

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CLAIM NO. BVIHCV 2021/0266

BETWEEN:

ALCEDO TYSON

Applicant

and

THE QUEEN

Respondent

Appearances: Mr. Michael Maduro & Ms. Isis Potter, Counsel for the Applicant
Ms. Tiffany R. Scatliffe, LL.M., DPP & Mr. Kael London, Crown Counsel for the
Respondent

2021: December 13th
2022: February 2nd

JUDGMENT ON BAIL APPLICATION

[1] **FLOYD J:** This is an application for bail. The Applicant, Alcedo Tyson, is charged with murder. He has been in custody on this charge since his arrest on 17th March, 2012. At one point, he was convicted after trial. However, that conviction was overturned on appeal. Despite the length of time spent in custody, this is his first bail application.

THE FACTS

[2] The Applicant is charged with the murder of Kawana Todd-Rymer, which occurred on 16th March, 2012. Ms. Todd-Rymer was shot and died of her wounds. The Applicant and the deceased had been

in a domestic relationship. The charge of murder is of the utmost gravity. The use of a firearm in the commission of the offence increases the very serious nature of the allegations.

- [3] The Crown's case appears to centre around three eye witnesses. One is a security guard at the night club where the incident occurred. One is a cousin of the deceased and the third is a friend of the deceased. The latter two witnesses were with the deceased on the night of the incident. All three also knew the Applicant at the time.
- [4] On the date in question, an incident apparently occurred between the Applicant and the deceased inside the night club. The Applicant then left but later returned. When the deceased left the club with her companions, she was allegedly confronted by the Applicant in the parking lot and was shot. The shooting was observed in whole or in part by the three witnesses. There was also security camera surveillance (CCTV) which captured some of what took place both inside the club and outside.

THE POSITION OF THE APPLICANT

- [5] Learned Counsel for the Applicant submitted that the Applicant is entitled to bail and it should be granted. The Applicant has been in custody in this case for nearly ten years. This is his first application for bail. He was born on 23rd July, 1988 in the Territory of the Virgin Islands. An Affidavit from the Applicant's mother, Cynthia Tyson, was filed. It sets out details and background information for the Applicant because, at the time of writing, HM Prison Balsam Ghut, was closed to visitors due to public health restrictions caused by the COVID-19 pandemic. In addition to the age and nationality of the Applicant, it is confirmed that, prior to his arrest, the Applicant resided with his parents in Joe's Hill, Tortola and that he was employed as a heavy equipment operator. The Applicant has a thirteen-year-old daughter who lives with her mother in the United States. If the Applicant is granted bail, he will reside with Cynthia Tyson at her apartment building in Joe's Hill. Additional sureties were noted as being available although no further details were given.

- [6] In oral submissions, Counsel for the Applicant advised the Court that the Applicant had a step son, aged 12 years, who resides in this Territory. The Applicant has no prior criminal record and is therefore a person of good character. All of this confirms the ties that the Applicant has to this community and the support that he has from his family. He is therefore not a flight risk.
- [7] Counsel for the Applicant referred to the length of time the Applicant has spent in custody and the delay he has experienced in bringing his case to trial. It is submitted that the majority of the delay can be laid at the feet of the prosecution service. This delay breaches the Applicant's Constitutional right to a speedy trial, reasonable bail and the presumption of innocence.
- [8] Counsel for the Applicant disagreed with Counsel for the Respondent, submitting that the Applicant was not a risk to abscond and was not a risk to interfere with witnesses nor with the administration of justice generally. There was no evidence of witness intimidation by the Applicant. Witness statements had been collected by the police long ago. In fact, witnesses had already testified once at the first trial in this case. Counsel for the Applicant also disagreed with Counsel for the Respondent, submitting that there was no need for exceptional circumstances to be shown for bail to be granted in cases of murder. The Court should apply the same principles and have the same considerations it does in all bail applications. The seriousness of the offence is but one factor to consider amongst a constellation.
- [9] Counsel for the Applicant relied upon a letter from the Superintendent of Prisons which confirmed the progress the Applicant had made while incarcerated. The Applicant had successfully completed a Life Skills Course. He worked on the prison farm (outside of the prison gates) from September 2019 to August 2020. He was later assigned to the prison maintenance team and remains part of that group. In that position, the Applicant has access to and uses tools such as machetes, rakes and "weed whackers." He was granted that role based upon his attitude and his success in behaviour modification programs. Overall, the Applicant was described as cooperative, hardworking and respectful. He was deemed to be a low-risk and therefore eligible for privileges within the prison facility. Learned Counsel for the Applicant filed a number of authorities in support of his position.

THE POSITION OF THE RESPONDENT

- [10] Learned Counsel for the Respondent submitted that the Applicant was a flight risk, likely to interfere with witnesses and commit further offences if granted bail. Although it was not a complex case, the charge of murder, particularly when a firearm is used, was very serious. The Crown's case was a strong one. The Court should therefore exercise great care when considering bail and do so only in exceptional circumstances. Such circumstances do not, it was submitted, exist in this case. Even strict conditions would be insufficient to deal with the Crown's concerns. Counsel for the Respondent relied upon two Affidavits and a number of authorities in support of her position.
- [11] The Affidavit of D/S Darrin Malone laid out the general facts of the case, its chronology and the Crown's evidence. That evidence was reviewed earlier in this decision. The affidavit referred to the brother of the Applicant owning a "Go-Fast" boat as being a cause for concern. It also referred to a cell phone being found in the Applicant's prison cell and his involvement in what was described as "party activities" leading to unrest, although no details were given. The Affidavit of D/S Malone indicated that members of the deceased person's family expressed concerns for their safety if the Applicant was granted bail.
- [12] The Affidavit of Legal Cadet Cadijah Collins set out a chronology and time line of events in the prosecution of this case. Reference was made to conviction in 2013 after trial and then to a successful appeal in 2017. Hurricane Irma struck the Territory in September 2017 and the destruction it caused led to the closing of the courts and the transfer of prisoners to another facility off-island. The Crown sought leave to appeal to the Privy Council. That was denied sometime in early 2019 (although material filed by Counsel for the Applicant cited that denial as being made in May 2018). A date for re-trial was scheduled in July 2019, however, further delay occurred when replacement disclosure had to be located and provided to Defence Counsel because of previous hurricane damage. In a separate case, a challenge was brought to the jury array in July 2019, leading eventually to the suspension of all jury trials in this Territory. That issue was not resolved until January 2020. Even before that issue was resolved, the COVID-19 pandemic struck, leading to general lockdowns and the further suspension of trials. Jury trial resumption did not occur until September 2020. The pandemic again led to the closure of the court to jury trials in late December

2020. In January 2021, the law firm representing the Applicant asked to be removed from the record when its lead counsel was appointed to the bench. That necessitated an application to the Legal Aid Board and new counsel was not appointed until September 2021.

THE LAW

[13] The entitlement to bail arises from the general right to liberty and the presumption of innocence, which flow from both the common law and the Constitution. It does not emanate from statute, there being no Bail Act in the Territory of the Virgin Islands. **Section 15 (2) of the Virgin Islands Constitution** indicates that no person shall be deprived of his or her personal liberty, save as may be authorized by law. **Section 16** confirms that anyone charged with a criminal offence is to be afforded a fair hearing within a reasonable time and shall be presumed innocent.

[14] In the oft quoted case of **Devendranath Hurnam v The State**¹, a case that originated in Mauritius, the Privy Council, at **para 1**, addressed the importance of applications for bail as follows:

Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. But the community has a countervailing interest, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence, and that he does not take advantage of the inevitable delay before trial to commit further offences.

[15] The Privy Council went on to confirm that despite the serious nature of a charge, bail cannot be arbitrarily denied. There cannot be a system of mandatory detention based upon the severity of the charge. A court will fall into error if it treats the seriousness of the offence as an all but conclusive reason for refusing bail. It was noted at **para 15** that:

It is obvious that a person charged with a serious offence, facing severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him....Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail...The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may

¹ [2005] UKPC 49

well...provide grounds for refusing bail, but they do not do so of themselves, without more. They are factors relevant to the judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty.

- [16] In another important case dealing with the issue of bail, **Thelston Brooks v The Attorney General and The Commissioner of Police**², George-Creque J. (as she then was), cited the Hurnam case with approval when she said, at **para 12**:

The exercise of a judge's discretion in admitting an accused person to bail calls for a balancing of the scales by weighing the interests of an accused person and his fundamental rights as guaranteed under the Constitution on the one hand, and the interest of the rights and freedoms of others and the public interest, being the sole qualifications on the said rights, on the other.

- [17] The court in the **Brooks** case at **para 19** and the court in the **Hurnam** case at **para 16** both referred to five grounds for refusing bail, recognized by the European Court of Human Rights as being in keeping with the European Convention for the Protection of Human Rights. Those grounds include:

- (i) the risk of the Defendant absconding bail,
- (ii) the risk of the Defendant interfering with the course of justice,
- (iii) preventing crime,
- (iv) preserving public order, and
- (v) the necessity of detention to protect the Defendant.

- [18] Similarly, in the case of **R v Huey Gowdie**³ at para 15, the Court of Appeal of Jamaica listed the considerations for a court in a bail application, including:

- (i) the nature and seriousness of the offence;
- (ii) the defendant's character, antecedents, association and community ties;
- (iii) the defendant's record with regard to the fulfilment of his obligations under previous grants of bail;
- (iv) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having failed to surrender to custody;

² [2007] ECSC J0115 – 11

³ [2012] JMCA Crim 56

(v) whether the defendant is a repeat offender, that is to say, a person who has been convicted on three previous occasions for offences which are punishable with imprisonment; or

(vi) any other factor which appears to be relevant including the defendant's health profile.

[19] The Supreme Court of Canada also elaborated upon issues for bail courts to bear in mind in the case of **R v St. Cloud**⁴. At **para 41**, the court reinforced the traditional bail considerations of whether detention was necessary to ensure attendance in court to be dealt with according to law and also whether detention was necessary in the public interest or for the protection and safety of the public, having regard to all of the circumstances including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence or interfere with the administration of justice. The Bail Court, it was noted, must determine the apparent strength of the prosecution's case, consider the objective gravity of the offence, the circumstances surrounding the commission of the offence, the role played by the accused in the offence, and whether the accused would be liable to a significant sentence upon conviction. All of this, the court held, must be considered while never overlooking the basic entitlement to be granted reasonable bail unless there is just cause to do otherwise, the right to liberty and the presumption of innocence. This involves balancing all of the relevant circumstances in order to maintain confidence in the administration of justice.

[20] These cases and others illustrate what courts in all common law jurisdictions consider in bail applications. The presumption of innocence and the liberty of accused persons are entrenched at the pre-trial stage by the right not to be denied reasonable bail without just cause. It is a balancing exercise requiring the consideration of all the issues noted above.

[21] The issue of delay formed a part of this Application. When examining the cause of the delay in a case, the court must consider all of the circumstances and facts. That issue was explored in the case of **Coecillia St. Romaine v The Attorney General**⁵. At **para 27**, the court referred to a balancing process to ensure that prosecutions take place in a reasonable time, including the need for the state to allocate sufficient resources to ensure that occurs. In considering this, the approach taken is one of proportionality where the court weighs the competing interests of the public against those of the

⁴ [2015] 2 S.C.R. 328, 321 C.C.C. (3d) 307

⁵ [2012] ECSC J0530 – 1

defendant. The court also noted the need to bear in mind the steps taken by the accused to complain about the delay in bringing the matter to trial.

- [22] In the case of **Gibson v The Attorney General of Barbados**⁶ at **para 58**, the Caribbean Court of Justice dealt with the issue of delay in a murder case. The court was clear in holding that the issue of delay requires a review of many factors:

A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case-by-case basis. It cannot be reached by applying a mathematical formula although the lapse of an inordinate time will raise a presumption, rebuttable by the state, that there has been undue delay. Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the state. An accused who is the cause and not the victim of delay will understandably have some difficulty in establishing that his trial is not being heard within a reasonable time. One must not lose sight of the fact, however, that it is the responsibility of the state to bring an accused person to trial and to ensure that the justice system is not manipulated by the accused for his own ends. Even where an accused person causes or contributes to the delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused the overall delay has been too great to resist a finding that there has been a breach of the guarantee.

- [23] Although legal principles and their application to issues such as delay and to procedures such as bail hearings can be remarkably similar throughout the Commonwealth and common law jurisdictions, local factors must be considered. That was confirmed in the case of **Curtis Charles and Others v The State**⁷ at **para 15**, where the Privy Council held that “it would be wrong to apply conditions and practices in England in this matter to cases in Trinidad and Tobago.” Clearly, the same is true in the Territory of the Virgin Islands. Difficulties in scheduling cases and moving them forward must be considered. As the court noted further, “claims to delay cannot be looked at in vacuo but must bear relation to local conditions and circumstances and the public interest.” It remains, however, a balancing exercise involving the rights of the individual and the public interest.

- [24] When the case involves a re-trial, the issue of delay is further complicated. The Privy Council addressed that at **para 15** of the **Curtis Charles** case. In stressing the importance of ensuring that, if ordered, a re-trial should take place without delay, the court referred to the case of **Bell v Director**

⁶ (2010) 76 WIR 137

⁷ [1999] UKPC J0526-1

of Public Prosecutions⁸. In that case, Lord Templeman reminded us at p. 954 that where an Applicant has been “arrested, detained and submitted to a defective trial and conviction (and) through no fault of his own...must for the second time prepare to undergo a trial” there will be an urgency about the matter. Therefore, “a period of delay which might be reasonable as between arrest and trial is not necessarily reasonable between an order for re-trial and the re-trial itself.”

ANALYSIS

[25] The facts in this case are very serious. They include the discharge of a firearm in a public place. The victim was shot dead in a parking lot after leaving a night club. The case is based upon eye witness evidence and video recordings. Although there is no need to undertake a detailed review of the evidence, there nonetheless appears to be merit and strength to the Crown’s case. It is also obvious that the potential for a substantial sentence of incarceration, if convicted, exists. But the serious nature of the offence and the severity of the penalty are not outright bars to the granting of bail. They are but considerations in the global view of bail. That was made clear in the **Thelston Brooks** and **Hurnam** cases. While there can be no question that bail applications in cases of serious offences such as murder demand careful consideration, the court must conduct the same evaluation that it does in any such application. The process may be approached with heightened caution and sober thought in such cases but to state that exceptional circumstances must be demonstrated before bail can be granted goes too far.

[26] When the learned Justice Hariprashad-Charles stated in the case of **Malcolm Maduro v The Commissioner of Police**⁹ at para 21 that it was “highly uncommon to grant bail” in cases of murder, she was reminding us that careful consideration of all of the factors was necessary. For example, there may be a heightened concern of the Applicant absconding if released on bail in cases where the potential penalty is severe, as in cases of murder. But that concern must be assessed in light of all the other relevant factors. It is therefore incumbent upon the court to carefully consider whether strict and appropriate conditions can be imposed to militate against that risk. Once the risk is

⁸ [1985] 1 A.C. 937

⁹ BVIHCV2006/0262

assessed, the court must consider whether it can be adequately managed. The learned Justice was not elevating the offence of murder to a unique status for bail consideration.

[27] Similarly, Counsel for the Respondent referred the Court to the unreported case of **Wakeem Guishard**. It was submitted that the learned Justice Byer had denied bail to the Defendant who was charged with murder. Just as in the case at bar, that Defendant was from the Territory of the Virgin Islands with local family and ties to the community. It was submitted that in that case, the court referred to the need for exceptional circumstances for the granting of bail. Counsel for the Applicant sought to distinguish that case and urged caution, submitting that there was no overall requirement to establish exceptional circumstances to achieve bail in serious cases such as murder.

[28] Upon further analysis, it appears that the **Guishard** case also had a protracted history. Two citations for that case, including **Wakeem Guishard v Attorney General**¹⁰ and **Wakeem Guishard v The Attorney General of the Virgin Islands**¹¹, reveal that the Defendant, while incarcerated, had a preliminary hearing and three trials. The first trial in 2015 resulted in a mistrial, the second trial in March 2016 resulted in the jury being discharged and the third trial in April 2016 resulted in an acquittal. The events in that case illustrate the importance of a carefully considered decision in a Bail Application. While a bail court cannot look into the future, it must consider all of the pertinent facts in every case, notwithstanding the charge. These considerations include the strength of the Crown's case, the gravity of the offence, the potential for a lengthy sentence upon conviction, the Applicant's ties to the community, including friends, family and employment, and any record for convictions. These considerations apply regardless of the offence charged.

[29] When considering whether appropriate conditions can be imposed to facilitate bail, the court must bear in mind that conditions can be many and varied. They must, however, relate to the criteria for detention and the facts of the case. Conditions of bail should never be imposed to punish the Applicant. Conditions of bail should similarly not be so onerous as to be impossible to satisfy and therefore amount to constructive detention. A surety will often assist the process. If found to be

¹⁰ BVIHCV 2016/0319

¹¹ BVIHCVAP 2018/006

acceptable, a surety has a significant role to play in the bail process. It is a serious commitment that assists in the supervision of the Applicant and seeks to ensure compliance with bail conditions.

THE RISK OF ABSCONDING

[30] The Applicant was born in the Territory of the Virgin Islands. He is 33 years of age. He has family here. His mother is willing to provide him with a residence. He has a history of employment here. I am therefore satisfied that the Applicant has significant ties to this jurisdiction. He has no criminal record. He therefore has no history of failing to appear in court or otherwise failing to comply with release conditions. The Respondent is concerned with the Applicant's relationship to the United States as he has a child residing in the state of Texas. The Respondent is also concerned with the Applicant's connection to boats as his brother owns one. But all of that is strongly outweighed by the Applicant's substantial connection to the Territory of the Virgin Islands.

[31] Judicial interim release requires the Court to be confident that, amongst other things, the accused will not flee the jurisdiction and fail to attend court. After reviewing all of the material filed and upon hearing the submissions of counsel, the court is not persuaded that the Applicant, if released on bail, would flee the jurisdiction and fail to appear in court as required. Although the charge is serious and the Crown's case has merit, the Applicant is significantly attached to the Territory of the Virgin Islands. With the assistance of one or more sureties and the imposition of appropriate conditions, the concern with absconding can be dealt with. In sum, I find that the Applicant is not a flight risk, owing to his close and long-standing connections to this community. The Respondent has therefore failed to show cause why the Applicant should be detained on this ground.

THE RISK OF INTERFERING WITH THE COURSE OF JUSTICE - PREVENTING CRIME - PRESERVING PUBLIC ORDER

[32] I shall deal with these issues together as they are interrelated. In this second ground, what I would call the public safety component, I must consider whether there is a substantial likelihood that the Applicant, if released, would interfere with the administration of justice, commit further crimes and generally interfere with the public peace. This interference includes Crown witnesses and the family of the victim. The Court once again notes that the Applicant has no previous record for doing any of

these things. Indeed, he has no criminal record at all. He is a person of good character and he must be recognized as such for the purposes of this bail application. The Court also notes the positive strides the Applicant has made while in custody. He has taken behavioural management courses and earned privileges. He works within the prison and is entrusted with tools that could easily be considered weapons. He is considered to be a low risk. The Affidavit of D/S Malone indicates that members of the victim's family have indicated fear and anxiety if the Applicant is released. However, there is no evidentiary basis put forward to substantiate that concern. The police affidavit also refers to the Applicant engaging in party activities and unrest within the prison. Again, there is no evidence provided to support that and the assertion flies in the face of the report of the prison superintendent.

- [33] The allegations in the charge are serious but for the purposes of this application they remain unproven. There is no other record for the Applicant. Although no Crown witnesses have apparently indicated fear or anxiety over the release of the Applicant, it may be considered akin to the concerns raised by the family of the deceased. As the Court noted in the **Thelston Brooks** case at **para 28**, in cases like this, “witnesses tend to have some reluctance in coming forward, not because of threats being made upon them by a suspect but by virtue merely of strong family and friendly ties in a small community. Such a circumstance ought not, in my view, to militate against the Applicant.” In the case at bar, the witnesses have already come forward and their statements are recorded. There is nothing in the Respondent’s material that suggests the Applicant is likely to threaten any witness or family member of the victim nor otherwise interfere with the administration of justice in this case. It is not surprising that, in a case like this, family members of the deceased victim are anxious and concerned over the potential release of the Applicant. However, no evidence was presented of any actual or attempted interference by the Applicant with anyone related to the case. It is also clear to this Court that, with the assistance of one or more sureties and the imposition of appropriate conditions, any concerns on this ground can be satisfied. Preventing the commission of further offences and ensuring the protection and safety of the public, including witnesses, must be ensured. I am satisfied that any concerns in that regard can be alleviated with strict terms of bail and the use of sureties. The Respondent has therefore failed to show cause why the Applicant should be detained on this ground.

- [34] I have considered the issue of whether it is necessary to detain the Applicant for his own protection. Nothing was presented in that regard and without any evidence or submissions, the Court finds that it is not a concern in this case.

DELAY

- [35] I must also consider the issue of delay in this case and what impact, if any, it has upon considerations for bail. The length of time it has taken to prosecute this case is concerning. However, the prejudice caused to the Applicant's liberty interest while awaiting trial must be assessed in the context of the specific circumstances, including the reason for any delays in bringing the Applicant to trial.
- [36] The right to a speedy and public trial was reviewed by the United States Supreme Court in the case of **Barker v Wingo**¹², noting a general concern that all persons accused of crimes should be treated according to fair and decent procedures, minimizing the anxiety and concern of the accused. The Supreme Court of Canada in the case of **R v Askov**¹³ similarly noted the "exquisite agony" experienced by persons awaiting trial. However, the plight of the Defendant must be carefully considered in light of all of the facts. A Court must review all of the reasons for the delay in bringing a case to trial. The view of the Caribbean Court of Justice in **Gibson**, that delay must be considered in light of the particular facts of each case, is shared by the courts in many other jurisdictions.
- [37] The timeline in this case shows a date of offence of 16th March, 2012. The Applicant was arrested on 17th March, 2012. He was convicted after trial on 24th June, 2013. His appeal was argued on 31st January, 2017. The appeal was allowed on 20th November, 2017. Although it appears that the time for appeal was lengthy, overall, the time the Applicant spent in custody for this offence up until that date, cannot be considered as inordinate delay nor can it be placed at the feet of the State. The Crown then sought leave to appeal further. It was not until sometime between 23rd May, 2018 and January 2019 (counsel are not in agreement about that), that leave to appeal by the Crown was refused. That six – fourteen months' time period cannot be held against the Applicant. One must, however, bear in mind that a devastating hurricane struck this Territory in September, 2017. That

¹² 407 U.S. 514 (1972)

¹³ [1990] 2 S.C.R. 1199, [1990] S.C.J. No. 106

disrupted all trials and the Applicant was transferred to a custodial facility in St. Lucia. He did not return until April or May, 2018. However, that cannot be held against the Applicant. Even if the courts were running, he could not have had his trial as he awaited the verdict of the Crown's application to appeal. A date for re-trial was set for July 2019. However, that was affected by the need for his counsel to be resupplied with disclosure, owing to its loss during the hurricane. That cannot be held against the Applicant. The process of trial by jury in the Territory was then interrupted by an application in an unrelated case objecting to the jury array. That was argued in July and September 2019. A ruling in October 2019 quashed the jury array. That matter was not resolved until January 2020. Although the issue regarding juries in this Territory may have arisen from steps taken or not taken in the Registry as opposed to the Crown's Office, that delay cannot be visited upon the Applicant. The COVID-19 pandemic then struck and impacted courts in this Territory, just as it did throughout the world. Trials did not recommence until September 2020 and continued until the end of the law term, 2020. Although there was a delay in the resumption of trials in 2021 while the criminal court room was retrofitted with COVID-19 precautions, in January 2021, the law firm representing the Applicant asked to be removed from the record as senior counsel had been appointed to the bench. This apparently necessitated an application to the local Legal Aid Board with new counsel not being appointed until September 2021. None of that delay was caused by the Applicant.

- [38] The Court is mindful that local conditions and causes for delays must be considered. There cannot be a uniform time line for trials in every jurisdiction. Systemic or institutional limitations must be considered but can be difficult to assess. Institutional problems will differ greatly from country to country and state to state. Differences in populations, terrain, financial resources and facilities will exist. However, at the end of the day, as the Court noted in the **Askov** case at **para 71**: "It must be remembered that it is the duty of the Crown to bring the accused to trial. It is the Crown which is responsible for the provision of facilities and staff to see that accused persons are tried in a reasonable time." Of course, the word "Crown" refers to the "State" in that quotation. The Caribbean Court of Justice in the **Gibson** case similarly reminded us of the responsibility of the State to bring an accused person to trial in a timely fashion.

[39] What then is to be made of this delay and the reasons therefore? Delay in moving cases forward is a concern and it can be taken into account in a bail application, along with all of the other relevant considerations. As was noted in the cases of **Curtis Charles** and **Bell**, cases involving re-trials must be treated with a degree of urgency. Delay, therefore, is particularly onerous in those cases. The case at bar involves a re-trial. The courts in many jurisdictions, recognizing that delay is an issue, have set out the following general considerations:

- a) Length of delay.
- b) Reason for delay.
- c) Defendant's assertion of right to trial/waiver.
- d) Prejudice to Defendant.

[40] Bearing all of this in mind, it is difficult to attribute any of the four-year delay from the date of appeal which quashed the Applicant's conviction and ordered a re-trial, to the Applicant. In particular, the delay caused by the Crown seeking leave to appeal further, the delay caused by the quashing of the jury array generally, and the delay caused by the Legal Aid Office procedure, cannot be ascribed to the Applicant. This is not a complex case and it is a re-trial. It deserves to be resolved in a timely fashion. The Court also notes that trials in this jurisdiction are being scheduled well into 2023. It is not a good situation for any participant in the criminal justice system in this Territory. That includes Defendants, victims, witnesses and the community at large. The delay in this case is lengthy. The delay has not been caused by the actions of the Applicant. The Applicant has never waived his right to a speedy trial. There can be no doubt that his continued incarceration is prejudicial to him and his right to liberty, the presumption of innocence and his right to a fair hearing within a reasonable time, as mandated constitutionally and at common law.

[41] Although I consider that the Applicant has suffered by reason of delay in this case and it is a consideration in support of his bail application, it is not, in and of itself, sufficient to justify his release on bail. That would be improper. This Court must consider this bail application globally. As noted above, I am satisfied that the Applicant is not a risk to abscond. I am equally satisfied that the Applicant is not a risk to interfere with the course of justice (including witnesses), commit crime, nor interfere with public order. I am satisfied that strict conditions of bail can be imposed to deal with the concerns raised by the Respondent. The use of sureties is appropriate and will further aid in satisfying the concerns related to bail.

[42] For all of these reasons, the Respondent has failed to show cause why the Applicant should be detained and this application for bail is hereby granted. The Applicant is therefore released on a recognizance of bail as follows:

Bail is set in the total amount of \$200,000.00 bond with no cash deposit. There shall be two suitable sureties with the amount of bond apportioned between them. The Applicant shall be bound by the following conditions:

- (a) The Applicant shall report to and sign in at the Road Town Police Station every Monday, Wednesday and Saturday between the hours of 6:00 AM and 6:00 PM, commencing immediately upon his release from custody.
- (b) The Applicant shall reside with his mother, Cynthia Tyson, in Joe's Hill, Tortola.
- (c) The Applicant shall remain in his residence daily between the hours of 8:00 PM and 6:00 AM except for medical emergencies involving himself or his mother, Cynthia Tyson, and only after having notified the Royal Virgin Islands Police Force of such emergency.
- (d) The Applicant shall present himself within five (5) minutes of a police request made at any time when he is required to be in his residence and ensure that the police have access to the door of his residence to enable such bail compliance checks to be conducted.
- (e) The Applicant shall not contact or communicate in any way either directly or indirectly by any physical, electronic or other means with any Crown witness in this case.
- (f) The Applicant shall not be within 100 feet of any Crown witness in this case, nor any place where any Crown witness lives, works or goes to school.
- (g) The Applicant shall not possess any weapon, firearm, pellet gun, flare gun, imitation firearm, prohibited weapon, restricted weapon, bladed weapon, ammunition or explosive substance, or anything designed or intended to be used to cause death or injury.
- (h) The Applicant shall not possess or apply for any licence, authorisation or registration certificate for any such weapon referred to above.
- (i) The Applicant shall not attend at any bar, tavern, restaurant or establishment licensed to sell alcohol.
- (j) The Applicant shall not be found on board any ship, boat or maritime vessel.

- (k) The Applicant shall remain within the Territory of the Virgin Islands.
- (l) The Applicant shall deposit his passport and any other travel permits or documents with the High Court Registry Office immediately upon his release from custody.
- (m) The Applicant shall not apply for a passport or any other travel permits or documents while this case remains outstanding.
- (n) The Applicant shall keep the peace and be of good behaviour.
- (o) A breach of any of the terms of this Recognizance of Bail shall result in the immediate revocation of bail and the associated bond shall be subject to estreatment proceedings.

Richard G. Floyd
High Court Judge

By the Court

Registrar