

CANADA / JUDGMENT

R. v. Caza

2005 BCCA 318

COURT

British Columbia Court of Appeal

DECIDED

8 June 2005

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2005 BCCA 318 R. v. Caza COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Caza, 2005 BCCA 318 Date: 20050608 Docket: CA032598; CA032666 Between: Regina Respondent And David James Caza Appellant Before: The Honourable Madam Justice Ryan The Honourable Mr. Justice Hall The Honourable Mr. Justice Low D.J. Caza Appearing in person M.J. Brundrett Counsel for the Respondent Place and Date of Hearing: Vancouver, British Columbia 7 April 2005 Place and Date of Judgment: Vancouver, British Columbia 8 June 2005 Written Reasons by: The Honourable Mr. Justice Hall Concurring in by: The Honourable Madam Justice Ryan The Honourable Mr. Justice Low Reasons for Judgment of the Honourable Mr. Justice Hall:

- [1] The appellant seeks to appeal from two sentences imposed by a judge of the Provincial Court on the respective dates 25 October 2004 and 13 December 2004. In March of 2004, the appellant had been placed on a recognizance under s. 810.1(1) of the Criminal Code requiring him to not have contact with or communicate with persons under the age of 14 years and to refrain from attending a public park or a public swimming area, daycares, playgrounds and schools where persons under the age of 14 years could be expected to be present. He was also required by a term of this recognizance to keep the Cranbrook R.C.M.P. advised of his residential address and report to the police once a week or as directed by Constable Perpelitz of that detachment. Before us he stated that he had faithfully fulfilled his reporting duties and there is no evidence to the contrary. His legal difficulties arose from breaches of other terms of the recognizance.
- [2] The appellant has a serious record over the past 15 years for criminal activity related to the molestation of children. In October 2004, information came to the attention of the police at Cranbrook that the appellant had been having contact with children and was possibly buying alcohol for them. He had been observed visiting at a home where there were a number of young children and he left toys at a location for the children. The Crown noted in the proceedings before the judge in October that the appellant appeared to be engaged in grooming behaviour with these young children. The judge did not accept this submission but did conclude there was prohibited activity. The appellant pleaded guilty to the breach alleged. In some written material dated 28 June 2004, the appellant stated that he had been buying alcohol for youngsters. The recognizance he was originally placed on in March of 2004 required him to adhere to the terms of that recognizance for one year. The judge said

this in his reasons for sentence on 25 October 2004: It is clear that this contact was both avoidable and prohibited and occurred on several occasions. In addition he put a bag containing toys in the yard, not in the presence of the children, but then made it known to the parents that he was the provider. He also bought small presents and gave them to the parents, including a skateboard on one occasion.

- [3] Mr. Caza has an extensive record of sexual offences which includes three counts of anal intercourse in 1990, which was met with twelve months in jail and three years of probation; a count of sexual assault from 1993, punished by 18 months of imprisonment; a count of sexual assault and both possession and making of child pornography in 1996, resulting in two years of imprisonment; a charge of sexual interference in 2000, with a sentence of six months in jail and two years of probation; another charge of possessing child pornography in 2001, which was punished by six months imprisonment, consecutive to other six-month sentences, which was then varied on appeal to a global sentence of twenty-four months. He has also been sentenced for breaches of recognizance in 2000, 2002 and five counts of probation breach in 2001. Previous penalties for breach of recognizance have been three months concurrent with a sentence being served and sixty days. He has been classified as a homosexual pedophile at a high risk to offend.
- [3] In that case, the Crown sought a sentence of 18 months and requested the imposition of a probation order for the maximum period of three years. The judge said this about the circumstances he found to be established:
- [7] In the circumstances presented here, as much as the court fears the possibility of grooming and a search for the next victim, all that is really established is careless or wilful breach of a protective term in the recognizance, but with actions which in virtually anyone else would be completely innocent.
- [4] The judge found that the accused appellant had clearly and knowingly breached his recognizance and in light of his history felt that a short jail sentence was appropriate and he as well placed him on a probation order for three years. This order requires him to report within seven days of his release to a member of the R.C.M.P. in Cranbrook and thereafter as directed but not less than once a month and if he wishes to relocate and report elsewhere than Cranbrook, he is required to make application to a court of competent jurisdiction in order that the place of reporting can be changed in the order. Other terms of the probation order track generally the terms of the recognizance he had been placed on in March 2004. The sentencing judge ordered him to carry a copy of the probation order with him at all times and to produce it upon contact with a police officer. The appellant argues that the probation order is too long and he further argues that it is oppressive that he is required to carry it with him at all times.
- [5] As a result of the publicity surrounding this incident, other information was brought to the attention of the police concerning behaviour of the appellant with young children in the period between March and October 2004. Arising from these disclosures, another

Information was laid against the appellant alleging other breaches of the recognizance. These incidents were more serious in that it was demonstrated that the appellant had had a number of contacts with quite young children and was giving them presents and was alone with them.

- [6] Although the appellant had represented himself at the October hearing, counsel appeared for him in connection with this second matter. With respect of this offence, the appellant entered a guilty plea to this breach charge on 8 November 2004 and sentencing occurred on 13 December 2004. At the time he was sentenced for this offence, his counsel was before the court and the appellant who was in custody appeared by video hook-up. He professes to have had some difficulty in following the proceedings but there is no indication of that in the transcript. He also alleges error in that the judge did not ask him before sentence if he had anything to say. The judge may have made an oversight in this connection but I do not see any deliberate refusal by the sentencing judge to comply with s. 726 of the Code. It is clear that counsel for the appellant had an opportunity to say everything that needed to be said on behalf of the appellant. It does not seem to me that this oversight invalidated the proceedings: see *R. v. MacMillan* (2003), 184 B.C.A.C. 239, 2003 BCCA 372.
- [7] The learned sentencing judge found that the incidents comprised in this charge of breach were more serious than the ones dealt with in October of 2004. The judge found that it was clear that the appellant was seeking out young children and doing his best to build a relationship with them. The judge observed that in the incidents comprising this charge, there had not been involvement of adults as had been the case in several of the earlier incidents dealt with in October. The judge considered that a heavier penalty was merited in the second case because of the egregious circumstances of the breaches of recognizance demonstrated in that case. The judge said this: I intend to give you, as I said, some credit for the fact that although there is this contact, it has not led to you doing the thing that the prevention of contact is aimed at stopping. The net of it is, though, Mr. Caza, I am going to sentence you to twelve months in jail, concurrent with the sentence that you are presently serving. That will result in a sentence that is approximately one of fourteen, fifteen months in duration in total for the acts that you committed in Cranbrook from the time you entered the recognizance until sentencing in October.
- [8] The appellant suggests that the jail time imposed on him in December was excessive and, as I noted above, he submits also that the three year probation order was excessive both in its duration and by reason of the circumstance that he is required to carry it on his person at all times. He also suggested in submissions that he might want to change his residence and he asked for the intervention of this Court in that regard. With regard to this latter request, it seems to me that any such request ought to be directed to the trial court if he wishes to change his residence so that proper arrangements can be made for him to report in any new location he proposes to reside.

- [9] As regards the length of the sentence of incarceration imposed upon him in December 2004, it seems to me that the appellant has demonstrated that he is a well-nigh incorrigible offender with respect to young children. The court was required to take measures to try to deter him from his constant lapses into the impermissible pattern of conduct with young children. The sentence of incarceration imposed by the judge in December was designed to do that and cannot be viewed as in any way excessive in my opinion. With respect to the temporal duration of the probation order for three years, it seems to me that this appellant has demonstrated himself to be an offender who requires a probation order of maximum duration to again attempt by measures authorized under the Criminal Code to deter him from having contact with young children. I see no error in the dispositions of sentence made by the judge, either with regard to the terms and duration of the probation order imposed in October 2004 or the sentence of incarceration imposed in December 2004. I do not consider that it can be said that the requirement that he carry a copy of the probation order on his person at all times works any particular hardship on the appellant. One would hope that it might have some effect in controlling his continually offending behaviour. This is simply another measure required in the case of this very persistent offender to endeavour to persuade him to leave young children alone.
- [10] In the result, I would grant the appellant leave to appeal from the sentences imposed upon him but I would dismiss both appeals from sentence. "The Honourable Mr. Justice Hall" I Agree: "The Honourable Madam Justice Ryan" I Agree: "The Honourable Mr. Justice Low"

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