
CANADA / JUDGMENT

R. v. Alexis

2020 BCSC 2151

COURT

Supreme Court of British Columbia

DECIDED

16 October 2020

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2020 BCSC 2151 R. v. Alexis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Alexis,

2020 BCSC 2151

Date: 20201016

Docket: 30685W; 30978W

Registry: Vancouver

Regina

v.

Dean Peter Alexis

Corrected Judgment: The front page of the judgment was corrected on

April 11, 2022.

Before: The Honourable Mr. Justice Skolrood

On appeal from: A decision of the Provincial Court of British Columbia, dated

April 21, 2020 (R. v. Alexis, Vancouver Docket Nos. 257050-1, 257050-2-C,

257050-3-A, and 257059-1; and Prince George Docket Nos. 72285-1

and 72410-1)

Oral Reasons for Judgment at

Section 525 Detention Review Hearing

Counsel for the Crown

appearing via teleconference:

A.M. Murray

C. Risley

Counsel for the Accused

appearing via teleconference:

D.M. Turko, Q.C.

Place and Date of Trial/Hearing:

Vancouver, B.C.

October 2 and 8, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 16, 2020

Introduction

- [1] THE COURT: Mr. Alexis is before the court for a 90-day bail review pursuant to s. 525 of the Criminal Code, R.S.C. 1985, c. -46.

Background

- [2] Mr. Alexis is in custody pursuant to two principal sets of charges, the circumstances of which I will describe briefly.

Information 72285

- [3] Pursuant to Information Number 72285, Mr. Alexis is charged with three counts of trafficking in a controlled substance, contrary to s. 5(1) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19. It is alleged that on October 5 and 6, 2018, Mr. Alexis sold cocaine and fentanyl to an undercover police officer. While the alleged offences occurred on October 5 and 6, 2018, the information was sworn on July 3, 2019.

Information 257050

- [4] Pursuant to Information Number 257050, Mr. Alexis is charged with various weapons offences. It is alleged that at approximately 2:00 a.m. on November 9, 2019, Mr. Alexis was found in a parkade located on Cambie Street in Vancouver. When the police checked his identification, they discovered that there was a warrant outstanding from Prince George. Mr.

Alexis apparently held out a fanny pack and told officers that there was a gun inside. Officers searched the pack and found a gun and ammunition. It was subsequently determined that Mr. Alexis was subject to a firearm prohibition at the time which resulted in a further information, number 257059, for possession of a firearm while prohibited from doing so.

Initial JIR/Return to Custody

- [5] Mr. Alexis was taken into custody pursuant to Information Number 72285 in July of 2019, but was released on an undertaking. He subsequently did not appear at scheduled court dates in Prince George and warrants were issued. As noted, he was then arrested in Vancouver on November 9, 2019, and taken into custody.
- [6] Mr. Alexis was subsequently released pursuant to the order of Judge Doherty dated December 20, 2019, although I understand his actual release was not until January 2, 2020. His release was subject to a number of terms, including electronic monitoring and residence at the New Visions Recovery House in Surrey.
- [7] On January 7, 2020, he was taken back into custody. It is alleged that on that date, Mr. Alexis consumed drugs and left the recovery house. It is further alleged that Mr. Alexis was tracked by way of electronic monitoring device to a gas station in Surrey where he was found and arrested. The events of that day resulted in a further information, number 257050, charging Mr. Alexis with breach of terms of his release order.
- [8] Mr. Alexis applied for judicial interim release, which application was heard by Judge Smith of the B.C. Provincial Court on April 21, 2020. Judge Smith denied the application. She reviewed the background to the charges, considered Mr. Alexis' prior breaches and his personal circumstances, including relevant Gladue factors, and stated:

Balancing the risk to the public and all of the circumstances, including the presence of the COVID virus in our community and the challenges that it poses, I simply cannot conclude that his detention is not justified on the secondary ground, while the onus is on him, and I find that he has not met it. Even if it were not, I would be detaining him on the secondary ground. In my respectful view, there is a substantial likelihood that he will reoffend if released. So I order his detention on all files on the secondary ground.

- [9] It is useful to note at this point that the federal drug charges under Information Number 72285 are scheduled to go to trial beginning November 17, 2020. No trial date has yet been set on the firearms charges.

Legal Principles

- [10] In *R. v. Leppington*, 2020 BCSC 546, Mr. Justice Riley summarized the key principles governing a bail review under s. 525 at paras. 18-23:

- [18] The purpose of the 90 day bail review provision in s. 525 of the Criminal Code is to prevent accused persons from languishing in custody pending trial and to ensure matters are tried promptly: Myers at para. 24.
- [19] The reviewing judge is expected to show deference to any findings of fact made by the first instance decision maker unless there is some demonstrated basis for reconsidering them: Myers at para. 47.
- [20] The overarching question for the reviewing judge under s. 525 of the Criminal Code is whether the continued detention of the accused is justified having regard to the grounds set out in s. 515(10): Myers at para. 46. Section 515(10) sets out three different grounds for detention, which I would briefly summarize as: (1) to ensure attendance at trial per s. 515(10)(a), (2) to protect safety of the public as contemplated in s. 515(10)(b), and (3) to maintain confidence in the justice system per s. 515(10)(c).
- [21] In considering the question of judicial interim release, the court must bear in mind that throughout the process the accused is presumed innocent unless and until there has been a trial leading to a finding of guilt based on proof beyond a reasonable doubt, or a guilty plea: Antic at para. 1, 66, 67(a); Myers at para. 1, 59.
- [22] The default position is that the accused should be released at the earliest opportunity and on the least onerous terms available in the circumstances: Myers at para. 1; Antic at para. 29, 67(d). Detention in custody is the exception and should be regarded as the option of last resort: Myers at para. 67.
- [23] In deciding the overarching question of whether continued detention is justified under the grounds set out in s. 515(10), the reviewing judge should consider (a) any new evidence or change in circumstance, (b) impact of the passage of time and any unreasonable delay on the proportionality of detention, and (c) the rationale offered for the initial detention: Myers at para. 63.
- [11] The reference to Myers is, of course, to the leading decision of the Supreme Court of Canada in *R. v. Myers*, 2019 SCC 18.

Discussion

- [12] I will discuss each of the factors referred to by Judge Riley in turn.

Change of Circumstances

- [13] In terms of change in circumstances, as noted, Mr. Alexis was released from custody by Judge Doherty on strict terms. He was then taken back into custody on January 7, 2020, for breaching certain of those terms. When he appeared before Judge Smith in April, the proposed release plan was less stringent than what would have been put in place by Judge Doherty, largely because, due to the COVID-19 pandemic, electronic monitoring was not available. The plan before Judge Smith involved residence at another recovery house. Judge

Smith did not consider that sufficient, given Mr. Alexis' prior history of breaches and the fact that the alleged weapons offences occurred while he was out on bail on the drug charges.

- [14] On the present application, I am told that Mr. Alexis may have a bed available to him at VisionQuest, another recovery facility. In my respectful view, this proposal is no different from what was considered and rejected by Judge Smith. I appreciate counsel's point that in these times of COVID, it is difficult to put solid plans in place. However, absent more information confirming that Mr. Alexis has, in fact, a spot secured, that he would be released into the care of VisionQuest, and details about the program, including processes for supervising Mr. Alexis, I am not satisfied that there has been a change of circumstances or that there is new evidence that would warrant reviewing Judge Smith's decision, keeping in mind that this is a reverse-onus situation.

Passage of Time/Unreasonable Delay

- [15] In terms of the passage of time, as noted, the federal drug charges are scheduled to go to trial on November 17 of this year. At that time, Mr. Alexis will have been in custody for approximately 18 and a half months. One factor to consider in terms of delay and the passage of time is that an accused should not spend more time in custody awaiting trial than the time he would spend if convicted on the charges and sentenced to jail.
- [16] The Crown has cited a number of cases which it says support a likely jail term for Mr. Alexis of at least two years. Counsel for Mr. Alexis submits that that is excessive. Given the nature of the charges and Mr. Alexis's criminal history, I cannot say that the likely sentence suggested by the Crown is unreasonable or excessive, or that having Mr. Alexis remain in custody for approximately one additional month up to the time of trial is disproportionate. I will say that I am more concerned about the fact that there is, as yet, no trial date for the firearm charges and I will return to that point in a moment.

The Rationale Offered for the Initial Detention

- [17] In terms of the rationale offered for the initial detention, Judge Smith held that continued detention of Mr. Alexis was justified on the secondary ground, referring to s. 515(10)(b) of the Criminal Code which states:
- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice;
- [18] In Leppington, Judge Riley discussed the approach to be taken by the reviewing court in similar circumstances in which the judge below found detention to be warranted. At paras. 37 to 38:

- [37] The learned Provincial Court Judge found that in view of Mr. Leppington's prior criminal record and the nature of the new charges against him, there was a substantial likelihood that he would, if released, commit further offences that would endanger the safety of the community. The Provincial Court Judge went on to assess whether the risk could be properly addressed or managed by the proposed release plan, and concluded that it could not, for a number of reasons. The court was concerned about Mr. Leppington's history of non-compliance with bail and conditional sentence orders, as reflected in his criminal record and the new allegations. The Provincial Court Judge did not have confidence that Mr. Leppington would abide by the proposed terms of release, and thus the risk to the safety of the community could not be brought down to an acceptable level.
- [38] It has not been suggested that the learned Provincial Court Judge made any error in law or in principle in reaching that conclusion, which is entitled to deference in the absence of some extricable error. I cannot say, based on the information placed before the learned Provincial Court Judge at the bail hearing, that he was wrong in concluding that Mr. Leppington's detention was required on the secondary ground in s. 515(10)(b). The question that is left to be decided by me is whether that conclusion continues to hold today, in light of the passage of time and the above-noted developments.
- [19] Similar to Judge Riley's finding in Leppington, there is no basis here to find that the learned Provincial Court judge committed an error of law or principle.
- [20] In terms of whether continued detention is justified, I have considered Mr. Alexis's difficult past, the relevant Gladue factors, and the fact that Mr. Alexis is presumed innocent of the charges. However, given his history of prior breaches, there is, in my view, a significant risk that Mr. Alexis will commit further offences if released. I therefore find that continued detention is required on the grounds set out in s. 515(10)(b) of the Criminal Code.
- [21] That said, as I indicated, I am concerned that no trial date has yet been set on the firearms charges. Depending upon the outcome of the drug charges, it may well be appropriate for his bail to be reviewed in connection with those charges.
- [22] Pursuant to s. 525(4)(b) of the Criminal Code, I therefore direct a further bail review in respect of the remaining outstanding charges to be held within 90 days of the date of determination of the charges under Information Number 72285.
- [23] Those are my reasons.

"Skolrood J."

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