
CANADA / JUDGMENT

R. v. Alvarez

2020 BCSC 699

COURT

Supreme Court of British Columbia

DECIDED

30 April 2020

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2020 BCSC 699 R. v. Alvarez

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Alvarez,

2020 BCSC 699

Date: 20200430

Docket: 30493W

Registry: Vancouver

Regina

v.

Stephen Paul Alvarez

On review from: Provincial Court of British Columbia

(R. v. Alvarez, North Vancouver File No.257075-1)

Before: The Honourable Mr. Justice Crossin

Oral Reasons for Judgment

Re: Detention Review Hearing

Counsel for the Crown:

K. Gagnon

Counsel for the Accused:

P. Pirgheibi

Place and Date of Trial/Hearing:

Vancouver, B.C.

April 29, 2020

Place and Date of Judgment:

Vancouver, B.C.

April 30, 2020

- [1] Mr. Alvarez is before the court for a 90-day bail review pursuant to s 525 of the Criminal Code, R.S.C. 1985, c. C-46. He is in custody on three sets of charges.
- [2] Information 4-C #67210 contains four counts. These are: break and enter a dwelling house with intent; two counts of possession of property knowing it was obtained by the commission of an offence (these counts relate to property of two different persons and unconnected to the entry into the dwelling house); and one count of possession of identity documents relating to another person. These offences are alleged to have been committed on November 16, 2019.
- [3] The second information, #67384 alleges that on October 7, 2019 the accused failed to comply with certain terms of a probation order imposed on the accused by the Honourable Judge Milne on January 19, 2017. The breach alleged is that he failed to reside where required to reside.
- [4] The third information, #67952 alleges Mr. Alvarez unlawfully possessed ammunition while prohibited from doing so. This offence is also alleged to have been committed on November 16, 2019.
- [5] Mr. Alvarez was ordered detained by the learned Provincial Court Judge in North Vancouver Provincial Court on January 8, 2020.
- [6] The court in the first instance held that the accused was required to be detained under the secondary ground, namely s. 515 (10)(b). The court concluded there was a substantial likelihood Mr. Alvarez would commit further offences if released.
- [7] The circumstances of the alleged offences are relatively straightforward. The narrative for this purpose begins on October 4, 2019 when the management of Luke 15 House found it necessary to ask Mr. Alvarez to leave the premises. Luke 15 is a highly regarded assisted living facility for the treatment of persons with substance abuse issues. How Mr. Alvarez came to be at Luke 15 is best understood in the context of an overview of the criminal history of Mr. Alvarez that I will address momentarily.

- [8] Mr. Alvarez had been residing at Luke 15 since approximately May, 2019, pursuant to court orders. Mr. Alvarez is addicted to heroin and methamphetamine. I understand his world has been defined by this addiction for many years.
- [9] Mr. Alvarez did well at Luke 15 for a short while, however that ended by the early fall of 2019. It is reported that in the weeks leading up to his expulsion Mr. Alvarez stopped participating in the required and necessary programs of recovery; he became inappropriately intimate with a practicum student on site, and was generally disruptive. He was spoken to on many occasions but to no avail. He was asked to leave and did so. It appears to be common ground that drug use had overcome him once again in those weeks prior to leaving.
- [10] A warrant was issued for his arrest and he was in fact arrested on October 26, 2019 and released in short order. He did not appear on his return date. Another warrant was issued. He was arrested and released again with certain reporting conditions. He failed to report. Another warrant was issued. This warrant was outstanding on November 16, 2019.
- [11] On this date, in the early evening hours, an off-duty police officer in a residential area of Squamish, B.C. observed the accused enter a home through a back patio door. The police were called. The accused was apprehended in the home having locked himself in the bathroom.
- [12] He possessed a backpack and in the backpack was discovered items allegedly previously stolen from different persons, including a MasterCard, a Visa card, and a wallet. These items had been reported stolen. In addition, the accused possessed a substantial amount of ammunition; 50 shotgun shells and a magazine for a 303 rifle containing five bullets.
- [13] It is these circumstances that relate to the 4-C information #67210, and information #67952. It is the failure to report his exit from Luke 15 that forms the basis of the allegations in the third information, information #67384.
- [14] The criminal record of Mr. Alvarez is somewhat bracing. Over the past 8 or 9 years he has been convicted of failure to comply with court orders, including conditional sentence orders, a total of five times. He has been convicted of break and enter with intent on four other occasions. I am advised on all of these occasions, or mostly all, these offences involved homes in residential areas that were entered into at night. Finally, he has been convicted of possession of stolen property and theft on eight occasions.
- [15] In 2017 Mr. Alvarez received a term of incarceration of two years less a day for a series of break and enters; plus three years probation. This sentence was imposed by the Honourable Judge Milne.
- [16] Mr. Alvarez was released in the summer of 2018. While on probation he was charged with possession of a controlled substance. This occurred on August 18, 2018. He subsequently pled guilty and received a 60-day conditional sentence.

- [17] There is no information concerning how Mr. Alvarez was filling his days over the next few months. However, while on probation, he was charged in February 2019 with dealing with an identity document not his own. He subsequently pled guilty to this charge. I am advised in April 2019, concerning what counsel have referred to as a "unrelated matter" he was released on a recognizance directing that he reside at Luke 15. In addition, he was directed by his probation officer, pursuant to the terms of the probation imposed by Judge Milne, to reside at Luke 15 and participate in the programs that were offered.
- [18] The information before the court concerning the circumstances of the accused is somewhat sparse. He is now 33 years of age. He was born in Toronto but has resided in Vancouver since he was a child. He did well in high school in North Vancouver but following high school it appears his life simply didn't get started in the right direction. I am told he was victimized by his babysitter for a prolonged period of time although no other details were offered. Whether counselling has been sought is unknown. He has held menial jobs from time to time.
- [19] The accused has recently developed a romantic relationship with a woman who is very supportive. She is willing to provide a surety in the amount of \$1,000 cash bail, notwithstanding she is a single mother and currently unemployed. This feature forms a new part of his release plan. In addition to the proposed cash bail from a third party, the accused proposed to be released to another recovery facility; "It's Up To You". This is also a highly regarded facility. However, it has more or less the same control guidelines and drug testing as exist at Luke 15. The facility does not accommodate any form of house arrest.
- [20] It is submitted this plan is a step up from the previous release plan placed before the Provincial Court Judge.
- [21] The decision of the learned Provincial Court Judge was spartan but pointed. The court considered the release plan of Mr. Alvarez. The plan included the submission that Mr. Alvarez be allowed another chance to return to another recovery house; Pathway To Freedom. The proposal did not include the current feature of cash bail.
- [22] The learned Provincial Court Judge concluded as follows:

I can have no confidence, sadly, with respect to this young man that if he were to be released on a release order, which would contain nothing more than a series of judicial orders in terms and rules, that he would comply with them. I am concerned that he missed some court dates. That is not the most serious matter that is placed before me, but in my view the secondary ground is clearly met here that there would be a substantial likelihood that he would commit further criminal offenses if he was released.

The public is entitled to some protection from people like the accused who historically has shown a proclivity to break into houses. If he is doing so to obtain things to sell to buy drugs, he had a very clear and strong opportunity to deal with that starting in the spring of last year and for whatever reason best known to him was not able to deal with it at that time.

- [23] There is no submission the court below erred in law or misapprehended any factual matters.
- [24] The principles to be applied on the application before the court are well known. The whole purpose of s. 525 is to empower the court to maintain oversight of persons in custody to ensure they not improperly languish pending resolution. The accused has not been convicted of any of these charges. He is presumed innocent. The gravamen of the exercise upon a review is to assess whether the detention of the accused is justified having regard to the grounds set out in s. 515(10) of the Criminal Code. The default position is always that the accused be released and on the least onerous terms that are reasonable in the circumstances. Detention in custody must be the last option.
- [25] The position of the Crown before me remains much the same as it did before the learned Provincial Court Judge. The Crown submits the circumstances currently before the court on review have not changed in any consequential way such as to pragmatically amount to a step up. The Crown submits, given the circumstances, particularly the nature of his criminal history, it has shown cause why the accused must be detained. The Crown fundamentally rests its position on the secondary ground. The Crown also relied on the tertiary ground although it was not, at least in my view, pressed with a great deal of enthusiasm.
- [26] The accused points to the new release plan as his linchpin to release, but also raises, quite properly, the emergence of the Covid-19 pandemic, with particular emphasis on the health risks facing in custody persons at the North Fraser Remand Centre, where the accused is currently detained.
- [27] In this regard, on the face of matters, the risks are obvious. Our health officials have developed, and vigorously promoted, conduct and strategies to reduce risks to our citizens; including social distancing, self isolation, and protective wear. These strategies however present unique challenges to the corrections branch in this province.
- [28] I have been provided with a status report concerning this issue relating to North Fraser Pretrial Centre as at April 19, 2020. It is information released by the Provincial Director of the Ministry of Public Safety and Solicitor General/BC Corrections/Adult Custody Division. I attach the report as Appendix A to these reasons. There are no Covid-19 cases extant at North Fraser Remand Centre and it is clear all reasonable steps are being taken to limit the risks in this regard. The accused did not suggest otherwise.
- [29] Nevertheless persons in custody live with the emotional toll this uncertainty adds to the general anxiety of being detained. It is a factor that must be weighed in the assessment relating to the overall consequences of the accused being ordered detained.
- [30] The critical submission however is the release plan proposing the cash bail, coupled with the aid and assistance the accused would receive at a recovery facility concerning his drug addiction. In this regard I am very much alive to the comments of the Court in *R. v. Myers*, 2019 SCC18, at para. 67 as follows:

- [67] Third, Mr. Myers was detained exclusively on the basis of the second ground under s. 515(10), despite the fact that he had a release plan involving a closely supervised treatment facility to address his substance abuse problems and multiple proposals to address the concern that he posed a risk to the public. It was within the bail judge's discretion to determine whether the release strategies presented by counsel addressed the risk that if released from custody, Mr. Myers would commit a criminal offence or interfere with the administration of justice within the meaning of s. 515(10)(b). That being said, judges and justices presiding over bail hearings should always give very careful consideration to release plans that involve supervised treatment for individuals with substance abuse and mental health issues. Release into treatment with appropriate conditions will often adequately address any risk raised under s. 515(10), and such a strategy is a less onerous alternative than provincial remand. It may also substantially address the root causes of the accused person's alleged criminal behaviour and reduce the likelihood of future criminal conduct. In accordance with the principles articulated in *Antic*, we must not lose sight of the fact that pre-trial detention is a measure of last resort.
- [31] Regrettably I am of the view the circumstances and history of the accused demonstrate there is a substantial likelihood the accused, if released, would commit other offences and, in so doing, endanger the public. I have concluded the Provincial Court Judge was correct in his assessment.
- [32] The suggested change to Pathway To Freedom or to It's Up To You is, in my view, simply a suggestion to repeat basically the same undertaking, under virtually the same conditions as existed at Luke 15. It does not advance matters, and does not weaken the compelling evidence concerning his likely behaviour if released.
- [33] In addition, I see little or no evidence his addiction has become manageable. Of course persons cannot be deprived of pretrial liberty because they are addicted to drugs. I raise it because it appears to be common ground his criminal behaviour is connected, to one degree or another, to his drug addiction.
- [34] The clearly new feature to the release plan is the proposed surety in the amount of \$1,000 cash. Certainly this is a sacrifice on the part of the accused's friend. I was directed to *R. v. Berlinguette*, 2020 BCSC 477 and the view expressed by Riley J. at para. 32.
- [32] Counsel says the release plan involves a significant step up because of the \$2,000 cash deposit. That is debatable. Cash bail is, in my view, most useful in addressing primary ground concerns about risk of flight. Cash bail is much less useful in addressing concerns about the secondary ground, that is, risk to public safety.
- [35] I do not take these comments as the court suggesting an immutable principle of law. I read this statement as an invitation to apply common sense to the particular circumstances that may be before the court on any given case. That said, on the facts before me, a cash deposit provides little comfort in the face of consistent criminal conduct fueled by addiction.

- [36] I am aware the accused may well remain in custody until his trial, and there is no trial date in sight. The accused has been in custody since November 16, 2019. This raises the important issue addressed by the court in Myers at para. 50:
- [50] In determining whether the detention remains justified under s. 515(10), the judge should also consider whether the time that has already elapsed has had -- or the anticipated passage of time will have -- an impact on the appropriateness or proportionality of the detention. In particular, it is necessary to be sensitive to whether the continued detention of the accused person could erode public confidence in the administration of justice: see, e.g., McCormack, at para. 29 (CanLII).
- [37] There is no information before me, nor even a suggestion, that there exists a desire on the part of the accused or his counsel, much less a demonstrated effort, to schedule a trial date. I am not convinced in the circumstances, at least at this point, the continued detention of the accused will undermine, or be seen to undermine, public confidence in our justice system. As well, in this regard it appears, at least to me, the Crown's case on what I will characterize as the primary charges, is overwhelming.
- [38] Finally, I have referenced the information placed before me concerning Covid-19. This circumstance, on these facts, do not significantly factor into my analysis. It does not really have the potential to tip the scale in this case.
- [39] It is not without reluctance I must find against you Mr. Alvarez. I accept you are genuine in your desire to escape the cycle of recovering, activating, and recovering from your addiction. You no doubt have seen what this kind of drug addiction leaves in its wake. You also know the process of recovering is not weeks or months. You experienced that again at Luke 15. I have not heard about any help you are getting in this regard at the North Fraser Pretrial Centre but I hope you are, or soon will.
- [40] The circumstances however, including your track record, instills no confidence that you would or could abide by the terms or conditions currently proposed, notwithstanding the support of your friend. Nor do the circumstances give rise to any reasonable belief you would not commit further offences if released; whether pursued as a result of your drug addiction or otherwise.
- [41] My conclusion is that, at the very least, there is a substantial likelihood you would in fact commit such offences. The Crown has shown cause your continued detention is required on the grounds set out in s. 515(10)(b). I am not of the view the Crown has shown cause on the tertiary ground.
- [42] I remain concerned you have been in custody for 5 1/2 months. There is no trial date. I appreciate the candour of defence counsel that there may not be a trial. Nevertheless, I cannot let this drift. Circumstances may change. New information becomes available. I will direct a further bail review pursuant to section 525(4)(b) to be scheduled at a time convenient to counsel, but no sooner than 90 days from today's date

[43] The application is dismissed. I must say Mr. Alvarez do not give up on yourself. You have a lot of life left to go. All right. We will adjourn.

"Crossin, J."

Appendix A

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