

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA CIRCUIT
A.D. 2020**

CLAIM NO. AXAHCV 2019/0058

BETWEEN:

SALIM RICHARDSON

Applicant

and

THE COMMISSIONER OF POLICE

Respondent

CONSOLIDATED WITH:

CLAIM NO. AXAHCV 2019/0059

BETWEEN:

SHAQUILLE GUMBS

Applicant

and

THE COMMISSIONER OF POLICE

Respondent

Appearances:

Mr. Carlyle Kevin Rogers, CARLYLEROGERS of Counsel for Salim Richardson
Mr. D. Michael Bourne, SAGIS LP of Counsel for Shaquille Gumbs
Mr. Ivor Greene, holding papers for Ms. Erica Edwards, Senior Crown Counsel,
Attorney General's Chambers of Counsel for the Respondent

2020: January 23;
February 6; 11.

*Bail – Sections 67 (3), 67 (4) and 72 Magistrate's Code of Procedure Act, R.S.A. c. M5 -
Sections 3 and 9 Anguilla Constitution Order, S.I. 1982 No. 334 – Court's inherent
jurisdiction – Murder – Section 187 (1) Criminal Code – Principles to be applied on
consideration of the grant of bail – Seriousness of the offence – Likelihood of risk of
absconding – Defendants jointly charged with commission of same offence – Principal and*

accomplice – Preliminary inquiry into offence incomplete – Whether likelihood of delay in completion of preliminary inquiry – Whether delay in completion of preliminary inquiry factor to be taken into account when considering the grant of bail – One defendant charged with offence of murder while on bail for grievous bodily harm – Whether previous offending bar to the grant of bail for subsequent offending – Whether likelihood of the risk of reoffending while on bail – Whether likelihood of interference with witnesses and the due administration of justice – Whether in the public interest to withhold bail – whether likelihood of risk of harm to defendants – Whether bail should be denied for protection of applicants – Whether imposition of conditions on the grant of bail likely to curb the likelihood of any of the risk attendant on the grant of bail occurring

JUDGMENT

- [1] **INNOCENT, J.:** This is an application for the grant of bail made pursuant to the court's inherent jurisdiction and section 67 (4) of the Magistrate's Code of Procedure Act (the 'MCPA').
- [2] On 16th December 2019, Mr. Shaquille Gumbs ('Mr. Gumbs') and Mr. Salim Richardson ('Mr. Richardson'), (jointly referred to as 'the applicants'), each filed a Notice of Application and; on 14th January 2020 the applicants each filed an Amended Notice of Application for their admission to bail (the 'Bail Applications').
- [3] On 17th December 2019, the Honourable Attorney General (the 'Attorney General') filed a Notice of Non Objection to the Bail Applications. Notwithstanding the posture adopted by the Attorney General, the court held the considered view that the decision for the grant or refusal of bail was ultimately a matter of the exercise of the court's inherent discretionary power. Therefore, the applicants' admission to bail would not follow as a matter of course merely because the Attorney General had no objection.
- [4] On 24th January 2020, the Attorney General filed affidavits and written submissions in opposition to the grant of bail to the applicants.
- [5] On 23rd January 2020 and on 6th February 2020, the court heard oral submissions from counsel for the applicants and the Attorney General and reserved its decision.

- [6] Both applicants were arrested and charged on 12th November 2018 with the offence of murder contrary to section 187 (1) of the Criminal Code in relation to events that occurred on 7th November 2018 at Island Harbour, Anguilla resulting in the death of Mr. Lofton Foreman ('Mr. Foreman').
- [7] It is alleged that on 7th November 2018 at Garlin Bottom, Island Harbour, Anguilla, one of the applicants shot Mr. Foreman who was at the time a passenger travelling in the back of a pickup truck. Mr. Foreman subsequently died as a result of the gunshot wounds that he sustained.
- [8] It is also alleged, that the applicants alighted from the motorcar in which they were travelling and had a verbal exchange with Mr. Foreman. During the course of this verbal exchange, Mr. Foreman was shot multiple times. After the shooting the applicants fled the scene on foot and the motorcar in which they were travelling was left abandoned on the roadside.
- [9] The motor car in which the applicants were travelling was registered to Mr. Richardson. The firearm used in the commission of the offence was never recovered.
- [10] Mr. Foreman died on 8th November 2018, while undergoing surgery. A post mortem examination on the body of Mr. Foreman revealed that he died of hemorrhagic shock secondary to three gunshot wounds.
- [11] Both applicants surrendered themselves into police custody on 9th November 2018. They were both arrested and charged for the offence of murder. The applicants were remanded into custody at Her Majesty's Prison ('HMP') on 12th November 2018.
- [12] Although, the court had ordered that the respective Bail Applications be consolidated, the court will deal with the issues related to the grant of bail in relation to each applicant separately.

Approach to the Grant of Bail

- [13] On hearing an application for the grant of bail the court is required to proceed on the assumption that there is a presumption in favour of the grant of bail. This presumption emanates from the presumption of innocence which has its underpinnings in the Constitution.
- [14] The Magistrate's discretion to grant bail is proscribed by section 67 (3) of the MCPA. The High Court is granted the discretionary jurisdiction to grant bail pursuant to sections 67 (2) and 72 of the MCPA.
- [15] The High Court's decision, whether to grant bail is discretionary and the manner in which this discretion is exercised, for the purposes of proceedings in Anguilla, is not derived from statute. Anguilla does not have in force a Bail Act, therefore, it will be necessary to apply the common law as it relates to the basis and the principles upon which the court must exercise its discretion.
- [16] The general approach is that the court must proceed on the basis that there is a presumption in favour of the grant of Bail; and that it is for the party seeking to persuade the court that bail should be refused to satisfy the court on the balance of probabilities of the justice of their case.
- [17] In **Devendranath Hurnam v The State**¹ the Privy Council dealt with the issues as they arose from the jurisdiction of Mauritius. The Mauritian Constitution² also adopted the identical rights and freedoms in its Constitution as Anguilla.
- [18] In **Hurnam** the following principles were identified. First, the onus should be on the party seeking to deprive a defendant of liberty to make their case. Second, the seriousness of the offence and the severity of the penalty likely to be imposed on conviction will not of themselves provide sufficient grounds to refuse bail but it is a

¹ [2005] UKPC 49

² At paras. 2 - 3

relevant element in the assessment of the risk of absconding and/or the risk of reoffending³.

[19] It can be distilled from the case law that there are five grounds as recognised by the common law for refusing bail. First, the likelihood of the risk of the defendant absconding; second, the likelihood of the risk of the defendant interfering with the course of justice; third, preventing crime and the preservation of public order; fourth, the necessity of detention to protect the defendant and fifth the protection of the public. These principles were re-iterated by the Eastern Caribbean Supreme Court in the case of **Maduro v The Commissioner of Police**⁴.

[20] When approaching the discretionary exercise as outlined by the Jamaican Court of Appeal in **DPP v Adams**⁵ the Court may wish to consider a number of factors, namely; (1) the nature and seriousness of the offence, (2) the defendant's character and community ties, (3) previous bail records (4) the strength of the evidence regarding the offence charged, (5) the likelihood of the defendant failing to surrender to custody, (6) whether the defendant is a repeat offender and (7) any other factor which the court considers it appropriate to consider in the exercise of its discretion.

[21] This position is distilled in the authority of **Gowdie v R**⁶ by the Jamaican Court of Appeal.⁷

[22] There needs to be substantial grounds for believing that one of the grounds for refusing bail is present⁸. This principle is reiterated in the judgment of Ramdhani J. (Ag) in the Eastern Caribbean Supreme Court in the matter of **Huggins v The Commissioner of Police**⁹.

³ At para. 15

⁴ See per: Hariprashad-Charles J at paragraphs 17-18

⁵ [2014] JMCA Crim 38

⁶ [2012] JMCA Crim 56

⁷ See: Brooks JA at para. [21]

⁸ Gowdie v R per: Brooks JA at para [21] 5

⁹ Infra at para. 25

[23] Otherwise described as 'an unacceptable risk' that the defendant would act out one of the grounds for refusing bail. The court is guided by the dicta of Wallace J. in the Eastern Caribbean Supreme Court case of **Jesper Qvist v The Commissioner of Police**¹⁰ where it was held that:

"In considering these principles and balancing them against the public good and the presumption of innocence, the Court has to assess whether granting bail in these circumstances would be an unacceptable risk. Such a determination is made where the court is satisfied that there is an unacceptable risk either that (a) the accused person, if released on bail would fail to surrender himself into custody in order to answer his/her bail or (b) he would commit an offence while on bail. It must be noted however that the burden of establishing either such risk lies on the Respondents.

In the Caymanian case of *R. v Whorms* and *R. v Clarke* the court considered who had the evidential burden on whether or not to grant bail. Although in that particular case the court was considering the application in light of the statutory provision in relation to bail, it provides some guidance with respect to this issue. There, Smellie, CJ after referring to the Convention for the Protection of Human Rights and Fundamental Freedoms and how it affects domestic law of the Cayman Islands went on to say:

"The burden may not, therefore, be reversed, by placing it upon a defendant, without infringing that principle and the presumption of innocence itself. If a person is presumed innocent until proven guilty, he cannot be required to prove that there should be no infringement upon his liberty, while his guilt is yet to be established."

Further in *Hildebrandt v. DPP* [2006] VSC 198. King J at paragraph 12 reinforced the central considerations for the court thusly:

"The issue becomes one really of risk management - can the Court impose conditions sufficient to ensure his attendance at court and ensure that he does not commit further offences, or must he remain incarcerated to ensure those matters?"¹¹

[24] Therefore, the court will apply the relevant legal test as set out below in the case of **R (on the application of Thompson) v Central Criminal Court**¹² Collins J said:

"that the issue.... was not as to whether bail should be granted, but was whether it was necessary for the defendant to be in custody (custody being

¹⁰ [2012] ECSCJ No. 292

¹¹ At paras. 15 - 17

¹² [2006] A.C.D. 9

necessary where the court decides that, whatever conditions can reasonably be imposed, there are nonetheless substantial grounds for believing that the defendant would fail to surrender, etc.); and for the purpose of deciding whether custody was necessary, the severity of the sentence risked was a matter to be taken into account, but the risk of absconding on account of the severity of the potential sentence had to be assessed in the light of other relevant factors. As to the imposition of conditions, His Lordship said that the question of bail must be determined in the round, involving consideration of the question whether suitable conditions would make it unnecessary to remand in custody.”

[25] It is also common ground that the court must first be satisfied that there are substantial grounds for believing that any of the five factors which militate against the granting of bail are likely to occur.

[26] Therefore, the prosecution must demonstrate on a balance of probabilities that there is a risk that the applicants will abscond, which cannot be cured by the imposition of conditions or that there is a risk that they are likely to commit further offences if admitted to bail.

Risk of Absconding

[27] The respondent has alleged that there is a substantial risk of the applicants absconding based solely on the argument, the offence for which they are charged is a serious one that carries a term of life imprisonment.

[28] In addition, the respondent contends that the fact of the applicants’ previous offending, in the case of Mr. Richardson, the fact that he currently stands charged with the indictable offence of grievous bodily harm which carries a penalty of life imprisonment on conviction, is likely to act as an incentive to the applicants to abscond, or adds to the likelihood of the risk of the applicants absconding.

[29] However, the danger of the Applicants absconding cannot be assessed solely on the basis of the seriousness of the charge and the means of dealing with the applicants if convicted. It may very well be the case that a defendant charged with

a serious offence which carries a severe penalty may have a powerful incentive to abscond. However, this cannot be assessed on the basis of the severity of the sentence to be imposed on conviction.

- [30] The risk of absconding has to be assessed in light of the factors related to the applicants' character, morals, family and home ties, ties to the community and the country where he is being prosecuted.
- [31] After assessing all of these factors, the court considering the grant of bail should also bear in mind whether the imposition of conditions are likely to alleviate the likelihood of the applicant absconding. These conditions must be adequate to ensure that the applicants surrender to custody.
- [32] Mr. Gumbs is a citizen of Anguilla where he permanently resides. Both his parents are Anguillian. He resides with his mother in the community of Island Harbour, Anguilla. Prior to his arrest, he was gainfully employed. In addition, Mr. Gumbs has no previous convictions for offences involving the use of violence. It appears that Mr. Gumbs has strong family and community ties.
- [33] Mr. Richardson is also a citizen of Anguilla and resides at East End, Anguilla. He is 32 years old. He was gainfully employed at the time of his arrest. Apart from the fact, that Mr. Richardson committed the subject offence while on bail in relation to the commission of another indictable offence involving the use of violence, he has no previous convictions.
- [34] When assessing the risk of the likelihood of the applicants absconding, the court has also considered the strength of the evidence pointing to the applicants' guilt in the commission of the offence. However, this, without more, does not constitute grounds for withholding bail.

[35] The respondent relies on eyewitness testimony and forensic evidence in support of their case, which they say points to the fact that Mr. Gumbs was the shooter. Trace amounts of gunshot residue ('GSR') was found on the hands of both applicants. The court was unable to properly assess the strength of the prosecution's evidence against the applicants in support of the charge. However, it appears that for all intents and purposes Mr. Richardson may properly be regarded as an accomplice. On an application for the admission of a defendant to bail, the court is not required to undergo a detailed assessment of the evidence. In any event, the strength of the prosecution's case would depend greatly on the quality of the identification evidence. The court has also taken into account the relative unreliability of GSR evidence. Also, in light of what was advanced by Mr. Bourne on the hearing of the bail application, it may very well be that there is a possibility of a manslaughter verdict in the case of Mr. Richardson.

[36] The court is of the considered view that the respondent has not presented any substantial ground for believing that there is a substantial risk of either of the two applicants absconding.

Risk of Reoffending

[37] The prosecution also premised their objection to bail on the grounds that both applicants have previous convictions. Essentially they argued that the applicants' previous convictions point to the risk of the likelihood of the applicants reoffending if granted bail. In addition, it appears that the respondent's objection on this ground is premised on the fact that the applicants' previous convictions ipso facto acts as a bar to the grant of bail.

[38] In the court's view, this is a wholly fallacious approach to the grant of bail. The mere fact of a previous conviction for a previous offence, even of a similar nature, cannot by itself ipso facto result in the denial of bail to the Applicants. The mere fact of a previous conviction cannot substantiate the argument that the applicants are likely to commit offences while on bail.

- [39] The court must be satisfied on substantial grounds that this risk exist. Therefore, the court would have to make an assessment based on the conduct of the defendant during previous grants of bail. The mere fact of a previous conviction for a previous offence or an offence of a similar nature cannot substantiate the argument that the Applicant is a repeat offender or is likely to commit further offences if granted bail.
- [40] To substantiate their argument the respondent would have to produce evidence of the applicants' character after the commission of the offence.
- [41] The respondent also premised their objection to bail on the grounds that both applicants had a previous convictions. Mr. Gumbs has a previous conviction for importation of cannabis. However, the respondent has not provided any documentary evidence in support of this. Therefore, the court is unable to properly assess this fact in the context of the Respondent's objection to bail on that basis since there is no evidence as to the time that elapsed between this previous offending and the most recent offending. In addition, no evidence has been presented in relation to Mr. Gumbs's conduct during the previous grant of bail in relation to his previous offending, or in relation to his conduct prior to his detention for the present offence.
- [42] The respondent also relies on the conduct of Mr. Richardson on or about the years 2010 and August 2018 respectively, prior to his arrest and detention for the present offence to substantiate what they argue goes to his character. It appears that the respondent relies on Mr. Richardson's character in support of their opposition to the grant of bail. These allegations relative to a time prior to the arrest and detention of Mr. Richardson for the present offence are merely argumentative and speculative for the present purposes. There is no evidence of Mr. Richardson being arrested, charged, prosecuted and convicted on the basis of these allegations. Therefore, the court will not consider this as having any significance in determining whether Mr. Richardson should be granted bail.

- [43] The court finds that it would be a wholly fallacious approach to the grant of bail to rely extensively on the fact of the applicants' previous offending as a ground for the refusal of bail. The mere fact of a previous conviction for a previous offence of a similar nature cannot by itself ipso facto result in the denial of bail to a defendant. It is submitted, that to do so would fly in the face of the principles involved in the determination of the issue of the grant of bail.
- [44] The court is fortified in this view by the Judgment of Ramdhani J. (Ag.) in the case of **Itesha Huggins v The Commissioner of Police and Anor**¹³ where His Lordship sets out the correct approach to be applied in relation to the risk of reoffending based on previous convictions. At paragraphs [33] – [34] and at paragraphs [65] and [66] His Lordship distilled the principles involved on the grant of bail, where a defendant has previous convictions. The applicant in that case, a nursing mother of an infant, was arrested by the police of charges of Larceny and taken before the magistrate where, on objections by the prosecution, bail was refused. Before the High Court, bail was objected to on the grounds that the applicant, having had two previous convictions which was part of one transaction, was likely to commit further offences while on bail. His Lordship said:

“In considering the antecedents of the defendant, it would be wrong to jump to the conclusion that once a defendant has previous convictions it will mean that he is likely to commit further offences while on bail. The court considering bail must be able to draw that inference from the record of the defendant that there is a real risk that he will offend while on bail. Previous convictions and other circumstances may be relevant, but the decision-maker must consider whether it may properly be inferred from them that there is a real risk that the defendant will commit an offence.

The criminal record of an accused person as noted is relevant in this process, but the court has to examine the list of convictions carefully. This is an exercise in predicting future conduct. This Court must note that it is possible that someone with a number of previous convictions might not commit any offences on bail, whilst someone who with no previous convictions might be the one to commit offences on bail. There is little information or data in this region of the number of persons who commit

¹³ SKBHCV2013/0239, November 14, 2013

offences whilst on bail, and more so, what are the factors, which might have assisted in predicting this outcome. In fact, judges might only learn of those occasions when persons released on bail commit some particularly atrocious crime. Notwithstanding, I am persuaded that if someone has a very bad record, it is to be weighed against him in the balance.”

[45] The respondent alluded to the fact that Mr. Richardson was charged with the indictable offence of inflicting grievous bodily harm in January 2018. The respondent says that Mr. Richardson was on bail for this offence when he was charged with the offence of murder in November 2018.

[46] In the court’s view this does not necessarily, without more, amount to substantial grounds for believing that Mr. Richardson, if released on bail, will commit further offences. In order, to arrive at the conclusion that either of the applicants would commit further offences while on bail, the court must make an assessment by weighing several factors in the balance. In the case of Mr. Richardson, the court notes that the preliminary inquiry in relation to the offence of grievous bodily harm has either just concluded or is nearing completion.

[47] Although, the charge of grievous bodily harm, involves the allegation of violent conduct and the infliction of harm, and to that extent is therefore similar in nature to the offence of murder, the presumption of innocence is preserved in either case. Mr. Richardson has not been convicted for either of the two offences.

[48] In order to succeed in establishing substantial grounds for believing that Mr. Richardson is likely to commit further offences if released on bail, the respondent would have to provide evidence to show that Mr. Richardson has a propensity to commit these kinds of offences which goes beyond the commission of one single offence in the past. Ramdhani J. (Ag.) summarized the position this way in the case of **Itesha Huggins**, he said:

“In this case, the respondent’s evidence, outlined in some detail above, contends that the applicant had stolen from a past employer whilst in that employment. Submissions from crown counsel for the respondent was that this indicates that the applicant has the ‘propensity’, and therefore there is

a real risk that she will commit further offences if released on bail. First, as noted before, it must be made clear the present allegation that she has stolen from her most recent employer whilst on the job has not been proven; she is to be presumed innocent on those charges. So what we have left is essentially one previous transgression against the law. It is unlikely that single previous conviction can 'show propensity unless it shows a tendency to unusual behaviour or where the particular circumstances demonstrate probative force in relation to the offence charged'. This is not the case before the court. Simply stealing from an employer in the past is not to be regarded as unusual for this principle; there would have had to be some element attached to the stealing. Equally, there is nothing about the particular circumstances that demonstrate any probative force for the purpose of showing propensity. Thus, on a bail application, a court should generally look for more than one previous conviction which are relevant to showing the character of the applicant. A defendant who has had two previous convictions (not in the same transaction) involving dishonesty must be viewed differently from a defendant with two convictions, one for dishonesty and one for an unrelated offence such as common assault."¹⁴

- [49] Therefore, the court finds that the respondent has failed to make out its case that there are substantial grounds for believing that the applicants, if released on bail are likely to commit further offences.

The Public Interest

- [50] The respondent also objects to bail on the basis that it would not be in the public interest to do so. Essentially, the respondent contends that in determining that it was in the public interest to deny the defendant bail the court should take into account the likelihood of the risk of the applicants interfering with prosecution witnesses, the likelihood of the protection of the public from harm from the applicants and the likelihood of harm to the applicants from the public.
- [51] The respondent has presented what purports to be evidence of the likelihood of the risk that the applicants will interfere with prosecution witnesses or otherwise pervert the course of justice, the likelihood of risk of harm to the public and the protection of the applicants themselves. This evidence comes in the form of an affidavit from

¹⁴ At para 66

Police Constable Brando Pinard ('Constable Pinard') of the Royal Anguilla Police Force ('RAPF').

- [52] Constable Pinard stated in his affidavit that he carried out a threat assessment in relation to the applicants. Constable Pinard states in relation to Mr. Gumbs:

"The findings of the assessment are that the threat to the general public associated with their release on bail is high considering that they will have access to the lethal weapon used in the incident. Also, the threat to specific groups including witnesses and police officers is high, since they will now have the capability of carrying out their threat. Further, the threat to the accused is unknown as it is uncertain how the aggrieved family, family members and members of the public at large may respond to them being out. The assessment finds that if the accused is to be released from prison, the opportunity exist for them to be able to rearm themselves thus exposing all to risk of serious injury or death. It also exposes the accused to serious risk of injury or death by those seeking to avenge the victim. This assessment is based on intelligence that indicates that the accused has been threatening a number of persons including police officers, to do them harm; and has demonstrated his ability to carry out his threats. Also the public outrage over the death of Lofton FOREMAN (Jr.) highly suggest that the accused is vulnerable to risk of serious harm, injury or death."

- [53] Constable Pinard's findings in relation to the threat assessment carried out by him renders very little assistance to the court. The expression of public outrage over an alleged killing is a normal occurrence in all societies. However, negative public sentiment may very well subside over time. The conclusions arrived at by Constable Pinard in relation to the threat assessment carried out by him seems to contain nothing more than a series of uninformed generalisations. It is worthy of note, that Constable Pinard does not state when this threat assessment was conducted. Also, Constable Pinard fails to state the basis upon which he has premised his findings or the methodology employed to obtain the findings that he alluded to in his affidavit.

- [54] Constable Pinard makes similar statements in relation to Mr. Richardson. The court's findings in relation to Constable Pinard's threat assessment holds true in the case of Mr. Richardson.

[55] In the circumstances, the court is constrained to find that the evidence presented by the respondent in the form of Constable Pinard's affidavit fails to establish substantial grounds for believing that harm to the public and/or the applicants is likely to occur in the event that the applicants are released on bail.

[56] However, it appears that the respondent has not produced any evidence that is sufficient to determine on a balance of probabilities that there exist substantial grounds for believing that it is in the 'public interest' or necessary for the 'protection of the public' to deny the Applicants bail. There simply is no evidence that the public interest would be served by denying the applicants bail. No reference was made to any matter from which it can be said that on a balance of probabilities, the applicants would interfere with witnesses or that there were substantial grounds for believing that it was necessary to keep the applicants in custody for the purpose of protecting the public from serious harm by the applicants or for their protection.

Constitutional Challenge – Delay

[57] The common thread upon which both applicants rely in support of the grant of bail, is what they allege to be the delay in the completion of the preliminary inquiry. It appears that the applicants are relying on their rights enshrined under section 3 (3) of the Constitution as it relates to the right to a fair trial within a reasonable time. Both applicants contend that given the pace at which the preliminary inquiry has progressed, it is unlikely that the preliminary inquiry will conclude within a reasonable time or that the matter will be set down for trial prior to the commencement of the criminal assizes in March 2020.

[58] With respect to this aspect of the applicants' Bail Application, the court is tasked with deciding whether there has been or is likely to be an inordinate and inexcusable delay, amounting to an infringement of the applicants' constitutional rights to a fair hearing within a reasonable time to the extent that the grant of bail is the only adequate redress.

- [59] The applicants contend that there is no likelihood of the preliminary inquiry being completed or the trial coming on for hearing in short order. The court is of the view that the applicants' contentions on this point are without merit. Therefore, the court will decline to make a finding that there has been any infringement of the Applicants' constitutional rights in that respect which can only be remedied by the grant of bail. For the purpose of exposition the court will set out its reasons for so deciding.
- [60] The preliminary inquiry was scheduled to commence on 14th May 2019. On that day the Preliminary inquiry did not commence and was adjourned to 15th July 2019. On 15th July the Preliminary Inquiry was adjourned to 26th August 2019, some nine months after the Applicants' initial remand. On 26th August 2019 the depositions of seven witnesses were taken. The hearing of the Preliminary Inquiry was adjourned to 9th December 2019. The Preliminary Inquiry did not continue on 9th December 2019, and was adjourned to 24th February 2020. Presently, the prosecution intends to call eighteen remaining witnesses.
- [61] Neither the applicants nor the respondent have proffered any explanation for the delay in concluding the preliminary inquiry. Therefore, it is difficult for the court to assess the cause of the delay. The court is not in a position to say whether the delay in concluding the preliminary inquiry is attributable to either the respondent or the applicants. This information was simply not provided to the court.
- [62] In the circumstances, the court will decline to make any decision as it relates to this aspect of the bail application. However, for future guidance in subsequent applications coming before the court, reference will be made to certain guiding principles when a challenge to continued detention is raised on the basis of unreasonable delay.

[63] Useful guidance on the point can be found in the case of **Coecillia St. Romaine v The Attorney General**¹⁵. This case is relied on solely for the statement of guiding principles that the court should apply in determining whether delay in a particular case was unreasonable and, if so, whether the grant of bail would be an appropriate remedy. It is to be noted that in the case of **St. Romaine v The Attorney General**, the delay complained of was infinitely greater to the extent that the delay alleged in the present case pales in comparison.

[64] Belle J. in giving the judgment of the court relied extensively on the decision of the Caribbean Court of Justice (the 'CCJ') in the case of **Gibson v The Attorney General**¹⁶. The two cited cases may provide useful guidance to counsel on the approach to be adopted in the event that an application for the grant of bail is premised on a constitutional challenge in relation to the right to be tried within a reasonable time.

Conclusion

[65] In the court's assessment, the evidence confirms that none of the grounds for the refusal of bail have not been properly made out and as such the applicants should be admitted to bail. The court is of the view that the imposition of conditions on the grant of bail to the applicants is capable of alleviating the likelihood of any of the contemplated risk occurring. Therefore, the court orders and directs that the magistrate releases the applicants on bail subject to the following conditions, namely:

1. The Applicant, Salim Richardson, is granted bail in the sum of EC\$500,000.00 by way of two (2) suitable sureties in the sum of EC\$250,000.00 in respect of each such recognizance taken;

¹⁵ [2012] ECSCJ No. 126

¹⁶ CCJ Appeal No. CV1 of 2010

2. The Applicant, Shaquille Gumbs, is granted bail in the sum of EC\$500,000.00 by way of two (2) suitable sureties in the sum of EC\$250,000.00 in respect of each such recognizance taken;
3. The applicants are to each surrender their passports and all other travel documents, including Social Security Cards and Identification Cards to the Royal Anguilla Police Force at Police Headquarters, The Valley Anguilla;
4. The applicants shall not leave Anguilla except with the permission of the court and upon having made application to the court for that purpose;
5. The applicants are not to apply for any replacement or renewal passport or any other travel document without the approval of the court upon application being made for that purpose;
6. The applicants are to each report to the Headquarters of the Royal Anguilla Police Force, The Valley, Anguilla daily between the hours of 6:00 a.m. and 6:00 p.m.;
7. The applicants are to appear before the Magistrate's Court sitting at The Court House, The Valley, Anguilla or any other Magistrate's Court where proceedings in relation to the preliminary inquiry is being held at 9:00 a.m. and at any time and date that the proceedings may be adjourned and until they shall have been dealt with according to law, and not depart the Court without leave;
8. The applicants shall refrain from contacting or interfering with any of the witnesses or persons concerned in this matter whether by himself or through the actions of his servants and or agents;
9. The applicants shall not engage in any conduct whatsoever that would harass, intimidate or otherwise result or amount to interference with any of the witnesses or persons associated with the present proceedings;

10. The Applicant, Shaquille Gumbs is restricted by curfew by virtue of which he is to reside at his residence situate at Island Harbour, Anguilla, by 6 p.m. every night and is forbidden to leave until 6 a.m. unless in the event of emergency or for any other reasonable cause and after having notified the Royal Anguilla Police Force of such emergency or necessity for leaving his residence;
11. The Applicant, Salim Richardson is restricted by curfew by virtue of which he is to reside at his residence situate at East End, Anguilla by 6:00 p.m. every night and is forbidden to leave until 6:00 a.m. unless in the event of emergency or for any other reasonable cause and after having notified the Royal Anguilla Police Force of such emergency or necessity for leaving his residence;
12. During the period of such curfew the applicants shall permit officers of the Royal Anguilla Police Force to make random visits to their respective residences at all reasonable times.
13. A copy of the Recognizances so entered into shall be served on the Chief Immigration Officer, the Commissioner of Police and the Senior Magistrate;
14. The breach of any of the terms of the Recognizance entered into herein may result in the immediate revocation of bail and the recognizances entered into shall be void, but otherwise shall remain in full force until further order of the Court.
15. A copy of this order shall be served on the Chief Immigration Officer, the Commissioner of Police and the Senior Magistrate.

Shawn Innocent
High Court Judge

By the Court

Registrar