

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

**2020
CRI/bal/00539**

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

V

DONALD COX

Respondent

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

**APPEARANCES: Director of Public Prosecutions Ms. Cordell
Frazier along with Ms. Jamecca Basden and
Ms. Tamika Gibson- 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 Ms. Tamika Gibson, Counsel for the Office of the Director of Public Prosecutions (“the Applicant”). Counsel for the Applicant contends the Respondent has failed to comply with the conditions of bail imposed by The Supreme Court. That he deliberately went “off the grid”- a term used to describe the disconnect of his Electrical Monitoring Device (EMD) to evade Justice. That this is not the behavior of a man fit and proper to continue to be granted bail. **Mr. Donald Cox**, is charged with one (1) counts of **Murder** and two (2) counts of **Attempted Murder**.
2. The Bail Bond granted to the Respondent by The Honourable Justice Mrs. Deborah Fraser (as she then was) (24/3/2021) provided the Respondent had the following Bail conditions;
 - a. The Respondent is to report to the South Beach Police Station every Monday, Wednesday, and Friday before 6:30pm;
 - b. The Respondent is to be Electronically Monitored and abide by the 2010 Regulations for the use of the device;
 - c. The Respondent is to remain at his place of residence which is No.81 Pidgeon Plum Street, Pinewood Gardens from 8:00pm to 6:00am daily;
 - d. The Respondent is not to interfere with the Prosecution’s witnesses either by himself or through any other persons;
 - e. The Respondent is required to report to Court on any an all dates fixed for hearing of this matter;
 - f. The Respondent is to surrender himself into custody on the day prior to his trial date at the Central Police Station; and
 - g. Any breach of these conditions and bail shall be forfeited and renders the Applicant liable to further remand at The Bahamas Department of Correctional Services.
3. The Affidavit in Support of Revocation of Bail stated that:
 - a. The Respondent, **DONALD PHILIP COX**, (D.O.B. 19.11.1996) was arrested on the 29th of May, 2020, and further charged with the offences of Murder (one counts); and Attempted Murder (one count);

- b. The Respondent was released on bail by The Honourable Madam Justice Mrs. Deborah Fraser, on the 16th of March, 2021, in the amount of Thirty Thousand Dollars (\$30,000.00) with two (2) sureties;
 - c. The Respondent signed the Bail Bond agreeing to comply with all the conditions listed on his Bail Bond;
 - d. The Applicant was informed by Metro Security Solutions that the Respondent was non-compliant with the conditions of the Electronic Monitoring Program on the 5th of January, 2024. Additionally, the Electronic Monitoring Compliance Report noted the following:
 - i. Sometime around 5:00pm on the 5th of January, 2024 while monitoring the Respondent at Metro Security by way of Global Positioning System (GPS), the Respondent GPS was noted at C.W. Saunders Highway. His device strap was on but the battery was on 0%. It remained on 0% until 3:00am on the 6th of January, 2024, when he charged up to 72%;
 - e. The Respondent on prior occasions has been in breach of his Supreme Court bail conditions;
 - f. On the 21st of May, 2023, the Respondent was arrested and further tried before the Magistrate Court on five (5) counts of violating bail conditions for periods between 14th May 2023- 21st May, 2023. The Respondent pled guilty and was fined Three Thousand Five Hundred Dollars (\$3,500) or six (6) months at The Bahamas Department of Correctional Services (B.D.O.C.S) and placed on probation for a period of two (2) years and in default, one year imprisonment at B.D.O.C.S;
 - g. On the 1st of September, 2023, the Respondent was arrested and further tried before the Magistrate Court on five (5) new counts of violating bail conditions. The Respondent pled guilty and was fined as follows: Counts 1, 2, and 3- One Thousand Five Hundred Dollars (\$1,500), in default six (6) months at B.D.O.C.S; and Counts 4 and 5 Two Thousand Five Hundred Dollars (\$2,500), in default six months at B.D.O.C.S; and
 - h. The Applicant verily believes that if the Respondent remains on bail he will continue to breach his bail conditions.
4. In response to this, the Respondent- who acted Pro Se in this matter- submitted in his oral arguments stated that:
- a. On the 5th of January, 2024, the Respondent was at his place of residence where his Electronic Monitoring Device (EMD) died;

- b. He explained that this apparent non-compliance was not his fault. Further, pursuant to the signed Metro Security Solutions contract, the EMD affixed to his ankle should produce a light indicator or vibration, which would indicate that the EMD is about to die. The Respondent stated that these prompts/ indications never occurred;
 - c. Regarding the non-compliance with his bail conditions on the 6th of January, 2024, the Respondent submitted that he was in custody on this day and therefore, could not have breached his bail conditions; and
 - d. The Respondent described that he engaged in group charging of his device with fellow accused men in other cases. He accepted that at no time did he contact Metro Security to report the malfunction, nor the Crown or the police at the time in order to report.
5. 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. Therefore then, he is not a fit and proper candidate for bail. The Crown assured the Court that the Respondent was arrested on the 6th of January, 2024, at 11:25am.

APPLICABLE LAW

6. 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.”

7. Charges of **Murder and Attempted Murder** are the most serious and condign offences an individual can be charged with. Upon conviction, the Court may impose a sentence of life imprisonment. It follows therefore that the Applicant facing these serious charges 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, this Court understands notwithstanding the **Murder and Attempted Murder** allegations are serious, that is not in itself a reason for denying him bail.

8. Having reviewed the Affidavit evidence provided by Counsel for the Applicant, having heard the oral submissions of the Respondent and Counsel for the Applicant, this Court finds that the Respondent has simply disregarded the terms of his bail. This Court does not accept the excuses provided by the Respondent that there were no indicators or prompts given to him by his Electronic Monitoring Device. Additionally, this Court does not accept that the EMD died unbeknownst to the Respondent. It is important that individuals who are charged with serious offences and fitted with EMDs understand that it is their duty to charge their devices, report if they malfunction and keep the terms of the regulations. It is their 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 at all times responsible for ensuring that his EMD was fully charged. However, he blatantly failed to adhere to this condition. He also failed to report to the authorities the alleged failure in his device. Had he done so Metro Solutions would be responsible for their failed device.

9. In addition to this, in reliance on the Affidavit evidence provided by the Applicant, this Court is of the view that the Respondent displayed a careless disregard of the Court's 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. Moreover, he will not be able to be tracked, to ensure his attendance if he does not voluntarily appear.

10. According to the aforementioned Affidavit the Respondent has been charged with and pled guilty to **five counts** of Violating Bail conditions on the 21st of May, 2023, and **five counts** of Violating Bail conditions on the 1st of September, 2023. These previous convictions raise serious concerns for the Court. These previous convictions indicate to the Court the Respondent's propensity to disregard his bail. In the eyes of this Court he would **not be a man of good character**.
11. Moreover, the Respondent's previous and current actions concerns the Court, that if released from custody there is a high likelihood that he would abscond. This is shown as the Respondent has shown is constant disregard to charge his EMD and to "go off the grid".
12. The Court finds that the Respondents 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. This Court has also taken into consideration the submissions made by Mr. Bjorn Ferguson, as a friend to the Court. Mr. Ferguson submitted that there is sufficient evidence available to the Court which proves that the Electronic Monitoring Devices provided to individuals are sometimes defective. Mr. Ferguson drew the Courts attention to the Magistrates cases of *The Commissioner of Police v Issac Roberts & the Commissioner of Police v Rashad Forbes*. However, whilst this Court is appreciative of Mr. Ferguson's assistance in this matter, this Court is inclined to agree with the response given

by Madam DPP, Ms. Cordell Frazier. Firstly, that two lower Court matters cannot bind the actions of the Supreme Court, or any higher Court. Secondly, although persuasive, they are distinguishable as the Court notes that this Respondent never said that his device was defective. He simply said that he did not charge the device. Further, the Respondent never once attempted to alert the Court or the Metro Solutions System that his device was malfunctioning in any way.

14. Therefore, due to the serious nature of the offences charged, the fact that the Respondent is in the Courts view 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 and one count of Attempted Murder is hereby revoked. This behaviour is unacceptable. The terms and conditions of bail are set for a reason. The Commissioner of the Correctional Facility should be so informed.

15. 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