

**EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

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

**SUIT NO: NEVHCV2015/0040
NEVHCV2015/0041
NEVHCV2015/0042**

BETWEEN:

Asim Parris

Dexter Somersall

Craig Halliday

Applicants

and

The Director of Public Prosecutions

Respondent

Appearances:

Dr. Henry Browne Q.C with Mr. Hesketh Benjamin for the 1st Applicant.

Ms. Marsha Henderson with Ms. Sandra Hector for the 2nd Applicant.

Mr. Chesley Hamilton with Ms. Mickia Mills for the 3rd Applicant.

Mr. Travers Sinanan with Mr. Giovanni James and Mr. Tishaun Vasquez for the Respondents.

2015: May 22
2015: July 21

DECISION

[1] **WILLIAMS, J.:** The Court has been presented with three Notices of Application filed on the 27th April 2015 by Asim Parris; Craig Halliday and Dexter Somersall seeking admittance to Bail for Murder charges against them.

[2] The grounds on which the applications are based are identical in all of the Applications, and the grounds presented in the Application of Asim Parris read as follows;

1. That the Applicant was arrested on the 19th January 2014 on a warrant in the first instance and charged with the offence of Murder contrary to Common Law.
2. That on the 27th April 2015, the Court quashed the indictment dated 22nd October 2014 upon which the Applicant's committal was found, and as such the Applicant was discharged.
3. That immediately upon exiting the Court following his discharge the applicant was apprehended on a warrant in the first instance dated the 23rd day of April 2015 in relation to the said murder of Leon Westerman for which the applicant had just been discharged.
4. That within the space of 30-40 minutes of his arrest, the Applicant appeared before Resident Magistrate Her Honour Yasmine Clarke, and at that hearing, he was again discharged.
5. That immediately after the discharge by the Magistrate, the applicant was re-arrested for the 3rd time and again charged with the murder of the said Leon Westerman.
6. That the Applicant had been detained on remand for a period of 15 months prior to the discharge by the Court on a warrant dated the 17th January 2014.

7. That the Applicant's fundamental and constitutional rights under the St. Kitts and Nevis Constitution has been breached and further that there has been an abuse of the process.
8. That for the Applicant to remain in custody on a warrant that predates his discharge on the same facts and circumstances would render his arrest arbitrary and without legal basis.
9. That the Applicant has suitable persons willing and able to stand as surety, and the Applicant has no intention of absconding or interfering with the prosecution witnesses in the case.

[3] On the 27th April 2015, all of the Applicants filed Affidavits in support of their Applications on similar grounds to that of their respective applications.

[4] On the 8th May 2015, Andre Mitchell Superintendent of Police of the Royal St. Christopher and Nevis Police Force swore to an Affidavit on behalf of the Respondents; Identical Affidavits were deposed to in all three applications by Andre Mitchell.

[5] At paragraph 2,3,4 of the said Affidavit, the Applicant states that he is attached to the Violent Crime Unit as the Officer-in-charge, and the Unit is continuing further inquiries into the case involving the Applicants, Asim Parris, Dexter Somersall and Craig Halliday.

[6] At paragraphs 5-8 of the said Affidavits, Superintendent Mitchell recites some of the evidence obtained by the police regarding alleged threats on the life of Jean Simmons, the main prosecution witness in the matter.

[7] Superintendent Mitchell deposes that if the Applicants are granted Bail, they will fail to surrender to custody and will seek to interfere with the witnesses or otherwise obstruct the course of Justice.

[8] The Respondents have also filed a second Affidavit in Answer dated 6th May 2015 and deposed to by Ray Gordon, Corporal of Police No. 591 of the Royal St. Christopher and Nevis Police Force.

Ray Gordon deposes in almost identical fashion to the previous Affidavit filed by Andre Mitchell Superintendent of Police of the Royal St. Christopher and Nevis Police Force.

Issues

[9] The Issues for determination by the Court are;

1. Whether the application for Bail by Asim Parris, Dexter Somersall and Craig Halliday should be granted.
2. What is the effect of the quashing of an Indictment on the proceedings?
3. Whether the re-arrest of the Accused men be considered an Abuse of process.

[10] The Hearing of these Applications were in Chambers, and submissions were made by the learned Director of Public Prosecutions Mr. Sinanan, learned Queen's Counsel Dr. Henry Browne and Hesketh Benjamin for Asim Parris, learned Counsel Ms. Marsha Henderson with learned Counsel Ms. Sandra Hector for Dexter Somersall, and learned Counsels Mr. Chesley Hamilton with Ms. Mickia Mills for Craig Halliday.

[11] Ms. Marsha Henderson made reference to the Affidavit in support of the Application dated and filed 27th April 2015 and made the following submissions which I will summarise.

- a) Craig Halliday was arrested on a warrant in the 1st instance on the 19th January 2014, for the murder of Leon Westerman on the 28th January 2008.
- b) Craig Halliday was discharged by this Court on the 23rd April 2015 and was re-arrested four times.
- c) Craig Halliday is not a flight risk and there is no evidence to substantiate that he will interfere with witnesses.

- d) The Court discharged the Accused and did not make a further order for incarceration.
- e) If the learned Director of Public Prosecutions intended to re-initiate the process by holding Craig Halliday in custody and bring him before the Magistrate, then the Law allows the Director of Public Prosecutions to do certain things in writing before the Preliminary Inquiry stage.

The Director of Public Prosecutions cannot re-indict or re-direct on the same Indictment but only at the end of the Preliminary Inquiry when the Magistrate who will convene a committal hearing to determine whether to indict or not.

- f) Craig Halliday was arrested on the same charge, but was not bound over or traversed to the next Assizes.
- g) The Director of Public Prosecutions should have appealed the matter, and not revert back to the Magistrate Court which would result in a different process.
- h) In relation to Dexter Somersall his arrest amounts to an abuse of process and a denial of his right to a Fair Trial and his right to Appeal.
- i) There is a presumption of Innocence which entitles him to Bail.
- j) Warrant of Arrest from Interpol is a deterrent to his movements and conditions can be imposed.
- k) Mr. Hesketh Benjamin submitted that the warrant of arrest sworn to on the 23rd April 2015 was done while the matter was still before the High Court. He considered this to be an Abuse of the process, as it was uncertain on which warrant the Accused were arrested, and since there was no other witness other than Jean Simmons, the question to be asked was whether the situation with this witness has changed.

- l) Learned Counsel Mr. Benjamin contended that there was no evidence to incarcerate the three men and that Section 4 (6) of the **Bail Act. No.18 of 2012** must be satisfied.
- m) Mr. Benjamin argued that there were only self-serving Affidavits from the police officers and that there was no evidence from the witness Jean Simmons to say that she was in fear of her life.
- n) Dr. Henry Browne Q.C submitted that the Exhibit presented by the Crown in relation to Dexter Somersall was irrelevant to the proceedings as there was no bilateral treaty between St. Kitts and Nevis and Guyana.
- o) Learned Queen's counsel contended that the Accused men were not taken up by a Foreign State Warrant which must be predicated by information on oath of Corporal Ray Gordon.
- p) Dr. Browne Q.C submitted that what the Director of Public Prosecutions has done is to set up a collision between the Executive and the Judiciary. The system was manipulated in total disrespect to the Court; as the Accused Men were discharged on the 27th April 2015, but were placed in custody on a warrant dated 23rd April 2015 which compounded the collision.
- q) Learned Queen's Counsel contended that the Director of Public Prosecutions had acted wrongly, and was in contempt of Court, and had undermined the authority of the Court and the Rule of Law.
- r) Mr. Sinanan, the learned Director of Public Prosecutions in his response to Counsel's submissions referred to Article V of the Constitution Chapter 2 and stated that the provisions for remission did not apply where there is a defective committal. The quashing of the Indictment was not an Acquittal, and the

proceedings had to be started De Novo. This would begin with the arrest of the Accused men.

- s) The learned Director of Public Prosecutions submitted that there was an error on the face of the warrant which was not fatal as the Accused Men were not in double jeopardy and the dismissal of the case was not on its merits.
- t) The learned Director of Public Prosecutions also submitted that there was no manipulation of the system as the Accused Men could be arrested without a warrant.
- u) In relation to the Interpol notice, the learned Director of Public Prosecutions states that Dexter Somersall must be brought before the Court for veracity of the offences with which he is charged in particular for the Firearm offences.
- v) The learned Director of Public Prosecutions argues that all three Accused Men are flight risks and the possibility of their interfering with witnesses especially the relatives of witnesses is very real; the learned Director of Public Prosecutions opines that no amount of conditions imposed on the Accused Men will prohibit their Interference with the course of Justice.
- w) Mr. Sinanan contends that Dexter Somersall has already escaped the Law in Guyana, and since Jean Simmons is the only eye witness to the crime, the gunning down of the witness is a reality.

Jean Simmons was the only eye witness, she knows the other parties and heard their conversations and she is the only witness to bring Justice to this case.
- x) The Learned Director of Public Prosecutions argues that there has been no abuse of the process, and the Crown can come back and indict again; while the liberty of

the person is important, the protection of the society is also important and Bail should be denied.

- y) Mr. Chesley Hamilton submitted that Craig Halliday has been on remand for three years and had not been tried within reasonable time, He contended that while the Crown can re-indict, the Court had discharged Craig Halliday on the 27th April 2015, while he was arrested on a warrant dated 23rd April 2015. Mr. Hamilton argued that a warrant of arrest was in existence pending the ruling of the Court, but the warrant and the Indictment were quashed by the decision of the Court of the 27th May 2015.

Learned Counsel Hamilton further contended that the learned Director of Public Prosecutions had acted in an Appeal Court capacity when he decided to a retrial of the matter.

- z) Learned Queen's Counsel Dr. Browne adopted the submission of learned Counsel Chesley Hamilton and submitted that the Information in the warrant of the 27th April 2015 smacked of misbehaviour in public office.

Dr. Browne Q.C referred to the case of **Itesha Huggins vs 1. Commissioner of Police 2. The Director of Public Prosecutions** and argued that the Magistrate had no material to exercise her discretion and the committal was bad in law. There was no credible evidence before the Court, no double jeopardy and fresh additional evidence could have been adduced.

Dr. Browne Q.C further submitted that the Order of Court of the 27th April 2015 was flouted since nothing new had happened to change the situation, and the Accused Men were entitled to Bail.

The Law

[12] The **St. Kitts and Nevis Bail Act No. 18 of 2012** at Section 4 makes it pellucid that Bail can only be denied in certain circumstances. The Section states inter alia that... it shall be within the discretion of the Court to deny bail to the defendant in the following circumstances.

- a) Where the Court is satisfied that there are substantial grounds for believing that the Defendant if released on Bail would;
 - i. Fail to surrender to custody
 - 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) Where the Court is satisfied that 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) Where he is in custody in pursuance to the sentence of a Court or any authority acting under the **Saint Christopher and Nevis Defence Force Act** Cap 19:14.
- d) Where the Court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required under this section for want of time since the Institution of proceedings against him.
- e) Where having been released on Bail or in connection with the proceedings for the offence, he is arrested in pursuance of Section 12.
- f) Where he is charged with an offence alleged to have been committed while he was released on Bail or

- g) Where his case is adjourned for Inquiries or a report, and it appears to the Court that it would be impracticable to complete the Inquiries or make the report with keeping him in custody.

[13] Under Section 4 (3) of the said Act the Court may in its discretion consider the following, namely;

- a) The nature and seriousness of the offence or default and probable method of dealing with the Defendant for it.
- b) The character, antecedents, associations and social ties of the Defendant.
- c) The Defendants record with respect to the fulfilment of his obligations under previous grants of Bail in criminal proceedings.
- d) 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 and
- e) Any other factors which appears to be relevant.

[14] In this jurisdiction, the statutory test for the refusal of Bail is not simply whether the Defendant will turn up for his Trial, but also whether there are substantial grounds for believing that one or more of the statutory exceptions to bail apply, that is if the Defendant will either fail to surrender to custody or commit further offences whilst out on Bail, interfere with witnesses or otherwise obstruct the course of Justice.

The Applications for Bail

[15] The Applicants in this matter Asim Parris, Dexter Somersall and Craig Halliday have all applied for Bail on similar grounds as stated in their Affidavits in support of their application for Bail filed on the 27th April 2015. The Applicants were arrested on Warrants in the 1st instance.

[16] The Respondents objections to the grant of Bail by this Court are that if released on Bail, the Applicants would;

- i. Fail to surrender to custody
- ii. Interfere with the witnesses or otherwise obstruct the course of Justice.

[17] In support of these statutory exceptions to Bail, the Respondents relied on two affidavits, one sworn to by Ray Gordon, Corporal of Police No. 591 on the 6th May 2015 and Andre Mitchell, Superintendent of Police on the 8th May 2015 both of the Royal St. Christopher and Nevis Police Force.

[18] In his affidavits, Andre Mitchell Superintendent of Police attempts to make a case that the Applicants would seek to interfere with the witnesses or otherwise obstruct the course of Justice and that the Applicants if granted Bail would fail to surrender to custody and commit other offences while on Bail.

[19] Similarly Ray Gordon, Corporal of Police No. 591 in his Affidavits in response to the Applicants application for Bail stated his objections to the granting of Bail and cited the following grounds;

- i. That the Applicants would fail to surrender to custody.
- ii. Interfere with the witnesses or otherwise obstruct the course of Justice.
- iii. That the nature and seriousness of the offence and the manner in which the offence was committed was indicative of premeditation and execution by the use of illegal firearms.
- iv. The strength of the evidence made the prospect of a conviction very realistic; and also makes the Applicants a flight risk, despite the conditions that may apply to Bail.

- v. That the witness Jean Simmons has been in constant fear for his life as she has had sightings of masked men on her premises, and has had to be removed out of the jurisdiction for her protection.

[20] The learned Director of Public Prosecutions has relied on several cases to bolster his submissions and in particular I refer to the case of R vs Gee¹ where J. Goddard following the decision of Crane vs The Director of Public Prosecutions stated that “where there has been a quashing of an Indictment on a successful motion, the Court has the power to order that these men should be taken back and that proceedings should be re-commenced de novo, that the Depositions be properly taken and the Men brought before the Court of Quarter sessions.”

[21] In the case of Warren et al vs The Attorney General for Jersey ² Lord Dyson stated that **“The Court’s power to stay proceedings arises in two distinct categories of case (1) where it will be impossible for the Defendant to have a fair trial, in such a case, no question of balancing competing interests arises and the Court will stay the proceedings. (2) Whereas here it offends the Court’s sense of propriety and justice to try the Defendant in the particular circumstances.**

Propriety in the conduct of prosecutions is a matter of Constitutional importance. It is for the Court to take responsibility for ensuring that process is not abused. The Judiciary’s acceptance of responsibility for maintaining the rule of Law requires them to oversee executive action and to refuse to permit conduct which threatens it. The Court cannot turn a blind eye to Executive lawlessness beyond the frontiers of

¹ [1936] 25 Cr App R198

² [2012] UKPC 10

its own jurisdiction, and where it finds such lawlessness, its proper and necessary response is to decline to exercise jurisdiction on the ground of Abuse of process. In the second category of case the Courts concern in protecting the Integrity of the Criminal Justice System is to strike a balance between the competing public interests to endure that Executive misconduct does not undermine public confidence in the system and (2) those charged with serious crimes are brought to trial.

In that discretionary exercise, Fairness has little weight in the balance, great weight is attached to the nature of the offence and to the need, as a matter of Public policy to discourage prosecutorial misconduct.” (My Emphasis)

[22] I now refer to Issue no. 3 to thoroughly examine whether the dicta adumbrated in Warren vs The Attorney General for Jersey is applicable to the case at Bar. The submissions on behalf of the Accused men rest on the contention that the warrants obtained were not in accordance with the Law.

[23] Under Section 37 of the Magistrate's Code of Procedure Act Cap 3:17 of the Laws of Saint Christopher and Nevis, it provides as follows:

1. “In all cases where a charge is made in respect of an offence punishable either on indictment or on summary conviction, the Magistrate, if he or she thinks it expedient that a warrant be issued in the first instance, may take an information and require such evidence that behalf as he or she considers necessary to substantiate the matter of the Information and may issue his or her warrant in the first instance to apprehend such person as a aforesaid and to cause him or her or any other Magistrate in the state to answer the charge and to be dealt with according to law.”

[24] There is no doubt that this provision cited places a heavy onus on the Magistrate who must think it expedient that a warrant should be issued and take the evidence he/she considers necessary to issue the warrant.

[25] There is no evidence before the Court that new evidence was taken by the Magistrate to issue the warrant of the 27th April 2015.

In fact a warrant dated the 23rd April 2015 had been issued while the Applications by the Accused men were still being determined by this Court. The Court is baffled by this development and can find no legal or evidentiary basis for this warrant. The Court ruled on the 27th April 2015 that the Indictment was defective and the committal to Trial of the Accused men was invalid.

[26] In my respectful opinion since the Indictment was deemed void on the basis of a bad committal, the prosecution must embark on fresh committal proceedings so as to obtain a valid committal on which to found the Indictment. In the premises as I have already stated the warrant of arrest of the 23rd April 2015 is without legal basis, and renders the arrest arbitrary and an Abuse of the process of the Court. While I am acutely aware that the Court cannot sanction or discipline the Crown for prosecutorial misconduct, the Court takes a very dim view of the actions of the Crown and considers that what transpired in this case as disrespectful, and an affront to the authority of the Court and the public conscience.

[27] Superintendent Andre Mitchell in his Affidavit in Answer to the Defendant's Application for Bail states at paragraph 5 that the witness Jean Simmons has made three reports to the Violent Crime Unit indicating the sighting of masked individuals on her premises since the arrests of the Accused person, and the witness has become very fearful as a result of her sightings.

He says further at paragraph 6 that the police have received information with reference to threats on the life of Ms. Simmons. This information together with her fear has prompted the immediate relocation of the witness to an area outside of the jurisdiction.

At paragraph 7, Superintendent Mitchell states that it is his belief that the Applicants if granted Bail will seek to interfere with the witnesses or otherwise obstruct the course of Justice.

[28] I note, that apart from that bald statement by Superintendent Mitchell, there is no affidavit evidence from Ms. Simmons to substantiate this fear, that she fears for her life, and to identify the Applicants as the source of her fear and trepidation. There is no evidentiary basis on which I can reasonably deduce that the witness(es) will suffer harm if the Applicants are released on Bail. Neither have I been presented with strong or compelling evidence or persuaded otherwise, that the Applicants will fail to surrender to custody.

[29] I have also noted the strength of the evidence against the Applicants on the Murder charge. In this case Jean Simmons is the sole eye witness who was also part of the planning and execution of Leon Westerman. I do not propose to embark on a mini trial here, but I am well aware that this matter may proceed to Trial where the evidence is likely to be challenged and tested under cross-examination by Defence Counsel.

Having stated that, this Court has considered the strength of the evidence as one of the factors to be taken into account.

[30] The Court has also considered the character, antecedents, associations and social ties of all the Applicants and examined the specific evidence relating to the issue of "flight risk" and "absconding".

- [31] Assistant Commissioner of Police Ian Queely in his Affidavit dated 8th May 2015 states that Dexter Somersall is a fugitive wanted to serve a sentence in Guyana and has been arrested for possession of firearms and cocaine.
- [32] Learned Queen's Counsel Dr. Henry Browne submitted that the Interpol Notice was irrelevant to the proceedings and beseeched the Court **not** to take Judicial notice of the Red note from Interpol as it was an unsigned document that was not properly before the Court and was in breach of sections 126 & 130 of **The Evidence Act of St. Kitts and Nevis** No. 30 of 2011.
- [33] I concur with learned Queen's Counsel Dr. Browne on his submission that the Interpol notice without more could not provide substantial grounds for believing that the Applicant Dexter Somersall would abscond. I attach no weight to the Notice from Interpol which is not properly before the Court; and the wanted person(s) in that Notice would have to be subject to Extradition proceedings or similar lawful action. Any individual who is subject to an **Interpol notice** must be considered innocent until proven guilty.
- [34] The Respondents have argued that the Applicants are likely to commit further offences if released on Bail and state that the fact that the offence with which they are charged carries a long custodial sentence and that conditions imposed for Bail might not be barriers for the Applicants surrendering to custody.
- [35] This theory presented by the Respondents is in my opinion bereft of rationality, and there is no evidence presented of those risks. I have reviewed the conviction sheets of all of the Applicants and while some of the convictions may show a propensity to commit various crimes, there is no evidence of any threats or harm to any witnesses or their familial relations or on their bad character. In fact there is nothing to militate against the grant of Bail in this matter.

- [36] I have already stated that the test established by the **Bail Act No. 18 of 2012** for the refusal of Bail where the main exceptions to Bail apply is whether there are substantial grounds for believing that one or other of the statutory exceptions to Bail applies. It is **not** whether there is a likelihood or reasonable grounds for believing that the Applicants for Bail will fail to surrender to custody or will be likely to commit further offences or otherwise obstruct the course of Justice while released on Bail.
- [37] All the learned Defence counsels for the Applicants in their objections to Bail have cast grave doubt in my mind on the submissions from the Respondents.
- [38] This Court is also guided by the dicta regarding admission to Bail which was adumbrated by Her Ladyship Honourable Madam Justice Janice George Creque (as she then was) in the case of **Thelston-Brookes vs The Attorney General (2) Commissioner of Police** ³ “Accordingly the exercise of a Judge’s discretion in admitting an Accused person to Bail calls for a balancing of the sides, by weighing the interests of an Accused person and his fundamental rights as guaranteed under the constitution on the one hand, and the Interests and rights and freedoms of others and the Public Interest, being the sole qualifications in the said rights of the other.”
- [39] Having considered all of the submissions, factors, authorities and circumstances, I am persuaded that the balance lies in favour of the grant of the Bail rather than the refusal of Bail to the Applicants Asim Parris, Dexter Somersall and Craig Halliday.
- a) In these circumstances, this Court directs that the Magistrate do admit to Bail the Applicants Asim Parris, Dexter Somersall and Craig Halliday in the sum of \$350,000.00 each with two suitable sureties of \$175,000.00 each for each applicant.

³ AXAHCR2006/0089

b) The Applicants are to surrender all travel documents to the Court pending disposal of the criminal trial.

c) The said Asim Parris is to report to the Charlestown Police Station every day of the week between the hours of 6am and 5pm.

Dexter Somersall and Craig Halliday are to report to the Basseterre Police Station every day of the week between the hours of 6am and 5pm.

d) The Applicants are not to have any contact with or interfere with any witnesses or their direct familial relations who are involved in this matter either by themselves or through any of their agents acting on their behalf or with their encouragement.

e) The Applicants are to keep the peace and be on good behaviour.

f) The Applicants should not leave the jurisdiction of St. Kitts and Nevis except with the permission of the Court showing proof of intention to travel, purpose of travel, duration of stay and date of return to the jurisdiction.

g) Any breach of these conditions will result in immediate revocation of Bail.

[40] There will be no order as to costs on these Applications.

[41] Liberty to apply within four months of the date of this order..

[42] I would like to thank Counsels on both sides for their very helpful submissions and assistance to the Court.

Lorraine Williams
High Court Judge.