

HMLB

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO HVC 0814/2003

BETWEEN GLENFORD WILLIAMS CLAIMANT/APPLICANT

A N D REGINA DEFENDANT/RESPONDENT

Mr. Roy Fairclough and Mr. Hugh Thompson for Claimant/Applicant.

Miss Tana Reid for Defendant/Respondent.

Notice of Application for Court Orders.

IN CHAMBERS

Heard:- 26th May, 2003

Brooks, J.

The application before the court is for the applicant Glenford Williams to be re-admitted to bail. The basis for the application is that the learned Resident Magistrate for Saint James erred when she revoked her previous order granting bail to the accused.

The relevant facts leading to the learned Resident Magistrate's decision are as follows:

- (1) The accused was arrested on 17/4/03 on charges of possession of certain substances in breach of the Dangerous Drugs Act.

- (2) On the 6th May, 2003 he was granted bail in the sum of \$10,000,000.00 with one or two sureties. This was on condition that he reported to the Area 1 Narcotics Police every Monday, Wednesday and Saturday, that he surrendered all travel documents and that his sureties should attend court with him. A stop order was also to be placed at both (international) airports.
- (3) The accused took up the offer of bail and on Friday 9th May he reported to the police as per the condition previously mentioned.
- (4) On Monday 12th May, 2003 when he again reported to the police he was taken into custody. His detention, it was later established, was on the instruction of Senior Superintendent Carl Williams who is the officer in charge of the Narcotics Division.
- (5) The accused was taken back to court on 15th May when Senior Superintendent Williams was called upon to show cause why the accused was taken back into custody.
- (6) The Senior Superintendent gave evidence that he learned from the same source that gave information leading to the original

find of the prohibited substances and to the arrest of the accused, that the accused “ was not going to submit himself and he was going to flee.”

The officer indicated that it was on this basis that he ordered the accused to be taken back into custody.

The learned Resident Magistrate having heard this evidence, found after considering it that the Senior Superintendent had shown reasonable grounds for his action.

As a separate consideration the learned Resident Magistrate in her notes said:

“Court now ha(s) to (decide) whether to readmit Mr. Glenford Williams to bail. Considering all the circumstances, I am not going to readmit Mr. Glenford Williams to bail. He is therefore remanded in custody until the 27th May, 2003.”

In her “Reason for Decision” recorded in the “Record of Bail Decision” form completed pursuant to Section 8 of the Bail Act, the learned Resident Magistrate stated:

“Having heard from Senior Superintendent Carl Williams I am satisfied that accused is a flight risk.”

It is from this decision that the applicant now appeals pursuant to Section 10 of the Bail Act. Mr. Fairclough for the applicant has submitted, and the court accepts, that the appeal is by way of review of the decision of

the learned Resident Magistrate. As I understand, it this court's role in these circumstances, is not to substitute its own views for that of the learned Resident Magistrate, but to determine whether the appropriate principles were applied and whether there was any proper legal basis upon which she might have come to her decision.

The essence of Mr. Fairclough's submission is that the learned Resident Magistrate erred in that she mis-understood the circumstances of the police acting under Section 16 (3) of The Bail Act as being circumstances which would entitle a court to act in revoking a grant of bail. He submitted that in so doing the learned Resident Magistrate operated on a finding that since the police had reasonable cause to arrest the accused that would by itself justify a revocation of the bail.

Mr. Fairclough submitted that Section 16 (5) of the Bail Act imposed a higher standard on the court.

While Section 16 (3) (a) reads:

- (3) "A person who has been released on bail in criminal proceedings may be arrested without warrant by a police officer where –
 - (a) the police officer has reasonable grounds for believing that the person is not likely to surrender to custody."

Section 16 (5) says:

- (5) “Where a Resident Magistrate before whom a person is brought under subsection (4) is of the opinion that the person –
- (a) is not likely to surrender to custody
 - (b) has committed or was about to commit another offence; or
 - (c) has breached or is likely to breach any condition of his bail,

the Resident Magistrate may remand him in custody or commit him to custody, as the case may require, or grant him bail subject to the same or different conditions, but where the Resident Magistrate is not of any such opinion, the Resident Magistrate shall grant him bail subject to the same conditions, if any, as were originally imposed.”

He says that the standard of the proof to be provided to the court, so that it can reach an “opinion” that the accused is not likely to surrender to custody, is the one used in criminal cases, that is, that the magistrate must feel sure. The basis of the decision he says should be one that can be “marked, underlined and read.”

Learned Counsel for the applicant amplified his point by stating that neither in his sworn testimony before the learned Resident Magistrate or in his Affidavit filed in opposition to the present application, has Senior Superintendent Carl Williams pointed to any overt act or statement by the

accused which the court could rely upon in reaching its decision. What the learned Resident Magistrate had, submitted Mr. Fairclough, is a conclusion drawn by either the Senior Superintendent or his source of information, that the accused “was going to flee.”

The submission on behalf of the applicant is therefore that the learned Resident Magistrate applied an incorrect standard and that what she ought to have done was, having established that the accused was properly taken back into custody, to then determine on proper evidence whether he was likely to surrender to custody, and to consider whether he was to be granted bail again at all or under the same or other terms than those originally imposed.

Mr. Fairclough pointed to Section 6 (7) of the Bail Act which stipulated that bail ought not to be revoked unless justifiable by the provisions of Section 4 of that Act. He pointed in particular to Section 4 (1) (a) and stated that the court must be “satisfied that there are substantial grounds for believing that the defendant if released on bail would:

- (a) “fail to surrender to custody.”

As indicated before, Mr. Fairclough said that there was no such evidence and therefore the accused ought to have been re-admitted to bail.

Crown Counsel in response to the application gave a background of the original charge. She submitted that having regard to Section 4 (1),

particularly paragraph (a) and Section 4 (2) (f), the court was entitled to take into account any relevant factor which touched the issue of the accused man's likelihood of surrendering to custody.

Crown Counsel relied on the authority of *In Re Moles* reported at 1981 CLR 170 for the proposition that the standard to be applied by the Learned Resident Magistrate was not the standard in the trial of criminal cases and that the normal rules of evidence would not necessarily be appropriate in such applications.

The headnote to that case, as reported, has the following as the relevant part of the finding:

“that the strict rules of evidence were inherently inappropriate in a court concerned to decide whether there were substantial grounds for believing something, such as a court considering an application under the Bail Act 1976.”

The learned Resident Magistrate, Crown Counsel therefore submits, was entitled to take into account that the source, which led the police to find the substances the subject of the charge, should be considered reliable in respect of the information concerning his likelihood of not surrendering to custody. Crown Counsel says that, on that information being brought to the attention of the court the learned Resident Magistrate had a proper basis for revoking bail.

Mr. Fairclough accepted that in a bail application the court could act on hearsay evidence but that in the instant case there was not even hearsay evidence before the court, as nothing has been said, even by hearsay, concerning any fact. All that has been said he repeated is what amounts to a conclusion.

I have considered the arguments of counsel and the provisions of the Act and I conclude that the learned Resident Magistrate did properly consider her role with respect to Section 16 (5) of the Act. The learned Resident Magistrate did however fall into error in that there was in fact no evidence before her that the accused was not likely to surrender to custody.

In the circumstances the exercise of her authority under Section 16 (5) was without legal basis.

Mr. Fairclough also made a complaint of the terminology used by the learned Resident Magistrate concerning the evidence of the accused man's intention but I find that that complaint is without merit.

The situation which now faces this court is that the accused is scheduled to appear before the Resident Magistrate's Court tomorrow.

Having found that the learned Resident Magistrate fell into error the provisions of Section 4 now fall to be considered by me in relation to the accused.

No other evidence has been provided concerning the accused not being entitled to the operation of the provisions of Section 3 of the Act. It was however said that one of his sureties according to Senior Superintendent Williams "was living overseas and that proof of her identify was a driver's licence that she obtained on the day she went to bail him."

This does not affect the accused's entitlement to bail.

The order of the court therefore is that the accused be granted bail in the sum of \$10,000,000.00 with one or two sureties.

The conditions of the offer of bail are that he is to report to the Area One Narcotics Police every day between the hours of 6:00 a.m. and 6:00 p.m. He is to surrender all travel documents to the police and his surety or sureties must attend court with him on each court date set.

A stop order is to be placed at all ports of exit whether by sea or air.