

CANADA / JUDGMENT

R. v. Bhullar

2016 BCSC 2506

COURT

Supreme Court of British Columbia

DECIDED

24 October 2016

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2016 BCSC 2506 R. v. Bhullar IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Bhullar, 2016 BCSC 2506 Date: 20161024 Docket: X079552-1; X079553-1; X079554-1; X079555-1 Registry: New Westminster Regina v. Rajdeep Singh Bhullar Before: The Honourable Mr. Justice Bernard Oral Reasons for Judgment re s. 525 application Counsel for the Crown: N.M.D. Reithmeier Counsel for the Defence: M.A. Scheirer Place and Date of Trial/Hearing: New Westminster, B.C. October 24, 2016 Place and Date of Judgment: New Westminster, B.C. October 24, 2016

- [1] THE COURT: The application before the court is pursuant to s. 525 of the Criminal Code [Code]; it is a review of an accused's detention for trial delay. The application has been brought by the Crown on behalf of the Warden of the prison where Mr. Bhullar is detained; however, the Crown questions whether s. 525 applies in Mr. Bhullar's particular circumstances.
- [2] These circumstances are that Mr. Bhullar has entered guilty pleas to the charges upon which he was detained, but has yet to be sentenced. He is also seeking to strike his guilty pleas, with that hearing set to proceed on November 21, 2016.
- [3] Section 525(1) of the Code provides in part as follows:
- (1) Where an accused who has been charged with an offence other than an offence listed in section 469 and who is not required to be detained in custody in respect of any other matter is being detained in custody pending his trial for that offence and the trial has not commenced . . .
- (b) in the case of an offence for which the accused is being prosecuted in proceedings by way of summary conviction, within thirty days from
- (i) the day on which the accused was taken before a justice or (ii) where an order that the accused be detained in custody has been made or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision, the person having custody of the accused shall, forthwith on the expiration of those thirty days apply to a judge having jurisdiction in the place in which the accused is in custody to fix a date for a hearing to determine whether or

not the accused should be released from custody. [Emphasis added]

- [4] By its plain wording, this Code provision applies to a detainee whose trial has not yet commenced. In the instant case, as a result of Mr. Bhullar's guilty pleas, it cannot be said that his trial is "pending" or has "not yet commenced"; moreover, there can be no concerns that he is languishing in pre-trial detention. If and when his guilty plea is struck, then his status will return to that of an accused person, and the rights afforded by s. 525 and other applicable judicial interim release provisions of the Code, will be available to him.
- [5] In short, I am satisfied that a detention review under s. 525 is not available to Mr. Bhullar. Upon the entry of guilty pleas, Mr. Bhullar relinquished his right to a trial. Relief from continued detention, if appropriate, pending the imposition of sentence is found under s. 523(2)(a) of the Code, which provides as follows:
- (2) Despite subsections (1) to (1.2),
- (a) the court, judge or justice before which or whom an accused is being tried, at any time, may, on cause being shown, vacate any order previously made under this Part for the interim release or detention of the accused and make any other order provided for in this Part for the detention or release of the accused until his trial is completed that the court, judge or justice considers to be warranted. [Emphasis added.]
- [6] This provision has been interpreted and applied to allow the trial judge to, inter alia, revisit bail or detention where sentencing is postponed following a determination of guilt: see for example *R. v. Davidson*, [1999] B.C.J. No. 2406 (S.C.); *R. v. Green*, [2006] O.J. No. 3240 (S.C.); and *R. v. Van*, 2014 ONCJ 232.
- [7] Notably, Mr. Bhullar exercised this right of review before the judge who accepted his guilty pleas. This judge, in her wisdom, decided that Mr. Bhullar should remain in custody pending sentencing. Mr. Bhullar has, therefore, exercised the review that is available to him as an offender who is awaiting the imposition of his sentence.
- [8] In view of Mr. Bhullar's stated intention to have his guilty pleas struck, the instant application is adjourned generally, rather than dismissed. Such a disposition is recommended by the Crown to ensure that Mr. Bhullar is not unintentionally deprived of his "one time" s. 525 Code review, in the event his pleas are struck and he remains in detention pending his trial. "Bernard J."

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