

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division

2024/PUB/con/

IN THE MATTER OF ARTICLES 20 and 28 OF THE CONSTITUTION OF THE

COMMONWEALTH OF THE BAHAMAS

AND

IN THE MATTER OF AN APPLICATION BY TREVON STEVENS FOR

CONSTITUTIONAL RELIEF

B E T W E E N

TREVON STEVENS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Mr. Justice Franklyn K M Williams, KC

Appearances: The Applicant Pro Se

Royann Forbes for Respondent

Hearing Dates: 31 July 2024

RULING

WILLIAMS, J

[1.] On 23rd June 2024 the applicant laid over, *in curia*, a document intituled “RE: CONSTITUTIONAL MOTION” . The same was not attended by an affidavit and sought no declarations and or orders.

[2.] The claim for constitutional redress in the instant was thus expressed:

“I AM HEREBY WRITING THIS MOTION IN REGARD OF THE
NUMEROUS AMOUNT OF MY CONSTITUTIONAL RIGHTS
BEING INFRINGE AND VIOLATED. DELIBERATELY AND
INTENTIONAL BY JUDGE FRANKLYN K M WILLIAMS.
JUDGE WILLIAMS REFUSE. TO GRANT ME A FEAR TRIAL
IN MY MATTER AND IN MY RECUSAL MOTION. I AM
SEEKING REDRESS AND THE REMOVEVAL OF JUDGE
WILLIAMS OFF OF MY CASE BECAUSE OF HIS
UNLAWFULLY TREATMENT. IN MY CASE”

[3.] The applicant is charged with kidnapping, rape and two counts of murder. Mindful of the serious nature of the charges, the Registrar, Supreme Court, appointed Mr. Keith Seymour, Counsel to make application (the applicant makes several) on behalf of the applicant and to defend him generally. The applicant declined the services of court appointed counsel. Subsequently, in the precincts of the Court, and to his face, the applicant told Mr. Seymour that he did not require his services. The applicant makes this application pro se, having insisted that he be permitted to do so.

[4.] Here the impugned constitutional provisions are :

20. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence -

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

...

(c) shall be given adequate time and facilities for the preparation of his defence;

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgement a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

...

(8) Any court or other adjudicating authority prescribed by law for the

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(8) Any court or other adjudicating authority prescribed by law for the

determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

28. (2) The Supreme Court shall have original jurisdiction –

(a) ...

(b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article,

and may make any such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 – 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

[5.] The Applicant complains that the transcript of his bail hearing of 26 September 2023 was “... altered, forged, non authenticated...”, that:

“On the 25th of June, 2024, at a case management hearing, I attempted to present the Court with an application of the irregularity in regard of having the aforesaid

transcript amended. I explained to Judge Williams that the transcript was a fraud, and it was not authenticated and it wasn't legitimate. I explained to him that I would like to have the transcript amended. Judge Williams asserted to me that he was not responsible for the alteration of the aforesaid transcript. I explained to Judge Williams that if you were not responsible for the alteration of the aforesaid transcript, then that would give you more authentic [sic] to investigate or to inquire on the allegation made that the transcripts were altered. So therefore Judge Williams refused to hear my my application of irregularity. He asserted to me that he was not going to hear it.

Okay, by Judge Williams doing so, not hearing my application of the irregularity, it falls into a procedural fundamental breach which is equivalent to the violation of my Constitutional and fundamental rights under Article 20 (8) of the Constitution,..."

[5.] The law on the recording of court proceedings in the Bahamas is found in the Supreme Court Act, 1996, Chapter 53 Statute Laws of the Bahamas, and which is set out hereunder:

PART IX

MISCELLANEOUS

...

...

...

...

77. (1) There shall, whenever possible, be provided adequate equipment for recording mechanically the evidence and proceedings in every cause or matter, whether civil or criminal, heard before the Court:

Provided that in any of the following cases, that is to say –

- (a) where the presiding judge and the parties or their counsel and attorneys consider that a recording is unnecessary;
- (b) where the equipment is out of order; or
- (c) where the equipment cannot be operated due to the absence of the operating staff whether such absence is caused by illness or otherwise,

the presiding judge may order that in the case of paragraph(a), the particular cause or matter be heard or shall proceed, as the case may be, without mechanically recording the evidence therein; and, in the case of either paragraphs (b) or (c), that all causes or matters shall be heard or shall proceed, as the case may be, without mechanically recording the evidence therein until such time as the disability ceases.

(2) Every such recording shall be preserved and filed by the Court in the cause or matter to which it relates and **shall constitute the record of the Court in regard to the evidence and proceedings taken and had in that particular matter** (emphasis added).

(3) In the following cases and subject to the following conditions the recording of any cause or matter shall be transcribed **and such transcription shall also constitute the record of the Court in regard to the evidence and proceedings taken and had in that particular cause or matter** (emphasis added)

...

- (b) in all criminal causes, or matters provided that application be made therefor to the presiding judge before the accused person is placed in charge of the jury;...

...

(6) Either the said recording or said transcription thereof or both such recording and transcription, as the case may be, shall be receivable in evidence notwithstanding any law to the contrary.

...

(8) For the purposes of this section and any other law, a reference to a “transcription” of the evidence or record of the proceedings in the Court includes a reference to a typewritten record of the evidence and proceedings mechanically recorded as in this section provided and includes any notes of evidence, prepared by a person designated by the the Registrar by notice published in the *Gazette* to perform the duties of court reporter, and authenticated by that reporter.

[6.] On 31 July 2024, I heard the applicant’s so called “application of irregularity”. The transcript in question did not bear the authentication. The reporting schedule was referenced, the reporter identified, and transcript reissued by email attended by the words of authentication, “...which transcript is a true and correct record of the proceedings.” and the reporter’s signature. Significantly, the applicant provides no evidence of alteration, forgery or fraud in relation thereto.

[7.] The applicant alleges that the written ruling refusing the grant of bail was withheld from both himself and the Court of Appeal (“the appellate court”), thereby hindering him in his ability to prosecute his appeal thereof. The applicant asserts that “Judge Williams also had to write a letter to the Appellate Court stating the reason why he took so long with presenting the High Court with the aforesaid mentioned document.”. The applicant provides no evidence for this assertion, which is a manifest untruth. The written ruling refusing bail was given on 1 November 2023, the applicant’s appeal thereof heard on 20 February 2024, by which time both the applicant and the appellate court had long been supplied with the court’s written ruling. The applicant asserts that “Judge Williams also had to write a letter to the Appellate Court stating the reason why he took so long with presenting the High Court with the aforesaid document”. In dismissing the applicant’s appeal, and referring to the written ruling of the judge, the appellate court (Barnett P) makes no reference to the applicant’s claims. Significantly, the applicant does not say that at the time of the appeal, he was not in possession of the written ruling.

[8.] The applicant alleges that the court refused to hear his renewed application for bail, for which allegation he provides no evidence. The evidence **suggests** that the applicant seems to have thought that the **mere verbalization of his intention to renew** his application for bail was

sufficient to move the court or that the court should grant bail *suo moto*. The uncontroverted facts are that upon written formal application, and the listing of that application by the assistant registrar (bail), the applicant's bail application was heard and determined **in his favour** on 9th April 2024.

[9.] Article 28 (1) of the Bahamas Constitution gives the Supreme Court original jurisdiction to deal with matters where fundamental rights and freedoms are alleged to have been breached:

“**28.** (1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.”

[10.] Subsections (2) and (3) of Article 28 confer wide powers on the court to grant constitutional relief where the right to it has been established. But Article 28 is not the refuge of the claimant who ceaselessly complains because some ruling, judgement or decision was adverse to him or because he cannot impose his writ upon the trial process or one whose claims are a smokescreen, designed to obscure forum shopping. The point can be gleaned from the discussion of the court's jurisdiction in **Attorney General and Others v Joseph and Boyce** (2006) 69 WIR 104 at para [59]:

“...the jurisdiction conferred ...on the High Court to adjudicate allegations that any particular right has been, is being or likely to be contravened and to fashion appropriate remedies for any contravention or likely contravention that it finds, is limited to cases which involve a contravention of one or other of the detailed sections.” *de la Bastide PCCJ and Saunders JCCJ*

and from the discussion **Adrian Paul Gibson et als v The Director of Public Prosecutions** SCCon/CrApp No.97 of 2023:

“ 20. I sound a word of caution that the fundamental rights provisions of the Constitution must not become the first refuge of disgruntled litigants lest those provisions lose their importance as safeguards of societal rights. I repeat the caution sounded by Lord Diplock in **Harrikissoon v Attorney General of Trinidad and Tobago** [1980] PC

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App. No.40 of 1977 when speaking about judicial review in relation to administrative actions but is equally applicable in the context of criminal proceedings:

‘the notion that whenever there is a failure by an organ of the government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by...the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms, but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative actions. In an originating application to the High Court,...the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy...which involves no contravention of any human right or fundamental freedom.’ Isaacs JA
[Emphasis added]

[10.] For the court to intervene and grant relief under Article 28, there must be some right or freedom contravened. Thus, to succeed, the applicant must show that some guaranteed right, as set out in Articles 15 through 27, or at common law, has been infringed. The applicant has not been able to point to any guaranteed right thereunder which has been, is being or is likely to be infringed.

[11.] Before disposing of this matter altogether, I wish to iterate the fundamental flaw in the bringing of the applicant's motion, which but for the applicant being *pro se*, I would have dismissed *ab initio*; that is, the Honourable Attorney General is not, nor has been sought to be joined. The point is emphasized by Evans JA in **Adrian Paul Gibson et als v Director of Public Prosecutions** SCCrApp No. 46 of 2024:

“22. At no point was the Honourable Attorney General sought to be joined.

He after all is the custodian of the Constitutional rights of the citizens of the Bahamas and the defender of any challenges to or under the Constitution pursuant to Article 28. I do not accept Mr. Ducille's submission that the Attorney General's powers have been ceded to the Director of Public Prosecutions. The powers ceded to the DPP were limited to the institution and conduct of Criminal proceedings and related powers and duties.”

[12.] The matters complained of here are either frivolous, or easily capable of being dealt with through ordinary trial or in this case, case management process, by which they have been. The right to a fair trial is not in question. The application for constitutional relief is misconceived and an abuse of process, and appears to be an attempt to either ensure no trial or to judge shop. Here I adopt the dicta of Charles J in **The Queen v David Shane Gibson** No. 233/10/2017:

“[154] In **Jaroo**, the Privy Council addressed the proposition of dressing up a case in constitutional clothes to avoid a trial. At para 39, the Board said:

“Their Lordships respectfully agree with the Court of Appeal that, before he resorts to this procedure, the Applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not be more conveniently invoked . If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate

and it will be an abuse of the process to resort to it. If, as in this case, it becomes clear after the motion has been filed that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued use in such circumstances will also be an abuse.”

[13.] In the premises, the constitutional motion is struck out, and given my findings above the proviso to Article 28 is applied.

Dated the 10th day of October 2024



Franklyn K M Williams, KC

Justice

