

**COMMONWEALTH OF THE BAHAMAS**

**In The Supreme Court**

**Criminal Division**

**No. CRI/BAIL/2023**

**BETWEEN**

**ANTONIO GLINTON**

**Applicant**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

Before: Her Ladyship, The Honourable Madam Justice Jeanine Weech-Gomez

Appearances: Mr. David Cash for the Applicant.  
Mr. Howard Thompson et al for the Respondent.

**RULING- BAIL**

**INTRODUCTION**

1. Antonio Ginton (D.O.B. 7<sup>th</sup> August, 1993) the Applicant (“**Applicant**”) was granted Bail on the 20<sup>th</sup> December, 2021 for one count each of Attempted Murder, Armed Robbery and Possession of a Firearm with Intent to Endanger Life and was to be electronically monitored as a part of his bail conditions. He was thereafter charged with five (5) counts of violating bail conditions before the Magistrate’s Court #8 for failing to keep his electronic monitoring device (“EMD”) charged and was granted Bail in the amount of \$6,500 by the Magistrate’s Court relative to these charges with a Suretor and no conditions. He thereafter applied to the Supreme Court via Summons and Affidavit filed the 14<sup>th</sup> February, 2023 to vary his bail granted to be varied to one or two more Suretors. The Respondent thereafter via its summons and affidavit filed the 16<sup>th</sup> February, 2023 responded seeking to revoke the Applicant’s Bail completely.

**SUBMISSIONS**

2. The Applicant details that he is a skilled mason by trade and operator of a licensed business named 3A’s rental which provides scooter and ATV rentals to Tourist and that his business has been threatened by theft while he is on remand. He seeks the Court’s assistance to vary the bail conditions attached to the violation of bail charge by the addition of another Suretor to help him meet bail so that he can attend to his business and support his family.
3. At the outset it should be noted that the because the Crown brought an application for the revocation of the Application’s bail , that application became primary as everything will turn on whether Bail revoked or not. The Applicant’s Counsel thereafter replied to the application of the Prosecution on revocation.
4. The Respondent has intimated that the Applicant’s Bail ought not to be varied but revoked completely as he has violated the conditions to be bound by the 2010 Regulations of the EMD device on five occasions and in some instances for extended periods and there is concern that if he remains on Bail, he may reoffend looking to his antecedents and the public interest and that he seems to have no regard for the Bail conditions. There was also concern by Counsel that the Applicant’s trial being the 20<sup>th</sup> March, 2023 meant it was more prudent for him to remain remanded, and for these reasons he is not a fit and proper candidate to be Bail and in the circumstances Bail ought to be revoked. Counsel also intimated from the case of ***Tassey V DPP (MCCrApp.***

**No. 129 of 2022)** that it was made clear that bail can be revoked although his matter is not being dealt with in the Magistrate's Court.

5. The Applicant's Counsel responded that while the trial is set for the 20<sup>th</sup> March, 2023, this is not a trump card for the Prosecution to keep him remanded and looked to the case of **Duran Neely** in support. The Applicant's Counsel continued that application for revocation was an abuse of process as the matter was already before the Magistrate's Court on the exact charges and relied on Article 20(5) of the Constitution of the Bahamas and the Criminal Procedure Code 158(1). Counsel opined that the Prosecution is seeking to by-pass the criminal trial in the Magistrate's Court because the Applicant already got bail there but the Magistrate's Court is the correct forum to bring both matters and for this matter Counsel asserted that the Respondent's application ought to be dismissed.
6. In concluding, Counsel for the Applicant furthered that there is a trial to be had on the violation charges which separates this matter from Tassej in some aspects as this matter is still at the Bail stage.
7. Counsel for the Respondent, replied by averring that this is not a trial and no evidence need to be adduced at this point. Counsel continued that the Supreme Court has jurisdiction to hear the revocation of Bail as it granted Bail for the substantive matter and to say the Supreme Court does not have jurisdiction, its hands are tied suggests that the Supreme Court cannot enforce its own order. The purpose of legislation was never to shackle the Supreme Court and looked to paragraph #24 of Tassej.

## **THE LAW**

### **The Bail Act**

**Section 12 of the Bail Act provides:**

**12. (1) Where a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a Court fails to surrender to custody at the time appointed for him to do so, the Court may issue a warrant for his arrest.**

**(2) Where a person who has been released on bail in criminal proceedings absents himself from the Court at any time after he has surrendered into the custody of the Court and before the Court is ready to begin or to resume the hearing of the proceedings, the Court may issue a warrant for his arrest, but no warrant shall be issued under this subsection where that person is absent in accordance with leave given to him by or on behalf of the Court.**

**(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a Court may be arrested without warrant by a police officer where —**

**(a) the police officer has reasonable grounds for believing that that person is not likely to surrender to custody**

**(b) the police officer has reasonable grounds for believing that that person has committed another offence while on bail;**

**(c) the police officer has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or**

**(d) in a case where that person was released on bail with one or more surety or sureties, a surety notifies a police officer in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.**

**(4) A person arrested in pursuance of subsection (3) shall be brought as soon as practicable, and in any event within forty-eight hours after his arrest —**

**(a) before a Magistrate; or**

**(b) where a person is arrested within forty-eight hours of the time appointed for him to surrender to custody, before the Court at which he is to surrender to custody.**

**(5) Subject to paragraphs (a) and (f) of Part A of the First Schedule where a Magistrate before whom a person is brought under subsection (4) is of the opinion that that person —**

**(a) is not likely to surrender to custody;**

**(b) has committed another offence; or (c) has broken or is likely to break any condition of his bail, the Magistrate may, subject to subsection (6), remand him in custody or commit him to custody, as the case may require or, alternatively, grant him bail subject to the same or different conditions, save that where the Magistrate is not of any such opinion, the Magistrate shall grant him bail subject to the same conditions, if any, as were originally imposed.**

**(6) Where the person brought before the Magistrate under subsection (4) is a child or young person and the Magistrate does not grant him bail, subsection (5) shall have effect subject to the provisions of section 36(1) of the Children and Young Persons (Administration of Justice) Act.”**

**The Bail Act (as amended) 2016, sections 12A and 12B**

**12A. Offence of violating conditions of bail.**

**Any person who, having been released on bail in criminal proceedings and who breaches any conditions of bail, commits an offence.**

**12B. Penalty for violating conditions of bail.**

**(1) An offence under section 12A is punishable on summary conviction to a fine not exceeding \$50,000.00 or to a term of imprisonment not exceeding five years or to both such fine and term of imprisonment.**

**(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 the granting of bail of the accused person, and duly certified to be a true copy of that part of the record, shall be evidence of the conditions of bail.**

**DISCUSSION**

8. As both Counsels have made mention of the case of *Tassej (supra)*, this Court is also guided by the principles therein and the sections of the Bail Act as quoted above.

**Bail Revocation**

9. In relation to Bail Revocation, when looking to section 12(3)-(5) of the Bail Act:

**(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a Court may be arrested without warrant by a police officer where —**

**(a) the police officer has reasonable grounds for believing that that person is not likely to surrender to custody**

**(b) the police officer has reasonable grounds for believing that that person has committed another offence while on bail;**

**(c) the police officer has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or**

**(d) in a case where that person was released on bail with one or more surety or sureties, a surety notifies a police officer in writing**

*that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.*

**(4) A person arrested in pursuance of subsection (3) shall be brought as soon as practicable, and in any event within forty-eight hours after his arrest —**

**(a) before a Magistrate; or**

**(b) where a person is arrested within forty-eight hours of the time appointed for him to surrender to custody, before the Court at which he is to surrender to custody.**

**(5) Subject to paragraphs (a) and (f) of Part A of the First Schedule where a Magistrate before whom a person is brought under subsection (4) is of the opinion that that person —**

**(a) is not likely to surrender to custody;**

**(b) has committed another offence; or (c) has broken or is likely to break any condition of his bail, the Magistrate may, subject to subsection (6), remand him in custody or commit him to custody, as the case may require or, alternatively, grant him bail subject to the same or different conditions, save that where the Magistrate is not of any such opinion, the Magistrate shall grant him bail subject to the same conditions, if any, as were originally imposed.**

10. When looking at Sections 12 (3-5) above it conveys what Tasse (supra) highlighted at paragraph 26 that,

**“In our judgment, it is imperative that persons on bail fully understand that the conditions upon which they are released on bail must be complied with by them. Prior to the 2016 amendment, a breach of conditions could only result in the revocation of their bail; but by the 2016 amendment, not only can bail be revoked but they can be further punished for the breach as a criminal offence”.**

11. Therefore the Magistrate has power to hear the revocation of a Bail application and through sections 12(5) either remand to custody or grant Bail as was done in this instant matter.

12. The Magistrate was also correct to hear the violation of a Bail matter under sections 12A and 12B of the ***Bail Act (as amended) 2016***, and was confirmed in ***Tasse (supra)*** as detailed below where sections 12 A and B were said to apply to,

**16.... “any person released on bail in any criminal proceedings. That is so whether the proceedings are in the Magistrates Court, the Supreme Court or the Court of Appeal. The section also applies to any condition whether the condition relates to attending court on the date(s) fixed for attendance, curfew, area restriction, reporting requirements or the wearing of an electronic monitoring device.**

**15. The offence created by section 12A is a summary offence. It is triable only in the Magistrates Court, notwithstanding that the bail and conditions may have been imposed by the Supreme Court or Court of Appeal. The penalty for committing the offence is a fine not exceeding \$50,000.00 or imprisonment for a term not exceeding 5 years or to both a fine and imprisonment. By any reference, these are heavy penalties and reflect a desire by Parliament that a breach of bail conditions be regarded as a serious offence, and one that should be dealt with quickly by the courts.**

**16. 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.**

13. From the highlighted points of *Tassey* above, it is clear that the Magistrate has jurisdiction to hear the Bail revocation under section 12 and violation of Bail under Sections 12A and 12B (see no.16 above).

14. Of note, *Tassey (supra)* was a matter where the trial for the violation of Bail had already concluded and in this instant case the substantive hearing has not yet materialized but the issue of Bail which the Magistrate rightly had jurisdiction to hear was also adjudicated.

15. Understanding the above, this Court agrees with the argument of the Defense that hearing this Bail revocation application would be duplicitous in nature as the Magistrate has the jurisdiction to hear both and has already laid the foundation for same.

16. It must also be stated for the record, that through perusal of the evidence particularly as it related the EMD report laid over, while it is appreciated that even if not charged the Applicant's location can still be determined, it is however concerning that Applicants outfitted with such devices could be monitored for length periods in this case allegedly a month without being brought in for questioning or concern or confirmation of their whereabouts whether by going to the location or the like for an understanding of what is

happening. On the first day of alerts of non –charging chase should be made to secure the whereabouts of the Defendant and confirmation of what may be transpiring with his device, whether or not technical issues, his safety or failure to charge, these should have been confirmed in haste and not a month's delay to act.

### **Conclusion**

17. This Court having heard the arguments of both parties and after perusal of the Law and principles laid out in the recent case of *Tassey (supra)*, it is evident that the Magistrate has jurisdiction to adjudicate both matters and would be duplicitous in nature to be heard here in the Supreme Court and for this reason orders that the matter of revocation and violation of Bail be continued within its jurisdiction of the Magistrate's Court which is said to have granted Bail in relation to the violation Bail and should be followed there. Therefore dismissed here in the Supreme Court,

18. It also ordered that the stay concerning the Learned Magistrate's rule be lifted.

**Dated this 8<sup>th</sup> day of March, 2023.**

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**The Hon. Madam Justice Jeanine Weech – Gomez**