

JAMAICA

IN THE COURT OF APPEAL

BAIL APPLICATION NO 3/2015

NERECE SAMUELS v R

Cecil J Mitchell for the applicant

Jeremy Taylor for the Crown

29 and 30 December 2015

IN CHAMBERS

ORAL JUDGMENT

BROOKS JA

[1] This is an application by Ms Nerece Samuels for bail to be granted to her pending the hearing of her appeal against a conviction in the Resident Magistrate's Court for the Corporate Area, Criminal Division, for the offence of unlawful wounding. The information about the case, which is set out herein, is what has been provided by Ms Samuels only, as the record has not yet been made available by the Resident Magistrate's Court.

[2] She was convicted on 28 October 2015 and was, on the same day, sentenced to imprisonment for six months. The basis of the conviction is that she wounded a woman during a bottle-throwing incident between Ms Samuels and the woman's son.

[3] Ms Samuels filed a notice of appeal on 3 November 2015. In her grounds of appeal filed on the same date, Ms Samuels asserted that she did not plead guilty and that the learned Resident Magistrate convicted her without hearing any testimony. On Ms Samuels' account, the learned Resident Magistrate, during "an exchange" in court with the woman, who was the virtual complainant, and Ms Samuels, insisted that Ms Samuels "must be guilty and as a consequence [she] was pleaded by the Clerk of Courts on a number of occasions".

[4] According to Ms Samuels, she "kept on insisting that [she] was not guilty and would not plead guilty". Despite her refusal to plead guilty, she alleges, the learned Resident Magistrate "became angry and proceeded arbitrarily and without more to sentence [her] to imprisonment" without the benefit of a Social Enquiry Report and although she had no previous conviction.

[5] In her affidavit in support of her application for bail, Ms Samuels asserted that she is 32 years old and in stable circumstances. She stated that she has two children of her own, who are under 10 years of age, and that she is also the caregiver for three other children, who are the offspring of her sister, who has died. She deposed that she was on bail prior to the conviction, which is the subject of the present appeal.

[6] A person, who, before conviction, had been granted bail, is entitled, after conviction, to apply for bail pending appeal (section 13(1) of the Bail Act). It has repeatedly been said that it is only in exceptional circumstances that bail is granted after a person has been convicted. Nonetheless, this court has recognised that in appeals from the Resident Magistrates' Courts, there is a real risk that custodial sentences, which have been imposed by those courts, may well have been served before the appeal comes on for hearing. That risk has been recognised as being an exceptional circumstance in considering an application for bail pending appeal from those courts. The cases of **Lynette Scantlebury** (1976) 27 WIR 103 and **Dereek Hamilton** [2013] JMCA App 21 give guidance in respect of those principles.

[7] There are, of course, other considerations which must be assessed in the analysis of applications for bail. These include the likelihood of the applicant surrendering to custody at the hearing of the appeal, the prospects of success of the appeal, the nature and seriousness of the offence and the applicant's antecedents.

[8] As the only evidence before the court is that which has been produced by Ms Samuels, the analysis of those considerations is necessarily hampered. Nonetheless, it is an objective fact that she has spent the last two months in custody, as her application for bail was only recently filed. That period would be counted toward, and thereby shorten, any sentence she would be obliged to serve, if her appeal was unsuccessful. Her personal circumstances, which have been set out in paragraph [5] above, also

suggest that she is likely to surrender to custody for the hearing of her appeal. It is also to be noted that the Crown did not oppose her application.

[9] In those circumstances, the court will grant the application for bail.

ORDER

1. Bail is granted to the applicant, pending appeal, in the sum of \$50,000.00 with one or two sureties on condition that:
 - (a) the applicant and each of her sureties enter into the undertakings required by rule 3.21 of the Court of Appeal Rules;
 - (b) the undertakings shall be made by the applicant to the Superintendent of the Fort Augusta Adult Correctional Centre, and by the surety or sureties to the deputy registrar of this court; and
 - (c) the applicant shall not leave the island without the permission of this court.
2. The registrar of this court shall submit a copy of the applicant's affidavit, sworn to herein on 29 December 2015, to the relevant Resident Magistrate for the Corporate Area, Criminal Division on or before 8 January 2015.
3. The Resident Magistrate before whom the applicant was convicted shall submit to the registrar of this court, on or before, 22 January 2015, an affidavit in response to the applicant's.