

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

CLAIM NO. 369 of 2005

(ERIC LEWIS	CLAIMANT
(
(AND	
(
(THE QUEEN	RESPONDENT

BEFORE CONTEH, C.J.

Mr. Richard Dickie Bradley for the Claimant
Mr. Kirk Anderson, D.P.P. for the Respondent

R U L I N G

The Pitioner in this case, Eric Lewis, is presently on remand in the prison awaiting trial, as it appears from the record, on charges relating to Robbery and Conspiracy to Commit Robbery and Kidnaping.

On the 24th October, 2005 he appeared before the Magistrate in Corozal Town and was denied bail. In his Petition for bail, the Applicant has protested his innocence, as no doubt he would, and raises what could probably be an alibi defence to the charges against him and he also complains against the identification parade which was conducted by the police in the course of their investigation of the Robbery in Corozal Town. After an adjournment last Friday, the Petitioner has filed two affidavits this morning which were intended to bolster his alibi defence. He has again, perhaps on the prompting on the Court, filed yet another affidavit refuting the affidavits filed on behalf of the Crown in opposing the application. Let me say for the purposes of clarity that bail applications are ordinarily not the occasion to enter into the merit or lack of merit of the case of an applicant. An application for bail is intended to vindicate both the constitutional presumption of innocence and the right to personal liberty as stipulated in the Constitution of Belize. Therefore the grant or refusal of bail is not indicative of the innocence or

guilt of a petitioner for bail. This is all the more so as the court considering the application is not a trial court, its only concern being to ensure that an Applicant will be available in court at the appropriate time to answer the charges against him. Bail is an important feature in the administration of the Criminal Justice System that is intended to ensure that an accused will be available to stand his trial and at the same time to ensure that an accused need not lose his liberty in the meantime in order to ensure his availability for his trial.

These competing considerations are nearly always at play in every bail application. The legislation in Belize has, however, over the years, seen it fit to tinker around this important institution of bail. This, perhaps no doubt, may be in response to the seemingly escalating crime rate in the country. This has effectively made it difficult for applicants to obtain bail for certain specified offences. First in time was the *Criminal Justice Act No. 26 of 1992* which put restrictions on the powers of the Magistrate and police to grant bail. This Act even enabled the Prosecution to appeal to the Supreme Court against the grant of bail or against the terms of bail by the Magistrate's court. Secondly, by the *Crime Control And Criminal Justice Amendment Act No. 25 of 2003* the Restrictions on the grant of bail were extended to the Supreme Court itself. This was joined conferring the discretion on the Supreme Court to grant bail only for special reasons to be recorded in writing for certain specified offences. And in considering such applications the Court will pay due regard to:

- (1) the prevalence of the crime with which the accused/applicant is charged;
- (2) the possibility of an accused being a danger to the public or committing other offences or interfering with witnesses while on bail;

- (3) the public interest in assisting the security services to combat crime and violence; and
- (4) all other relevant factors and circumstances.

Those are all factors to be taken into consideration in bail application cases.

From the evidence in this case, the Applicant, I am afraid, has not shown any special circumstances within the contemplation of the law that should predispose this court the discretion to grant bail in his favour. Yes, he has a wife that is expecting who may need help but it would be unfeeling for me to say he should have thought about that. I say no more. Yes, he protests his innocence and he has an alibi but that is for the trial court itself to determine and give it what weight it carries.

On the contrary, however, the evidence by the Crown, I find, is telling, if not overwhelming as to why the Applicant should not be granted bail. See for example the affidavit of Alejandro Cowo, Diana Hendy, Solomon Westby and Chester Williams. All these evince a possible flight risk or possible interference with witnesses or showed that the accused has a history which will fall within the factors of the prevalence of crime to be taken into account by the court in granting him bail.

I therefore find myself, with some regret, unable to grant the prayer in the petition of the Applicant.

However, in refusing him bail, as I am informed that his Robbery charge will be on summary process, **I Order** that he shall be tried not later than three months from the day he was denied bail by the Magistrate in Corozal.

And in the case of the Kidnaping offence, **I Order** that the Applicant be tried in the next practicable sitting of the Supreme Court.

