

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

Criminal Side

2023/CRI/bal/No. 00005

BETWEEN

WILNALDO WILLIAME

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Mr Senior Justice Bernard Turner

APPEARANCES: Mr Quinton Percentie for the Applicant
Ms Cordell Frazier and Ms Karine MacVean for
the Respondent

HEARING DATE: 6 February 2023

RULING

TURNER Snr. J.

1. The applicant herein applied for bail by way of a summons with an affidavit in support thereof filed on 20 January 2023.
2. The applicant is charged with Armed Robbery and Kidnapping, which are alleged to have been committed on 4 January 2023.
3. The affidavit of the applicant reads, in part:

“..

3. That I am 20 years of age, date of birth 12th December, 2022, and I am charged with Armed Robbery: Contrary to Section 339 (2) of the Penal Code, Chapter 84 and Kidnapping: contrary to Section 282 of the Penal Code, Chapter 84. A copy of the Charge Sheet is herein attached and marked as Exhibit WW-1.

4. That the Office of the Attorney General has advised that they intend to present a Voluntary Bill of Indictment against me on 26th March, 2023.

5. That I was born in The Bahamas and now awaits an appointment to be sworn in as a citizen of the Commonwealth of The Bahamas.

6. That I have never lived or resided in any other country, herein attached a copy of my birth certificate and Department of Immigration confirmation receipt and marked as Exhibits "WW-2 and WW-3."

7. That prior to my arrest, I was employed at Show boy Bistro Restaurant and also at Island Brothers mobile detailing and Cash washing.

8. That the evidence against me is weak and I wish to be given an opportunity to vigorously mount a defense to the charges against me, and I humbly submit that that will be

difficult if I am on remand at the Department of Correctional Services and not gainfully employed.

9. That I make this Affidavit in Support of the Application for Bail as stated in the First Schedule (Section 3) Part A of Chapter 103 of the Bail Act that:

- a. In relation to the charges of Armed Robbery and Kidnapping and the evidence linking me to the offence is very weak;**
- b. There is no reasonable belief that if Bail is granted, I will not appear for trial;**
- c. That I have no Antecedents and there is no reason to believe that I will interfere with any evidence or anyone connected with the matter before the Court; and**
- d. That the bail will afford me the opportunity to be gainfully employed and provide for my family, and defend this allegations.”**

4. In response to Counsel’s submissions that the applicant, being a person with no antecedents, no pending matters and gainfully employed, is entitled to be granted bail, counsel on behalf of the respondent, the Director of Public Prosecutions, objected to the grant of bail and contended that the applicant was not a fit and proper candidate for bail as the case was a serious one and the evidence was cogent.
5. The respondent further focused their submissions on the fact that the applicant is not (yet) a citizen of The Bahamas, that he has no real ties to The Bahamas that he has the means to abscond and therefore in these circumstances is indeed likely to abscond.
6. The applicant had exhibited a copy of a birth certificate indicating that he was born in The Bahamas, at the Princess Margaret Hospital, and

asserted, in the affidavit, that he has never lived anywhere else. He also provided a copy of a letter applying for citizenship and a copy of a letter from the Department of Immigration acknowledging receipt of the same.

7. Without delving into the question as to whether he is entitled to being made a citizen of The Bahamas, in the absence of any indication that the asserted facts as to his nationality status are not true, the court is left to conclude that the applicant does in fact have a substantial connection to The Bahamas.
8. The charged offences are Part C offences and in relation to those types of offences section 4(2) of the Bail Act provides:

“4. (2) Notwithstanding any other provision 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,

(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 make 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 for the released on bail.

...

(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.”

Part A of the First Schedule of the Act provides:

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;...

(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.

9. There are, unsurprisingly, appellate decisions on the issue of what justifies a denial of bail on the issue of a fear of absconding. That

standard generally is that there must exist sufficiently probable grounds that the applicant **“would”** (and not “may”) abscond the jurisdiction of the court if granted bail. Only then would detention be necessary to secure and ensure the applicant’s appearance (see **Toni Sweeting v. Commissioner of Police** MCCrApp No. 133 of 2013; **Attorney General v. Bradley Ferguson et. Al** SCCrApp No. 57, 106, 108, 116 of 2008).

10. The Court of Appeal in **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**, stated, at paragraph 66, the following:

“66. In the absence of evidence, merely listing the relevant factors and using expressions such as “may”; or “is likely to”; or “it is recommended” as was done in the McHardy affidavit, cannot discharge the Crown’s burden. We take this opportunity to stress once again what this Court (differently constituted) said in Armbrister, which is that that is not how the Crown’s burden on a bail application is discharged. Paragraph (a) of the First Schedule requires the production by the Crown of evidence capable of supporting a belief that the applicant for bail “would”, if released, abscond, commit new offences or interfere with witnesses. Ritualistic repetition of the Part A factors, in the absence of evidence, is unfair to the accused person and comes nowhere close to discharging that burden.”


11. The position of the appellant in **Seymour** is the exact position this applicant is in, a person who asserts his good character and absence of criminal convictions. The Crown invites the court to find that, based on the present "nationality" circumstances of the applicant, that he would fail to surrender to custody, without providing any real basis for the court to do so, beyond what was asserted as a possibility, that would clearly be unreasonable and wrong, in the Court of Appeal's analysis.

12. In these circumstances, the applicant is entitled to and therefore granted bail on the following stringent terms:

1. Bail in the sum of \$15,000.00 with two sureties.
2. The applicant is to be electronically monitored and is required to comply with the Regulations for the use of such a device.
3. The applicant is not to come into any deliberate contact with any of the witnesses in this matter, either by himself or through any agent.
4. The applicant is prohibited from coming within 200 feet of the virtual complainant in this matter and from coming within 500 feet of the Shangra La residences, West Bay Street, Nassau.
5. The applicant is required to sign in at the Nassau Street Police Station on Mondays and Fridays before 6:00pm.
6. The applicant is required to remain at his identified home between the hours of 8:00pm and 6:00am.

7. A breach of any of these conditions will render the applicant liable to further remand.

Dated this 13th day of February, A D 2023



Stn. J.

**Bernard S A Turner
Senior Justice**