

COMMONWEALTH OF THE BAHAMAS

CASE NO. CRI/BAIL/FP/00001/2021

IN THE SUPREME COURT

Criminal Side

BETWEEN

JUSTIN SEYMOUR

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Attorney Mrs. Erica Kemp c/o Director of Public Prosecutions

Attorney Mr. Charlton Shurland KC c/o Justin Seymour

Hearing Date: 14th March 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. The Applicant states that he was remanded on the charge of Attempted Child stealing having appeared before Deputy Chief Magistrate Debbye Ferguson sometime in January 2021.
2. The Court notes that this Applicant was arraigned before Magistrate Laquay Laing on two counts of Attempted Child Stealing and was granted bail in the sum of Twenty Thousand Dollars (\$20,000.00). The Applicant's attorney at the time Mr. Wendell Smith filed an application in the Supreme Court seeking a variation of the Bail granted by Magistrate Laing. The DPP objected to that application. The Court heard the parties on the 13th December 2022 on that application for bail and the Court subsequently granted bail to the Applicant in the amount of Nine Thousand and Five Hundred Dollars (\$9,500.00) with one or two sureties. The Court also imposed the following conditions such as that the Applicant was required to be electronically monitored and refrain from parking in or around a school in the Bahamas for no more than a minute. The Applicant was further required to report to the Police Station in Freeport, Grand Bahama each Monday, Wednesday and Friday before 6pm at the latest. Lastly, that the Applicant is to have no direct or indirect contact with any of the Prosecution witnesses and the parties were at liberty to reapply.
3. However, it was discovered at some point while the Applicant was making attempts to execute the bond the matter before Magistrate Debbye Ferguson had not been included in the original application nor was it brought to the attention of the Court.
4. The Court wishes to pause and question this very curious circumstance where the Applicant was arrested and investigated for three alleged incidents, one alleged to have occurred on the 6th January 2021 and two

others alleged to have occurred on the 7th January 2021. So rather than arraigning the Applicant on one charge sheet with three counts he was instead arraigned on two separate charge sheets, one containing one count in which he appeared before Magistrate Ferguson and the other charge sheet containing two counts in which he was arraigned before Magistrate Laing. No explanation was and has been offered as to how and why this occurred. Therefore when the parties were heard on the Applicant's bail hearing in December 2022 no reference was made either by Counsel for the Applicant or the DPP. Additionally, the Affidavit of Sargent 2169 Prescott Pinder filed on the 14th January 2021 on behalf of the DPP only spoke of the two counts on which the Applicant had been arraigned before Magistrate Laing, but no mention was made as to the second matter before Magistrate Ferguson nor mention of any pending matters. Interestingly the Affidavit of Corporal 771 Anastacia Rolle filed on the 17th February 2023 on behalf of the DPP in opposition to the current bail application exhibits the charge sheets from the respective Magistrates Court, noting that the Applicant appeared before Magistrate Laing on the 12th January 2021 and subsequently appeared before Magistrate Ferguson on the 15th January 2021, the same day on which his application for bail to be determined by the Supreme Court was filed. She also avers that the Applicant has been diagnosed with mental disorders in January, 2020 as reported by Dr. Collie in his report dated the 12th January, 2020; that further mental evaluation was completed by Dr. John Dillet in November, 2022 with results confirming the Applicant was fit to plead and stand trial but requires further treatment. Lastly, she states that due to the nature of the offence(s) the DPP objects to the grant of bail as the Applicant poses a danger to society and a threat to public safety and order and that he is not a fit and proper person to be granted bail.

5. As a result the Court has now been tasked with determining two separate bail applications dealing with essentially the same issues that arose in the first application. It is frustrating and unacceptable that this Court wasn't provided the essential information from the outset so as to avoid a duplication of efforts and a rehearing of this matter.

SUBMISSIONS

6. The Applicant's Counsel has argued that notwithstanding the allegations, the Applicant has denied the allegations and maintains his innocence. Additionally, Counsel for the Applicant submits that although the Applicant made an apparent confession he should still should be admitted to bail. Further that his apparent drug dependence and abuse ought not to prohibit his consideration for bail and that the Applicant ought to be given the presumption of innocence as articulated within our Constitution. Counsel cited the case of **R v. Stephon (2009) 1 BHS J No. 2, Barker v. Wingo US Supreme Court and The Attorney General v. Bradley Ferguson et al SCCrApp. No. 57, 16, 108 & 116 of 2008.**
7. The Respondent's submissions in summary was that there has been no unreasonable delay as the Applicant has only been on remand for 14 months; that the Applicant is a person of bad character due to previous convictions and the unresolved matters before the Court and that the offence is of such a heinous nature that it's an affront to public safety. 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 he was a threat to public safety as one of the grounds. On appeal the Court of Appeal addressed each of these arguments. At paragraph 9 the Court said as follows:

"9. On my reading of the appellant's case, it does not appear that he was applying for bail on the basis of undue delay in bringing his case on for trial. On a reading of the Judge's assessment of the respondent's case, the only real reason for their objection to bail being granted to the appellant, was the cogency of the evidence."

THE LAW

8. 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. It appears that the Respondent's submissions are that the Applicant's

antecedents; that he has pending matters and that the evidence adduced is cogent and powerful should be grounds to deny the Applicant bail.

9. The Applicant faces charges involving murder, an offence that has been included in Part C of the First Schedule of the Bail Act 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.”

10. 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.”

11. 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.";

12. 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]

13. 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

14. Thus the question before the Court on its consideration is whether the Applicant would surrender for trial? The Respondent offers no evidence to suggest that he would not appear and surrender for trial. Further, the Affidavit in opposition to the grant of bail is totally devoid of any suggestion and evidence that the Applicant will not surrender for trial. Instead, the Respondent focused on the allegations and the Applicant’s making of an out of court statement. These admission might themselves be subject to challenge. The final issue raised by the Respondent was the seriousness of the offense and the cogency of the evidence. In this regard the Court will note the statement of the Court of Appeal in **Davis (supra)** where in the headnote the Court said as follows: -

“No substantial grounds have been disclosed in this case to support a conclusion that the appellant would abscond and not appear for trial. As stated in Hurnam “the seriousness of the crime alleged and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ...” it follows that there must be shown, substantial grounds for believing that the applicant would not surrender to custody or appear for trial. There is no evidence to suggest that the appellant would not appear for his trial. The Judge is required to consider whether there are conditions that may be

imposed that would, as far as possible, ensure that the appellant appear for his trial. It is only the severity of the charge and the inference of flight in the instance where no form of bail condition could mitigate or minimize that flight that can support the Judge's refusal of bail."

11. Likewise in **Davis (supra)**, in the instant case the Respondent has not adduced any evidence before this Court that the Applicant will refuse to surrender. Therefore, the Court will grant the Applicant bail however, to secure his attendance for trial the Court is prepared to consider stringent conditions.

DISPOSITION

- a. The Court will accede to the Applicant's bail application and grant bail in the sum of Nine Thousand Five Hundred Dollars (\$9,500.00) with 1 or 2 sureties;
- b. The Applicant is to be outfitted with an electronic monitoring device and must comply with all conditions established related to the wearing and maintenance of device.
- c. In addition to the previous requirements of not parking or delaying in the area of any school within the Commonwealth of the Bahamas the Court adds as a further condition that the Applicant is to be placed on curfew on weekdays 9pm to 5am and weekends 10pm to 5am;
- d. The Applicant is to have no direct or indirect contact with any witness involved with this case; and
- e. The Applicant is required to report to Central Police Station, Freeport, Grand Bahama each Monday, Wednesday & Friday by 6pm at the latest.
- f. Parties are liberty to reapply.
- g. Parties aggrieved may appeal to the Court of Appeal.


Justice Andrew Forbes

Dated the 24th day of March 2023