

CANADA / JUDGMENT

R. v. Bath

2013 BCCA 332

COURT

British Columbia Court of Appeal

DECIDED

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2013 BCCA 332 R. v. Bath COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Bath, 2013 BCCA 332 Date: 20130719 Docket: CA39857 Between: Regina Respondent And Sikander Singh Bath Applicant Direction of the Chief Justice on an Application for Review Pursuant to Section 680 of the Criminal Code Counsel for the Applicant: B.R. Anderson Counsel for the Respondent: W.P. Riley R.D. Leong Written Submissions of the Applicant filed: June 14, 2013 Written Submissions of the Respondent filed: June 24, 2013 Place and Date of Judgment: Vancouver, British Columbia July 19, 2013 Summary: Mr. Bath applied under s. 680 for a direction that a division of this Court review an order of the chambers judge denying his interim release pending appeal. Mr. Bath submitted that the chambers judge erred in determining that his detention was necessary in the public interest. Held: Application dismissed. There is no reasonable possibility that a division would reach a different conclusion from that of the chambers judge. Reasons for Judgment of the Honourable Chief Justice Bauman:

- [1] Mr. Bath applies under s. 680(1) of the Criminal Code for a direction that the order of Mr. Justice Frankel, in chambers, which denied Mr. Bath release pending the outcome of his appeal, be reviewed by a division of this Court.
- [2] On 15 December 2011, Mr. Bath was convicted of six counts of fraud in connection to claiming false GST rebates. On 10 April 2012, he was sentenced to serve four and one-half years. Mr. Bath appealed both the conviction and the sentence, and on 18 May 2012, he was granted bail pending appeal by Mr. Justice Hinkson. Mr. Bath subsequently applied for an extension of that bail to Mr. Justice Frankel, which was granted. Mr. Bath also applied to Frankel J.A. for court-appointed counsel, which was refused. He then made two additional applications for extension of bail, the first of which was granted, and the second of which was refused. That second order, issued on 3 May 2013, is the subject of this application.
- [3] Justice Frankel's reasons considered each of the three elements in s. 679(3) of the Code concerning granting interim release. He concluded that the appeal was not frivolous, though it was just over that threshold. He also concluded that Mr. Bath was likely to surrender himself and comply with the terms of the order, should he be released. Each of these factors favoured granting Mr. Bath's application.

- [4] In considering the third factor, whether Mr. Bath's detention was necessary in the public interest, Frankel J.A. considered the merits of the appeal and inconsistencies in Mr. Bath's affidavits. Concerning the merits, Frankel J.A. reviewed each of the grounds of appeal raised by Mr. Bath and determined that they had little chance of success.
- [5] Justice Frankel also assessed a number of inconsistencies in Mr. Bath's affidavits. In summary, in one instance Mr. Bath swore that he was in a position to fund his appeal and anticipated being able to order transcripts for his appeal. One week later he swore that he was unable to fund his appeal, and could not order transcripts when applying for court-appointed counsel. When that application was refused, and he applied for an extension of bail, his story again changed to now having sufficient funds to fund his appeal. Such inconsistencies led Frankel J.A. to conclude that Mr. Bath was manipulating the Court to suit his own interests. Justice Frankel stated:
- [48] My assessment is that Mr. Bath has described his financial circumstances in different ways in an effort to manipulate this Court. He is a person for whom the truth shifts depending on the circumstances. When he considers it to be in his interests to say that he has the funds necessary to prosecute his appeal he does so. However, when he considers it to be in his interest to say that he does not have such funds, that is what he says.
- [49] In my view, public confidence in the administration of justice would be negatively affected by releasing Mr. Bath. Not only is he someone convicted of serious offences whose grounds of appeal are weak, but he has shown a lack of respect for the judicial process.
- [6] Mr. Bath, on this application, submits that Frankel J.A. erred in determining that his appeal lacks merit. Further, he submits that his affidavits provided some explanation for the inconsistencies regarding his finances, including that his circumstances had changed, and that he was unaware of the costs of ordering transcripts when he stated that he anticipated being able to order them.
- [7] Further, Mr. Bath raised the issue that if he were not granted release, his appeal may be rendered moot by requiring him to serve most or all of his custodial sentence. Justice Frankel's reasons did not expressly consider this point. The Crown has responded that it is unlikely that Mr. Bath will have served the custodial portion of his sentence given the appeal is currently scheduled to be heard in March of 2014.
- [8] The threshold for granting a review is a low one. A review will be granted where the Court, properly applying the law, could possibly reach a different conclusion from that of the chambers judge: *R. v. Porisky*, 2012 BCCA 371 at para. 7, citing *R. v. Gill*, 2001 BCCA 569 at para. 4, and *R. v. Wilder*, 2007 BCCA 446 at para. 4.

- [9] Having reviewed the materials and the decision of Frankel J.A., I am not convinced that a reviewing division could possibly come to a different conclusion. I can see no reasonable possibility of a division reaching a different conclusion on the merits point. Justice Frankel had the opportunity to review the merits of Mr. Bath's appeal not just in relation to the interim release application, but also in the s. 684 application for appointment of counsel. I can see no issue with either of those sets of reasons.
- [10] Further, as the case management judge, Frankel J.A. was in a unique position to determine whether Mr. Bath was engaging in manipulation of the Court through inconsistent affidavits. Any reviewing division would have to show due deference to his evaluation of the evidence on this point: *R. v. K.M.E.*, [1998] B.C.J. No. 619, at para. 2 (C.A. Chambers).
- [11] Effective case management requires that appropriate deference be paid to the decisions of the Justice managing the file. This is especially so when a particular decision in part rests on an inference drawn by that Justice based on his in-depth review of the materials before the Court and his experience in managing that particular case. While a decision whether to admit a person to bail is not a case management tool, here it was based on Justice Frankel's significant background in the matter. The affidavits do show inconsistencies. I can see no reason why a division would reach a different conclusion.
- [12] As the Crown has pointed out, the current schedule for this appeal will not require Mr. Bath to serve all of his custodial sentence before the appeal is heard. I can see no possibility that this point would lead a reviewing division to reach a conclusion different from Frankel J.A.
- [13] I would dismiss the application for a review. "The Honourable Chief Justice Bauman"

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