

IN THE EASTERN CARIBBEAN SUPREME COURT  
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE  
(CIVIL DIVISION)

CLAIM NO: DOMHCV 2024/0188

IN THE MATTER OF AN APPLICATION OF DESMOND ROCQUE FOR AN ORDER THAT PRELIMINARY  
INQUIRY NO DOMMCR2017/0523 AND PRELIMINARY INQUIRY NO CR2019/0220 AND CR2019/0221  
BE STRUCK OUT AND/OR PROCEEDINGS THEREIN BE PERMANENTLY STAYED

BETWEEN:

|                     |   |           |
|---------------------|---|-----------|
| DESMOND ROCQUE      | - | Claimant  |
| V                   |   |           |
| THE CHIEF OF POLICE | - | Defendant |

APPEARANCES:

Ms Zina Moore-Dyer, for the Claimant

Ms Sherma Dalrymple, Director of Public Prosecutions and Mr Kevin Julien, State Counsel,  
for the Defendant

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2024: July 30<sup>th</sup>  
September 20<sup>th</sup>

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**JUDGMENT<sup>1</sup>**

**Introduction**

1. **COLIN WILLIAMS J:** Although this matter is titled as an application to have certain criminal matters against the Claimant struck out or permanently stayed, it is in essence an application for bail. The entire proceedings was dealt with as an application for bail.

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<sup>1</sup>This is the edited version of the oral decision delivered on the 20<sup>th</sup> of September 2024

2. The Application was filed on the 25<sup>th</sup> of July 2024. It was supported by an affidavit sworn to by the Claimant.
3. The matter first came on for hearing on the 30<sup>th</sup> of July 2024 and it was adjourned to the 20<sup>th</sup> of September 2024. At the July sitting, it was ordered, *inter alia*:

“2. Claimant at liberty to file any additional submissions before the adjourned date.

“3. Defendant to provide a timeline of all the matters (the Claimant is charged with), an explanation for the delay and any proposals for a just expeditious disposal of the application.”

4. The Claimant filed two further Affidavits: on the 17<sup>th</sup> of September 2023 and the 20<sup>th</sup> of September 2024. The second of these further affidavits was filed on the very morning this matter was heard.
5. The Defendants filed an affidavit through woman Police Constable No 347 Kayanner St Hillaire, with several exhibits annexed to it. Constable St Hillaire was the investigating officer in the firearm matters for which the Claimant was remanded in custody.

### **Previous Application**

6. The applicant, Mr Rocque, previously applied for bail.<sup>2</sup> This was therefore a further application for bail.
7. Justice Floyd on the 31<sup>st</sup> of March 2023 refused bail to Mr Rocque.
8. At the time of refusing bail, Justice Floyd, in his written judgment, said at paragraph 35:

“Turning to the other enumerated grounds, the court must be satisfied that the applicant will not commit any offence while on bail. The firearm offences and the allegations of violence towards police officers, demonstrate a propensity to commit offences while on bail. Given the very serious nature of these charges, the court has great concern for the protection and safety of the community, should the applicant be again released on bail. In totality, the court is satisfied that it is not in the public interest to grant bail to the applicant. There are no conditions that could be crafted to satisfy those concerns. Further, to release this applicant on bail, in the face of this behavior and of these facts would lead to a serious erosion in public confidence in the administration of justice.”

9. When Floyd J refused the Claimant bail, Mr Rocque was on remand for a number offenses:<sup>3</sup>

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<sup>2</sup> In February 2023, DOMHCV: 2023/0008

<sup>3</sup> Paragraph 1 of the judgment

- i. possession of a prohibited weapon,
- ii. possession of ammunition,
- iii. converting (modifying) a prohibited weapon,
- iv. assaulting a police officer,
- v. threats to police,
- vi. wounding.

10. Prior to being charged with the firearm, assault and wounding offences, the Claimant secured bail on two separate occasions in relation to murder charges. Mr Rocque was first charged with murder sometime following an incident in May 2016. He was granted bail on that murder charge by Stephenson J on 12<sup>th</sup> July 2018.<sup>4</sup> While on bail, Mr Rocque was charged with a second murder in 2019. He was granted bail on this second murder charge on the 10<sup>th</sup> of July 2020.<sup>5</sup>
11. The present offences for which Mr Rocque seeks bail were said to have been committed after he obtained bail for the second murder charge.
12. Mr Rocque's antecedent history shows that he was convicted in 2012 and 2014 for wounding, battery, indecent language, threats and intimidation.<sup>6</sup>
13. According to the Affidavit of WPC No 347 St Hillaire, since the Order of Floyd J in March 2023 refusing the Claimant bail, the first murder charge has been discontinued by the Learned Director of Public Prosecutions, DPP. Also, the charges that were laid against Mr Rocque for assaulting a police officer, threats and wounding have been discontinued by the DPP.
14. Those discontinuances were filed recently.
15. The firearms charges, in relation to prohibited weapon and ammunition, however remain pending.
16. Floyd J in his judgment noted that Mr Rocque was granted bail in the murder matter by the learned Justice Roberts in 2020, Mr Rocque was required to execute a bond of \$300,000.00 with two sureties.<sup>7</sup> Among the conditions were that Mr Rocque "leads an honest and industrious life and be of good behaviour" and that "bail will be revoked upon any breach of the above conditions."<sup>8</sup>

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<sup>4</sup> Paragraph 3 of the judgment

<sup>5</sup> Paragraph 4 of the judgment

<sup>6</sup> Paragraph 11 of the judgment

<sup>7</sup> Paragraph 4 of the judgment

<sup>8</sup> As above

### **Statutory framework**

17. The Respondent resisted the present application for bail, citing the factors enumerated in section 7(2) of the **Bail Act**.<sup>9</sup>
18. Counsel Mrs Zena Moore-Dyer on behalf of Mr Rocque stated that the Claimant satisfied the statutory considerations.
19. For clarity, it is best to enumerate the conditions in section 7(2) of the **Bail Act** and assess what evidence emerged during the course of this application in relation to those factors. Indeed, how did the available evidence impact on the assessment of the Claimant's application?
20. The **Bail Act** states that:<sup>10</sup>

“The appropriate circumstances referred to under subsection (1) of which the court must be satisfied include the court being satisfied that -

- (a) the defendant will surrender to custody,
- (b) the defendant will not commit any offence whilst on bail,
- (c) the defendant will not interfere with witnesses,
- (d) the defendant should not be kept in custody for his own protection or for the protection of the community, and
- (e) that it is in the public interest to grant the defendant bail.”

21. Counsel Mrs Moore-Dyer submitted that that the Claimant will surrender to custody and that there was nothing to suggest otherwise. Counsel is correct; there was nothing advanced by the Respondent to suggest that Mr Rock will not surrender to custody. This factor was resolved in the Claimant's favour.
22. Section 7(2)(b) requires that consideration be given to whether the defendant (Claimant in this matter), will not commit any offence whilst on bail.
23. The propensity factor clearly loomed large and was a concern of Floyd J at the previous bail hearing when the learned Judge refused the Claimant bail. The issue was whether or not anything has transpired since the last bail hearing to suggest that the Claimant may or may not commit any offence while on bail.

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<sup>9</sup> Act No 20 of 2020

<sup>10</sup> At section 7

24. The next consideration, at section 7(2)(c), is whether the Claimant will not interfere with witnesses. This factor may be evaluated at the same time in considering whether the second part of section 7(2)(d) of the **Bail Act** is relevant, that is that Mr Rocque ought to be kept in custody “for the protection of the community.” This factor may have relevance if one finds that the Claimant may well interfere with witnesses who live in the community. If that is the case, then he must be kept in custody for the protection of the community. (The State did not suggest that the first part of this limb, that the “defendant should be kept in custody for his own protection” applies.)
25. Lastly, section 7(2)(d) requires that consideration be given as to whether it is in the public interest to grant the defendant bail. Increasingly, bail is being granted to individuals accused of murder. The Claimant did get bail on two occasions for separate murder charges. However, the issue now is whether Mr Rocque’s application for bail should succeed in relation to the offences of possession of a prohibited weapon and ammunition, offences alleged to have been committed while on bail for murder, or whether Mr Rocque’s Claim for bail ought to be refused.

Change in circumstances?

26. Underlying any determination of this matter is whether there has been any change in the circumstance since the decision of Justice Floyd to refuse bail that would give rise to a reconsideration of the Claimant’s application?
27. One of the changes highlighted by Counsel Mrs Moore-Dyer on behalf of the Claimant, was the length of time since the decision to deny bail. Seventeen months have elapsed since the 31<sup>st</sup> of March 2023 to September 2024.
28. It is also noted that the first murder charge has been discontinued by the learned Director of Public Prosecutions, DPP. The DPP has also discontinued the charges of assaulting, threatening and wounding a police officer.
29. It must also be noted that the Preliminary Inquiry in relation to the second murder charge has commenced and is currently underway. The claimant previously obtained bail in relation to that particular charge. (Nothing needs to be said at this time about the slowness in which that committal proceeding is taking place. The concern here is solely with this particular application for bail, which has to be considered under the statutory framework of the Commonwealth of Dominica).
30. In summary, the significant factors which represent a change in circumstances since March 2023 were:
  - i. The passage of a substantial period of time.

- ii. The first murder charge against Mr Rocque has been discontinued.
- iii. The charges against Mr Rocque in relation to assault and wounding have been discontinued
- iv. The firearms matters have still not been determined.
- v. The preliminary inquiry in relation to the second murder charge has commenced.

### **Propensity revisited**

31. In refusing bail in May 2023, the Learned Judge cited, *inter alia* “the allegations of violence towards police officers” as “demonstrating a propensity to commit offences while on bail.”<sup>11</sup> It is acknowledged that the charges relating to any aggression towards police officers have been discontinued. Does that fact mitigate the concerns the Judge had in relation to the Claimant’s propensity to commit offences while on bail?
32. WPC St Hillaire in her Affidavit opposing bail being granted to the Claimant, exhibited part of the proceeding at the Magistrate’s Court from Preliminary Inquiry into the 2019 murder charge against Mr Rocque. The extract concerned what transpired in the Magistrate’s Court when the witness Imgachee Peters testified.
33. Mr Imgachee Peters is said to have been an eye witness to the second murder; the witness testified that at the time of the incident, he was in company of two other persons. Those two other persons are now dead.
34. The record from the Learned Magistrate shows that Mr Rocque interrupted the committal proceedings. According to the Judicial Officer’s notes, there was an outburst, in Court, by the Claimant, who said:
- “he will remain in jail, but will kill the witnesses and by the time he leaves jail, he will come to his mother’s funeral, because he will buy the guns as he is accustomed to do and to kill the witnesses.”
35. The Magistrate noted that he warned the Claimant that if he does not behave and conduct himself properly as an accused person, then the Magistrate would have the accused removed from the court room and the evidence will be adduced from the witnesses in his absence.
36. The evidence put forward in this hearing, was that Mr Rocque openly threatened a witness with violence and spoke of his capacity to access guns. This threat was made in the sanctity of a Court Room, with a judicial officer present, and no doubt several police officers. The

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<sup>11</sup> Paragraph 35

evidence as to what transpired in the Magistrate's Court was not rebutted nor doubted by Mr Rocque even though he filed an affidavit the very morning of the hearing of the application in response to WPC St Hillaire's Affidavit.

**Order**

37. Mr Rocque's conduct was a distinct and clear indication that he is someone who needs to be kept away from society and the society needs to be protected from him until his matter is disposed of. There is every likelihood that Mr Rocque will commit offences whilst on bail. Based on what Mr Rocque has said, there is a great likelihood that he will interfere with witnesses. It is clear that Mr Rocque should be kept in custody for the protection of the community. It is in the public interest not to grant Mr Rocque bail.
38. Mr Rocque is to remain in custody. The Claimant's application for bail is wholly refused. That's the order of Court.

**Colin William  
Judge**

**By the Court**

**Registrar**