

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL DIVISION
No. CRI/BAIL/00169/2023

LATARIO WHYMS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Ms. Cassie Bethell for the Applicant
Ms. Royann Forbes for the Respondent

Judgment Date: 27 February 2024

Armed Robbery – Possession of an unlicensed Fire Arm – Possession of Ammunition - Receiving – Bail - Fresh Application for Bail - Constitutional rights – Nature and Seriousness of Offences – Public Safety and Order – Strength of Evidence

BAIL RULING

Background

1. Latario Whyms (“**Applicant**”) was charged with one (1) count of Armed Robbery contrary to section 339 (2) of the Penal Code, Chapter 84 (“**Penal Code**”), one (1) count of Receiving contrary to section 358 of the Penal Code, one (1) count of Possession of an unlicensed firearm contrary to section 5(b) of the Firearms Act, Chapter 213 (“**FAA**”) and one (1) count of Possession of Ammunition contrary to section 9(2)(a) of the FAA (collectively, “**Offences**”) regarding events which took place on the 17th and 23rd April, 2023 on Mr. William Paul (“**Virtual Complainant or VC**”).
2. On 13 December 2023, the applicant filed a Summons and supporting affidavit (“**Applicant’s Affidavit**”) requesting bail.

3. It is to be noted that the Applicant applied for bail before in relation to these same Offences. I shall address this later in my judgment.

Issue

4. The issue for this Court to consider is whether the applicant should be granted bail?

Evidence

Applicant's Evidence

5. The Applicant's Affidavit provides that: (i) the Applicant was born on 10 October 2002 in the Commonwealth of The Bahamas and is presently twenty-one (21) years old; (ii) he is remanded for the Offences (the charge sheet is exhibited to the affidavit); (iii) he was arraigned in Magistrate Court No. 9 on 01 May 2023 before Chief Magistrate Mrs. Joyann Ferguson-Pratt (as she then was); (iv) that his next court date is set for the 14 March 2024 for service of the Voluntary Bill of Indictment; (v) the he pleaded Not Guilty and will be defending the Offences; (vi) he requests bail; (vii) the Applicant does not have any previous convictions before the courts in the said Commonwealth; (viii) he has a pending matter of Conspiracy to Commit Armed robbery before the court; (ix) should he be admitted to bail, he will have accommodations at No. 44B Rupert Dean Lane, New Providence, The Bahamas; (x) prior to his incarceration, he was employed as a construction worker in the island of New Providence; and (xi) he is Bahamian; (xii) he requests bail because: (a) he will be disadvantaged in his ability to adequately prepare his defence if he is further remanded; and (b) that he will be disadvantaged in his ability to support himself and assist his family.
6. The Applicant's Affidavit further states that: (i) if the Applicant is granted bail, he will comply with all rules and regulations set out by the court; and (ii) he is a fit and proper candidate for bail.

Respondent's Evidence

7. The Respondent filed its Affidavit in Response on 19 January 2024 ("**DPP Affidavit**"). The affidavit provides that: (i) the Respondent opposes the Applicant's bail application; (ii) the Applicant's date of birth and the Offences (as stated above); (iii) the Offences involve the use of a fire arm and are offences serious in nature; (iv) the Applicant was granted bail for the offence of Conspiracy to Commit Armed Robbery (a copy of the Voluntary Bill of Indictment is exhibited to the affidavit); (v) it is alleged that while on bail for the charge of Conspiracy to commit Armed Robbery, the Applicant committed the offences mentioned earlier; and (vi) the evidence is strong and cogent. On 17 April 2023, the VC posted on Facebook Marketplace, his black iPhone 13 Pro Max ("**iPhone**") for sale for \$920.00. He received a response on the same day around 4:05pm from a Facebook profile bearing the name "Trap Boy Jay". They agree to

meet around 10:30pm on the same day on Poinciana Drive near Wilma Pharmacy. "Trap Boy Jay" stated he would be wearing a yellow jacket along with a male in a red jacket near Wilma Pharmacy. During the sale, while inspecting the iPhone, it is alleged that the Applicant pulled out a black handgun with a chrome tip. The Applicant, while being concerned with another, allegedly stole both the iPhone and the 2012 burgundy Chevrolet Cruze vehicle (the charge sheet and statement of William Paul are exhibited to the affidavit).

8. The DPP Affidavit further provides that: (i) on 25 April 2023, the VC visited the Criminal Investigations Department of the Royal Bahamas Police Force where he positively identified the Applicant in photo number nine (9) as the male that robbed him of his iPhone, his friends' iPhone 12 Pro Max, and the 2012 burgundy Chevrolet Cruze vehicle while armed with a black handgun (William Paul's identification statement and a copy of the initialed 12 man photo line-up is attached to the affidavit); (ii) on 25 April 2023, sometime around 3:30pm, D/Sgt. 3134 Leslie Whyte conducted the 12 man photo line-up identification made by William Paul (the officer's report is exhibited to the affidavit); (iii) on 23 April 2023, D/Sgt. 3216 Percy Patton cautioned, arrested the applicant and search him upon arrest. Officer Patton's search revealed a black Glock Taurus G3 9mm pistol along with fifteen live rounds of ammunition in the Applicant's waist and a silver iPhone 13 Pro Max (the statement of D/Sgt. 3216 Patton is exhibited to the affidavit); and William Paul on 23 April 2023 identified his stolen phone found on the Applicant and the black handgun with a silver nozzle that looked exactly like the gun the male in the red jacket used during the armed robbery (a copy of the identification of the iPhone and the gun is exhibited to the affidavit).
9. The DPP Affidavit further states that: (i) during the Applicant's record of interview, he admitted to the Offences (the record of interview is exhibited); (ii) the Applicant has elevated from Conspiracy to Commit Armed Robbery to Armed Robbery (the Applicant's antecedent form is exhibited to the affidavit); (iii) considering the nature and seriousness of the offences, the nature and strength of the evidence, the character and antecedent form of the Applicant and his purported propensity to commit similar crimes, there is an overriding need to protect public safety and public order; (iv) there is nothing peculiar about the Applicant's circumstances that would suggest that his continued detention is unjustified; (v) the Applicant is not a fit and proper candidate for bail; and (vi) the Applicant was denied bail on 31 October 2023 before this Court.

Law

10. In this jurisdiction, the law on bail is well settled. One's right to freedom must be balanced against the best interest of society. One must also bear in mind one's presumption of innocence until his/her guilt is proven guilty. I remind myself of both **Articles 19(1)(d), (3) and 20 of the Constitution of The Bahamas**:

“19 (1). No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases-

...

(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;”

“19(3). Any person who is arrested or detained in such a case as is mentioned in subparagraph 1(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph 1(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions including in particular such conditions, as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

20. 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. The Court derives its powers to grant bail from **section 4 of the Bail Act, 1994 (“Act”)**. **Section 4(1) of the Act** provides:

“(1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail:

Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody.”

12. According to **section 4(2) of the Bail (Amendment) Act, 2011**:

“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.....

(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..."

13. The First Schedule, Part A of the Act provides the relevant factors that Court ought to consider in a bail application. It reads:

"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);

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

(e);

(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) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant"

14. I also wish to highlight that it is the Respondent's burden to prove, through evidence, that the Applicant would likely fail to surrender to custody, appear at

trial, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice. This was noted in the Bahamian Court of Appeal decision of **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019** (“**Jevon Seymour**”). There, the court made the following pronouncements:

“...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.”

15. In the Privy Council decision of **Hurnam v. State of Mauritius [2006] 1 WLR 857** the board made the following observations:

“15. It is obvious that a person charged with a serious offence, facing a serious 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 drugs 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 grounds for refusing bail....The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well...provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given...”

16. Also, in the Bahamian Court of Appeal decision of **Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016** (“**McDonald**”), Allen P (as she then was) explained the extent to which a judge is to consider evidence at a bail application. There, the learned President opined:

“34. It is not the duty of a judge considering a bail application to decide disputed facts or law and it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences such as to justify the deprivation of liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail.”

17. Lastly, I bear in mind that, despite the fact that the Applicant has already applied for bail before this Court, he is by law entitled to apply for bail afresh. This was expressly stated in the Court of Appeal decision **Damagio Whyms v The Director of Public Prosecutions SCCrApp. No. 148 of 2019**. There, the Court opined:

“20. In his separate opinion in Mackey, Isaacs JA explained the reasons why the English practice is unworkable within the Bahamian constitutional framework given the guarantees of personal liberty and the right to a fair hearing within a reasonable time. He put the matter as follows:

“57. Articles 19 and 20 provide that a person may only be detained if the law determined otherwise after a trial. It is clear that no policy created by a magistrate or judge can override a person’s undoubted ability to apply for bail as often as he wishes or his right to have that application fully considered.”

DISCUSSION AND ANALYSIS

Whether the Applicant should be granted bail?

18. Bearing in mind the above principles, I will now apply same to the facts before me. The Applicant is charged with the following offences:

- *one (1) count of Armed Robbery contrary to section 339 (2) of the Penal Code;*
- *one (1) count of Receiving contrary to section 358 of the Penal Code;*
- *one (1) count of Possession of an unlicensed firearm contrary to section 5(b) of the FAA; and*
- *and one (1) count of Possession of Ammunition contrary to section 9(2)(a) of the FAA*

19. The Offences all fall within Part D of the Act, which requires a bail application to be heard by the Supreme Court (section 4(3) of the Act). Also, the First, second and fourth offences are serious in nature.

20. The evidence in this scenario appears overwhelming. Bearing in mind the principles enunciated in McDonald, I will not conduct a forensic analysis of the evidence. This is for trial. However, I do note that DPP Affidavit provides that the VC positively identified the Applicant as the person who robbed him at gunpoint and that a black Glock Taurus G3 9mm pistol along with fifteen live rounds of ammunition were found on the Applicant’s person. Furthermore, an Iphone, which matches the description of the one stolen from the VC was also found on the Applicant’s person. In addition, the DPP Affidavit states that the Applicant was on bail for a similar offence (Conspiracy to Commit Armed Robbery).

21. All of this is extremely strong evidence which suggests that the Applicant is the person who not only robbed the VC at gunpoint, but would likely commit an offence while on bail. Furthermore, the Applicant was charged with a similar offence back in 2020 and has allegedly committed the Offences while on bail. This strongly suggests that the Applicant would likely commit another offence if bail was granted to him.

22. In addition, though the Applicant may apply for bail afresh, circumstances remain the same the last time I considered a bail application for him. I see no reason to alter my position.

23. Bearing in mind all of the principles above and the compelling evidence against the Applicant, I am not prepared to grant bail.

Conclusion

24. In the premises, and based on the evidence and current state of the law, I refuse bail.

Justice Jeanine Weech-Gomez

Dated this 27 day of February 2024