

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

**2012
CRI/bal/00230**

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

V

BERKLEY FOWLER

Respondent

**BEFORE: The Honourable Madam Senior Justice
Cheryl Grant-Thompson**

**APPEARANCES: Director of Public Prosecutions Ms. Cordell
Frazier - The Office of the Director of Public
Prosecutions for the Applicant**

Pro Se- Counsel for the Respondent

HEARING DATES: January 24th, 2024

BAIL JUDGMENT

***Bail - Bail Act - Application for Bail –Bahamian-Ties to Community-Whether
applicant is a fit and proper candidate for bail***

GRANT-THOMPSON, J

1. This is an Application for the Revocation of Bail, brought by Madam Director of Public Prosecutions, Ms. Cordell Frazier, Counsel for the Office of the Director of Public Prosecutions (“the Applicant”). Counsel for the Applicant contends the Respondent has whilst on bail for the offence of **Murder**, committed the offence of **Possession of an Unlicensed Firearm and Possession of Ammunition**, contrary to Section 5B and 9(2)(a) of the Firearms Act, Chapter 213.
2. **Mr. Berkley Fowler** pled guilty to the offence of **Possession of an Unlicensed Firearm and Possession of Ammunition**. The Respondent has been in clear breach of his bail conditions. This is not the behavior of a man fit and proper to continue to be granted bail.
3. According to the Affidavit In Response produced by the Applicant and filed on the 19th of January, 2024, which states:
 - a. With respect to the Murder charge, the Respondent was granted bail on the 6th of December, 2012, in the amount of Twenty Thousand Dollars (\$20,000) with one or two sureties. That other conditions imposed were that the Respondent be fitted with an Electronic Monitoring Device and to report to San Andros Police Station every Monday before 6:00pm; and
 - b. The evidence against the Applicant in respect to the Murder offence is cogent according to the Applicant. The Applicant during his Record of Interview dated the 30th of April, 2012, allegedly admitted to killing his step father by choking him until he was unconscious and then putting a plastic bag over his head and driving him out to the Airport Road, where the Respondent left the deceased.
4. The Crown laid before the Court a myriad of reasons for the revocation of the Respondent’s bail. The primary reason is that the Applicant has not been compliant with his current Bail conditions and therefore then he is not a fit and proper candidate for bail.

APPLICABLE LAW

5. The Court is to consider if there are appropriate alternative conditions which can be imposed. In **Jevon Seymour v The Director of Public Prosecution**

SCCrApp No. 115 of 2019, Crane-Scott JA observed at paragraph 50 of Judgment:

“50. We are satisfied that even if the learned judge found (as he could) that the Crown’s evidence was “cogent” and was prepared to infer (as he did) that given the nature and seriousness of the offences and the likely penalty, that appellant might have a powerful incentive to abscond, that is not the end of the matter. Such a “finding” is not in itself a reason for denying an applicant bail. Accordingly, if the learned judge concluded that the appellant might be tempted to abscond, in the proper exercise of his discretion, he ought also to have proceeded to consider whether that risk could nonetheless be effectively eliminated by the imposition of appropriate conditions.”

6. The charge of **Murder** is one of the most serious offences that one can commit. Upon conviction, the Court may impose a sentence of life imprisonment. It follows therefore that the Applicant facing this serious charge for which he is liable to a severe penalty, if convicted, has an incentive to abscond and not appear for trial. However, though this is true it must be expressed that this Court fully understands that notwithstanding the finding the allegations of **Murder** for which the Applicant is charged is of a serious nature that is not in itself a reason for denying the application.

7. Having reviewed the Affidavit evidence provided by Counsel for the Applicant and having heard the oral submissions, this Court finds that the Respondent no longer is a fit and proper candidate for bail. The Respondent was granted bail for the offence of Murder on the 6th of December, 2012. According to the Affidavit evidence produced by the Applicant, the Respondent was scheduled to appear before then Senior Justice Mr. Bernard Turner on the 21st of April, 2021 for trial. However, there was no appearance by the Respondent or his attorney. Once bail is granted the Court ensures that every Defendant understands that they must be present at all Court hearings. However, the Respondent took it upon himself to unilaterally vary the Court’s

bail Order and not appear when he was scheduled to. In the eyes of this Court, this blatant disregard of the Court's Order. This behaviour displays that if the Respondent is allowed to remain on bail there is a high likelihood that he will abscond. In addition to this, this Court finds that the Respondent has now become a flight risk.

8. As shown by the aforementioned Affidavit evidence, whilst on bail for the offence of Murder, the Respondent pled guilty and therefore committed the double offences of **Possession of an Unlicensed Firearm and Possession of Ammunition**. This guilty plea whilst commendable in taking responsibility for ones wrong, also indicates to the Court the Respondent's deliberate disregard of his bail conditions and his propensity to commit similar serious offences should he remain on bail. Therefore, in the eyes of this Court the Respondent **can no longer be seen as a man of good character**.
9. This Court also takes into careful consideration the nature of offences in which the Respondent is charged. As previously stated, the Respondent has been charged with offence of Murder, which is one of the most serious offences that an individual can be alleged to have committed. The Respondent pled guilty to the offences of Possession of an Unlicensed Firearm and Possession of Ammunition, which are in their own right very serious crimes. Taking this into consideration this Court is further satisfied that the Respondent is a man who possess the propensity to commit serious offences. This Court finds the Respondent may present a potential threat to members of the public.
10. It is important that individuals who are charged with offences understand that it is their duty and responsibility to adhere to any and all bail conditions imposed on them. They cannot take it upon themselves to vary a condition of bail. The Respondent fully understood that he was responsible for always

being present before the Court on the necessary days. Further these are serious offences he is alleged to have committed and pled guilty too. However, the Respondent failed to adhere to this condition. His deliberate disobedience of the Court's Orders cannot be ignored. This Court has even taken the view that if the Respondent's second offences were of lesser nature, i.e. a traffic offence, then maybe the Court may have been swayed in his favour. However, this is not the case.

11. In reliance on the Affidavit evidence provided by the Applicant, this Court is of the view that the Respondent displayed a blatant disregard of the Court bail Orders. Further, this Court also finds that there is a high likelihood that the Respondent would abscond from his trial. He does not adhere to the rules, in fact he ignores them. This raises a concern with the Court that the Respondent will not appear for his trial. He is a flight risk. He could not be found for the bail hearing. His suretors have been summoned.
12. In the eyes of this Court, the Respondent's actions coupled with his previous history of bail infringements are clear indicators that he has not and will not be respectful of the conditions imposed on him by the Supreme Court.
13. Therefore, due to the serious nature of the offences, the fact that the Respondent is likely to abscond, his clear disregard of the Court bail conditions, this Honourable Court finds that the Respondent's bail should be and is hereby revoked. Moreover, that the Respondent is ordered to remain in the custody at the Bahamas Department of Correctional Services. His bail for one count of Murder is hereby revoked. This behaviour is unacceptable. The terms and conditions of bail are set for a reason.

14.I promised to put my reasons in writing, this I now do.

DATED this 25th day of January A.D. 2024

The Honourable Madam Senior Justice Mrs. Cheryl Grant-Thompson