

IN THE SUPREME COURT

Criminal Side

BEWTEEN

**IN THE MATTER OF AN Application pursuant to Article 28 of the Constitution
of the Commonwealth of The Bahamas.**

AND

**IN THE MATTER OF AN Application pursuant to Article 20(1) of the
Constitution of the Commonwealth of the Bahamas**

FRANKLYN LOUIS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: His Lordship Mr. Justice Andrew Forbes

**Appearances: Mr. K. Brian Hanna, Counsel for the Applicant
Mrs. Erica Kemp, Counsel for the Respondent**

Dates: 12th August 2021

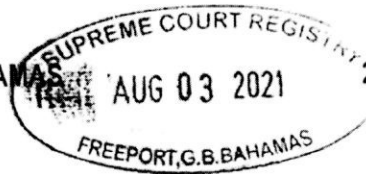
Criminal Trial-Constitutional Application- Article 20(1) of the Constitution-Right to trial within a reasonable time-Stay of proceedings:

- 1) The Court heard legal arguments offered by Counsel for the Applicant and Respondent and indicated that it would provide a written decision and do so now.
- 2) Counsel for the Applicant filed a Notice of Motion on the 29th July 2021 alleging that the Applicant's rights pursuant to Article 20(1) of the Constitution of The Bahamas were violated. In support of this Application, the Applicant swore an Affidavit filed on 30th July, 2021. For completeness the Court presents the entire contents of the Affidavit.

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division



2021/PUB/con/FP/0000

IN THE MATTER OF an Application pursuant to Article 28 of the Constitution of the Commonwealth of the Bahamas

AND

IN THE MATTER OF an Application pursuant to Article 20(1) of the Constitution of the Commonwealth of the Bahamas

AND

IN THE MATTER OF an Application by

FRANKLYN LOUIS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

AFFIDAVIT IN RESPONSE

I, **PRESCOTT PINDER** of the Island of Grand Bahama, one of the Islands of the Commonwealth of The Bahamas, **MAKE OATH** and say as follows, **THAT**:

1. I am Police Sergeant 2169 Liaison Officer in the Office of the Director of Public Prosecutions ("ODPP") and I am authorized to swear this Affidavit on behalf of the

Respondent giving the information contained herein which is known to me from my own knowledge or from sources stated herein.

2. That I was told by W/Sgt. 2343 Terry Jo Lowe, the investigating officer in this matter and I verily believe that on 20th June, 2002 Police received a complaint from the mother of Toni Ferguson, Ms. Lisa Robinson, on behalf of her minor daughter. That Ms. Lisa Robinson complaint to police was that her 12 year-old daughter Toni Ferguson had been sexually molested by a man driving a 2 door black Cadillac registration number 20776. Now produced, shown to me and exhibited hereto and marked "P.P.1" is a copy of Ms. Robinson's statement.
3. That on 20th June, 2002 Toni Ferguson was taken by Police to the Rand Memorial Hospital where she was examined by Dr. Francis Hoover where a sexual assault kit was taken. Now produced, shown to me and exhibited hereto and marked "P.P.2" is a copy of medical report for the VC prepared by Dr. Francis Hoover who was then attached to the Rand Memorial Hospital.
4. That I was told by the personnel at the Forensic laboratory in New Providence and I verily believe that there were forensic analysis on the sexual assault kit were completed but no intimate samples from the suspect were received by the said laboratory for comparative analysis.
5. That on 27th June, 2002, the Applicant was interviewed by Sgt. 2343 TerryJo Lowe in the presence of retired Sergeant 1441 Charles Johnson and the Applicant admitted that he had sexual intercourse with Toni Ferguson on the 20th June, 2002 in his black Cadillac after he

bought her food from Kentucky Fried Chicken Restaurant and that she told him that she was 17 years old. Now produced, shown to me and exhibited hereto and marked "P.P.3" is a copy of the Applicant's record of interview.

6. That on 28th June, 2020 after investigation in this matter, the Applicant whose date of birth is 4th February, 1970 was charged with unlawful sexual intercourse contrary to section 10(1) (a) of the Sexual Offences and Domestic Violence Act, Chapter 99. Now produced, shown to me and exhibited hereto and marked "P.P.4" is a copy of the Magistrate's Court Docket.
7. That on 1st July, 2020 the Applicant was arraigned before Deputy Chief Magistrate Helen Jones in Magistrate's Court #3 in Freeport. He was not required to enter a plea and the matter was adjourned to 5th November, 2002 at 10 a.m.
8. That on 1st July, 2002 the Applicant was granted bail in the said court in the sum of \$5000 with 1 or 2 sureties. Additionally he was to report to Central Police Station every Monday.
9. That on 5th November, 2002 The Applicant did not appear at Court and a Bench Warrant was issued for him.
10. That on 27th January, 2003, the matter was adjourned to 24th March, 2003 at 10 a.m. for surety to appear and the bench warrant for the Applicant was still outstanding.
11. That after a traffic stop by police, the Applicant appeared on 27th September, 2018, on a warrant of arrest before Magistrate Rengin Johnson in Magistrate's Court #3.
12. That Bail was denied and the matter adjourned to 29th January, 2019.

13. That I was told and I verily believe that the complainant Ms. Toni Ferguson was located by the Prosecution and indicated that she still wish to proceed with this matter.
14. That a Voluntary Bill of Indictment was prepared and served on the Applicant and on 25th April, 2019 the Applicant was arraigned in the Supreme Court before Justice Mrs. Estelle Gray-Evans. The Applicant was unrepresented and asked the Court for assistance with counsel for his representation.
15. That Counsel Simone Brown was issued the Crown brief in this matter on 25th April, 2019 by the Deputy Registrar of the Supreme Court. Now produced, shown to me and exhibited hereto and marked "P.P.5" is a copy of appointment letter of counsel.
16. That on 27th September, 2019, Ms. Brown accepted the brief on record and the Applicant's trial was fixed for 26th July, 2021 to 30th July 2021. Now produced, shown to me and exhibited hereto and marked "P.P.6" is a copy of the Court's transcript dated 27th September, 2019.
17. That on the 1st October, 2019 a case management conference was scheduled. Counsel Brown appeared however, there was no appearance of the Applicant who was in custody at the time and I was told and I verily believe that due to hurricane Dorian no flights were coming into or leaving Grand Bahama for New Providence. Additionally, no virtual communication was possible with the Bahamas Department of Correctional Services

("BDOCS") due to the downed cable network. The matter was adjourned to 10th October, 2019.

18. That on 10th October, 2019, Counsel for the Applicant appeared however there was no appearance of the Applicant for reasons given in paragraph 17 above. The matter was adjourned to 6th November, 2019.

19. That on the 6th November, 2019 the Applicant appeared with Counsel Brown before Gray-Evans J and was informed of the trial date of 26th July, 2021 to 30th July, 2021. The matter was adjourned to 20th February, 2020. Now produced, shown to me and exhibited hereto and marked "P.P.7" is a copy of the Court's transcript.

20. On 20th February, 2020, there was no appearance of the Applicant who was in custody at BDOCS. The matter was adjourned to 12th March, 2020.

21. On 12th March, 2020, at the case management conference, Counsel for the Applicant stated that she needed more time to familiarize herself with the Applicant's file. The matter was adjourned to 12th November, 2020.

22. On 12th November, 2020, the Applicant was at BDOCS and did not appear. The matter was adjourned to 24th November, 2020.

23. On 24th November, 2020, the Applicant did not appear. The matter was adjourned to 1st December, 2020.

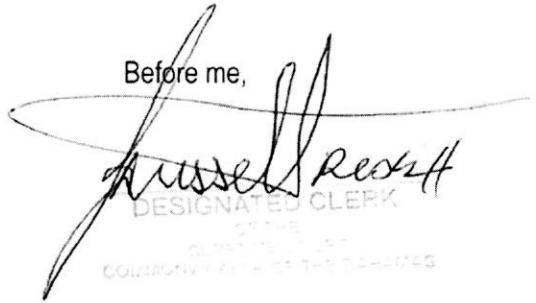
24. On 1st December, 2020, the Applicant appeared virtually via live television link from BDOCS. Defense counsel inquired about the photographs and any forensics tests results the Prosecution may have to be disclosed. The matter was adjourned to 26th July, 2021 to 30th July, 2021. Now produced, shown to me and exhibited hereto and marked "P.P.8" is a copy of the Court's transcript dated 1st December, 2020.
25. That due to the Applicant non-appearance in the Magistrate's Court his whereabouts were unknown from 1st July, 2002 to 27th September, 2018. I was told and I verily believe that the Applicant absconded. The Applicant did not appear at court until he was brought in by police on a warrant for his arrest.
26. That on 29th July, 2021, the Applicant filed a Notice of Motion and on 30th July, 2021, the Applicant filed an Affidavit seeking a permanent stay due to delay and therefore he cannot receive a fair hearing.
27. That in the premises, the Applicant's constitutional rights pursuant to Article 20(1) and any other fundamental right pursuant to the Bahamas Constitution was never breached by the Crown. The delay from arrest in July 2002 to September 2018, when the Applicant was picked up on a warrant of arrest (a total of 16 years) is attributed to the fault of the Applicant as trial could not proceed due to his absconding.
28. That in the premises, the Applicant was given notice at the Magistrate's Court on 1st July, 2002 to appear on 5th November, 2002 therefore there was no need for public advertisement concerning his absence as stated by the Applicant in his Affidavit at paragraph 8. The Applicant never showed up at court on the date given.

29. That the Applicant's trial should proceed and he should not be granted a permanent stay or dismissal of the charges in all the circumstances as delay in prosecution of this matter is due solely to the behaviour of the Applicant.

SWORN TO at Freeport, Grand Bahama)
by the said Sergeant Prescott Pinder)
this 3rd day of August, A.D. 2021)


Sgt. 2169 Prescott Pinder

Before me,


DESIGNATED CLERK
OF THE
COURT OF JUSTICE
COMMUNITY COLLEGE OF THE BAHAMAS

3) The Respondent filed its Affidavit in reply on the 3rd August 2021 the contents of which is incorporated herewith.

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division

No. 43/03/2019



IN THE MATTER OF ARTICLES 20 (1) of The Constitution of the
Commonwealth of The Bahamas

BETWEEN:-

THE DIRECTOR OF PUBLIC PROSECUTIONS

AND

FRANKLYN LOUIS

AFFIDAVIT

TAKE NOTICE that I, **FRANKLYN LOUIS**, of the City of Freeport on the island of Grand Bahama, one of the Islands of the Commonwealth of The Bahamas make oath and say as follows:

1. That I make this Affidavit in support of my Summons pursuant to Article 20 (1) of the Constitution of the Commonwealth of The Bahamas which states:

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

2. That I was arrested and charged for the offence of Unlawful Sexual Intercourse;
3. That I was granted bail from the Magistrates Court

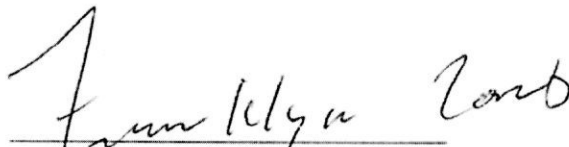
4. That on the adjourned date that I cannot remember now, I did appear to Court. However, nothing took place. This happened on a few occasions. I made inquiries with the prosecution at the time. Again, I was not given a specific date for trial;
5. That I never absconded. I was always available for trial. However, it seemed that the Court was not aware of my matter;
6. That I never left The Bahamas, I was available for trial at all times;
7. That the police are familiar with my address. If they needed me, they knew where to find me as they initially did;
8. That no public advertisement was issued concerning my absence from Court. Neither did anyone ever inform me that the police was looking for me;
9. The indictment against in this matter is dated 2019/No. 43/03 that indicated that they had no intention of trying this matter in 2002. Otherwise, they would have brought it to my attention and made an effort to have me served with an indictment in 2002/2003;
10. That the only way I found out about a warrant for my arrest was a result of a road block. I attended Court on many occasions and no one never informed me of a warrant for my arrest.
11. Is it now 2021, there is no way if the police was looking for me or if they had made an effort to find me, that would have been very easy as I always lived in The Bahamas;
12. That it is unfair now to attempt to have me answer to the charge as I do not remember anything about this matter nor do I have any recollection;
13. I am unable to contact or find the persons who may be able to assist me with my defence. It has been twenty (20) years ago. I would be at a loss just thinking about defending myself;
14. That my constitutional right to a fair hearing within a reasonable time has been breached and the only remedy at this time is to stay the matter permanently., there is no way that the prosecution can offer me a fair trial after such a long and drawn out period;

15. I have spent the last three years in jail, rotting without any indication of what will happen to me. I was not informed about anything concerning this matter for twenty (20) years;

16. I was never served with statement of witnesses or what offence I am being tried for. Why was I incarcerated for such a long time to no fault of my own;

17. This matter was not heard due to the prosecutions delay and negligence. No fault of mine caused this delay as I have said, I was always available for trial as I never left the Bahamas. In addition, if I was in prison for the last three (3) years, which have them enough time to prepare my case.

DATED this 29th day of **July** A.D., 2021



FRANKLYN LOUIS



NOTARY PUBLIC



- 4) The Court adopts the factual matrix highlighted in the Respondent's Affidavit. However, the Court notes that the Applicant was interviewed on the 27th June 2002 by Woman Constable 2343 Lowe and Detective Sargent 1441 Johnson where the Applicant when questioned under caution without an Attorney, made an admission to having intercourse with the Virtual Complainant who was fourteen (14) years old at the time. He acknowledged that he wasn't aware she was that young and claimed that the Virtual Complainant had mislead him and indicated she was in fact seventeen (17) years old.
- 5) The trial was set to commence on Wednesday the 28th July 2021. It was at this point the Court was informed of this Application and the matter was adjourned for the substantive hearing of the Constitutional Motion. This means that the Applicant invokes Article 28, Paragraphs (1) & (2) which read as follows;

“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.

(2) The Supreme Court shall have original jurisdiction — (a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and (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 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 to 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....”¹

- 6) He further invokes Article 20(1) as the substantive clause itself as being violated which reads as follows;

“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

¹ The Constitution of the Commonwealth of the Bahamas

² Supra

- 7) The Court refers to the Court of Appeal's decision in **Kingsley Adderley and The Director of Public Prosecutions**³ . In that case the Court cited with approval the case of **Barker v. Wingo (1972) 407 US 514**⁴ where Powell J articulated the formula for determining what constitutes a reasonable time (emphasis mine). These include:
1. The length of the delay,
 2. The reasons for the delay,
 3. The responsibility of the accused for asserting his rights; and
 4. Any prejudice to the accused.
- 8) The issues to be determined in this case are simply:
- (a) Whether there is or has been a violation of the Applicant's right to a fair trial within a reasonable time;
 - (b) Whether a trial at this time would amount to a violation of the Applicant's right to a fair trial under Article 20(1);
 - (c) Whether the Applicant can under the circumstances currently existing receive a fair trial; and
 - (d) Whether the remedy in this case should be a stay of the Proceedings.

In addressing these factors the Court notes the comments of **Powell J** at Page 5222 of the Barko case:

"... The right to speedy trial is a vaguer concept than other procedural rights. It is, for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate... The amorphous quality of the right also leads to the unsatisfactorily severe remedy of dismissal of the indictment when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried."⁵

- 9) The length of the delay in this case commenced from 2002 when the Applicant was arraigned before the Stipendiary and Circuit Magistrate on a single count of Unlawful Sexual Intercourse. The Applicant was not required to enter a plea and was placed on Five Thousand Dollars bond (\$5,000.00) with 1 or 2 suretors. Also the Applicant was required to report to the Central Police Station every Monday.

The matter was then adjourned to the 5th November 2002. On the 5th November 2002, the Applicant failed to appear and a warrant of arrest was issued. However,

³ SCCRAp. No. 212 of 2018

⁴ Supreme Court of the United States of America

⁵ Barko v. Wingo (1972) 407 US. 414

on the 27th January 2003, the warrant was cancelled and/or suspended and adjourned to the 24th March 2003 for suretors to appear and show cause as to the outstanding warrant of arrest for the Applicant. According to the Applicant in his filed Affidavit, he returned to Court on the adjourned date, nothing occurred and this occurred on a few occasions and that he made inquiries with the Prosecution at the time but was never given a specific trial date.

- 10) On the 27th September 2018, the Applicant was arrested on the outstanding warrant. The Applicant bail was revoked and Applicant was remanded to custody to await the Office of Director of Public Prosecutions attempts to ascertain whether they could locate the Virtual Complainant and whether she wished to continue.
- 11) The Voluntary Bill of Indictment was filed on the 21st March 2019, and served on the Applicant in April 2019 to appear before Senior Justice Madam Evans. The Applicant appeared and plead not guilty and the matter was adjourned for Trial on the 26th to 30th July 2021.
- 12) The Applicant indicated at the time that he required Counsel to be appointed. Attorney Ms. Simone Brown was duly appointed in April 2019. However, in June 2021, Ms. Brown withdrew as Counsel for the Applicant as she was being appointed as an S & C Magistrate.
- 13) On the 6th July 2021 Mr. K. Brian Hanna was appointed as Counsel for the Applicant. At the Pre-Trial Review on the 26th July 2021, Counsel for the Applicant indicated he was ready to proceed to trial, as the Court was still in the process of wrapping up another trial.
- 14) On the 29th July 2021 Counsel for the Applicant indicated his intention to file a constitutional application and that hearing was then adjourned to 10th August 2021. The Submissions of the Applicant is that the reason for the delay is entirely the fault or cause of the Crown as the Applicant was at all times present on the Island of Grand Bahama. Further, that the Applicant has now been detained for three (3) years awaiting trial.
- 15) The Crown argues that the Applicant had absconded for sixteen years and that was entirely the fault of the Applicant. That the Applicant has been in custody two (2) years and ten (10) months and that is not an unreasonable delay.
- 16) Clearly the Applicant has some fault in this process. After his arraignment he was ordered to report to the Central Police station each Monday. There is no evidence that he did so and thus appeared to absent himself from the Court proceedings and made no effort to follow up knowing he had been accused of Sexual Assault. Notwithstanding the assertions made in his Affidavit it is clearly contradicted by the notes of the Magistrate.

17) As for the Respondent, clearly they bear some responsibility, as there was an original effort to summon the Suretor who executed the Applicant's bail bond but that hearing was never effected. Further, there was the delay in the execution of an arrest warrant and that responsibility rests on the State. Moreover, there was the further delay following the arraigning of the Applicant by not moving the trial in an expedited fashion. So in deciding whether the Applicants rights have been denied what has been the actual delay itself?

18) The Applicant contends that the delay has been from 2002 to present and the Respondent contends it more likely from 2018 to present. If one accepts the Applicant's calculation, this case is twenty (20) years in the making and if you accept the Crown's contention it is merely two (2) years and ten (10) months, either way there has been a delay.

19) The Court's view, is that the operative period extends not from the arraignment but rather from the Applicants incarnation to date. **As Powell J** said at page 430;

"Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstance of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge."⁶

20) Therefore, the only questions to be considered are whether that delay was reasonable and can this Applicant receive a fair trial given the delay? As for whether this delay was unreasonable given the factors previously outlined, the Applicant was clearly at fault for some of it. He cannot now argue, "I was in Grand Bahama and the Police didn't look for me". He was under a legal obligation to comply with the Magistrates order to report and there is no evidence that he did so. Therefore, if you accept that there is a twenty year delay, then sixteen of that twenty falls on the Applicant.

21) The Respondent cannot be absolved either as they allowed those sixteen years to go unchallenged. Additionally, there was no urgency on their part given that these were allegations made by a child.

⁶ supra

22) Another consideration for the Court is, what if anything did the Applicant do to expiate this case? In **Taylor v. The Attorney General of the Commonwealth of The Bahamas**⁷ Senior Justice Isaacs (as he then was) noted that Taylor had been charged with Attempted Murder resulting from an incident in 2008. A preliminary inquiry only occurred in 2012 and at the time of the hearing Taylor's previous Attorney had written a letter to the Office of Attorney General seeking clarification as to her trial. Justice Isaacs stated:

"...there are letters written to the Office of the Attorney-General that suggest the Applicant was proactive in having her case brought on for trial. This is a positive factor that weighs in the Applicant's favor as I have found she has taken steps to ensure her case is heard quickly..."

23) However, in this case the Applicant took no proactive steps whatsoever.

24) Therefore, considering the above can the Applicant receive a fair trial meaning whether the Applicant would suffer any prejudice as a consequence of the delay. In **Barko Powell J** made the following observations:-

"...Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial was designed to protect. This Court has identified three such interests:

(i) to prevent oppressive pre-trial incarceration;

(ii) to minimize anxiety and concern of the accused; and

(iii) to limit the possibility that the defence will be impaired.

Of these, the most serious is the last... if witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defence witnesses are unable to recall accurately events of the distant past. Loss of memory however, is not always reflected in the record, because what has been forgotten can rarely be shown..."⁸

25) According to the Applicant in his Affidavit he does not remember anything regarding this matter and has no recollection. Further he states he cannot contact anyone to assist him regarding his defence. However it should be noted that the Applicant never asserted a reliance on an Alibi although when given his notice, he asserted he knew nothing of the matter.

26) Furthermore given the Applicant's admission, it appears that the question of an Alibi appears moot. The Applicant appears to this Court to be saying, "Well it's been twenty (20) years, so I can't recall anything". However as a part of the process, the Applicant would have been served with the Voluntary Bill of Indictment along with all of the relevant statements of the witnesses including the statement he gave.

⁷ (2013) 1 BSH J 218

⁸ (1972) 407 US at 532

- 27) The Applicant's statement is comprehensive and detailed. It matches the details of the Virtual Complainant's statement except for the Applicant's assertions that the Virtual Complainant had misled him as to her age. The defense the Applicant offered in 2002 was that, "She misled me and I assumed that she was seventeen (17)." However, there is no witness or evidence required to mount that defence.
- 28) Counsel for the Applicant argues that they will challenge the admissibility of the adverse statement should the matter proceed to trial. He further argues that he cannot effectively cross examine the physician who examined the Virtual Complainant, as Dr. Hoover has now left the jurisdiction. However, that is not unique, as doctors leave the jurisdiction all the time hence, the reason for contemporaneous notes, which a colleague who is familiar with the handwriting of the original doctor can give into evidence.
- 29) There was some argument about the Virtual Complainant's sexual history, which Counsel for the Applicant rightly knows is inadmissible. Counsel also argued that the Applicant was at the time of his arrest allowed an opportunity to produce an alibi. However when arraigned before Madam Senior Justice Evans, the Applicant was asked about a possible alibi and his response was, "I don't recall anything". Counsel indicated the Applicant has witnesses who could account for his whereabouts on the day and time in question. And that the Applicant will risk incriminating himself because he can no longer recall events clearly.
- 30) In support of these submissions, Counsel relies upon the authorities of *R v. Edwin Ogle*⁹ where the Court at page 442 said;

"In my view the accused cannot be said to have been afforded a fair hearing within a reasonable time, if he is now called upon to defend himself having depositions read into evidence on behalf of the Crown more than three years after he was committed to stand trial unless a very satisfactory explanation for the delay be forthcoming from the Prosecution...."¹⁰

- 31) Counsel for the Respondent in their submissions contend that a permanent stay is unwarranted and that there are other remedies which are available. She submits that delay is not unjustifiable as the Applicant bears some fault for the delay. Counsel cited a number of authorities however the Court notes the case of **Attorney General's Reference No 2 of 2001 (On Appeal from the Court of Appeal Criminal Division)**¹¹ The House of Lords was considering whether criminal proceedings may be stayed on the ground that there had been a violation of the reasonable time requirement in Article 6(1) of the European Convention for

⁹ (1968) 11 WIR 439.

¹⁰ supra

¹¹ (2003) UKHL 68

the Protection of Fundamental Rights and Freedoms. The Court noted at paragraphs 23 & 24, the following: -

"The Court found a breach of the reasonable time continue. It would be unwise to attempt to describe such in advance. They will be recognizable when they appear. Such cases will however be very exceptional and a stay will never be an appropriate remedy if any lesser remedy would adequately vindicate the defendant's Convention right...."

32) If the Court accepts that the Applicant was responsible for a portion of the delay in these proceedings and that the Respondent was also responsible for some of the delay in these proceedings by failing to take progressive steps when the Applicant failed to comply with his bail conditions then the Court can answer the question as to whether the Applicant can receive a fair trial. In all of the circumstances considered I find that the Applicant can receive a fair trial. .

33) The Court considered the Applicant's continued detention as unreasonable and the Respondent rightly accepted a modification. The Court then granted the Applicant bail in the sum of Nine Thousand Five Hundred Dollars (\$9,500.00) with one (1) or two (2) suretor(s). The Court also required the Applicant to be electronically monitored and be placed on curfew of 8 p.m. on weekdays and 9 p.m. on weekends.

Additionally to report Monday, Wednesday & Friday to Central Police Station Freeport, Grand Bahama before 7 p.m. at the latest. Additionally to have no direct or indirect contact with witnesses or come within one hundred (100) yards of the Virtual Complainant.

34) On the substantial question as to whether the entire case ought to be stayed? The Court notes the Court of Appeal's decision of ***Genear McKenzie and Director of Public Prosecutions***.¹² The Court cited with approval the decision of the ***Caribbean Court of Justice*** ("the CCJ"), ***Frank Gibson v. The Attorney General***.¹³ At paragraph 30 the Court of Appeal cited paragraph 62 of the CCJ decision which states:-

"[62] A permanent stay or dismissal of the charge cannot be regarded as the inevitable or even the normal remedy for cases of unreasonable delay where a fair trial is still possible. Quite apart from prejudicing the operation of section 13(3), to so hold, as some other jurisdictions have done, would create too great a risk of unnecessarily placing trial courts in the uncomfortable position of having to choose between equally undesirable 11 alternatives, namely: to permit a possibly dangerous criminal, to avoid being tried or else to raise to an

¹² SCCrApp. No 124 of 2020

¹³ (2010) CCH 3

unacceptably high level the threshold for deeming unreasonable obviously inordinate delay. Having an inevitable permanent stay or dismissal of the charge as the single sanction for breach of the reasonable time guarantee may well reward the guilty, who escape being brought to justice, even as it does little or nothing for the innocent who cannot regain the time they have lost suffering under a cloud of suspicion or worse, being remanded in custody. We accept the view of the Inter-American Court of Human Rights that “the State’s duty to wholly serve the purposes of justice prevails over the guarantee of reasonable time” [FN34].

35) The fundamental objective of the reasonable time guarantee is not to permit accused persons to escape trial but to prevent them from remaining in limbo for a protracted period and to ensure that there is efficient disposition of pending charges. The guarantee is an incentive to the State to provide a criminal justice system where trials are heard in a timely manner.¹⁴

36) The Court also adopts Lord Bingham of Cornhill comments in *The Attorney General No.2*¹⁵ where he said as follows;

“First the right of a criminal defendant is to a hearing. The article requires that hearing to have certain characteristics. If the hearing is shown not to be fair, a conviction can be quashed and a retrial ordered if a fair trial can still be held. If the hearing is shown to have been by a tribunal lacking independence and impartiality or legal authority, a conviction can be quashed and retrial ordered if a fair trial can still be held. If Judgment was not given publicly, Judgment can be given publicly. But time, once spent cannot be recovered. If a breach of reasonable time requirements is shown to have occurred it cannot be cured. It would be however be anomalous if breach of reasonable time requirement had effect more far reaching than breach of the defendant’s other article 6(1) rights when (as must be assumed) the breach does not taint the basic fairness of the hearing at all, and even more anomalous that the right to a hearing should be vindicated by ordering that there be no trial at all.”¹⁶

37) This Court recognizes the unacceptable delay in this case and has granted the Applicant bail and has established that this trial will be adjudicated on the 16th December 2021. In the circumstances this Court will not offer a permanent stay at this time but reserves the right should this trial not occur that the question is revisited as to whether this case ought to be permanently stayed.

¹⁴ supra

¹⁵ (2004) @ 1 WLR 1

¹⁶ supra

38) Parties are at liberty to Appeal the decision of this Court.

Given this 1st day of September, 2021

A handwritten signature in black ink, appearing to read 'A. Forbes', written above a horizontal line.

Andrew Forbes
Justice of Supreme Court