

COMMONWEALTH OF THE BAHAMAS

2023/CRI/BAL/00588

IN THE SUPREME COURT

Criminal Side

BETWEEN

GARNETT THOMPSON

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Mr. Justice Franklyn K M Williams KC

APPEARANCES: Ms. Cassie Bethel for Thompson

**Ms. Jacklyn Burrows for the Director
of Public Prosecutions**

HEARING DATE: 6 June 2023

RULING

WILLIAMS J

1. The applicant, twenty four(24) years, is charged with the offences of burglary contrary to section 363 of the Penal Code Act, Chapter 84 and rape contrary to section 6(a) of the Sexual Offences Act, Chapter 99. The offences are alleged to have occurred on Friday 18 November 2022.
2. The offences, as alleged, occurred whilst the applicant was on bail for burglary, alleged to have been committed on Friday 25 October 2019.
3. All of the offences are alleged to have been committed at Cargill Creek, Central Andros, Bahamas.
4. The applicant avers, inter alia, :

“8. I do not have any pending matter(s) before the Court(s) in the Bahamas.”

and

“12. I respectfully request that this Honourable Court admit me to bail ...for the following reasons:-

c. That, I will be disadvantaged in my ability to support myself, and assist my family.”

5. The applicant, according to criminal records antecedent form, was on bail for burglary alleged to have been committed prior to the charge to which the present application appertains. Further, the applicant does not indicate to what or whom the word family refers i.e. dependents; in fact, the applicant in a previous iteration averred:

“5. That I reside with my father Garnett Thompson Sr. who is employed at Small Hope Lodge situate at

Small Hope, Andros Island.

6. That I am single with no children.”

Affidavit of Garnett Thompson 3rd December 2019

6. There is no evidence that the facts then averred have changed; it appears that the applicant's now averments lack candor.

THE LAW

7. The applicant is presumed innocent of the charge the subject matter of this application. Article 20(2)(a) of the Bahamas Constitution states:

“Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty”.

8. Article 19(1)(b) provides that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committed a criminal offence.

9. In relation to part C offences for which rape is included, section 4 of the Bail Act, Chapter 103 states:

“4. (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 or (c) should be granted bail having regard to all 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)...without limiting the extent of a reasonable time, a period of three years from the date of arrest and 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 to be a reasonable time.

(2B) For the purposes 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 and antecedents of the person charged, the need to protect the safety of the 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.”

10. The factors to consider are:

“PART A

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 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. Both burglary and rape are serious offences, the latter no doubt a horrendous offence, both physically and mentally.

12. In the Court of Appeal decision of *Jonathan Armbrister v AG* SCCrApp. No.45 of 2011, the stated that:

“The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence

should invariably weigh heavily in the scale against the grant of bail”.

13. And in *Jeremiah Andrews v DPP* SCCrApp No.163 of 2019:

“30. These authorities all confirm therefore the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. eg the applicant’s resources, family connections.

14. Whilst I find that rape and burglary are serious offences, the former very serious, and likely upon conviction to attract severe penalties, there is not before me any evidence that the applicant is likely to abscond.

15. The applicant is entitled to trial within a reasonable time (Article 19(3)).

16. The Bail(Amendment) Act, 2011 states:

“2(A) For the purpose of subsection (2)(a)(b)-

(a) Without limiting the extent of a reasonable time, a period of three years from the date of arrest or detention of the person charged shall be deemed to be a reasonable time;”

17. In *Duran Neely v AG* Appeal No.29 of 2018, the Court of Appeal stated:

“17. It should be noted that section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown. As I understand the law when an accused person makes an application for

bail the Court must consider the matters set out in Section 4(2)(a)(b) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried within a reasonable time he can be admitted to bail as per (a) and (b). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the court is of the view that bail should be granted the accused may be granted bail.”

18. The extant offences for which the applicant has been charged are alleged to have committed 18 November 2022. There is no indication before the court that the applicant will not be tried within a reasonable time.

19. In ***Cordero McDonald v The Attorney General*** SCCrApp No. 195 of 2016, Allen P explained the judge’s task in relation to the evidence adduced:

“34. It is not the duty of a judge considering a bail application to decide disputed facts or law and it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences such as to justify the deprivation of liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail.”

20. The evidence against the applicant includes the statements of the alleged complainant and the fact of the applicant having previously been charged with the same offence, in the case of the burglary charge.

21. After a review of the evidence, I conclude that it raises a reasonable suspicion of the commission of the offences by the applicant such as to justify the deprivation of liberty of the applicant.

22. I am guided by the view expressed by Osadebay JA in ***AG v Bradley Ferguson*** in which it was stated that I should not assess the probative value of the evidence against the applicant:

“...the defendant is not detained 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 detention is necessary to ensure his appearance at trial.”

23. I accept that the strength or weakness of the evidence is yet to be determined.
24. I fully understand that finding that the offences of Rape and Burglary are serious offences is not in itself a reason for denial of grant of bail to the applicant.
25. In this particular application I address my mind to the public safety, the safety of the complainant and family, the prospect of interference with witnesses and the otherwise obstruction of justice.
26. The allegations appear to evidence a pattern of conduct by this applicant. I note that at the time of the alleged commission of the offences the subject of this application was on bail for burglary. The applicant avers that, if granted bail, he intends to reside in the same community or settlement where both are alleged to have been committed.
27. The allegations evidence an identification by the complainant of the applicant, alleged to be known to her since childhood. The allegations also evidence an intent to interfere with the witnesses and otherwise obstruct the course of justice. The complainant alleges that she identified the applicant to his face, which identification was not contested. Further, having so allegedly identified the applicant, he is alleged to have asked that his alleged acts not be reported to the police. Finally, in this regard, the complainant states that she reported the alleged act of rape to her boyfriend.
28. The prospect of the imperiled safety of the applicant, interference with witnesses, obstruction of the course of justice, and vigilante justice is strong. I take judicial notice of the notorious fact of the growing culture of vigilantism.

I take judicial notice of the notorious fact of the growing culture of vigilantism.

29. In light of the above and the fact that, having been released on bail, the applicant is alleged to have committed, in one instance, the same offence (burglary) and in the second, another more serious, both of which are punishable upon conviction by more than twelve months imprisonment, the risks inherent cannot ***“...be effectively eliminated by the imposition of appropriate conditions.”*** (Crane-Scott JA *Jevon Seymour v The Director of Public Prosecutions*, SCCrApp No.115 of 2019)
30. To be certain, I am of the view, *in toto*, that the grant of bail here is or would be detrimental to the safety and protection of witnesses, in particular the complainant and to the protection and safety of the public, in particular they of Cargill Creek and Behring Point, Andros.
31. In the premises, bail is denied.

Dated this 12th day of June 2023


Franklyn K M Williams KC
Justice