

CANADA / JUDGMENT

R. v. Ellis

2008 BCSC 1890

COURT

Supreme Court of British Columbia

DECIDED

12 December 2008

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2008 BCSC 1890 R. v. Ellis IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Ellis, 2008 BCSC 1890 Date: 20081212 Docket: 35429 Registry: Penticton Regina v. Christopher Wayne Ellis Before: The Honourable Mr. Justice Brooke Oral Ruling on Application for Dangerous Offender Assessment Counsel for the Crown: V.M. Frolick Counsel for the Defence: R.H. Maxwell Place and Date of Trial/Hearing: Penticton, B.C. December 12, 2008 Place and Date of Judgment: Penticton, B.C. December 12, 2008

- [1] THE COURT: This is an application by the Crown pursuant to s. 752.1(1) of the Criminal Code for an order before sentence is imposed upon Mr. Ellis for an assessment, and to that end that Mr. Ellis be remanded for a period no more than 60 days for the purposes of such an assessment.
- [2] The threshold for the court's order is a low one. The court must be of the opinion that there are reasonable grounds to believe that an offender who is convicted of a serious personal injury offence or an offence referred to in paragraph 753.1(2)(a) might be found to be a dangerous offender under s. 753 or a long-term offender under s. 753.1. In such circumstances the court shall, by order in writing, make the order for remand.
- [3] There have been extensive submissions by the Crown and by the defence. The Crown has filed the consent of the Attorney General to the remand for assessment, and the application for the assessment order contains a list of the index offences which number, I believe it is 29 offences, which are clustered into relatively few time periods, in no small part because the time periods are separated by periods of incarceration.
- [4] There is a young offender record, but the adult record begins in 1996 with stolen property offences in October 1996, followed in November 1996 by a conviction for carrying a concealed weapon and assault of a peace officer, and in May of 1997, the three offences of robbery found to have been committed in April 1997.
- [5] The next series of offences came before the court on October 7, 2002, and these consist of seven offences of robbery, contrary to s. 344 of the Criminal Code. On February 7, 2006, convictions were entered in respect of the offence of flight from a peace officer, possession of break-in instruments, theft over \$5,000 and the dangerous operation of a motor vehicle.

On November 14, 2008, Mr. Ellis was convicted by a court composed of a judge sitting alone of the offences of robbery, three counts of kidnapping and the offence of unlawful confinement.

- [6] In support of the application, the Crown has filed and referred me to a psychological assessment report prepared through the Correctional Services Canada in December 2002, as well as follow-up or continuation assessments in February 2006 and November 2006. The Crown has also referred me to the authorities which touch upon the threshold that I have referred to, and these, in the order in which they were referred to by the Crown, are *R. v. Wong*, [2002] O.J. No. 3330 (Ont.S.C.); *R. v. Torres*, [2007] O.J. No. 1885 (Ont.S.C.); *R. v. R.F.L.*, [2007] O.J. No. 3394 (Ont.S.C.); the decision of Mr. Justice Hill in *R. v. Naess*, [2005] O.J. No. 936 (Ont.S.C.); and finally, *R. v. M.B.H.*, [2004] O.J. No. 1679 (Ont.C.A.).
- [7] I am satisfied, having considered the authorities, the operative sections of the Criminal Code and the submissions of counsel for Mr. Ellis, that there are reasonable grounds to believe that Mr. Ellis, who has been convicted of a serious personal injury offence and an offence referred to in paragraph 753.2(a), that he might be found to be a dangerous offender under s. 753 or a long-term offender under s. 753.1. In those circumstances, I am required by order in writing and before sentence is imposed to remand Mr. Ellis for a period not exceeding 60 days for the purposes of an assessment.
- [8] Mr. Frolick, is there a name of a person or an institution to which I am to order the remand?
- [9] MR. FROLICK: No, My Lord. Specifically, in fact, they ask that it be left generic. Their procedure is that they will transport him wherever they feel it's appropriate to whatever expert they attend. So, they simply ask that it be remanded to a correctional facility and not naming the facility.
- [10] THE COURT: All right. So ordered, then. Brooke J.

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