

COMMONWEALTH OF THE BAHAMAS

CASE NO. CRI/BAIL/FP/00081/2017

IN THE SUPREME COURT

Criminal Side

BETWEEN

LARRY ARTILLUS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Attorney Mrs. Ashley Carroll c/o Director of Public Prosecutions

Attorney Mr. Osman Johnson c/o Larry Artillus

Hearing Date: 21st February 2023

RULING ON BAIL

Forbes. J.

BACKGROUND

1. The Applicant has filed an application seeking consideration of the Court as to the question of bail. In support of his application the Applicant filed an Affidavit on the 16th February 2023 in which he avers that he was remanded on the charges of Murder and four (4) counts of Attempted Murder; that he has close ties to the local area in Carvel Beach, Freeport, Grand Bahama and that he was previously employed with Grand Sun Investment Ltd. as a pump attendant. Further that he is prepared to comply with any and or all conditions should bail be granted and that he was previously released on bail for a similar matter.
2. The Respondent filed a Supplemental Affidavit in Response dated 30th January, 2023 sworn by Corporal 771 Anastacia Rolle and in support of the Affidavit sworn by Sargent 2169 Prescott Pinder filed on 27th January 2022.
3. The Court makes the following observations as it relates to this Applicant. The Court heard an application filed by this Applicant in March 2022 and had denied bail in a written decision dated 18th April 2022. However, certain events have overtaken this present application. Those events are that on the 22nd February, 2023 the Applicant appeared before this Court in a criminal Trial (cri. /vbi. /no. 212/8/2015), before a jury. The Applicant was represented by Counsel for the duration of the trial and that trial concluded on the 7th March, 2023 when the jury returned a unanimous guilty verdict on the charge of Murder.
4. In the interim the application for bail remained to be determined as it related to the charges of Murder and Attempted Murder and that trial is scheduled to commence in May 2024. It should be noted that the Applicant/convict now awaits a probation report and thereafter sentencing. Clearly the Applicant maintains his right to appeal the conviction and sentence when imposed. However, the issue for

consideration given the current facts should this Court consider granting this Applicant bail in his pending matter?

SUBMISSIONS

5. The Applicant's Counsel has argued that notwithstanding the allegations, the Applicant has denied the allegations and maintains his innocence. In support Counsel cites the Court of Appeal decision of **Stephon Davis and the Director of Public Prosecution SCCrApp. No. 108 of 2020.**
6. The DPP has submitted that the Applicant is of such a bad character and has allegedly committed such heinous acts he ought not to be granted bail. In this regard the Respondent relied on **Stephon Davis v The Director of Public Prosecution 2014/Cri/bail/00069** where Davis was charged with Murder and two (2) counts of Attempted Murder. He appeared before a Judge of the Supreme Court and was denied bail on the basis that Davis was a threat to public safety as one of the grounds.

THE LAW

7. The Applicant faces charges involving Murder and Attempted Murder, offences that are included in Part C of the First Schedule of the Bail Act.
8. Part C states, inter alia as follows:-
"PART C (Section 4(3)) Kidnapping — section 282, Ch. 84; Conspiracy to commit Kidnapping — sections 282 and 89(1), Ch. 84; Murder — section 291, Ch. 84; Conspiracy to commit Murder — sections 291 and 89(1), Ch. 84; Abetment to Murder — sections 86 and 307, Ch. 84; Armed Robbery — section 339(2), Ch. 84; Conspiracy to commit Armed Robbery — sections 339(2) and 89(1), Ch. 84; Abetment to Armed Robbery — sections 86 and 339, Ch. 84; Treason — section 389, Ch. 84; Conspiracy to commit Treason — sections 389 and 89(1), Ch. 84."
9. Section 4(2) and (3) of Bail (Amendment) Act, 2011 permits the grant bail to those charged with a Part C offence. Sections 4(2) and (3) state:-
"(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."

10. In considering whether to grant bail to a defendant who has been charged with a Part C offence, the court shall have regard to the following factors (as found in Section 4 of the Bail (Amendment) Act 2011)—

"(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 purposes 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.";

11. The Court of Appeal in *Stephon Davis v. Director of Public Prosecutions* SCCrApp. No. 108 of 2021 cited *Vasyli v. The Attorney General* (2015) 1 BHS.J. No 86 where Allen P said: -

"12. On a true construction of section 4 (2) and paragraph (a) (i) of Part A of the Bail Act, and notwithstanding the 2014 Amendment, I am still of the view that bail may only be denied if the State is able to demonstrate that there are substantial grounds for believing that the applicant would not surrender to custody or appear for trial. In assessing whether there are substantial grounds for such belief, the court shall also have regard to the nature and seriousness of the offence and the nature and strength of the evidence against an applicant as prescribed in paragraph (g) of Part A." [Emphasis added]

12. There have been multiple decisions by the Court of Appeal which have established what criteria a Court ought to consider when the issue of bail

is being reviewed. In the Court of Appeal decision of **Dennis Mather and the Director of Public Prosecution SCCrApp 96 of 2020** the Court of Appeal at paragraph 16 cited a number of cases as the starting point:-

“16. The main consideration for a court in a bail application is whether the applicant would appear for his trial. In Attorney General v. Bradley Ferguson, et al SCCrApp. No.’s 57, 106, 108, 116 of 2008, Osadebay, JA observed as follows:

“As stated by Coleridge J in Barronet’s case cited earlier the defendant is not detained in custody because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial.”

17. In Jonathan Armbrister v The Attorney General SCCrApp. No.145 of 2011, John, JA said as follows:

“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.”

ANALYSIS

13.The Court must now consider the rational for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial. The Court must also take into consideration the now established fact that the Applicant has been convicted of Murder in an unrelated matter and awaits sentencing.

14.The Respondent has submitted that the Applicant’s antecedents; his pending matters and that the evidence adduced is cogent and powerful

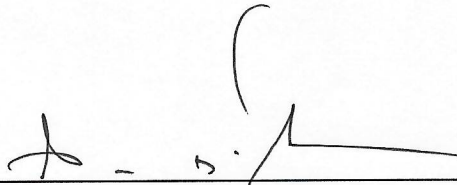
should be grounds to deny the Applicant bail. However, the Respondent offered no evidence to suggest that he would not appear and the Affidavit is totally devoid of any suggestion that the Applicant might not surrender for trial. They however focused on the Applicant being a safety concern to the community.

15. As stated in **Davis (supra)** there is no evidence before this Court that the Applicant will refuse to surrender. However as this Court has noted above, this Applicant has now been convicted of Murder and whether he ought to be granted bail while he awaits sentence on the other case is not in the Court's view an issue to be determined on this application.

DISPOSITION

16. Therefore, given the circumstances the Court denies this application for bail. However, should the Applicant successfully appeal his conviction and sentencing in the other matter and both are set aside, the Applicant can reapply with regards to this current matter.

17. Parties aggrieved may appeal to the Court of Appeal.



Justice Andrew Forbes

Dated the 2nd day of February 2023