

CANADA / JUDGMENT

R. v. Davidson

2024 BCCA 171

COURT

British Columbia Court of Appeal

DECIDED

29 April 2024

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

2024 BCCA 171 R. v. Davidson COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Davidson, 2024 BCCA 171 Date: 20240429 Docket: CA49830 Between: Rex Respondent And Angela Davidson Appellant Before: The Honourable Madam Justice DeWitt-Van Oosten (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated April 24, 2024 (sentence) (Teal Cedar Products Ltd. v. Davidson, 2024 BCSC 662, Nanaimo Docket S211602-10). Oral Reasons for Judgment Counsel for the Appellant (via videoconference): B. Isitt Counsel for the Respondent: D.M. Layton, K.C. Place and Date of Hearing: Vancouver, British Columbia April 29, 2024 Place and Date of Judgment: Vancouver, British Columbia April 29, 2024 Summary: This is an application for release pending an appeal from sentence for seven convictions of criminal contempt. The Crown did not oppose the application. HELD: Leave to appeal from sentence is granted and the appellant is released on a promise to pay \$1,000 (no deposit and without sureties), with terms agreed to by the parties.

- [1] DEWITT-VAN OOSTEN J.A.: The appellant, Angela Sue Davidson, applies for release pending her appeal from sentence, applying s. 679(4) of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] Section 679(4) stipulates that:
- (4) In the case of an appeal [from sentence only for which the appellant has been granted leave], the judge of the court of appeal may order that the appellant be released pending the determination of his appeal or until otherwise ordered by a judge of the court of appeal if the appellant establishes that
- (a) the appeal has sufficient merit that, in the circumstances, it would cause unnecessary hardship if he were detained in custody;
- (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.
- [3] On April 24, 2024, Ms. Davidson received a cumulative sentence of 60 days' conventional imprisonment (less 12 days' credit for pre-sentence custody), plus 18 months' probation with 75 hours of community work service. See the reasons for sentence indexed as 2024 BCSC 662.

- [4] The cumulative sentence arose out of seven convictions for criminal contempt committed between May 2021 and January 2022. The chronology of those convictions is set out in the reasons for sentence, which I excerpt here:
- [2] Ms. Davidson was arrested for the alleged breach of the Injunction on May 18, 2021, and released from custody by order of Davies J. on May 19, 2021. Her release was conditional on her attendance before a judge of the Supreme Court of British Columbia to be dealt with according to law, and her strict compliance with the Injunction. Justice Davies reiterated at that time that Ms. Davidson was not to enter the Injunction area.
- [3] Ms. Davidson was arrested for a second time on June 23, 2021, on an allegation that she breached the terms of her bail. She was in custody for two days following this arrest.
- [4] Ms. Davidson was again arrested on June 25, 2021, on an allegation that she breached the Injunction but was released from custody the following day by order of Thompson J. She was released on the same terms as her release by Davies J., but with the addition of a \$2,000 cash deposit to be held as security for her compliance with the order.
- [5] Ms. Davidson was arrested on November 28, 2021, for the alleged breach of her bail conditions. On November 29, 2021, Thompson J. ordered her release from custody. Her \$2,000 deposit for security was maintained and a curfew was applied to her in addition to requirements that she strictly comply with the Injunction and not enter the Injunction area.
- [6] On December 13, 2021, Thompson J. varied the conditions of Ms. Davidson's curfew from his November 29, 2021 order.
- [7] On January 15, 2022, Ms. Davidson was arrested for an alleged breach of the Injunction but released the following day.
- [8] Ms. Davidson was again arrested for an alleged breach of the Injunction on January 28, 2022, but released that day.
- [5] In addition to the six convictions listed above, the appellant was also found guilty of criminal contempt for conduct that occurred on August 10, 2021. See para. 112 of the sentencing decision.
- [6] Ms. Davidson does not challenge the convictions. Rather, she has filed an appeal from sentence only. That appeal was filed on April 26, 2024 and lists the following grounds:
1. that the court below erred in deciding the sentence without proper application of Gladue, individualization, restraint, rehabilitation and totality principles, and without giving sufficient weight to Ms. Davidson's reduced moral culpability arising from (a) her distinct personal circumstances, systemic and background factors, and beliefs, teachings and practices as a Kwakwaka'wakw (Da'naxda'xw) person, and (b) her participation in the search for a missing Indigenous person on two of the offence dates;

2. that the court below erred in failing to consider or give sufficient weight to strict bail conditions as a mitigating factor; and,
 3. such further grounds as counsel may advise and this Court may permit.
- [7] At sentencing, Ms. Davidson's primary position was that a cumulative custodial sentence of 13 days would be a fit sentence (taking into account her pre-sentence custody), along with 12 months' probation and community work service: at para. 11. In her argument filed for purposes of the application before me, she describes the basis for that position as follows: This position on sentence accounted for Ms. Davidson's personal circumstances as a Kwakwaka'wakw (Da'naxda'xw) person and systemic factors which played a part in bringing Ms. Davidson before the court, including her traditional beliefs, teachings and practices as a land guardian, her formal training and employment history as a land guardian, her grandparents' experience of residential schooling at the St. Michael's Indian Residential School, other family members' incarceration for defying the potlatch ban, and Ms. Davidson's obligations under Kwakwaka'wakw custom to follow the direction of her Elders and Matriarchs and care for the land, particularly the cedar trees, who she considers to be sacred beings.
- [8] Ms. Davidson has filed an affidavit in support of her release. She has deposed that if released, she will abide by "any and all terms" this Court imposes as part of a release order. She has also committed to surrendering herself into custody when required to do so. During her release, she commits to residing in New Vancouver and Campbell River with her partner.
- [9] The Crown does not oppose Ms. Davidson's application and is content with the application being heard on short notice.
- [10] The Crown accepts that leave to appeal is warranted (a pre-requisite to Ms. Davidson's release). It says the grounds for appeal are not strong in light of this Court's decisions in *Trans Mountain Pipeline ULC v. Mivasair*, 2023 BCCA 115 and *R. v. Nelson*, 2024 BCCA 72. However, it also cannot be said the appeal is frivolous. The Crown accepts that the evidence at Ms. Davidson's trial may differ in some respects from one or more of the prior decisions cited, and thereby provide a different factual context for consideration of the issues raised on appeal. Furthermore, the law surrounding these issues is "arguably still developing": Crown's memorandum on release at para. 10.
- [11] Finally, the Crown accepts that Ms. Davidson's appeal meets the criteria set out in s. 679(4) (a)-(c).
- [12] Even if the appeal is heard and resolved quickly, it is likely that Ms. Davidson would have served her entire sentence. If the appeal succeeds and the sentence is reduced, this means she would have served a greater length of custody than required. The Crown accepts that Ms. Davidson will surrender herself into custody in accordance with the terms of a release order. Although she has been convicted for repeated breaches of court orders, which is

always of concern, she has not done so since January 24, 2022. In its reasons for sentence at para. 85, the court recognized that Ms. Davidson " has, to a considerable extent, engaged in a positive rehabilitation process".

- [13] The Crown does not dispute that Ms. Davidson's detention while awaiting her appeal is not necessary in the public interest. There is " no concern about public safety, and the relatively short length of the sentence tips the balance from enforceability towards reviewability": Crown's memorandum on release at para. 13.
- [14] Having reviewed the material filed in support of this application and in light of the Crown's position, I am satisfied Ms. Davidson meets the criteria for release pending appeal.
- [15] Accordingly, with the Crown's consent, I grant leave to appeal from sentence and order that she be released without sureties and a promise to pay in the amount of \$1000 (no deposit), on the following conditions:
- a) The appellant shall keep the peace and be of good behaviour.
 - b) If the appellant is to engage in protest or activism, it will be lawful and not include behaviour that objectively puts the public safety at risk. For greater clarity, any protest or activism will respect and comply with the terms of any court order that is applicable to the appellant or to the location in which the protest or activism occurs.
 - c) The appellant shall report to a bail supervisor at 128-1180 Ironwood Street, Campbell River, by telephone at 250-286-7522, or toll-free 1-800-681-3611 within 72 hours of her release from custody and thereafter as and when directed by her supervisor.
 - d) The appellant shall surrender herself into custody at the Sheriff's Office, The Law Courts, 800 Smithe Street, Vancouver, British Columbia, at 9:00 a.m. on November 25, 2024, unless, by that date, the appeal has been set down for hearing and the appellant has filed her statement on sentence, in which case, the appellant shall surrender at 9:00 am on the date fixed for the pronouncement of judgment. "The Honourable Madam Justice DeWitt-Van Oosten"

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/24/01/2024BCCA0171.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-davidson-2024>

Prepared on 26 October 2026 · Esheria