
CANADA / JUDGMENT

R. v. Cocks

2012 BCCA 39

COURT

British Columbia Court of Appeal

DECIDED

26 January 2012

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2012 BCCA 39 R. v. Cocks

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Cocks,

2012 BCCA 39

Date: 20120126

Docket: CA039593

Between:

Regina

Respondent

And

Norman Robert Cocks

Applicant

Direction of the Chief Justice on an Application for Review Pursuant to Section 680 of the Criminal Code

Counsel for the Applicant:

Joseph J. Blazina

Counsel for the Respondent:

Joseph C. Bellows, Q.C.

Written Submissions of the Applicant filed:

December 28th, 2011

Written Submissions of the Respondent filed:

January 19th, 2012

Place and Date of Judgment:

Vancouver, British Columbia

January 26th, 2012

Reasons for Judgment of the Honourable Chief Justice Finch:

- [1] This is an application under s. 680(1) of the Criminal Code for a direction that a division of this Court review the decision of the Supreme Court of British Columbia to deny bail to the applicant under s. 515(10) of the Code. The learned chambers judge held that the applicant had failed to show that his continued detention was not necessary under the secondary and tertiary grounds of s. 515: namely, the protection or safety of the public, and the maintenance of public confidence in the administration of justice.
- [2] The applicant is charged with the second degree murder of Dain Phillips on or about 12 June 2011. The Crown's case is that the applicant was one of seven men who swarmed the deceased in broad daylight and beat him to death with various weapons.
- [3] The chambers judge reviewed the evidence adduced by the Crown as to the circumstances of the offence and the alleged offenders. They are described in paras. 4 through 15 of his reasons, and it is not necessary here to repeat the detail. In short, there was a simmering dispute between the deceased and his family on the one hand, and the applicant and his friends on the other. The deceased, together with his sons and friends, met by arrangement with the applicant and his co-accused at a predetermined location.
- [4] The evidence was that the deceased was swarmed in an unprovoked attack by three assailants, including the applicant, wielding baseball bats, a hammer and other weapons, knocked to the ground and beaten to death. The applicant later bragged about his role in the attack in an intercepted telephone call. Police had been carrying out surveillance on the applicant, and intercepting his phone calls, in connection with other offences.
- [5] The applicant has no criminal record, and at the bail hearing two sureties were presented, each willing to provide security in the sum of \$100,000 to supervise the applicant's compliance if released on bail.
- [6] The judge held that the applicant had failed to show that his detention was not necessary on the secondary ground. In his reasons he said in part:

- [25] ... I conclude that the Crown case is strong. There are eyewitnesses to what occurred, but most telling is the intercepted message which provides a chilling account of what happened. The motivation for the attack was to dissuade the Phillips' from passing themselves off as members of the Hells Angels and to send a message that it was an organization not to be meddled with. That message was delivered with dispatch and efficiency.
- [26] Mr. Cocks has no criminal record. He has been steadily employed. He has the support of his employer and his family. That stands in his favour.
- [27] However, Mr. Cocks knew that he was being watched and that he was the subject of a telephone intercept. In spite of those constraints, he was part of a group that intended to send a message to other members of the community. That message was designed to be delivered through violent means with little, if any, regard for the consequences.
- [7] And further:
- [36] I have concluded that there are no release provisions that will reduce to an acceptable level the risk that Mr. Cocks poses. There is a substantial likelihood, particularly in light of the open and brazen attack on Mr. Phillips, that Mr. Cocks has little, if any, regard for the law. It would be a genuine concern that the administration of justice would be interfered with.
- [8] The judge also held the applicant's detention was justified on the tertiary ground. He found that the prosecution case was strong, the offence was serious, and "the attack was planned, it was deliberate, and it was ruthlessly efficient".
- [9] It appears to me that all of those conclusions are fully justified on the evidence. The judge was satisfied that the public would lose confidence in the justice system if bail were granted.
- [10] The threshold for a direction under s. 680 is low. The test is whether there is any reasonable prospect of success on a review of the order refusing bail.
- [11] In my opinion, there is no possibility that a division of this Court would conclude that the order for the applicant's continued detention was made in error. The judge directed himself correctly on the law, applied the correct principles, and reached his conclusions on an ample evidentiary base.
- [12] The applicant submits that five of his co-accused have already been released on bail, suggesting that the circumstances of the offence were less egregious than alleged. This argument ignores evidence that the applicant played a substantially more serious role in the attack than did the five accused who were granted bail. Indeed, the Crown conceded that none of these five numbered among the "principal people that were involved in the murder of Mr. Phillips." The applicant, conversely, is alleged to have played a central role in the incident.

- [13] The applicant also argues that the chambers judge disregarded a number of decisions where bail was granted, including two which he argued "contained strikingly similar facts to the present case": R. v. Brotherston, 2009 BCCA 431, [2009] B.C.J. No. 2294 and R v. Patko, 2003 BCCA 262, [2003] B.C.J. No. 1012.
- [14] Both Brotherston and Patko are distinguishable from the present case in important respects. The judge in this case placed considerable weight on the evidence that the applicant acted in order to send a terrifying message to the community. He also emphasized evidence as to the significance of the applicant's decision to attack Mr. Phillips, and to boast about the incident over the telephone, when he was aware that the police had him under surveillance and were monitoring his phone lines. The reasons in Brotherston and Patko do not disclose any such aggravating factors; indeed, the two accused in Brotherston actually turned themselves in to the police. There is nothing to show that the judge's decision in the present case was inconsistent with prior jurisprudence on applications for bail.
- [15] The application for a direction under s. 680 is dismissed.

"The Honourable Chief Justice Finch"

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