Notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule."*

12. The Amendments to the First Schedule found at Part A outlines some factors that the Court must take into consideration when determining whether to grant bail to an Applicant/Defendant. Part A reads as follows:

*"In considering whether to grant bail to a defendant, the court shall have regard to the following factors—*

*(a) whether there are substantial grounds for believing that the defendant, if released on bail, would-*

*(i) fail to surrender to custody or appear at his trial;*

*(ii) commit an offence while on bail; or*

*(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;*

*(b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;*

*(c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;*

*(d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;*

*(e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;*

*(f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;*

*(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant;*

*(h) in the case of violence allegedly committed upon another by the defendant, the court's paramount consideration is the need to protect the alleged victim."*

#### ANALYSIS and CONCLUSION

13. A common principle involving bail applications is, the Crown carries the burden of satisfying the Court that an Applicant is not a fit and proper candidate to be granted bail. This principle was affirmed in the First Schedule of the Bail Act and cited by the Honourable Madam Justice of Appeal Crane- Scott in *Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019*, at paragraph 65 :

*“...Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail “would” if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown’s burden is only discharged by the production of such evidence.”*

14. At paragraph 63 in ***Seymour v. DPP*** the Court cited the case of ***Jonathan Armbrister v. The Attorney General, SCCrApp No. 145 of 2011*** which read:

*“17. It must however, be borne in mind that the onus is upon the Crown to satisfy the Court that the person ought not to be granted bail.”*

15. Crown Counsel relied on passages from the two cases alluded to early to support its objection to the grant of bail. I find it necessary to include them in this decision.

***Hurman v The State [2005] UKPC 49***, page 10; paragraph [15]:

*“ It is obvious that a person charged with a serious offence, facing severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good ground for refusing bail...”*

***Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019***, page 18; paragraph 68:

*“If the appellant was in fact a threat to public safety or public order; or if there was evidence of specific threats which had been made against the witnesses, Perry McHardy’s affidavit should have included the necessary evidence of his propensity for violence for the judge’s consideration. Such evidence might have included for example, any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences, or again, evidence for instance, of any known or suspected gang affiliation. No such evidence was placed before the learned judge and the absence of such evidence, stood in stark contrast with the evidence which the appellant had placed before the judge of his good character, strong family and community ties and the fact that he had a long and unblemished record of service within the BDF.”*

16. The factors and primary considerations that the Court must take into account when determining whether to grant or deny bail are outlined under the Law at paragraphs 11 and 12 above. A number of Courts have applied the various considerations when exercising its discretion. In ***Randy R. Williams and Director of Public Prosecutions SCCrApp. No. 25 of 2022***, Sir Michael Barnett, P at paragraphs 11, 12, and 19 pronounced the following:

“ 11. In my judgment a judge in denying bail must have “substantial” grounds for believing the an applicant for bail “would” not “might” or “may” abscond, interfere with witnesses or commit a crime whilst on bail.

12. *There is always a possibility that an applicant for bail may abscond, interfere with witnesses or commit a crime. However, if that possibility, nay probability, was not based on evidence then it would be difficult to see how any person charged with an offence would be granted bail.*

19. *In my judgment, it cannot be a proper exercise of judicial discretion to deprive a person of his liberty on a speculative belief that a person may interfere with witnesses or commit a crime whilst on bail. This is particularly so where an accused has no antecedents.”*

17. It is now the duty of this Court to consider those factors and primary considerations that are applicable to the instant case. Having assessed the filed Affidavits, and hearing the submissions made by the parties, I find that the Crown produced substantial grounds for supporting their argument that the Applicant should not be granted bail.

18. At paragraph 28 of **Stephen Godfrey Davis and The Director of Public Prosecutions SCCrApp. No. 108 of 2020** Isaacs JA said:

*“The antecedents of an applicant for bail is an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to commit other offences while on bail.”*

19. The Applicant’s past criminal history shows a tendency to commit crimes that are similar in nature to the offence which he is now charged before this Court. The offences which I find similar are: Stealing/ Receiving, Threats of death, and Attempted murder. The dates of these sentences range between January 2007 and May 2013. Although the Stealing/ Receiving is some 15 years, in my opinion it can still be considered to prove the argument that the Applicant may likely re-offend if granted bail. What weighs heavily against the Applicant is the Attempted Murder conviction and sentence of ten (10) years on the 31<sup>st</sup> May, 2013; a very recent conviction. Crown Counsel submitted that the Applicant was released in February, 2020 after serving his sentence for the Attempted Murder.

20. Consideration must also be given to the nature and seriousness of the offence. In the case of **Jonathan Armbrister v The Attorney General SCCrApp. No. 45 of 2011**, John JA expressed that:

*“The seriousness of the offence with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail.”*

21. In this instance, the charge laid before the Court is Armed Robbery with an offensive instrument being a handgun. In my opinion, armed robbery is a very serious offence; and one which could possibly result in death. Moreover, just as the Attempted Murder which the Applicant was convicted. With that said, it is likely that the Applicant may re-offend if granted bail.
22. Crown Counsel averred that it would be in the best interest of the public that the Applicant ought not to be granted bail.
23. In the Court of Appeal case of *Richard Hepburn and the Attorney General SCCr.App. No.276 of 2014* Dame Allen at paragraph 5 of the judgment stated that:

*“Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crimes; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.”*

24. In weighing the two important competing interest, I find that the evidence produced in this application suggests that the Applicant is likely to re-offend and may become a danger to society. As such, these circumstances result in an override of the Applicant’s freedom in order to protect the safety of the public and public order. Paragraph 62 of the case of *Jevon Seymour v DPP* is also instructive on the point of public safety as the court highlighted :

*“Paragraph (a) of Part A of the First Schedule to the Bail Act expressly mandates a judge who is hearing a bail application to take into account whether there is evidence in the form of “substantial grounds” from which a belief can be formed (or inferred) that the applicant was, inter alia, a flight risk; a threat to public safety or public order; would interfere with witnesses or otherwise pervert the cause of justice.”*

25. In my opinion, the Crown has sufficiently provided this Court with substantial grounds to support the objection of bail. Having measured all the necessary factors and considerations, along with the evidence produced, I exercise my discretion in accordance with the Bail Act and find that the Applicant is not a fit and proper candidate for the grant of bail.
26. Bail is hereby denied for the reasons outlined in this decision.

**Dated this 16<sup>th</sup> day of September, A. D., 2022**

  
**Camille Darville Gomez**  
Justice