

CANADA / JUDGMENT

R. v. Czechowski

2020 BCCA 237

COURT

British Columbia Court of Appeal

DECIDED

13 August 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCCA 237 R. v. Czechowski

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Czechowski,

2020 BCCA 237

Date: 20200813

Docket: CA45999

Between:

Regina

Respondent

And

Jeremy Robert Czechowski

Appellant

Restriction on publication: A publication ban has been imposed under ss. 486.4(1) and 486.4(2) of the Criminal Code restricting publication, broadcasting or transmission in any way of any information that could identify the complainant or a witness. This publication ban applies indefinitely unless otherwise ordered.

Restriction on publication: Pursuant to s. 16(4) of the Sex Offender Information and Registration Act [SOIRA], no person shall disclose any information that is collected pursuant to an order under SOIRA or the fact that information

relating to a person is collected under SOIRA.

Before:

The Honourable Mr. Justice Butler

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated

May 16, 2018 (R. v. Czechowski, 2018 BCSC 1646, Kelowna Docket 84432-2).

Oral Reasons for Judgment

Counsel for the Appellant

(via teleconference):

M.A. Nathanson

K. Leslie

H. Parmar, Articled Student

Counsel for the Respondent

(via teleconference):

M. Vojvodic

Place and Date of Hearing:

Vancouver, British Columbia

August 13, 2020

Place and Date of Judgment:

Vancouver, British Columbia

August 13, 2020

Summary:

While on judicial interim release pending the determination of his appeal, the appellant was charged with uttering threats. The Crown applies to revoke bail. Held: Application dismissed. The appellant has shown that his detention is not necessary in the public interest, provided that the terms of release are modified to address the public safety concerns arising from the recent charge.

- [1] BUTLER J.A.: On May 16, 2018, Jeremy Czechowski was convicted of four offences in connection to a sexual encounter with the complainant in February 2016. He appealed those convictions and obtained judicial interim release from this Court pending the determination of his appeal. The appeal was heard on June 16, 2020, and judgment is currently under reserve.
- [2] On August 5, 2020, Crown received a sworn Information charging the appellant with uttering threats. Pursuant to ss. 679(3) and 524(2) of the Criminal Code, R.S.C. 1985, c. C-46, Justice Griffin issued a warrant for Mr. Czechowski's arrest on August 7, 2020. The appellant was arrested and the Crown now applies to revoke bail. Mr. Czechowski opposes the application and seeks his release. However, he acknowledges that the new charge has changed the circumstances and submits that it would be appropriate to modify the terms of bail to satisfy concerns arising from the new charge.
- [3] For the reasons that follow, I would dismiss the Crown's application to revoke Mr. Czechowski's judicial interim release. I am satisfied the appellant has met the onus of showing that his detention is not justified, provided the terms of bail are modified as I will outline below.

Background

- [4] In reasons indexed as 2018 BCSC 1646, Justice Ball convicted Mr. Czechowski of one count of sexual assault causing bodily harm; one count of unlawful confinement; one count of choking with intent to enable himself to commit an indictable offence; and one count of uttering threats. He received a global sentence of five years' imprisonment.
- [5] The appellant filed a notice of appeal against conviction on April 5, 2019. He subsequently received judicial interim release on his own recognizance, without sureties, in the amount of \$25,000 with a cash deposit of \$10,000. His bail was renewed on the same terms by an order of Justice Harris on December 9, 2019, and again on June 16, 2020, when his appeal was heard. With judgment reserved, the most recent release order expires on the date set for the pronouncement of reasons.
- [6] On August 5, 2020, Crown counsel received the Information sworn in relation to the appellant, charging him with uttering threats. The offence is alleged to have taken place on August 3, 2020. Crown also received a copy of the narrative portion of a report to Crown counsel, which has been provided to the Court. The report outlines the complainant's statement to the police. She met the appellant through a mutual friend. On August 3, she says she attended a gathering on the Enderby River with a group of people, including the mutual friend and the appellant. The complainant left the group when the partying became too rowdy for her but inadvertently left her car key in the appellant's truck. When she spoke with the appellant on the phone, she alleges he threatened to kill her and kidnap her child. The report also attaches a copy of a Facebook message from the appellant to the complainant in which he states, "I know where you live" and "[it's] on now". The complainant

says that she is afraid of the appellant.

Legal framework

- [7] Section 679 of the Criminal Code governs release pending the determination of an appeal. Subsection 679(6) provides:

679 (6) Sections 495.1, 512.3 and 524 apply, with any modifications that the circumstances require, in respect of any proceedings under this section.

- [8] Section 512.3 deals with the powers of a judge where there are reasonable grounds to believe that an accused has contravened their undertaking or recognizance, or committed an indictable offence after being released pending trial:

512.3 If a justice is satisfied that there are reasonable grounds to believe that an accused has contravened or is about to contravene any summons, appearance notice, undertaking or release order that was issued or given to the accused or entered into by the accused or has committed an indictable offence while being subject to any summons, appearance notice, undertaking or release order, the justice may issue a warrant for the purpose of taking them before a justice under section 524.

In the circumstances here, the modification required is that the reasonable grounds relate to contravention of an undertaking or recognizance or commission of an indictable offence, pending release of this Court's decision on appeal.

- [9] As the warrant was issued, the question that now arises is whether the appellant should be released again. The proper approach to the consideration of this issue is set out in *R. v. Mehan*, 2016 BCCA 129 and *R. v. Joe*, 2017 YKCA 1. The recent amendments to s. 679 of the Criminal Code have not altered that approach.
- [10] In deciding whether an appellant can be released again, the factors to be considered are those set out in s. 679(3)-(4) as opposed to the grounds listed in s. 515(10). This is, in part, because the benefit of the presumption of innocence no longer inheres to the appellant, and he must be considered guilty for the purposes of the application: *R. v. Oland*, 2017 SCC 17 at paras. 19, 35. As explained in *Joe* at paras. 30-31, bail pending appeal raises different considerations than pre-trial bail:
- [30] But bail pending appeal engages different considerations, and is governed by different factors, as noted above at Paragraph 25. In my view, it would be incongruous to have the factors set out at section 679 apply at an appellant's initial application for bail pending appeal, and then, in the event of a breach, revert to the pre-trial bail framework in deciding whether that appellant should be released again pending the hearing of the appeal.

[31] Subsection 679(6) incorporates subsection 525(7) by reference, but the wording of the provision includes an important caveat: subsection 525(7) applies "with such modifications as the circumstances require". In my view, one modification that the circumstances require is that in deciding whether an appellant can be released again, the factors to be considered are those set out at subsections 679(3) and 679(4) as opposed to the grounds listed at subsection 515(10).

[11] Section 679(3) provides:

679 (3) In the case of an appeal referred to in paragraph (1)(a) or (c), the judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that

- (a) the appeal or application for leave to appeal is not frivolous;
- (b) he will surrender himself into custody in accordance with the terms of the order; and
- (c) his detention is not necessary in the public interest.

[12] The appellant bears the onus of establishing the three criteria set out in s. 679(3). In the present case, the first two criteria are not in issue. Bail would not have been ordered by this Court if those criteria were not met. The question is whether the appellant has satisfied the onus of showing that his detention is not necessary in the public interest given the recent charge.

[13] In *Mehan*, Justice Donald (in Chambers) explained the test at para. 17:

[17] Section 679(3)(c) puts the onus on the appellant to establish that "his detention is not necessary in the public interest." Public interest has two elements: (1) protection and safety of the public; and (2) maintenance of the public's confidence in the administration of justice: see, e.g., *R. v. Lohrer*, 2003 BCCA 161 (per Rowles J.A. in Chambers). The first most commonly addresses the likelihood or actual occurrence of reoffending while on bail, as in *Lohrer*; the second, public confidence, involves a balancing of the principles of enforceability and reviewability, as discussed in *R. v. Gingras*; *R. v. Porisky*, 2012 BCCA 467.

[14] In *Oland*, the Court reiterated the approach to the public interest consideration that was set out in *R. v. Farinacci* (1993), 86 C.C.C. (3d) 32 (Ont. C.A.). The public interest component requires the court to consider public safety and the public confidence in the administration of justice. The Court also noted that the public safety and public confidence components are not to be treated as silos; the public safety concerns are relevant to the public confidence analysis: at para. 27.

- [15] In *Mehan*, referring to *R. v. Ling*, 2008 BCCA 330, Justice Donald emphasized that the denial of bail is not a means of punishment and that a grant of bail pending appeal "ensures that a convicted person will not serve a sentence for a conviction that cannot be sustained." Further, he observed that a new charge "should not automatically result in revocation or denial; it should be considered contextually and on a practical sense of public safety": *Mehan* at para. 28.
- [16] In *Mehan*, at para. 29, Justice Donald set out a list of non-exhaustive factors to apply in assessing whether further release of the applicant would be contrary to the public interest. In doing so, he was concerned primarily with the public safety component of the public interest. As the public safety component is the primary consideration here, I will examine those factors below.

Discussion

- [17] The Crown takes the position that the application of the factors from *Mehan* to the circumstances of this case should lead to the conclusion that the protection and safety of the public cannot be met without detention of the appellant. The Crown says there are several distinguishing features between this case and *Mehan*. In particular, in *Mehan*, neither the index offence nor the new charge involved allegations of violence. Here, the appellant was convicted of a violent sexual assault and the new charge involves threats of violence.
- [18] The appellant refers to *R. v. Zora*, 2020 SCC 14, at para. 26, for the proposition that the principle of restraint must be applied as a primary consideration in any interim release decision. He says that applies equally to bail decisions under s. 679. He further says that detention would not be the proportionate result here as the public interest can be satisfied by modifying the bail conditions to take into account any concerns arising from the recent charge. The modifications proposed include a change to the terms of the curfew, an increase in the cash deposit, and a no-contact term to protect the complainant.
- [19] I will start my analysis by applying the factors outlined in *Mehan* to the circumstances here.

Is the offence charged in the same class as the index offence?

- One of the convictions under appeal is for uttering threats to cause death or bodily harm to the complainant, contrary to s. 264.1(1)(a). While the circumstances of the new charge do not involve a sexual element, the appellant now stands charged with the same offence.

Are the circumstances alleged in direct contravention of a specific term of the release order?

- The appellant is not charged with a contravention of a specific term of a release order. Nevertheless, the uttering threats charge can be seen to contravene the term requiring the appellant to keep the peace and be of good behaviour.

Does the appellant have a record of offences similar to the charge?

· The appellant does have a dated conviction for uttering threats from 2003. His other convictions are unrelated, with the exception of the index offences. As appellant's counsel notes, the appellant received a suspended sentence for the 2003 charge from which I can infer that the threat was at the less serious end of the spectrum. I cannot say that the appellant's record establishes a pattern of similar behaviour.

What is the gravity of the allegations?

· An allegation of threatening to cause death or bodily harm is serious. However, it is attenuated somewhat by the fact that the threat was allegedly made over the phone to someone who is not a close acquaintance and little information is provided regarding the surrounding circumstances.

Has there been any difficulty with bail compliance?

· The appellant has been on bail pending appeal or disposition of the appeal for almost two years without any difficulties. He was also on bail for a lengthy time leading up to trial. He does have a record of two breaches of an undertaking or recognizance, including one for failing to report as required in 2016, and one breach of an undertaking in 2010.

Is there any allegation of violence in the commission of the offence?

· The allegations against the appellant do not involve any physical violence.

[20] I am satisfied that the application of these factors to the circumstances of this case raises real concerns regarding the protection and safety of the public. The new charge changes the circumstances from those existing when the current release order was made. As a result, the question of whether the safety of the public can be met without detention requires reconsideration. Absent any alteration to the terms of the release order, I would not have been persuaded by the appellant that his detention was not warranted.

[21] While I accept the proposition in Zora that the principle of restraint must be applied as a consideration in this decision, as in other release decisions, that does not of itself assist in how I approach the difficult task at hand. However, I would take guidance from the approach set out in Mehan. I start from the proposition that where an appeal is not frivolous, it is important to recognize that denial of bail raises the possibility that a convicted person will serve prison time for a conviction that cannot be sustained. As Justice Donald indicated at para. 28:

[28] I think this philosophy tempers the decision whether a charge laid while on bail amounts to just cause to revoke or deny bail. A new charge should not automatically result in revocation or denial; it should be considered contextually and on a practical sense of public safety.

[Emphasis added.]

- [22] When I approach the question of public safety contextually and practically, I would make these observations. First, the new charge raises a concern of public safety that is directed at one individual. It did not involve physical violence, but it did involve a serious threat. The circumstances of the charge, while much closer to one of the index offences than the situation in Mehan, are of an entirely different character, and are less serious.
- [23] Third, and most significantly, the proposed variations to the conditions attached to the release order will significantly reduce the public safety concerns that arise from the recent charge. Increasing the amount of the cash deposit should bring home to the appellant in a direct way the seriousness of the change in circumstances. Increasing the curfew limits so that the appellant is confined to his residence from 7:00 p.m. to 6:00 a.m. provides for a significant limitation on his activities outside of work. Finally, adding the complainant to the list of individuals with whom the appellant can have no contact and to whom he cannot be in close proximity, reduces the public safety concern to the complainant.
- [24] Although I am satisfied that the change in conditions meets the public safety concerns, I must still consider the maintenance of the public's confidence in the administration of justice. As noted in Oland, the two concerns do not operate in silos. Nevertheless, if the public safety concerns arising from the new charge are satisfied by the imposition of additional conditions to the release order, it is my view that the public confidence consideration is also satisfied. Accordingly, I am satisfied that the appellant's detention is not necessary in the public interest.

Disposition

- [25] I dismiss the Crown's application to revoke the appellant's bail pending determination of the appeal. The conditions attached to the release order are varied to: increase the amount of the cash deposit to \$20,000; increase the hours of curfew so that the appellant shall not be found outside his residence between the hours of 7:00 p.m. and 6:00 a.m. (condition (d)); and add the complainant to conditions (l) and (m) of the conditions of the recognizance.

[Discussion with counsel re: seeking further clarification]

"The Honourable Mr. Justice Butler"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/20/02/2020BCCA0237.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-czechowski-2020>

Prepared on 28 October 2026 · Esheria