

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT

CRIMINAL LAW DIVISION  
2020/CRI/bal/00032

BETWEEN

FRANK CURTIS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Madam Justice Renae McKay

Appearances: Mr. Stanley Rolle for the Applicant  
Ms. Cassie Bethell for the Respondent

Hearing Date: 2<sup>nd</sup> December 2021

Ruling Date: 21<sup>st</sup> December 2021

RULING ON BAIL

**Criminal – Bail – Previous Convictions – Section 4 of the Bail Act – Statutory considerations – Balancing Act**

1. This ruling concerns an application for bail by the Applicant, Mr. Frank Curtis (**the “Applicant”**) by way of a Summons and Affidavit in Support of Summons to Admit Bail both filed on the 13<sup>th</sup> October 2021 (**“Affidavit in Support of Bail”**) (**the “Bail Application”**). His application is objected to by the Respondent (**the “Director of Public Prosecutions”**) by way of their Affidavit in Response filed on the 24<sup>th</sup> November 2021.
2. The Applicant, a resident of Green Castle, Eleuthera, one of the islands of the Commonwealth of The Bahamas and who is currently on remand at the Bahamas Department of Corrections (**“BDOCs”**) in New Providence, is 42 years of age and a Bahamian citizen.
3. Prior to his arrest and remand, he was self-employed as a Welder with the Jack Bay Development on Eleuthera. He was charged with Attempted Murder, Possession of a

Firearm with Intent to Endanger Life and Possession of a Firearm and Ammunition. He previously applied for bail but was denied while his co-defendant was admitted to bail.

4. The Applicant averred that he had a number of convictions, his last being in 2013. He stated that the convictions he could recall are as follows:

1996 – Armed Robbery, Abduction, Grievous Harm and Possession of an Unlicensed Firearm;

2002 – Manslaughter

2013 – Possession of an Unlicensed Firearm and Possession of Dangerous Drugs.

5. He explained that he had pled guilty to the 2013 matters as he was guilty as charged.
6. With respect to the present charges, he stated that he was innocent of those allegations. While he could not deny his presence at the scene, he had a sound alibi which could be provided by a number of people who would be able to testify that he was in their presence at the time the incident occurred and that he did not discharge a firearm. He took this Bail Application as his opportunity to give the Respondent notice of his alibi.
7. The fact that he did not discharge a firearm would be revealed in his trial before the Magistrate as there was no evidence that the firearm found in his possession was recently discharged. He added that there would be no evidence of any gunshot powder residue on him or his clothing.
8. The Applicant averred that there was some evidence that police officers were in pursuit of an individual feeling the scene which could not have been him as he did not run. He added that anyone who alleged that he committed the offence was either mistaken or deliberately lying and noted that the officers had informed him about a gun and jackets that were both apparently smeared with blood.
9. The Applicant stated that he was a father to three young children, two of whom lived with him at the time of his arrest. In his absence his family suffered from much hardship and he has been unable to bond with his children. He added that he was a very hard working person and that he was rarely out of work when he was out of prison. The Applicant further stated that he was friendly and community minded.
10. The Applicant averred that he should be granted bail because he was innocent of the allegations and intended to vigorously defend his innocence. If he had to remain in custody he would be unable to maintain himself and his family nor would he be able to defend his case. He added that he would be unable to instruct private counsel if he remained in custody.

11. The Applicant additionally stated that the risk of contracting COVID-19 was very high in BDOCs and noted that the health care system could not support anyone who would contract the virus. Further, that anyone who did contract the virus in BDOCs was either hospitalized or died while in prison. He exhibited a statement from the Minister of National Security in support of his contention.
12. The Applicant stated that if he is admitted to bail, he would remain responsible to the obligations which the court would impose on him as conditions for his bail. He would have employment and would not be idle. He is not a flight risk as all of his ties were to the Bahamas alone and he had no intention on being a fugitive which would destroy his family who loved, gave him support and believed in his innocence.
13. He would not interfere with any witnesses for the prosecution nor would he do anything to prevent justice being carried out. He added that he would be present for each adjournment until his matter is disposed of. The Applicant concluded that he was a fit and proper person to be admitted to bail and believed that there were appropriate conditions that the court could impose upon him.
14. The Respondent relied on its Affidavit in Response filed on the 24<sup>th</sup> November 2021 sworn by Inspector Durie Smith, an officer of the Royal Bahamas Police Force ("**Insp. Smith**"). He confirmed that the Applicant was charged with the offences of Attempted Murder, Possession of a Firearm with Intent to Endanger Life, Possession of an Unlicensed Firearm and Possession of Ammunition, with respect to an incident which occurred on Sunday, 10<sup>th</sup> January 2021 on Harbour Island.
15. The Respondent objected to the Bail Application as there was strong and cogent evidence from the Virtual Complainant, Clarrington Bowleg (**the "VC"**) who had indicated that on Sunday, 10<sup>th</sup> January 2021, sometime after 10:00 p.m., he was at his residence on Harbour Island, when he observed a male known to him as Frank, clad in a mustard hoodie, with a gold grill in his mouth.
16. The VC added that the Applicant pointed a firearm through his window and discharged it several times. As a result, he grabbed his daughter and ran out of the room. The VC later identified the Applicant during a confrontation on Wednesday, 13<sup>th</sup> January 2021 which was conducted by woman D/Sgt. 3349 Cheyenne Wilkinson.
17. Prior to, on Monday the 11<sup>th</sup> January, 2021 at around 2:30 a.m., D/Cpl. 63 Javod Frazer ("**D/Cpl Frazer**"), a crime scene officer, visited the scene and photographed a bullet along with suspected gunshot damages to the VC's residence. D/Cpl Frazer also collected several 9mm fired cartridge casings. Around 6:15 a.m., Insp. Kelsey Farquharson ("**Insp. Ferguson**") and other officers, proceeded to an unnamed road in the area of the Dunmore

Hotel. There he observed three men walking south on the unnamed road and identified himself to them as a police officer.

18. Insp. Farquharson observed the Applicant pull an object from his right waistline and throw it to the ground. Thereafter, he retrieved the object and upon inspection, he discovered that it was a 9mm Taurus G28 pistol which was also photographed by D/Cpl Frazer.
19. During the Applicant's Record of Interview, at answer 20, the Applicant stated that he had resorted to sleeping in the bush as a safety measure, to protect himself from being shot. Accordingly, he should be kept in custody for his own protection. The Respondent averred that based on paragraph 6 of the Applicant's affidavit in support of bail, he had a propensity not only to re-offend generally but to commit offences of a similar nature.
20. The Respondent added that the Applicant's convictions spanned over a continuous 21 year period, with the most recent conviction being in 2014 after he was found to be guilty of possessing of an unlicensed firearm. He was released on the 9<sup>th</sup> December 2017, 3 years prior to the commission of the present offence.
21. The Respondent stated that the Applicant's previous convictions were for the offences of unlawfully carrying arms, armed robbery, possession of firearm while committing an indictable offence, causing harm, forcibly taking and detaining, rape, manslaughter, possession of an unlicensed firearm, possession of ammunition, assaulting a police officer, escape from lawful custody, causing harm and possession of dangerous drugs.
22. The Respondent added that the Applicant's long history of convictions for violent crimes and firearm offences indicated that he was a threat to public safety and public order. With respect to the Applicant's conviction for escaping from lawful custody, that was evidence that if the Applicant was released on bail, he would fail to appear to face his trial.
23. The Respondent averred that there was no evidence that the Applicant was at a heightened risk of contracting COVID-19 and that hospitalization was a risk that anyone faced who contracted the virus, whether in custody or not.
24. The Respondent concluded that there are no conditions that could be imposed that would prevent the Applicant from reoffending, reduce his risk of threat to public safety and ensure his attendance at trial and asked the Court to exercise its discretion not to admit the Applicant to bail.

#### **Submissions**

25. Counsel for the Applicant, Mr. Rolle contended that the Applicant's Record of Interview did not suggest that he did not have a place of abode. Therefore any condition with

respect to his residence was of no moment. In relation to the allegations of his escape, he contended that the Respondent did not provide the nature of the circumstances surrounding the particular offence which would have further supported their position.

26. Counsel for the Respondent, Ms. Bethell submitted that during the Applicant's Record of Interview he had indicated that he was in the bush because there were strange males walking around the island with their guns. He added that someone told him not to move. That was evidence which they relied on in support of their contention that he should be kept in custody for his own protection.
27. She relied on **Lorenzo Wilson v Director of Public Prosecutions SCCrim App No. 129 of 2020** where the Court of Appeal agreed with the trial judge's decision to deny the appellant bail based on a previous conviction. At para. 20 onwards she stated,

**"20. In this case, the appellant is 24 years old and has already been convicted of a criminal offence which was serious enough to serve 18 months imprisonment. That offence involved an unlicensed firearm and this offence also involves a firearm which was alleged to be used indiscriminately against members of the public on a public street.**

**21. In our view, 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. It is unfortunate that the judge did not set out her reasons why she did not think any conditions could be imposed to ameliorate her concerns. This should have been done."**

28. Ms. Bethell highlighted that as soon as the Applicant was released, in a short period, he found himself back into custody for another matter. She added that based on the Applicant's long history of re-offending, he was a threat to public safety and public order.
29. Ms. Bethell supplemented the Respondent's submission that the Applicant would be a flight risk by expanding on the circumstances of his escape from custody. On 7<sup>th</sup> December 2013 at 9:55 a.m., Cpl 2644 Johnson at the Marsh Harbour Police Station reported that Sgt. Johnson attended the said station to assist with the guard. The Applicant, who was under arrest in reference to possession of a firearm, was being placed in the cell.
30. While he was being placed in the cell, he pushed Sgt. Johnson to the ground violently and ran out of the station making good his escape. Later that day he was arrested in a bushy area, charged and subsequently convicted. Ms. Bethell submitted that the Applicant violently pushed the officer to make good his escape and that that is evidence that the court could properly take into consideration in support of their contention that if he is released on bail he would fail to appear to face his trial and that he was a flight risk.

## **The Law**

31. The Court is vested with the discretion to grant bail by virtue of the Bail Act as amended by the Bail (Amendment) Act, 2011 (the "Act"), specifically section 4 which states as follows:

**"4. (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."**

**Bail (Amendment) Act, 2011**

**"(2) Notwithstanding any other provision 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.**

**(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 to be 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 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.**

**(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal.**

**(3A) Notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule."**

**"4. Amendment to First Schedule of the principal Act.**

**The First Schedule to the principal Act is amended -**

**(a) by the repeal of Part A and the substitution of the following ---**

**"PART A**

**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."

32. By the **Bail (Amendment) Act, 2014**, the First Schedule was again amended to reflect another paramount consideration.

**"3. Amendment to First Schedule to Ch. 103.**

**The First Schedule to the principal Act is amended by the addition thereto of the following factors –**

**"(h) in the case of violence allegedly committed upon another by the defendant, the court's paramount consideration is the need to protect the alleged victim."**

33. Accordingly, the Court is required to consider certain factors for the proper disposal of a bail application, namely: the character and antecedents of the applicant, the nature and seriousness of the offence and the strength of evidence against the Applicant, the safety of the Applicant or the safety of the public, whether the Applicant would interfere with the prosecution's witnesses, the protection of an alleged victim and whether the Applicant would fail to surrender to custody or appear at trial. A separate consideration is whether the Applicant is likely to be tried within a reasonable time.

**Discussion**

34. As required, I shall consider the factors as they relate to the facts of the application before me.

**The character and antecedents of the applicant**

35. The Applicant paints himself as a hardworking welder with steady employment and a family man. He however admits to having previous convictions for a multitude of convictions as has been confirmed by the Respondent. The Applicant's most recent

conviction, some 3 years ago was for possession of an unlicensed firearm; the same offence that he is again currently charged with.

**The nature and seriousness of the offence and the strength of evidence against the Applicant**

36. The charge against the Applicant of attempted murder is based on allegations that he shot into the VC's home. The VC stated that he had to run with his daughter out of the room. The attempt to take another man's life is no doubt a serious offence, especially without any care or concern for any other resident of the home. The VC also identified the Applicant as the gunman who shot into his home.
37. The Respondent also provided evidence that the Applicant was seen dropping a firearm which led to him being charged with the remaining offences of Possession of a Firearm with Intent to Endanger Life and Possession of a Firearm and Ammunition.
38. I consider all of the above-mentioned offences to be serious offences. Additionally, the evidence provided by the Respondent is cogent as it provides a sufficient connection to the Applicant and the offences.

**The safety of the Applicant or the safety of the public**

39. The Respondent contends that the Applicant's safety may be in danger if he is released on bail as he had stated in his record of interview that he had resorted to hiding in the bushes because he was fearful of being shot. This evidence was not disputed.
40. The Respondent also contends that the Applicant's long history of convictions for violent crimes and firearm offences indicated that he was a threat to public safety and public order.

**Whether the Applicant would interfere with the prosecution's witnesses**

41. There is no specific evidence provided by the Respondent that the Applicant would interfere with the prosecution's witnesses if he is admitted to bail. To satisfy this consideration, more than just a blanket assertion would be needed for the Court's consideration.

**The protection of an alleged victim**

42. The 2014 amendment to the Act makes the safety of a witness one of the paramount considerations when considering a bail application. In the instant case, the Respondent has not provided any evidence that the VC or any of its witnesses fear for their safety if the Applicant was admitted to bail.

**Whether the Applicant would fail to surrender to custody or appear at trial**



43. This consideration is always considered the most paramount. The Court must be able satisfied that he would fail to surrender to custody and that he would not fail to appear for his trial.
44. The Respondent contends that the Applicant's previous conviction of escaping from lawful custody is sufficient evidence that the Applicant would fail to surrender to custody or to appear for his trial. I note that that was a conviction and not simply a pending charge against the Applicant.

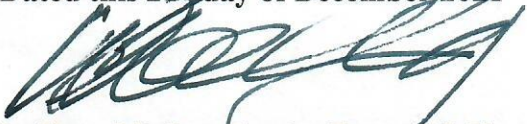
### **Ruling**

45. As required of the Court, the statutory considerations were contemplated in conjunction with the facts of the Bail Application. Notably, these must all be contemplated along with the Applicant's constitutional rights of his right to liberty as he is presumed innocent until proven guilty by a jury of his peers.
46. Notwithstanding that, the Court is vested with the power to detain an accused in custody unless it is satisfied that the detention would not be justified. This involves the Court carrying out a balancing act in order to determine whether the factors weigh in favor of an accused being admitted to or denied bail.
47. In the instant case, the offences that the Applicant is charged with are without a doubt serious offences. Due to his previous convictions for similar offences it can safely be said that the Applicant has a propensity to commit such offences. Moreover, such propensity does suggest that the Applicant would in fact be a danger to the safety of the public if he is admitted to bail.
48. The Applicant's admittance to sleeping in the bush because he feared being shot is evidence that his safety is at risk if he is released on bail. Additionally, there is cogent evidence that there is a sufficient connection between the Applicant and the commission of the offences which raises a reasonable suspicion of the commission of the offences by the Applicant. The Applicant's conviction for escaping for lawful custody presents substantial grounds for believing that he is a flight risk would fail to surrender for custody or to appear for his trial.
49. On the contrary, there is no evidence that the Applicant would interfere with the VC or any of the prosecution's witnesses. This is the only factor in favor of the Applicant being admitted to bail.
50. I now turn to consider whether any conditions could be imposed which would prevent witness interference, secure the safety of the public or the Applicant, prevent the commission of further offences or ensure the Applicant's attendance at trial.
51. While there is no allegation of witness interference, I do not consider that any conditions could be placed on the Applicant which would prevent any of the other eventualities.

Given the Applicant's long history of re-offending shortly after his release from custody for other serious offence, he has evidenced his intention to live a habitual life of crime, which thereby places the public's safety at risk and offends against public order.

52. Electronic monitoring devices are useful tools for tracking a person's whereabouts, but there is nothing which physically prevents a person from removing the device or deliberately masking it, thereby making it impossible to determine an individual's location, once a decision is made to breach the conditions of bail. This coupled with the undisputed evidence of the lengths that the Applicant has previously engaged to make good his escape from police custody as well as the Applicant habitually finding refuge in bushes on various islands as a means of either attempting to protect himself from the possibility of deadly harm being inflicted upon him or as a means of hiding from authorities and evading capture, this satisfies the Court that the Applicant's detention is necessary to ensure his attendance at trial.
53. Having performed the required balancing act, it is evident that the denial of the Applicant's right to liberty would be justified as he may very well fail to appear to have his right to a fair trial effected. This would be a denial of justice to the Virtual Complainant and a regression to the Court's mandate to ensure the continuous administration of justice. Having regard to the circumstances of the case the scales have no doubt tipped against the Applicant.
54. Accordingly, after considering all of the evidence and submissions of both parties, I find that the Applicant is not a fit and proper candidate to be admitted to bail. Bail is denied.

**Dated this 21<sup>st</sup> day of December 2021**



**The Hon. Madam Justice Renae McKay**