

CANADA / JUDGMENT

R. v. Barton

2010 BCCA 163

COURT

British Columbia Court of Appeal

DECIDED

1 April 2010

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2010 BCCA 163 R. v. Barton COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Barton, 2010 BCCA 163 Date: 20100401 Docket: CA037779 Between: Regina Respondent And Vincent Mark Barton Appellant Before: The Honourable Madam Justice Kirkpatrick (In Chambers) Counsel for the Appellant: Vincent Mark Barton on his own behalf Counsel for the Respondent: J. Duncan Date of Written Submissions: February 26, March 2 and 8, 2010 Place and Date of Judgment: Vancouver, British Columbia April 1, 2010 Reasons for Judgment of the Honourable Madam Justice Kirkpatrick:

Introduction

- [1] Vincent Mark Barton applies in writing for release pending the hearing of his appeal against sentence. His notice of application for leave to appeal sentence was filed out of time and leave is required for judicial interim release pending a sentence appeal. The respondent Crown does not oppose an extension of time but does oppose Mr. Barton's release.
- [2] Mr. Barton has not provided an affidavit containing the information required by Rule 19(2) of the Court of Appeal Criminal Rules, 1986, B.C. Reg. 145/86. However, as the Crown has not objected to this, I will decide the application on the basis of what has been filed.
- [3] For the reasons that follow, Mr. Barton's application for release is dismissed. Factual Background
- [4] On 10 September 2009, Mr. Barton received an 18-month conditional sentence after pleading guilty to seven counts of theft under \$5,000. Eleven days later, on 21 September 2009, Mr. Barton was apprehended for another theft and charged with theft under \$5,000 on Information 209553-1. The Crown proceeded summarily on that Information.
- [5] On 21 October 2009, the conditional sentence was suspended and the appellant was ordered to serve one year in jail, consecutive to a sentence of one month in jail on Information 209553-1.
- [6] On 22 October 2009, Mr. Barton contacted Legal Services Society requesting a sentence appeal. His request was refused on 20 November 2009.

- [7] On 30 December 2009, Mr. Barton filed a notice of application for leave to appeal sentence and a notice of application for an extension of time to appeal.
- [8] The hearing of the sentence appeal is set for 19 May 2010. Test for Release Pending Determination of Sentence Appeal
- [9] Section 679(1)(b) of the Criminal Code allows a judge of the Court of Appeal to release an appellant from custody if the appellant has been granted leave to appeal his or her sentence.
- [10] The criteria to be established are set out in s. 679(4):
- (4) In the case of an appeal referred to in paragraph (1)(b), the judge of the court of appeal may order that the appellant be released pending the determination of his appeal or until otherwise ordered by a judge of the court of appeal if the appellant establishes that
- (a) the appeal has sufficient merit that, in the circumstances, it would cause unnecessary hardship if he were detained in custody;
- (b) he will surrender himself into custody in accordance with the terms of the order; and
- (c) his detention is not necessary in the public interest.
- [11] It is unclear from the material filed by Mr. Barton whether he is appealing the original conditional sentence imposed on 10 September 2009 or its suspension on 21 October 2009. The understanding of the Crown, based on a telephone conversation with Mr. Barton on 24 February 2010, is that the appeal is directed at the suspension of the conditional sentence.
- [12] In his written material, Mr. Barton states that he was in detox and recovery houses during his conditional sentence but was forced to leave because of the lack of wheelchair accessibility and bedbug bites. He later developed "cellulitis" of the foot, but says he was refused medication at the hospital. He says that the following day the pain was extreme and he was forced to steal alcohol in order to buy street morphine. Mr. Barton submits that he has had HIV/Aids since 1997, is not violent, and has completed a relapse prevention program.
- [13] Mr. Barton states it is necessary for him to be released so that he can use a law library and obtain proof of his HIV status. I gather that these needs are in furtherance of preparation for his sentence appeal. In my view, these needs are outweighed in this case by the factors to be considered under s. 679(4) of the Code.
- [14] The Crown opposes Mr. Barton's release.
- [15] Mr. Barton has 130 prior convictions, mostly for property-related offences or breaches of court orders. The sentencing judge imposed a conditional sentence for seven counts of theft, notwithstanding that in 2008 Mr. Barton had served a 12-month jail sentence for four counts of theft and had twice before breached a conditional sentence. Despite Mr. Barton's extensive criminal record, the sentencing judge did not revoke the 18-month conditional sentence in its entirety; rather, Mr. Barton was ordered to serve 12 months of the conditional

sentence in custody, consecutive to one month for the new offence. Given Mr. Barton's extensive criminal record, including two prior entries for breaches of conditional sentence orders in 1997 and 2004, the merits of the appeal are dubious.

- [16] The Crown submits that Mr. Barton's criminal record precludes any realistic possibility that he will surrender himself into custody prior to his sentence appeal. In 1990, he received a 60-day intermittent sentence for breach of bail. Later that same year, he was unlawfully at large and, following that, escaped lawful custody. He has a conviction in 1992 for escaping lawful custody and convictions as well in 1992 for failing to attend court. In 1994 and 1995, Mr. Barton was convicted of failing to comply with probation orders. In 1996, he was convicted twice for failing to attend court. In 1997, he was convicted of breaching a conditional sentence order. In 2000, he served 14 days for being unlawfully at large. In 2003, he was convicted for failing to attend court. In 2004, he was again convicted for breaching a conditional sentence order. In 2008, he was convicted of failing to comply with a probation order.
- [17] I am not persuaded, given Mr. Barton's extensive record of failing to abide by court orders, that he would surrender himself in custody in accordance with a bail term to do so.
- [18] Lastly, I am concerned that Mr. Barton's release would present a risk to the community. He has an almost unbroken chain of property crimes dating back to 1988 and there is a likelihood that, if released, he will commit further offences. Accordingly, I am not satisfied that Mr. Barton has established that his detention is not in the public interest.
- [19] Accordingly, the application is dismissed. "The Honourable Madam Justice Kirkpatrick"

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