

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

2023/CRI/bal/No.00061

BETWEEN:

THEODORE WOODSIDE

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Camille Darville Gomez
Appearances: Ms. Cassie Bethel for the Applicant
Mr. Eucal Bonaby and Ms. Syklar Deveaux for the Respondent
Hearing Date: 3rd May, 2023

BAIL DECISION

Darville Gomez, J.

FACTUAL BACKGROUND

1. The Applicant, 27 year old Theodore Woodside is charged with Burglary contrary to Section 363 of the Penal Code, Chapter 84. The particulars are: 'That you sometime between 1:30am and 2:00am on 20th November 2022 while at Stafford Creek, Andros did break and enter the dwelling home of Avery Sherman with intent to commit a felony therein.'
2. The Applicant was arraigned before Magistrates Court No. 1 on the 3rd day of March, 2023. He is currently detained at the Bahamas Department of Correctional Services ('BDOCS').
3. On the 30th March, 2023 the Applicant applied for Bail pursuant to section 4 of the Bail Act by way of Summons and supporting Affidavit.
4. The Respondents filed two Affidavits in Response to Bail on the 25th and 27th April, 2023 objecting to the grant of bail and outlining various reasons why this Court should deny the Applicant's bail application.

THE APPLICANT'S CASE

5. The Applicant confirmed that he has a previous conviction before the court; however he maintains that there are no pending matters before any courts.
6. The Applicant is a Bahamian citizen and a self-employed diver and fisherman in Andros, The Bahamas. He pleaded that if he is not granted bail he will be disadvantaged in his ability to adequately prepare his defence, and to support his four (4) children, himself, and his family.
7. He maintained that he is a fit and proper candidate for bail.
8. Counsel for the Applicant highlighted the factors outlined in the First Schedule of the Bail Act and argued that there is no evidence to suggest that the Applicant will interfere with witnesses, or that he will abscond if granted bail because he is of modest means.
9. Counsel also argued that even if the evidence raises a suspicion of guilt however, that is only one factor that the court may take into consideration when determining whether to grant bail.
10. As it relates to the Applicant's previous convictions his Counsel submitted that his previous convictions arise out of one set of facts and are not for numerous offences and further, that he took a certain course with respect to them.
11. His Counsel concluded that the balance weighs in favour of the Applicant and therefore, the court should grant him bail.

THE CROWN' S CASE

12. The Crown in its Affidavits in Response exhibited the statements of the complainant and a witness, and the Antecedent Form. Counsel for the Crown argued that the evidence was cogent. The Antecedent Form showed that the Applicant had previous convictions in 2018 for inter alia, (i) house breaking; (ii) stealing; (iii) causing damage and (iv) Escape from lawful custody. Therefore, he submitted as it related to the two previous convictions for house breaking and stealing that the Applicant has a propensity to commit offences of a similar nature and poses a danger to society by his acts. He noted that the Applicant had in effect "graduated" from minor offences like, housebreaking and stealing , to burglary; a more serious crime.
13. Further, the Applicant was convicted of Escape from lawful custody in 2018.
14. Crown Counsel argued that the Court ought to deny the Applicant's bail application as he is not a fit and proper candidate for the reasons mentioned above.

THE ISSUE

15. The issue at hand is whether the Applicant, Theodore Woodside should be granted or refused bail.

THE LAW

16. **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."

17. 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;..."

18. 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."

19. 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."

20. Section 363 of the Penal Code, Chapter 84 provides that


"Whoever commits housebreaking by night in the case of a dwelling-house is guilty of burglary, and shall be liable to imprisonment for twenty years."

ANALYSIS and CONCLUSION

21. It is settled law that the burden rests with the Crown to provide the Court with evidence to support their objection to the grant of bail. Such evidence should demonstrate that the Applicant would, if granted bail breach one of the factors in Part A of the First Schedule of the Bail Act.

22. The Applicant's Counsel submitted that there is no evidence to suggest that the Applicant will interfere with witnesses, commit further offences, or abscond if granted bail.
23. The Crown exhibited two statements in their Affidavit; one from an eye witness who is alleged to have seen the Applicant inside the complainant's home, and the other from the complainant.
24. Having assessed the evidence, I am of the opinion that the evidence is cogent and it raises a reasonable suspicion that the Applicant did in fact commit the offence to which he is charged.
25. I must now determine whether the cogency of the evidence is sufficient to justify the deprivation of the Applicant's liberty. Simply put, whether the scale weighs heavy against the grant of bail to the Applicant. Also, whether any of the conditions which can be imposed can ameliorate the court's concerns regarding the Applicant's attendance at trial.
26. The Applicant was previously convicted of housebreaking and stealing; and Escape from lawful custody. The offence of burglary carries a sentence of up to 20 years imprisonment; a serious offence.
27. While the Applicant is presumed innocent of the charge of burglary until convicted by any court, the court is reminded of his previous convictions for crimes of a similar nature which demonstrate his propensity to commit these types of crimes.
28. Additionally and more alarming to the Court is the Applicant's conviction for Escape from Lawful Custody. This raises the possibility that the Applicant may abscond if granted bail in view of the weight of the sentence if he is found guilty of burglary. As such, the conditions which can be imposed may be insufficient to ensure that the Applicant appears for trial.
29. The court also plays a pivotal role in the protection of society. As such, its duty must be weighed up against the Applicant's liberty.
30. In all the circumstances, I find that the Applicant is not a fit and proper candidate for bail.
31. Bail is hereby denied.

Dated this 28th day of June, A. D., 2023


Camille Darville Gomez
Justice