

1 **IN THE GRAND COURT OF THE CAYMAN ISLAND**
2 **HOLDEN IN GEORGE TOWN, GRAND CAYMAN**
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6 **IND. NOS. 27 & 35 OF 2012**
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10 **REGINA**

11
12 **v.**
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14 **SHANE EDWARD CONNOR**
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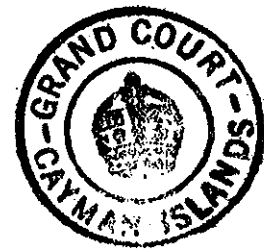


18 **Appearances:** **Ms. Nicole Petit of the Office of the Director of Public Prosecutions**
19 **for the Crown**

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21 **Mr. James Stenning of Stenning & Associates for the Defendant**
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25 **Before:** **Hon. Justice Henderson**
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29 **Heard:** **November 7, 2013**
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RULING

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1. The defendant, Shane Connor, like every other person in the Cayman Islands, enjoys a constitutional right to a trial within a reasonable time. When that right is invoked in the course of an application for bail, as it is here, there are two paramount factors which must be taken into account and which require analysis by counsel and by the Court.

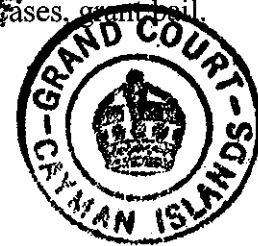
2. First, this is a right which can be waived.

3. Second, the authorities from other jurisdictions suggest that it is useful to examine the entire period of the delay and determine whether with respect to each segment in that period there has been a waiver or not; in other words, one must look to the reason for the delay. It is important that the procedural record in a criminal case contain those reasons.

4. Where the reason can be attributed to the defence then the period of delay occasioned by that reason cannot be relied upon when making the constitutional argument. It has been waived. Where the reason is occasioned by some need or desire on the part of the Crown or by the failure of the system itself to provide a trial in a timely manner then the period of delay counts in the analysis.

5. Having performed that sort of examination of the procedural record, the Court must assess what I will call the “net period of delay” (the period which has not been waived) and ask whether that period of time, combined with the anticipated additional time which

1 will be needed to bring the defendant to trial, is reasonable or unreasonable. Where the
2 defendant establishes that the period of time (looked at in that manner) is unreasonable,
3 the constitution contemplates that the Court will, at least in many cases, grant bail.



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5 6. I have not been presented with that sort of analysis today.

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7 7. I have been told that Mr. Connor was arrested in March 2012 and the first trial date was
8 set for November 14th, 2012. It is unclear whether all of that eight months of delay was
9 occasioned by the Crown and by the demands of the Court system or whether some of it
10 came about because of a request on the part of the defence. What is clear is that on
11 November 14th, at the commencement of the trial, the defendant fired his attorney. That,
12 of course, has occasioned a period of delay which must be attributed to this defendant.
13 However, the next trial date fixed was November 12th, 2013 – fully one year away. It
14 would not seem likely that all of that time would be attributable to this defendant,
15 although it is impossible to say without engaging in the sort of analysis I have described.

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17 8. In addition, we have to look to the future. This trial cannot proceed on November 12,
18 2013. Why is that? It is because the defendant has instructed leading counsel from the
19 United Kingdom who is not available on that date. The period of delay occasioned by the
20 unavailability of counsel must be laid at the feet of the defendant. I emphasise that there
21 is no element of fault necessarily brought to bear in this analysis. I do not suggest that
22 the defendant is at fault in firing his first attorney during the aborted first trial, nor is there
23 any fault to be attached to his natural desire to have a QC represent him, but it is delay

1 which is attributable to the defence side of the ledger and not delay which has been
2 occasioned by the Crown or by the court system. As a consequence, it does not count in
3 the constitutional analysis.

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5 9. On the scanty evidence which I have available to me, I conclude that, although there has
6 been a delay of 20 months since Mr. Connor's arrest, a significant portion of it is
7 attributable to the defence.

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9 10. What of the future? There is a fixed trial date in January. Thus, there will be two further
10 months of delay occasioned by Mr. Connor's desire to be represented by a QC.

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12 11. My overall conclusion is that the defendant, who bears the burden of persuasion in urging
13 that a constitutional right of his has been violated, has not established that there has been
14 a violation of his right to a trial within a reasonable time. However, given the brevity
15 with which the issue was examined, he is at liberty to re-apply when a full procedural
16 record is put before the Court.

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18 Dated this 7th day of November, 2013

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20 *Henderson, J.*

21 Henderson, J.
22 Judge of the Grand Court

