

IN THE HIGH COURT OF BELIZE, A.D. 2023

CRIMINAL JURISDICTION

CENTRAL DISTRICT

CASE NO: BA20230239

IN THE MATTER OF TISHANE THEUS -A PRISONER AWAITING TRIAL AT THE KOLBE FOUNDATION CORRECTIONAL FACILITY, BELIZE DISTRICT, BELIZE

AND

IN THE MATTER OF SECTIONS 3 AND 7 OF THE FIREARMS ACT, CHAPTER 143 OF THE SUBSTANTIVE LAWS OF BELIZE R.E. 2020

AND

IN THE MATTER OF SECTION 16 OF THE CRIME CONTROL AND CRIMINAL JUSTICE ACT, CHAPTER 102 OF THE LAWS OF BELIZE, R.E. 2020

AND

IN THE MATTER OF SECTION 62 OF THE INDICTABLE PROCEDURE ACT, CHAPTER 96 OF THE LAWS OF BELIZE, R.E. 2020

BEFORE: The Hon. Mr. Justice Nigel Pilgrim

APPEARANCES: O.J. Elrington for the Petitioner

D. Staine for the Respondent

JUDGMENT

1. Tishane Theus (hereinafter “the Petitioner”) applied for bail by virtue of a petition filed on 26th April, 2023. The Petitioner was charged for three firearm offences, namely unlawful possession of a firearm, ammunition and bullet proof vest, contrary to the *Firearms Act, Chapter 143 of the Substantive Laws of Belize Revised Edition 2020* (hereinafter “the FA”).

2. In the Court's view these are offences requiring special reasons for the grant of bail pursuant to the conjoint effect of section 16(1), 16(2)(i) and section 16(3) of the **Crime Control and Criminal Justice Act Chapter 102 of the Substantive Laws of Belize Revised Edition 2020** (hereinafter the "CCCJA"). The relevant portions of section 16 of the CCCJA read:

"16.-(1) Notwithstanding any other law or rule of practice to the contrary, no magistrate, justice of the peace or a police officer shall admit to bail any person charged with any of the offences set out in sub-section (2).

(2) The offences referred to in sub-section (1) are–

...

(i) an offence under the Firearms Act;

...

*(3) Where the bail is refused by the magistrate or justice of the peace under the foregoing provisions of this section, the person charged may apply to the Supreme Court for bail and **the Supreme Court may, for special reasons to be recorded in writing**, but subject to sub-section (4), grant bail to such a person other than for the offence of murder, but in considering any such application the Court shall pay due regard to the following factors, namely–*

(a) the prevalence of the crime with which the accused person is charged;

(b) the possibility of the accused person being a danger to the public or committing other offences or interfering with witnesses while on bail;

(c) the public interest involved in assisting the security services to combat crime and violence; and

(d) all other relevant factors and circumstances.

...

(5) Where bail is withheld under this section, the trial of the accused person shall, subject to sub-section (6) below, take place–

(a) in the case of summary trial, not later than three months from the date following the day on which bail is withheld;

(b) in the case of trial on indictment, at the next practicable sitting of the Supreme Court for the district.

(6) Where for any reason the trial cannot be proceeded with within the time prescribed in subsection (5) above, the accused person may be admitted to bail in the discretion of the judge or magistrate, at any time following the last day upon which the trial should have been held under that sub-section. (emphasis added)

3. The effect of section 16(3) of the CCCJA was considered by our High Court in the matter of **Timoteo Douglas Jimenez, Action No. 235/04**, per Denys Barrow J. (Ag.), as he then was:

“4. It makes for clarity to state the obvious: the intention of the legislature was to restrict the power of the Supreme Court to grant bail.

...

8. The Supreme Court may now only grant bail for special reasons, to be recorded in writing.

...

10. In these cases a common proposition was applied: a special reason was one which was special to the facts which constituted the offence and not one which was special to the offender as distinguished from the offence.... It was made clear that the fact that the offender had no previous conviction or that the application of the law would cause hardship did not constitute special reason'

...

12. ...the weakness of a case may provide special reason for granting bail...

13. The family circumstances and obligations of the petitioner and his good standing in his community, which counsel for the petitioner had initially proposed to urge as matters for the court to consider on this application, have been shown by the authorities as incapable of constituting special reasons. The length of time that the petitioner will have to wait before he is tried, to which counsel also referred, is undoubtedly a factor that must concern the court as an aspect of its concern with the administration of justice but that is not a special reason either, it is a very general reason that is of concern in every case.

14. It is a matter for which the Act makes provision by allowing for the accused person to be admitted to bail if he is not tried at the next practicable sitting of the Supreme Court. If in this case, or in cases of bail applications generally, the response of the court seems unsympathetic let it be remembered that it is the duty of the courts to recognize the intention of the legislature as expressed in the language of the Act....It would be wrong for the court to try to stretch the meaning of special reasons to grant bail in a case where, but for the restriction imposed by the Act, it would have granted bail. The Act exists and it is the law and it is not open to the court to ignore its clear intent.” (emphasis added)

4. A decision of our High Court, Shelton Tillett, Action 73/05, considered Jimenez and provided further clarification. The Court also relies on that judgment in particular at paragraphs 5-9 per Lucas J.:

“5. It cannot be argued that any person may be arrested and detained where 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 whereby the granting of bail to an applicant at the early stage of his detention or 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 giving 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. 25 of 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 reason to be recorded in writing, grant bail after taking into consideration certain factors which are enumerated in the Act.**

...

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 page 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* {1987} LRC (Const) 547, at page 562 (e), makes similar pronouncement."
(emphasis added)

5. The propositions that emerge from these two decisions, which in the Court's view correctly explain the effect of the CCCJA, are as follows: (i) this Court has no jurisdiction to grant bail for the offences covered by that Act, in a case where

there has not been unreasonable delay, unless special reasons exist to justify it; and (ii) special reasons are not generally peculiar to the offender but to the offence. These special reasons depend on the facts of the particular case but require a consideration of the strength of the evidence. Delay is factored into the *CCCJA* by giving the Petitioner liberty to re-apply if trial is not conducted within a particular time, pursuant to section 16(6).

6. It was in this context that the Court examined the petition. The Court looked for special reasons for the grant of bail. The Petitioner cited that there will be grave injustice because it is not foreseeable that a trial date will be given soon; he-claimed a good defence; and that he was willing to abide by bail conditions. The Court was of the view that none of these matters cited are special reasons on the authority of *Jimenez*, but for the claim of the good defence, which alludes to there being a weak case.
7. The Court then looked at the evidence for special reasons. The evidence in this case appears extremely weak. It appears that it rests on the Petitioner's mere presence on the outside of a house where the prohibited items were allegedly found. It is not clear that any of the presumptions at sections 6 and 6A of the *FA* would operate to place the Petitioner in possession, singly or jointly, of those prohibited items. Indeed, it is to the credit of Counsel for the Respondent, Mr. Staine, that after being given an opportunity for reflection he did not oppose the Petitioner's application for bail.
8. The Court having found special reasons, and after consideration of the factors at section 16(4) of the *CCJA*, admitted the Petitioner to bail in the sum of \$2,000.00 with one surety. He was admitted to bail on condition that (i) he attends every hearing of his matter; (ii) that he reports to the San Ignacio Police Station every Monday between the hours of 6:00 a.m. to 6:00 p.m. with effect Monday, May 13th, 2023, until the matter is concluded; (iii) he is not to interfere or communicate with any Prosecution witness or witnesses either by himself or a third party or through any instrument; and (iv) if he breaches any of the above conditions or if he is subsequently arrested and charged for any other offence while on bail, then the Petitioner is to be brought immediately or as soon as possible before a judge of the High Court with a view to revocation of the bail.

DATED 11th MAY, 2023

NIGEL C. PILGRIM
JUDGE OF THE HIGH COURT OF BELIZE
CENTRAL DISTRICT