

CANADA / JUDGMENT

R. v. Berg

2014 BCSC 1291

COURT

Supreme Court of British Columbia

DECIDED

5 May 2014

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2014 BCSC 1291 R. v. Berg IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Berg, 2014 BCSC 1291 Date: 20140505 Docket: X74851-2 Registry: New Westminster Regina v. Timothy Ralph Norman Berg Before: The Honourable Justice Truscott Oral Reasons for Judgment Counsel for the Crown: N. Reithmeier Counsel for the Defence: P. Evans Place and Date of Hearing: New Westminster, B.C. May 5, 2014 Place and Date of Judgment: New Westminster, B.C. May 5, 2014

- [1] THE COURT: On an objective basis, I do not consider this is a reasonable excuse on the part of Mr. Berg. It must be remembered that he had the possibility of going to real jail for this offence, as opposed to being on a conditional sentence order. Part of every conditional sentence order is to require the person to be in contact with the probation, or conditional sentence supervisor, in this case.
- [2] I look at the affidavit on the Allegation of Breach of Conditional Sentence, the narrative. It says [as read]: On March 14th, PO Bagri (phonetic) telephoned PO Marriot (phonetic) back and informed PO Marriot about the Salvation Army shelter option. But when presented to Mr. Berg, he refused to go.
- [3] Now, Mr. Berg says, "Oh, I have to line up, and I have a very slight chance of getting in." Well, he has to establish a residence. The purpose of the residence is so that the supervisor can check on him. That is the whole point of the conditional sentence order. So just to say, "Well, I don't think I get in, so I'm going to refuse to go," is not good enough. If he can only stay in a place for one night, or two nights, then tell the supervisor that, then the supervisor knows where he is at that point in time. If the answer is, "I can only stay there one night," then tell the supervisor that, and then they will work from there on when the next night is. The supervisor has to know where the person is.
- [4] Instead, it looks like Mr. Berg has simply said, "Oh, I'm homeless. I don't know where I'll be. I have no idea where I'm going to go. I'm not going to give you any information, and therefore you can't check up on me." In fact, he says here, and I know he says these are the people in the B.C. Housing, they do not want to give up the address. They do not want to be bothered by police. Well, it is too bad. Mr. Berg has to be bothered by police, because that is a term of the conditional sentence order, and as a consequence he had to give up that information.

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- [5] He said, according to this narrative here, he said he had a residential address in Surrey, so he had a residential address. I gather that was the discussion. But he did not want to provide the address to Community Corrections for fear of police conducting curfew checks. Too bad. That is not a valid excuse for him not to give up the residential addresses, so that the police or the conditional sentence supervisor can check on him. That is the whole point.
- [6] I do not consider there is any reasonable excuse on an objective standard in the circumstances here. I can see from the narrative there were discussions with the conditional supervisors, and there was simply a failure to give any information that would help them determine where he is going to be that night. Instead of a dialogue with the supervisors about where he can and cannot be at any point in time, it just basically amounted to a stonewall: "I don't know where I'm going to be, so don't bother me." That is what it looks like. Mr. Berg became angry and then proclaimed he was of no fixed address. He ended the conversation.
- [7] That is not satisfactory.
- [8] As far as I am concerned, there is no reasonable excuse here. I find the breach to have been proven. "Truscott J."
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