

Hayden D. Lucas

IN THE SUPREME COURT OF BELIZE, A.D. 2005

ACTION NO. 73

IN THE MATTER OF ~~SHELTON TILLEY~~ A PRISONER
AWAITING TRIAL

AND

IN THE MATTER OF SECTION 16 OF THE CRIMES CONTROL
AND CRIMINAL JUSTICE ACT, CHAPTER 102 OF THE LAWS OF
BELIZE, REVISED EDITION 2000 AS AMENDED BY ACT NO. 18
OF 2003

BEFORE The Honourable Mr. Justice Adolph D. Lucas

Appearances:

Mr. Ellis R. Arnold for the Petitioner

Ms. Cheryl-Lynn Branker-Taitt for the Respondent

1. The petitioner is on remand at the Department of Corrections in Hattieville, Belize District. He is accused and is charged (along with Leonard Myers) for three crimes; to wit, Attempted Murder, Use of Deadly Means of Harm and Dangerous Harm, which were allegedly committed upon Marlon Fisher on February 3rd, 2005.
2. The petitioner has petitioned this Court for bail and not the magistrate who remanded him to custody, because a magistrate has no jurisdiction to grant bail for certain serious crimes, one of which is Attempted Murder.
3. The relevant parts of the petition reads:

"(4) As regards the charges brought against your Petitioner,

your Petitioner states that he had a previous misunderstanding with Marlon Fisher but on that date in question your Petitioner was at home with his family and did not commit the offences, and knows nothing of the incident.

(5) Your Petitioner admits that he is presently on bail on charges arising out of an incident where he was a passenger in a motor vehicle in which prohibited firearms and ammunition were found.

(6) Your Petitioner further states that he has no previous convictions, he lives in a common law union and is the father of three children for which he is the sole breadwinner.

(7) The offences for which your Petitioner is charged are bailable offences and if bail is granted your Petitioner will appear on every adjournment date and will not attempt to flee the jurisdiction of the Court.

(8) Your Petitioner is fully prepared to abide by any conditions which the Court may impose when granting bail."

4. The respondent - Director of Public Prosecutions - opposed the application of the petitioner for bail on the grounds, *inter alia*, that the petitioner was on bail when he allegedly committed the crimes for which he is presently requesting release on bail from custody and that if he is granted bail he "would constitute a serious threat to the overall safety

and stability of life for those who are law abiding residents of
'Southside' of Belize City..."

5. It cannot be argued that any person may be arrested and detained when the arresting officer has reasonable grounds to suspect that that person has committed a criminal offence. Section 5(1) of the Constitution of Belize says so. Our Constitution also speaks of granting of bail to those who are arrested or detained. Section 5(4) is as follows:

"If any person arrested or detained ... is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is released, be entitled to bail on reasonable conditions."

6. A strict construction of the above section leads to a situation where the granting of bail to an applicant at the early stage of his detention on remand is not automatic. It is when a person is not tried within a reasonable time that his entitlement to bail becomes ripe. However, because a Constitution should not be interpreted "in a narrow and legalistic way, but broadly and purposively", the arrest and detention of a suspected person for less serious crimes without the consideration of granting of bail to him by the police or a magistrate would not be given effect to the spirit of the Constitution.

7. Our National Assembly, by virtue of its power "to make laws for the peace, order and good government of Belize," enacted *Act No. 2*

2003 to amend the *Crimes Control and Criminal Justice Act, Chapter 102* which prohibits a police officer or a magistrate from granting bail to accused persons who are charged with certain serious crimes. An accused who is desirous of obtaining bail is required to apply to a Judge of the Supreme Court. The Judge may, for special reasons to be recorded in writing, grant bail after taking into consideration certain factors which are enumerated in the Act.

8. Attorneys-at-Law, in bail application proceedings, frequently, in their submissions on behalf of their clients, draw the attention of the Court to the collision of *Act No. 25 of 2003* with the presumption of innocence, a provision which is guaranteed in section 6(2) of our Constitution. Justice Barrow J., in *Re: Timoteo Douglas Jimenez* 4 Bz. L.R. 248, gave an appropriate answer to such submission. He said at page 255:

"It seems to me that if a person detained while awaiting trial considers that the Act contravenes his constitutional right to bail, he has a clear recourse. But absent the bringing of a challenge to the constitutionality of the Act I do not see that it is for petitioners any further to hint at the view that the Act may be open to such a challenge."

9. While this action by the petitioner is not, *per se*, a constitutional matter, may I point out that there are judgments from other jurisdictions which express the view that denial of bail for a short period to those who are arrested for serious crimes is not unconstitutional. *Attorney General of*

the Gambia v. Momodou Jobe [1984] 1 A.C. 689 (P.C.) is one such case. The case pertains to a challenge to the constitutionality of an Act which is to some extent similar in our *Act No. 25 of 2003*. At paragraph 697(E), Lord Diplock had this to say:

"There is thus nothing in the Constitution which invalidates a law imposing a total prohibition on the release on bail of a person reasonably suspected of having committed a criminal offence provided that he is brought to trial within a reasonable time after he has been arrested and detained. Section 7(1) of the Act which prohibits release on bail not totally but subject to an exception if the magistrate is satisfied that there are special circumstances warranting the grant of bail, cannot in their Lordships' view be said to be in conflict with any provision of the Constitution."

A judgment from Zimbabwe, *Bull v. Minister of Home Affairs* (1981) LRC (Const.) 547, at page 562 (e), makes similar pronouncement.

10. Special reasons which should be presented by a petitioner for bail to a Judge in considering whether to grant bail is another "thorn in the side" of Attorneys especially in the way special reason has been interpreted in cases cited in *Re: Jimenez* referred to above.

11. The furnishing of special reason by a petitioner for his bail consideration is, in my view, secondary. What is paramount is whether the documents filed on behalf of the respondent who opposes the bail application reveal that there are reasonable grounds to suspect that a petitioner is


committed the crime as alleged in the Information and Complaint.
there are grounds I look at the petition to see whether there are
circumstances therein, and this may include special circumstances
pertaining to the petitioner, for my consideration in granting bail.
Where there are no reasonable grounds for the detention of the accused,
granting bail to him is inevitable.

12. I have perused the affidavit of Sergeant of Police No. 190 Alden
Dawson that he filed on behalf of the respondent. At paragraph 10,
reveals that there are reasonable grounds to suspect that the petitioner
was the person who gun shot and seriously injured Marlon Fisher on 3
February, 2005.

13. There are no special reasons or special circumstances disclosed in the
petition of the petitioner, or in the submissions of his Attorney-at-Law
for me to grant him bail.

14. I therefore refuse bail.

Dated this 14th day of March, 2005.


(ADOLPH D. LUCAS, SR.)
JUSTICE OF THE SUPREME COURT