

CANADA / JUDGMENT

R. v. Cuddeford

2023 BCSC 1865

COURT

Supreme Court of British Columbia

DECIDED

28 July 2023

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2023 BCSC 1865 R. v. Cuddeford

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cuddeford,

2023 BCSC 1865

Date: 20230728

Docket: 82385-1; 84873-1; 84874-1; 84875-1

Registry: New Westminster

Rex

v.

Sean Trevor Cuddeford

Before: The Honourable Madam Justice Francis

On judicial review from: Provincial Court of British Columbia, June 30, 2023

(R. v. Cuddeford, Vancouver Docket 258370-1,

New Westminster Docket No. 82385-11,

and Surrey Docket Nos. 246176-1 & 252391-1)

Oral Reasons for Judgment

Counsel for the Crown:

J.H.M. Patterson

Counsel for the Accused:

J.J. Allingham

Place and Date of Trial/Hearing:

New Westminster, B.C.

July 26, 2023

Place and Date of Judgment:

New Westminster, B.C.

July 28, 2023

- [1] THE COURT: Pursuant to s. 521 of the Criminal Code, R.S.C. 1985 c. C-46, the Crown has sought a review of the judicial interim release of Mr. Cuddeford.
- [2] Mr. Cuddeford has entered guilty pleas with respect to four informations. The first relates to a break and enter to a dwelling house that took place on September 24, 2019. That information was sworn in February 2020. Between February 10, 2020, and March 24, 2022, there were six or seven bench warrants issued for his failure to attend court.
- [3] On the second information, Mr. Cuddeford pled guilty to breaking and entering a construction site in New Westminster on March 29, 2020. He was released on a police undertaking.
- [4] The third information relates to possession of a loaded prohibited or restricted firearm on November 4, 2020, an offence for which Mr. Cuddeford pled guilty. He had a judicial interim release hearing with respect to this charge on November 5. There was a cash deposit provided and conditions that he attend a recovery home. Between that date and February 2022, he has been subject to a number of release orders with or without financial obligations, residing at recovery houses. He was required for court on this matter on March 24, 2022, and he did not attend, so a bench warrant was issued.
- [5] On the final information, he pled guilty to being found in an unoccupied residence on March 16, 2023. The RCMP found him there and he fled. When he was ultimately arrested, he provided a false name.
- [6] In sum, Mr. Cuddeford has been arrested and released many times regarding the matters that were before the bail judge. Not including the release order in question, he has been the subject of one police undertaking, at least six bench warrants for failing to attend court, eight release orders, and seven warrants issued pursuant to s. 512.3 for failing to comply with release orders.

- [7] Five of the release orders made between November 5, 2021, and February 11, 2022, contained conditions requiring Mr. Cuddeford to reside at a residential treatment facility and two required a deposit of \$2,000. Mr. Cuddeford breached all five orders. He failed to attend court on March 24, 2022, and he remained at large for almost a year until he was arrested on March 16, 2023, after he was caught committing the most recent offences for which he has been charged and pled guilty.
- [8] Subsequent to his March 16, 2023, arrest, Mr. Cuddeford sought judicial interim release in Provincial Court before the Honourable Regional Administrative Judge Bowry. That application took place on June 30, 2023. Subsequent to that hearing, Mr. Cuddeford was released with a cash deposit of \$2,000, and the condition that he reside at Hope For Freedom Society, a residential addiction treatment facility.
- [9] In this application, the Crown has applied for a review of that decision. The Crown submits that the release order should be vacated and replaced with a detention order for three reasons: (1) the bail judge made an error of law; (2) the release order was clearly inappropriate; and (3) new admissible evidence indicates that the bail judge overemphasized the amount of time Mr. Cuddeford had spent in pretrial detention prior to June 30, 2023.

Scope of Review

- [10] Sections 520 and 521 of the Code, which provide for bail review applications, do not confer an open-ended discretion on the reviewing judge to vary the initial decision concerning the release or detention of the accused.
- [11] The Supreme Court in *R. v. St-Cloud*, 2015 SCC 27, held that the reviewing court must determine whether it is appropriate to exercise its power of review and that power of review may be exercised in only three situations:
- 1) where there is admissible new evidence, if that evidence shows a material and relevant change in circumstances of the case;
 - 2) where the impugned decision contains an error of law; or
 - 3) where the decision is clearly inappropriate.
- [12] A decision will only be found to be clearly inappropriate if the bail judge gave excessive weight to one relevant factor or insufficient weight to another. It is not open to the reviewing judge to substitute his or her assessment of the evidence for that of the judge who rendered the impugned decision.

Analysis

Did the bail judge make an error of law?

- [13] The Crown submits that the right to reasonable bail is not a constitutionally entrenched right pursuant to s. 11(e) of the Charter in circumstances in which an accused has pled guilty. As such, he submits that the bail judge erred in law when she found, at paragraph 12 of her decision, that she was governed firstly and foremost by s. 11(e) of the Charter. The Crown submits that these circumstances, namely an accused who has pled guilty but not yet been sentenced, are analogous to those facing an accused in an application for bail pending appeal.
- [14] In *R. v. Oland*, 2017 SCC 17, the Supreme Court of Canada held that s. 11(e) of the Charter does not apply to an individual seeking bail pending appeal, because once a conviction is entered, the presumption of innocence no longer applies.
- [15] Counsel for the defence disagrees with this interpretation of *Oland*. According to counsel, the issue of the applicability of s. 11(e) in circumstances where an accused is seeking judicial interim release after a guilty plea does not appear to have been directly considered in the case authorities.
- [16] While the Crown has raised a very interesting issue of constitutional application, I have determined that I need not consider the applicability of s. 11(e), because I am satisfied that the bail judge's decision should be vacated on the basis that it was clearly inappropriate.

Was the decision clearly inappropriate?

- [17] I agree with the Crown that the bail judge's analysis did not put sufficient or any weight on certain relevant factors relating to detention or release, and put excessive weight on one factor. Specifically, at paragraphs 24 and 26, the bail judge primarily focused on the fact that Mr. Cuddeford had not, prior to the spring of 2023, spent any significant time in jail. At the time of the bail hearing, he had been in custody for 140 days, which is the longest amount of time he had ever spent in custody. The bail judge was of the view that the positive deterrent effect of this time in custody and a bail plan that involved him living in a residential treatment facility for his addiction, along with \$2,000 cash bail, satisfied her that his continued detention was not necessary under primary, secondary, or tertiary grounds.
- [18] In my view, the bail judge placed excessive weight on the amount of time Mr. Cuddeford had recently spent in custody, and little or no weight on highly-relevant factors that justified his detention on primary, secondary and tertiary grounds.

Primary Ground

- [19] The primary ground for detention is very clearly invoked in this case. At least six bench warrants were issued for Mr. Cuddeford's failure to attend court between February 10, 2020, and March 24, 2022. He was at large for almost a year between March 24, 2022, and March 19, 2023, at which time he was apprehended for another offence for which he pled guilty. Where there are concerns that an accused person will not attend court as required, and those concerns cannot be alleviated through the imposition of bail conditions, their

detention may be warranted.

- [20] The bail judge did not allude to the fact that a \$2,000 cash deposit and a bed in a residential treatment facility, the same release terms being proposed in the release plan before her, had on prior occasions been terms of release orders that Mr. Cuddeford had breached. Twice Mr. Cuddeford has been required to post \$2,000. On five release orders, he had been required to live at residential treatment facilities. It is clear that these terms have not been sufficient to secure Mr. Cuddeford's compliance with bail in the past.
- [21] The bail judge did not give sufficient consideration to these important facts which directly relate to the primary ground and securing Mr. Cuddeford's attendance at court.

Secondary Ground

- [22] The secondary ground for detention is also invoked. The secondary ground is broken down into four parts in the leading B.C. case of *R. v. Abdel-Rahman*, 2010 BCSC 189:
- [23] In my opinion, the decisions that a judge must necessarily make in order to reach the conclusion that detention is justified on the secondary ground, are the following:
- a) First, that there is a risk that the accused will either commit an offence, or will interfere with the administration of justice, if he is released;
 - b) Second, that this risk is of such magnitude that it amounts to a "substantial likelihood;"
 - c) Third, that the said risk would constitute a danger to public safety (in general, or to a specific victim or witness) if the accused is released; and
 - d) Fourth, that the detention of the accused is "necessary," because the identified danger to public safety cannot be prevented or reduced to an acceptable level by bail conditions (such as reporting to authorities, curfew, no-contact, mobility restrictions, sureties or cash bail).
- [23] The offences for which Mr. Cuddeford has pled guilty are serious: breaking and entering into a home in 2019 and committing the indictable offence of theft while being bound by a probation order; stealing tools from a worksite in New Westminster, and possessing tools suitable for committing criminal offences, again while being bound by a probation order; possessing a loaded restricted handgun in public; and breaking and entering into a residence and committing the indictable offence of mischief, and obstructing the police, in 2023.
- [24] In this context, it is very clear that there is a substantial likelihood that Mr. Cuddeford will commit an offence if released, that he constitutes a danger to the public, and that detention is necessary, and that the risk cannot be reduced to an acceptable level by bail conditions.

- [25] I find that the bail judge focused too little on the multiple serious crimes, including possession of a loaded firearm, to which Mr. Cuddeford has pled guilty. When he has been released on similar terms to the ones imposed by the bail judge, he has consistently reoffended.
- [26] Without wishing to minimize the commendable work Mr. Cuddeford has done to improve his life since he went into custody, for which he should be justifiably proud, it was clearly inappropriate for the bail judge to place more weight on Mr. Cuddeford's sobriety and the programs he has taken in the months he has been in custody, than on the repeated history of Mr. Cuddeford engaging in criminal activity while under the same release conditions imposed by the bail judge. I agree with the Crown that there are no conditions that the court could impose on Mr. Cuddeford that would adequately mitigate the risk he poses to the public in these circumstances.

Tertiary Ground

- [27] Finally, I turn to the tertiary ground and the factors enumerated at s. 515(10)(c) of the Criminal Code. Mr. Cuddeford has pled guilty to the counts before the court, which include breaking and entering, theft, obstruction, and possessing a loaded gun in public. The gravity of these offences is high. There is a likelihood of a lengthy jail sentence being imposed, and one of the offences involves a firearm. In my view, a member of the public would be shocked if they learned that Mr. Cuddeford was released on bail.
- [28] The bail judge did not expressly consider the factors under s. 515(10)(c), but offered the conclusory statement that the continued detention of Mr. Cuddeford is not necessary to maintain public confidence in the administration of justice.
- [29] Had the bail judge properly weighed the factors under s. 515(10), in my view, she would have reached a different conclusion.
- [30] As I have concluded that the bail judge's determination was clearly inappropriate, I need not consider the Crown's application to admit new evidence regarding Mr. Cuddeford's prior time in custody.
- [31] The judicial interim release decision made June 30, 2023, is set aside and, Mr. Cuddeford, you are ordered detained.

"Francis J."

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