

COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division
No. CRI/BAIL/00185/2016

BETWEEN

JILES JACKSON RUSSELL

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before: Her Ladyship, The Honourable
Madam Justice Guillimina Archer-Minns

Appearances: Mr. David Cash for the Applicant
Mr. Patrick Sweeting for the Respondent

Hearing Date: 20 October 2021

RULING-BAIL

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*Whether there has been a material change in circumstance- Bail application – right to apply for
bail –Consider each application anew*

Archer-Minns J

1. The Applicant, thirty-seven (37) year old Jiles Jackson Russell (15/October/1984) was arrested and charged, with two (2) counts of **ATTEMPTED MURDER** contrary to section 292 of the Penal Code, Chapter 84 (the “**Penal Code**”), **ARMED ROBBERY** contrary to section 339(2) of the Penal Code, **ATTEMPTED ARMED ROBBERY** contrary to section 339(2) and section 83 of the Penal Code, two (2) counts of **POSSESSION OF A FIREARM WITH INTENT TO ENDANGER LIFE**, contrary to section 33 of the Firearms Act chapter 213 (the ‘Firearms Act’) and **POSSESSION OF AN UNLICENSED FIREARM**, contrary to section 33 of the Firearms Act. The incident connected to these offences is alleged to have occurred on 16 April 2014. The Applicant was granted bail herein on 27 May 2016 in relation to these offences. Between 17 March 2018 and 4 March 2021, the Applicant was not in the jurisdiction as he served time in United States custody. On 4 March, he was deported back to the jurisdiction and his bail was subsequently revoked on 30 March 2021. Reasons for the revocation of bail are reflected in the decision of Senior Justice Turner. The matter was then transferred to this Court and the Applicant has now applied for bail.
2. An affidavit was filed for and on behalf of the Applicant on 17 August 2021 in support of bail herein. In his affidavit, he stated *inter alia*:
 - he was arraigned in the Magistrate's Court before Chief Magistrate Joyann Ferguson-Pratt in April of 2014 and had been remanded to Department Of Correction Service until 25 May, 2016 when he was granted bail;
 - on 4 March, 2021 his bail was revoked by Hon. Mr. Justice Turner after he had been deported from the United States after serving a 33 month sentence;
 - his trial was fixed before this Court for 26 July, 2021 but on the said date the trial did not proceed because the court was engaged in an ongoing trial and the Crown was not ready to proceed with the matter;
 - the matter was then adjourned to 11 August, 2021 when a new trial date was fixed and confirmed for 2 August, 2022 and a pre-trial review scheduled for 6 July, 2022;

- prior to his arrest and remand, he resided at Amos Ferguson Street, New Providence and will reside there if granted bail;
 - if granted bail he would dutifully report to Court when required and abide by all of the other terms and conditions of the bail;
 - he was employed prior to his remand;
 - he is not a flight risk and maintains his innocence with respect to these charges,
 - he has one previous conviction with no pending matters; and
 - he would not interfere with the witnesses and does not know the complainants.
3. Counsel for the Applicant relied on the Summons and Affidavit filed 17 August 2021 and in addition thereto orally submitted that: (i) Applicant is a fit and proper candidate who will comply with bail conditions. (ii) the evidence against the Applicant is weak and circumstantial as there is no identification evidence of the Applicant by any of the virtual complainants nor is there fingerprint evidence. (iii) the Respondent was not ready for trial on 26 July 2021 despite the age of the matter dating from 2015. Counsel further submitted that although bail was revoked the Applicant never fled the jurisdiction and the only time he missed court was when he was in the custody of another jurisdiction, the USA and he was serving a sentence. Counsel argued that whilst in the Bahamas, the Applicant was compliant with the terms of the bail conditions.
4. An Affidavit of A.S.P Nathan Mackey was filed on behalf of the Respondent on 9 March 2021 herein applying for the revocation of the Applicant's bail. This is one of the affidavits which the Respondent relies upon to oppose bail in this matter. In the affidavit, the affiant swore the following:
- that the Respondent, Jiles Jackson Russell was granted bail by the Honourable Justice Evans on the 25 of May 2016. Bail was granted in the amount of \$12,000.00 with one or two suretors and ordered to sign in at the Cable Beach Police Station every Monday, Wednesday and Friday before 6.00pm;
 - the suretors of this Respondent is Jackson Russell of West Place, Westridge and Laurinda Whitney of Queen Road, Nassau East;

- that on March 17 2018 a U.S Coast Guard vessel while off the coast of Fort Pierce, Florida observed a small vessel which was later identified as a 23 foot center console. This vessel was spotted 12 miles from Hobe Sound, Martin County Florida. The Coast Guard later stopped and boarded this vessel. The male steering the vessel at the time identified himself as Jiles Jackson Russell;
- a search was conducted on this vessel by the U.S Coast Guard and a bag with ammunition and a mountable flashlight were found. The Applicant later confessed to Agents from the United States Homeland Security Investigation that he threw over a .45 H and K caliber pistol overboard along with a cellular phone;
- that the Applicant Jiles Jackson Russell was charged with 5 counts of Encouraging and Inducing Aliens to enter the United States. On 17 March 2019 the defendant Jiles Jackson Russell did knowingly encourage and induce aliens to enter and reside in the United States knowing that it would be in violation of the law;
- the trial of Jiles Jackson Russell commenced in the U.S District court of the Southern District of Florida, Fort Pierce Division on 31 August 2018 during which the Applicant pled guilty to all five (5) counts of Encouraging and Inducing Aliens to enter the United States;
- Judge Jose E. Martinez presided over the case and sentenced Jiles Russell to thirty three (33) months in prison. The Applicant was also fined five hundred dollars (\$500.00);
- the Applicant was convicted for offences committed within the maritime jurisdiction of another country while on bail for a pending matter in the Supreme Court; and
- the Respondent is not a fit and proper candidate to have his bail continued and should be remanded into custody to prevent the possibility of absconding and to prevent further offences from being committed.

5. The Respondent also relies on the Affidavit filed 14 April 2021 wherein ASP Nathan Mackey averred *inter alia*:

- the offences are of a serious nature;

- the Applicant has previous convictions;
 - there is sufficient and cogent evidence against the Applicant to support the charges; and
 - there is nothing peculiar about the Applicant's situation which suggests that his continued detention is unjustified.
6. In his oral submissions, Counsel for the Respondent submitted that the Applicant according to his Counsel was not trying to flee from the country but was trying to encourage other persons to illegally enter the USA. Counsel further submitted that Jiles Russell was deported to The Bahamas on 4 of March 2021. Counsel contended that there is a pattern exhibited by the Applicant, since while he was on bail for serious offences, he was seeking to actively encourage others to breach the law of another country. Counsel continued that the Applicant is charged with serious offences in this country and is someone who clearly evinces an intent not to abide by the law of this country or others. In response to the evidential submission of Counsel for the Applicant, Counsel for the Respondent stated that circumstantial evidence is for the jury to decide.
7. In reply, Counsel for the Applicant submitted that April 2018 was the first time the Applicant missed court having being granted bail from 2016. Further, that he was not charged with a serious offence such as possession of an illegal firearm and that the Applicant has served his time for the offences which he pled guilty to and as such nothing requires him to be in prison at this time.

Applicable law

8. The Constitution gives the Applicant the right to apply for bail. Article 20 (2) (a) of the Constitution states that **"Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty."**

Article 19(3) of the Constitution entitles the Applicant to a fair trial within a reasonable time and in the event that this cannot ensue, the Applicant must be granted bail unconditionally or subject to reasonable conditions.

9. In any application for bail, the Bail Act 1994 (as amended) (the “**Bail Act**”) must be considered. The offences for which the Applicant seeks bail include part C offences, therefore, sections 4(2), 4(2A) and 4(2B) and Schedule 1, Part A of the Bail Act must be considered. These sections provide as follows:

“4. (2) 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 a written statement giving reasons for the order of the release on bail.*

(2A) For the purpose of subsection (2)(a) and (b)-

- (a) Without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed a reasonable time;*
- (b) Delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.*

(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 victim or victims of the alleged offence, are to be primary considerations”

10. Schedule 1, Part A of the Bail Act states as follows:

“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) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;*
- (d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;*
- (e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;*
- (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.*

DISCUSSION AND ANALYSIS

11. This Court has the benefit of the Ruling of Senior Justice Bernard Turner wherein bail was revoked as a result of non-compliance with bail conditions. Notwithstanding, this is a renewed application for bail, the Court must therefore consider the Application afresh and further consider if there has been a change in circumstances.
12. The Bail Act and Constitution requires a court, when considering bail, to evaluate whether an Applicant will have a trial in a reasonable time. In these circumstances, the

VBI has already been served on the Applicant as this matter dates back from 2015. The reasonable time period indicated by the Bail Act for an accused person to receive a trial is three years. These circumstances are special in that the Applicant spent 33 months out of the jurisdiction imprisoned in the United States. He has been remanded since April 2021. The set trial date in this matter is 2 August 2022. In these circumstances, the court finds that there has been no unreasonable delay. Further, notwithstanding that the matter did not proceed to trial on 26 July 2021, the Applicant's back up trial hearing date due to an ongoing trial, a significant delay in the prosecution of the matter is attributable to the Applicant given the period of his incarceration in the United States. Previous trial dates had to be vacated due to his non-appearance.

13. The Applicant has three previous convictions for:

- 19/April/2010 Possession of Unlicensed Firearm(1 count) and **Possession of Ammunition** (1 count) – Sentenced to thirty (30) months in prison
- 21/March/2017 Possession of Dangerous Drugs w/Intent to Supply– Fined \$750.00 or three (3) months in prison

14. In the case of **Lorenzo Wilson v Director of Public Prosecutions SCCrApp. No. 129 of 2020**, the Court of Appeal stated that *“it is not required to show that the appellant lives a habitual life of crime before taking his antecedents into account. In this case, the appellant had already been convicted of a criminal offence which was serious enough to serve 18 months imprisonment. It was not unreasonable for the judge to have found that the appellant was a danger and not a fit person to be granted bail.”* The Applicant has been convicted of serious offences, one for which he served a mandatory sentence, of (30) months. This factor, does not weigh positively in the scale of the granting of bail. The Court does note however, that this cannot be the mere deciding factor for consideration in these proceedings.

15. The case of **Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016** Allen P explained that:

“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.”

Stephen Davis 108/2021 also considered.

16. At the stage of bail, the Court does not rigidly consider evidence as it would for trial.

However, it is necessary to measure the strength of the evidence in exercising the Court's discretion pertaining to bail. The evidence before the Court is in the form of the statement of Police Corporal 2345 Elkin Brown who is a virtual complainant, the statement of David Pearce, a virtual complainant and a report of Superintendent Kendal A. Strachan.

17. The virtual complainants both state in their statements that they were approached by a male who demanded cash. The male robbed Corporal Brown of \$143.00 (2 Bahamian \$50.00 notes, 2 Bahamian \$20.00 notes, 3 Bahamian \$1.00 notes and 2 American \$1.00 notes) and attempted to rob Mr. Pearce as well. It was alleged that the perpetrator pulled the trigger in the direction of Mr. Pearce and as a result, the firearm jammed. However, Corporal Brown took out his personal issued service pistol and an exchange of bullets ensued between the perpetrator and Brown. The perpetrator ran and escaped into a waiting four door silver vehicle leaving behind his weapon which he dropped to the ground.

18. Around the same time when the incident took place, the Applicant was said to have been shot and taken to the hospital by his girlfriend who drove a four door Honda described as gray. The police investigating the matter was suspicious that the Applicant was the perpetrator of the robbery as his injuries and the location where he was found matched the description given by Corporal Brown who would have given the information surrounding the incident to police.

19. The Court finds that the evidence before it in this matter is cogent, raising a reasonable inference as to the commission of the offences by the Applicant. The Court further accepts that the Applicant was convicted of offences in the United States, spending 33 months in prison. However, the Court cannot rely on this factor alone in the exercise of its discretion.

20. The Court in Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011 said:

“The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail”.

The offences which the Applicant faces are very serious, and occurred in a neighborhood where members of the public could have been injured given the firearm exchange. Though the Court must consider this, it cannot be the basis for its decision but does weigh heavily in the scale against the grant of bail.

21. According to Mollan, CJ in the case of Noordally v Attorney General and another [1987] LRC,

“It has been established for centuries in England that the proper test of whether bail should be granted or refused is, whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as a punishment. The Courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in the case of conviction, the accused's record if any, and the likelihood of interference with witnesses”.

The main purpose of bail is to ensure that an Applicant will appear for trial, however the Court must consider whether the Applicant will interfere with witnesses or commit further offences whilst on bail as these factors too are critical. In these circumstances, there is no evidence before the Court that the Applicant will interfere with witnesses, however, the Court is increasingly concerned about whether the Applicant is a flight risk or whether he will further commit offences on bail. The Court accepts the evidence before it and adopts the opinion of Senior Justice Turner that the Applicant has previously shown non-compliance with bail conditions; being the reason why bail was initially revoked.

22. The case of **Bartholomew Pinder and The Queen SCCrApp No. 94 of 2020**, concerned the jurisdiction of the Supreme Court in the revocation of bail. However, in that case, the decision to revoke the bail of an accused who had been arrested in Jamaica and subsequently failed to report to the requisite police station over 300 times was upheld. In paragraph 43 the court stated *“Although a failure in and of itself does not automatically warrant a revocation of the bail, in this case the judge found that the failure to do so since 2018 and the fact that it was not done in July 2020 when he was in Jamaica was sufficiently egregious to warrant the revocation of his bail. The appellant explanation for the fact that his reporting was not recorded or the manner in which he found his way into Jamaica was clearly rejected by the judge as improbable.”* The COA stated that there were no bases for interfering with the judge’s decision to revoke bail previously granted. The Applicant was ordered to surrender his passport with the implication that he would not leave the jurisdiction, along with this, he was to sign in three days of the week. He was found on a vessel outside the jurisdiction and would have pled guilty to the charges against him. In this case and in these circumstances, the Court cannot accept the submission of the Applicant’s Counsel that the Applicant did not flee the jurisdiction in non-compliance with the bail conditions which he was given.
23. It is incumbent upon this Court to consider conditions which would deter and discourage an accused from absconding or minimize the risks involved with the granting of bail. The only other prudent condition which was not imposed was that of an electronic monitoring

device; however, the Court is not of the view that this additional bail condition will aid in ensuring the attendance of the Applicant at Court. This Court cannot take the risk in granting bail to someone who in the past has proven that he will not be compliant.

24. Further, the Applicant has serious previous convictions and the Court is of the view that it creates a barometer for the committing of further offences while on bail which exactly he did. Additionally, the Court notes that there were firearms used in the commission of this offence and the Applicant has a previous conviction for the same. The Court having considered the above stated factors together with the competing interests of the Applicant and his presumption of innocence and right to his liberty with those of the public and its right to safety and security, is of the view that there has been no material change in circumstances in this matter and will not exercise its discretion in favor of the Applicant for admission to bail.

25. Bail is hereby denied and this Application dismissed. Should there be a change in circumstances in the interim; the Applicant is at liberty to re-apply.

Dated the 3rd Day of November, 2021



A handwritten signature in dark ink, consisting of several loops and flourishes, is written over a horizontal line. Below the line, the word "JUSTICE" is printed in a bold, serif, all-caps font.