

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

2022/CRI/bal/No.00251

BETWEEN:

CODY NEWTON

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Camille Darville-Gomez

**Appearances: Mrs. Wendawn Miller- Frazer for the Applicant
Ms. Racquel Whyms and Ms. Audrey Bonamy for the Respondent**

Hearing Date: 19th January, 2023

BAIL DECISION

Darville Gomez, J.

FACTUAL BACKGROUND

1. The Applicant, 26 year old Cody Newton is charged with the following offences for which he has already been served with the Voluntary Bill of Indictment:
 - (I) Three Counts of Attempted Murder contrary to section 292 of the Penal Code Chapter 84; and
 - (II) Armed Robbery contrary to 339 (2) of the Penal Code Chapter 84.

2. The Applicant applied for bail pursuant to section 4 of the Bail Act by way of Summons and supporting Affidavit both filed on the 28th October, 2022 and followed up with a Supplemental Affidavit filed on the 10th November, 2022.
3. The Respondent filed an Affidavit in Response on the 22nd November, 2022 demarcating their objections to the Applicant's application for Bail.

THE APPLICANT'S CASE

4. The Applicant claimed that prior to his incarceration he was employed as a Mechanic. He admitted at paragraph 10 of his Affidavit that sometime in or about N2017 or 2018 he was convicted for Possession of Dangerous Drugs and Stealing/Receiving. In his Supplemental Affidavit, he specified that he has a pending matter before the Supreme Court for the following offences: Armed Robbery (2 counts), Damage and Receiving. However, he contends that he is innocent of the charges laid out at paragraph 1 above and is anxious to defend his case. In submission, the Applicant swore that he is a fit and proper candidate for bail and should bail be granted, he intends to relocate from No. 61 Geranium, Pinewood Gardens to Mangrove Cay, South Andros, The Bahamas.

THE CROWN' S CASE

5. The Crown in its Affidavit in Response exhibited the Applicant's Form. The Crown noted that the Applicant was granted bail on December 17, 2017 for 3 counts of Armed Robbery. He is charged with another in relation to this offence. The Crown asserted that this matter has a back-up trial date of April 3, 2023 and a substantive trial date of April 1, 2024.
6. The Crown also noted that the Antecedent Form reflected a history of past criminal offences that are similar to those which the Applicant is currently charged before the court. The Crown further argued that it is likely that the Applicant will re-offend if granted bail due to his propensity to commit crime(s). In this regard, the Applicant is not a fit and proper candidate for bail.
7. Additionally, the Crown submitted that there exist cogent evidence as one of the virtual complainants, Maverick Major knew the Applicant, Cody Newton. In their objection to the grant of bail, The Crown also averred that there is no unreasonable delay in this matter and the applicant is scheduled to be heard within a reasonable time before this court.

THE ISSUE

8. The issue to be determined by this Court is whether the Applicant, Cody Newton should be granted or refused bail.

THE LAW

9. Article 20(1) of the Constitution provides that:

“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.”

10. And at 20 (2)(a) 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;...”

11. According to the Bail Act, 1994 (Amendment 37 of 2011), Section 4(2) reads:

“Notwithstanding any other provisions of this Act or any other law, any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged –

- (a) Has not been tried within a reasonable time;*
- (b) Is unlikely to be tried within a reasonable time; or*
- (c) Should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B)*

And where the court makes an order for the release, on bail, of that person, it shall include in the record a written statement giving the reasons for the order of the release on bail.”

(2A) For the purposes 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 the 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."

12. The Amendments to the First Schedule found at Part A outlines some factors that the Court must take into consideration when determining whether to grant bail to an Applicant/Defendant. Part A reads 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;

(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."

ANALYSIS and CONCLUSION

13. The Court of Appeal in **Jonathan Armbrister v The Attorney General** SCCrApp. No. 145 of 2011 said:

"12. 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 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 case of conviction, the accused's record, if any and the likelihood of interference with witnesses."

14. Part A of the First Schedule of the Bail Act at paragraph 11 above places an onus on the Crown to satisfy the Court that an Applicant should not be granted bail. Crane- Scott JA In **Jevon Seymour v Director of Public Prosecutions, No.115 of 2019** paraphrased the statute at paragraph 65 and said :

"It is obvious from the above paragraph that the evidence which the crown placed before the learned judge in an effort to discharge its burden of satisfying the court that the appellant should not be granted bail was woefully deficient. Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail "would" if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown's burden is only discharged by the production of such evidence."

15. It is now necessary to determine whether the Crown produced substantial evidence to support their argument that the Applicant would breach one or more of the factors outlined in Part A.

16. In **Dennis Mather and Director of Public Prosecutions SCCrApp. No. 96 of 2020**, Isaacs JA at paragraph 28 said as follows:

"There must be some evidence adduced before the judge hearing the bail application to support the Crown's view that the applicant for bail will abscond, interfere with witnesses or is likely to re-offend or seek to pervert the course of justice."

17. In **Stephen Godfrey Davis and The Director of Public Prosecutions SCCrApp. No. 108 of 2020** Isaacs JA said At paragraph 28 the judgment that:

"The antecedents of an applicant for bail is an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to commit other offences while on bail."

18. As indicated above, the Crown produced the Applicant's Criminal Records Antecedent Form which reflects that the Applicant received a fine sometime on or about 30th April, 2018 for Stealing in the Magistrate's Court.

19. Additionally, there is a pending matter for three counts of Armed Robbery, to have occurred sometime in December, 2017 which is scheduled for trial in 2023 or 2024. Therefore, the Applicant has been charged in relation to an offence of Armed Robbery and Attempted Murder while on bail for three counts of Armed Robbery.
20. In light of the circumstances, I am of the opinion that should the Applicant be granted bail, he may likely commit an offence while on bail and if not similar in nature or identical to that which he is already charged before this court. My reason is founded on the historical facts of the Applicant criminal record.
21. In my view, the conditions which are usually imposed when considering the grant of bail, is not sufficient to ensure that the Applicant will not commit an offence while on bail. On this point, the case of *Dennis Mather* alluded to the judgment of then President Anita Allen in *Cordero McDonald v The Attorney General SCCrApp No 195 of 2016* where she said at paragraphs 38 and 39:

“38. The further question for the learned judge was whether there are conditions which can be imposed which would reasonably ensure the appellant's presence at his trial; the safety and protection of the public; and the safety of victims. Suffice it to say that the appellant was already on bail for another offence, he was required to have two sureties; to report to the Elizabeth Estates Police Station every Monday, Wednesday and Saturday before 6 pm; and was fitted with an electronic bracelet monitoring his whereabouts. The only other conditions which could reasonably be considered are a curfew, and the surrender of his passport.

39. Given these circumstances, namely the conditions to which he is already subject, and the fact that he was charged with these offences while on bail for another offence, I fail to see how the imposition of a curfew and surrender of his passport could reasonably ensure his appearance at trial; the safety, and the protection of the public, and that of the complainants.”

22. Also, in *Hurman v The State [2005] UKPC 49*, page 10; paragraph [15]:

“ It is obvious that a person charged with a serious offence, facing severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good ground for refusing bail...”

23. The law on this point was also discussed in **Randy R. Williams and Director of Public Prosecutions SCCrApp. No. 25 of 2022**, where Sir Michael Barnett, P at paragraphs 11, 12, and 19 said:

“ 11. In my judgment a judge in denying bail must have “substantial” grounds for believing the an applicant for bail “would” not “might” or “may” abscond, interfere with witnesses or commit a crime whilst on bail.”

12. There is always a possibility that an applicant for bail may abscond, interfere with witnesses or commit a crime. However, if that possibility, nay probability, was not based on evidence then it would be difficult to see how any person charged with an offence would be granted bail.

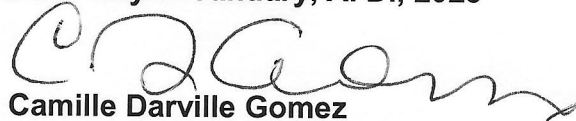
19. In my judgment, it cannot be a proper exercise of judicial discretion to deprive a person of his liberty on a speculative belief that a person may interfere with witnesses or commit a crime whilst on bail. This is particularly so where an accused has no antecedents.”

24. The duty of this Court also extends to the safety of society as was highlighted in the case of **Richard Hepburn and the Attorney General SCCr.App. No.276 of 2014**. While armed robbery is not considered a heinous crime, it is still a serious offence which must be taken into consideration. In my opinion, it is in the best interest of the public that the Applicant’s application be denied.

25. In the exercise of my discretion in accordance with the Bail Act, I find that the Applicant is not a fit and proper candidate for the grant of bail.

26. Bail is hereby denied for the reasons outlined in this decision.

Dated this 23rd day of January, A. D., 2023


Camille Darville Gomez
Justice