

CANADA / JUDGMENT

R. v. Gill

2019 BCSC 1304

COURT

Supreme Court of British Columbia

DECIDED

21 June 2019

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2019 BCSC 1304 R. v. Gill IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Gill, 2019 BCSC 1304 Date: 20190621 Docket: 28374W Registry: Vancouver Regina v. Munpreet Singh Gill Before: The Honourable Mr. Justice Verhoeven On review from: Provincial Court of British Columbia, May 17, 2019 (R. v. Gill, Surrey File Nos. 226713-7-BC, 226713-8-B, 226713-9-B, 233224-1 Oral Reasons for Judgment In Chambers Counsel for the Crown: N. Reithmeier Counsel for the Accused: S. Grewal Place and Date of Trial/Hearing: New Westminster, B.C. June 21, 2019 Place and Date of Judgment: New Westminster, B.C. June 21, 2019

- [1] THE COURT: This is a review of detention under s. 525 of the Code.
- [2] The relevant principles have been canvassed thoroughly and authoritatively in the decision of the Supreme Court of Canada in R. v. Myers, 2019 SCC 18.
- [3] The central focus is whether the accused should be released from custody, and under subsection (4) of s. 525, in particular, whether the continued detention of the accused in custody is justified within the meaning of subsection 515(10).
- [4] The detention order made by Judge P. Stark in the Provincial Court was relatively recent. The order was made on May 17, 2019. The judge gave reasons for judgment. She relied on the secondary ground, the risk of reoffending, in particular the risk of reoffending as it relates to Mr. Gill's family, which has been the focus of his recent troubles.
- [5] The background circumstances are set out in some detail in those reasons, and so it is unnecessary that I repeat them in full. I have been provided with further details concerning the record that relate to the previous offences, and as the Crown points out, I may have more information about that than Judge Stark did.
- [6] What is clear is that there were a number of serious offences which are focused on Mr. Gill's family, in particular his parents, and that pattern has persisted. Since his sentencing and probation order the reoffending behaviour has again focused on his parents, including several instances of unlawful contact with his parents, and unlawfully being present at their residence, or another residence nearby that he was also prohibited from attending.

- [7] The recent charges are of breaches of the probation order, breach of bail conditions, and an assault against his father. I am told that the circumstances of the assault may perhaps be less serious than the Provincial Court judge was given to understand, although the charge of assault remains. There was, I am told, no injury in the assault. That, of course, would certainly go to the length of sentence that might be imposed.
- [8] I am advised that the trial date has been set for the breach offences, and the trial date on those offences is coming up relatively soon, that is, July 24, so about a month from now. However, the trial of the assault charge is not yet set and may be several months away.
- [9] At the time of the hearing before Judge Stark, a release plan was presented having to do with residency at a recovery house and electronic monitoring. The release plan presented today has been amended from that. No documentation has been presented to me that I can rely on that deals with the release plan, but through verbal submissions I am told that while Mr. Gill has no relationship of any kind with his parents, understandably in the circumstances, he does continue to have a good relationship with another relative, an aunt, who lives in the same neighbourhood as his parents do, and who would be willing to put up a cash deposit of \$1,500.
- [10] My concern with respect to that is twofold. One is that I see nothing specifically from the surety herself to indicate that she understands her responsibility as the jailer in the community, effectively, and secondly there is no reliable information that goes to the question of whether she could, in fact, monitor the behaviour of Mr. Gill. It is clear on the record as a whole, referring both to the criminal record and the recent offences, that compliance with orders and behavioural compliance issues are of extreme concern in relation to Mr. Gill. So it would be very difficult for a person in any circumstances to monitor Mr. Gill's behaviour and prevent risks of harm and risks of reoffending as it pertains to his parents.
- [11] Another concern is with respect to Mr. Gill himself. His primary problems relate to abuse of narcotics, specifically heroin and crystal meth, coupled with psychiatric problems. I am told that he is making progress in these areas. He has suffered from relapses in the past, but he has now, since being held in custody, been making some progress. There is, however, nothing concrete I can rely on. There is no medical information, there is no letter, there is no report.
- [12] I am told that he is taking courses and programs in the institution, and he hopes to improve his lot in life and to return to school. He has had success in school in the past. At 28 years of age, he is still young enough that he could attend further schooling programs. Counsel suggested that he is relatively youthful. I am not sure I agree with that, but it is a neutral factor. I would not call him young anymore at this point in time. His problems are more fundamental. These are not youthful offences. These are offences that relate to his own personal problems with drugs and psychiatric disorder or illness. These things need attention, without any question, and as I said I am told he is making progress in that respect.

However, I do not, as I say, have much in front of me that I can confidently rely on in this regard.

- [13] As far as the surety from the aunt, again, I am not confident that that person will be able to meaningfully control Mr. Gill.
- [14] Another aspect of the release plan has to do with employment. Mr. Gill, through counsel, suggests that he will be employed by a Mr. De Micheli, who is his narcotics sponsor, and that he would reside with Mr. De Micheli. However, Mr. De Micheli's fitness is in question, as he himself has a criminal record. While not lengthy, it is of concern, including breaches of recognizance on offence dates within the last few months, an assault from 2017, criminal harassment from 2015, a break and enter and possession of weapons in 2004. So the criminal record of Mr. De Micheli is not insignificant.
- [15] I am very mindful of the concerns expressed in Myers about detaining persons who are presumed to be innocent. The Crown's case in relation to these offences seems to be strong. Mr. Gill is in a reverse-onus situation as was noted by the Provincial Court judge who made the earlier decision. It is not for me to substitute my decision for hers. However, I am focused on what has changed since she made that decision a couple of months ago. The primary change suggested is that there is a new release plan, and also that he has made some progress while in custody in terms of improving his situation. However, I am not satisfied that that overcomes the serious concerns expressed by the judge and that remain, in my view, with respect to the secondary ground, given the difficulties Mr. Gill has had with compliance with court orders in the past, which is demonstrable and persistent, and his problems with psychiatric conditions and drug abuse. I am also influenced by the lack of a reliable, persuasive release plan that would overcome the concerns about the secondary ground.
- [16] So I will not order Mr. Gill's release.
- [17] MR. REITHMEIER: Thank you, My Lord. The ultimate order I would seek is that his detention status be confirmed.
- [18] THE COURT: Yes.
- [19] MR. REITHMEIER: Thank you. And I do not have a paper order prepared. I will seek Your Lordship's dispensation to file it with the registry as a desk order?
- [20] THE COURT: No problem with that, is there, Ms. Grewal?
- [21] MS. GREWAL: No problem.
- [22] THE COURT: Your friend, Mr. Reithmeier, will simply file the order at a later time. So the detention is confirmed, as you said. That is the appropriate way to put the order. "Verhoeven J."

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