
CANADA / JUDGMENT

R. v. B.G.H.

2020 BCSC 913

COURT

Supreme Court of British Columbia

DECIDED

20 May 2020

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2020 BCSC 913 R. v. B.G.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. B.G.H.,

2020 BCSC 913

Date: 20200520

Docket: 30749-1-W, 173787-1,

39836-1-B, 39844-1, 39845-1-B

Registry: Nanaimo

Regina

v.

B.G.H.

Before: The Honourable Mr. Justice Baird

Oral Reasons for Judgment at Detention Review Hearing

Counsel for the Crown:

E. Bonner

Counsel for the Accused:

R. Horne

J. Jasser, A/S

Place and Date of Hearing:

Nanaimo, B.C.

May 19-20, 2020

Place and Date of Judgment:

Nanaimo, B.C.

May 20, 2020

- [1] THE COURT: The accused before the court, B.G.H., was arrested by the Port Alberni RCMP on January 22, 2020, and has been detained in custody at Nanaimo Correctional Centre ever since. He has not applied for bail until now. He does so under s. 525 of the Criminal Code, R.S.C. 1985, c. C-46. He is a 41-year-old intravenous drug addict. He has a lengthy criminal record comprised mostly of property offences and failures to comply with probation and bail orders.
- [2] On June 3, 2019, my colleague Justice Power ordered the accused to comply with the terms and conditions of a probation order of three years' duration following a conviction for dangerous driving causing bodily harm. One of the conditions of that probation order is that he is not to possess weapons. Subsequently, on September 12, 2019, the accused entered guilty pleas to offences dating back to January 31, 2018 of possession of housebreaking tools, breaking and entering, and breach of bail. On those guilty pleas Judge McKimm imposed consecutive conditional jail sentences totalling 360 days. These included orders prohibiting the accused from possessing drug paraphernalia and tools or instruments "capable for use in criminal activity".
- [3] In brief terms, the Crown presently alleges that in January 2020, while he was at large and living in Port Alberni, the accused violated the terms of his probation order by possessing weapons, and of his conditional sentence order by possessing drug paraphernalia and tools. He has also been charged with new substantive offences including possession of tools suitable for breaking and entering, mail theft, forgery, theft under, possession of stolen identification, and possession of weapons, being "hand made" swords and machetes of some kind.
- [4] These various allegations arose in roughly the following way. On January 15, 2020, the Port Alberni RCMP attended #2-4926 Burde Street to investigate a dropped 911 call. The police allege that this is the residence of the accused and his spouse, although how this fact is to be proved was not made explicit. The police entered the residence and found three individuals, but the accused and his spouse were not present.
- [5] The police noted that the house was full of tools of the type which they allege Judge McKimm forbade the accused to possess in his September 12, 2019 conditional sentence order. A couple of days later, local RCMP officers decided to check pawn tickets at a brokerage on Gertrude Street. These revealed that the accused had recently pawned a couple of compound bows and arrows at this location. The Crown will seek to prove, in addition to

the elements of possession, of course, that these items are weapons of the sort that the accused was prohibited from possessing by Justice Power in her June 3, 2019 probation order.

- [6] All of the foregoing information found its way into an information to obtain a search warrant for #2-4926 Burde Street that was issued on January 21, 2020 and executed on January 22, 2020. I gather that the warrant authorised the police to search for tools, weapons and other things. The accused was present in the residence on this occasion as well as two other individuals, one of whom was a young person called R.B.
- [7] During their search the police found and seized rather a wide variety of items including cell phones, laptops and tablets, many different types of tools, a key cutting machine and a multitude of keys and blanks, a number of pellet guns, items identified as home made swords and machetes, lock box assemblies and related items alleged to be property stolen from Canada Post, printers, forged and stolen cheques, stolen or forged identification, and multiple used syringes. The accused's alleged possession of these items, which he contests, form the substance of the charges against him in a ten count information sworn on January 27, 2020.
- [8] The police spoke to the young "found in", R.B., who confirmed, essentially, that the tools and printers in the residence belonged to the accused and that he used the latter to make false identification in other peoples' names. R.B. also reported that the accused's activities included breaking into mailboxes using his skills as a locksmith, stealing items of mail and using them for identity theft, and that the accused was in the midst of attempting to manufacture a firearm. I should say, I suppose, that I was made aware of no evidence gathered during the search that could support the latter allegation.
- [9] Because the accused is alleged to have failed to comply with a CSO he finds himself in what is commonly referred to as a "reverse onus" position; in other words, he bears the onus of establishing that his release is justified. However, it has to be emphasised that the accused enjoys the presumption of innocence concerning all of his outstanding charges, and the right to reasonable bail has constitutional status: see Charter s. 11(e). The Supreme Court of Canada has repeatedly stressed, most recently in *R. v. Myers*, 2019 SCC 18, that the early release of accused persons on the least onerous conditions of bail is the default presumption in our criminal law, while pretrial detention is reserved for exceptional circumstances and must be avoided where reasonable alternatives exist: see also *R. v. St-Cloud*, 2015 SCC 27 and *R. v. Antic*, 2017 SCC 27.
- [10] The accused is not a violent offender. His release will not imperil the safety of the public in that sense. However, the accused's fellow citizens have every reason to expect to be secure from property crime, too, and the pressing question here is whether I might make a reasonable bail order that will afford public protection against future offending of this type, since it is unquestionably the accused's primary course of substantive offending. In my view the fundamentals of a reasonable bail plan have been established and the public can be

protected by the accused's release on the strict conditions of release that I will presently set out. As far as the reputation of the court system is concerned, it will be preserved by the accused's rapid arrest and detention upon any instance of breach.

- [11] Before going further, I should like to stress what I consider to be an important and unusual factor at issue on this hearing. In the midst, as we are, of the global Covid-19 pandemic, the courts of British Columbia are operating on a much reduced basis from normal. At the moment it is not at all clear when the court system will be able deal with criminal trials such as those that will need to be conducted on the allegations against the accused before me. This raises the spectre of indefinite pretrial incarceration or at least the possibility that the present accused will spend a disproportionately lengthy period on pretrial remand. In my view this factor must be closely considered in balancing the competing interests that I have under consideration.
- [12] That said, I wish it to be clearly understood that my release of this accused has nothing to do with any risk that he might be infected with Covid-19 while in pretrial custody. In that connection, if anything, it sounds to me like he might be better off by staying where he is. There have been no cases of the virus reported inside the correctional facility where he has been kept since his arrest and he may be at smaller risk of contracting it in his present circumstances than living in the community. His other medical issues, such as hepatitis C, are of some concern, but once again, mostly because of the length of time that I fear he will be waiting for his criminal charges to come to trial. Recidivist criminals come into custody with a wide range of medical issues that the corrections authorities deal with as best they can as a matter of routine. Such things do not constitute some kind of free-standing ground of bail.
- [13] Risks to the accused's health, in other words, are not a material consideration here. What matters instead is that there is a reasonable alternative to pretrial incarceration. There is a bed available immediately for this accused at Back on Track Recovery House in Surrey, BC. I am satisfied on the evidence before me, including an on-the-record teleconference yesterday afternoon with the Director/Owner of the facility, Cole Izsak, that this is a reputable service provider and that the accused will be adequately supervised while there.
- [14] It is, for example, a totally drug and alcohol abstinent facility with zero tolerance for relapses. All breaches of court orders are reported immediately to the relevant resident's bail supervisor, and it is noteworthy that the majority of residents living in the facility are on bail or probation orders. The staff of the facility cooperate actively with community corrections, and indeed it is an integral part of their business plan to do so. There are drug tests administered by management on demand to monitor compliance with the house rule of total abstinence. Residents are subject to curfew rules. The facility has well defined regulations concerning conduct, hygiene, visitors, attendance at programming, and so on.

- [15] I have been persuaded that living in this facility and accessing treatment in a secure setting with suitable rules and oversight is a reasonable alternative to pretrial incarceration of this accused, and having come to that conclusion the law is clear that he must be released.
- [16] I hereby order the accused is to be released from custody. For reasons related to the availability of a responsible person to transport him to the recovery house, this is not to occur before 7:00 a.m. on Thursday, May 21, 2020, and then only upon his making a formal promise in the usual form to pay the amount of \$5,000 if he fails to comply with any of the following conditions of bail:
- a) You will keep the peace and be of good behaviour;
 - b) You must report to this court when required to do so by this court, including by telephone on May 22, 2020, at 11:30 a.m. In default of your appearance before me by telephone on that date and at that time, I will issue a warrant for your arrest;
 - c) Forthwith upon your release you are to report to the bail supervisor in Port Alberni by telephone at (250) 720-2444 and thereafter as and when directed by the bail supervisor;
 - d) You are to proceed directly upon release to reside at Back On Track Recovery House, 9889 140 Street, Surrey, BC. You are to arrive at and check into that facility by no later than 4:00 p.m. on Thursday, May 21, 2020. You are thereafter to reside at that place and not change your place of residence without obtaining a court order permitting it;
 - e) You are to provide your bail supervisor with the address, 9889 140 Street, Surrey, BC, and phone number (778) 316-2625, of the Back On Track Recovery House. You will furthermore provide your bail supervisor with your written consent to demand and receive information from the staff of Back On Track Recovery House confirming, at any time, that you are present and accounted for within the facility or its grounds, and that you are complying with the rules and regulations of the facility;
 - f) Once you arrive and check into Back On Track Recovery House, 9889 140 Street, Surrey, BC, you must thereafter abide by all the rules and regulations of the program and the facility;
 - g) If you are refused admission to Back On Track Recovery House for any reason, or if, once you are admitted to the facility, you are ejected from or leave the facility except on a temporary excursion approved by the management of the facility outside of curfew hours, you must immediately notify your bail supervisor of this fact, in which case the probation officer is hereby directed to take the necessary steps to compel your appearance before this court as soon as practicable;
 - h) You must obey a curfew of 6:00 p.m. to 8:00 a.m. seven days per week. During those hours you are to remain inside your residence at Back On Track Recovery House, 9889 140 Street, Surrey, BC, and you are forbidden from leaving that residence except for emergency medical treatment;

- i) You must forthwith attend the front door of your residence, or answer the telephone within the residence, whenever a peace officer or your bail supervisor attends the residence or rings the phone number to monitor your compliance with the curfew condition;
 - j) You are not to be found anywhere within the city limits of Port Alberni, British Columbia, except for the purpose of reporting to your bail supervisor, to appear in court, or to attend scheduled meetings with your counsel;
 - k) You are to have no contact directly or indirectly with R.B.;
 - l) You are not to possess or consume alcohol or any substance prohibited by the Controlled Drugs and Substances Act, except such substances as are prescribed for you by a medical physician licenced to practice in British Columbia;
 - m) You are not to possess any weapons as defined in s. 2 of the Criminal Code, including knives, excepting knives possessed within your residence for the preparation and consumption of food;
 - n) You must carry a copy of this bail document on your person at all times whenever you are off the property of Back On Track Recovery House 9889 140 Street, Surrey, BC, and you must produce it for inspection by a peace officer on demand at any time; and
 - o) You must provide a copy of this recognizance to the Directors of Back on Track Recovery House 9889 140 Street, Surrey, BC immediately upon your arrival and check in at the facility.
- [17] I have considered the cash security recommended by counsel as insurance of the accused's good conduct, but I was told that it would actually be the accused's mother who would be depositing the funds. I am not going to burden the accused's mother in this way, or require her to stand as a surety. The time when she might have been expected to perform such a role is long past, in my view, and I do not wish to expose her to the liability. The accused will have to make it on his own, if he can.
- [18] As I have said, if he fails to do so by breaching any of the terms and conditions hereby imposed, he will be promptly arrested and in all likelihood detained until his outstanding criminal matters are dealt with according to law.

"Baird J."

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