

CANADA / JUDGMENT

R. v. Gilliland

2007 BCCA 207

COURT

British Columbia Court of Appeal

DECIDED

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2007 BCCA 207 R. v. Gilliland COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Gilliland, 2007 BCCA 207 Date: 20070404 Docket: CA34516 Between: Regina Respondent And Raymond Frederick Gilliland Appellant Before: The Honourable Mr. Justice Hall (In Chambers) D.E. Morrison Counsel for the Appellant J.M. Duncan Counsel for the Respondent Place and Date of Hearing: Vancouver, British Columbia 22 March 2007 Place and Date of Judgment: Vancouver, British Columbia 4 April 2007 Reasons for Judgment of the Honourable Mr. Justice Hall:

- [1] This is an application for bail pending the appeal by the appellant of a number of convictions registered June 21, 2006 arising out of a serious accident that occurred at Kelowna on April 23, 2005. The appellant failed to stop for the police and was found with break-in instruments. He was convicted of several offences including criminal negligence, possession of a stolen vehicle and possession of breaking and entering instruments. These offences occurred about 45 days after his release from incarceration for other offences. Rogers J. sentenced him on September 26, 2006 to an additional 50 months plus the time he had served in custody awaiting trial (17 months counted as 34 months).
- [2] The appellant who is now aged about 36 has a relative of his common law partner who is willing to post \$75,000 in property bail. There is evidence that if released the appellant could have employment.
- [3] The issue on appeal relates to the identification of the appellant as the driver of the stolen SUV that was involved in the accident. It is worth noting that the driving observed over a considerable period by several police officer was as bad as can be imagined and the injuries caused in the accident to two people in the other vehicle were serious.
- [4] This appellant has an appalling record as an adult and a youth court record prior to that. The previous convictions involve narcotics and property offences and a great number of driving offences including several of driving while disqualified. He had cocaine in his blood when he was arrested. I think there is a reasonable likelihood he would not abscond but his record affords strong evidence that there is every likelihood he could again become involved in the type of conduct that resulted in the accident that occurred here. The serious injuries suffered by two innocent people are narrated in the reasons for sentence of Rogers J. A consideration of the public interest is engaged in this application.

- [5] In a previous case involving this appellant, *R. v. Gilliland* [2003] B.C.J. No. 2209, Thackray J.A. said this:
- [1] This is an application by Mr. Gilliland for release from custody. The Crown provided details of the case and submitted that the application should be denied.
- [2] Mr. Gilliland was charged and convicted on a five count information. The charges were theft of a motor vehicle, dangerous driving, failing to stop in an effort to evade a pursuing police officer, driving while prohibited by court order, and possession of an explosive substance. All of the offences occurred on 15 December 2002.
- [3] Mr. Gilliland was detained in custody until the trial, which took place on 6 May 2003. His Honour Judge Klinger delivered oral reasons that day finding the accused guilty on all counts. He also sentenced Mr. Gilliland the same day to incarceration for fourteen months, after giving credit for time in custody.
- [4] The Crown calculates that Mr. Gilliland's notice of appeal had to be filed by 5 June 2003. Section 14 of the Court of Appeal Act provides that the time limit for bringing an appeal is 30 days from the day following pronouncement of judgment. The notice of appeal was filed on 21 August 2003. The Crown submits that this application for release cannot be heard until such time as the extension of time is granted.
- [5] Section 679 of the Criminal Code provides for judicial interim release. Subsection 1 states that a judge may release an appellant pending the determination of his appeal if he has "given notice of appeal." It does not appear that Mr. Gilliland has complied with the applicable provisions of the Act or Code.
- [6] In the circumstances, I have no alternative but to decline to hear the application. However, I have read the material and I will give Mr. Gilliland the benefit of my opinion.
- [7] The grounds of appeal alleged by Mr. Gilliland are that he is "not guilty" and that the judge relied on perjured testimony from Constable Alexie which Mr. Gilliland says he can prove was fabricated "if given the opportunity." I have read the reasons for judgment of the trial judge. In my opinion Mr. Gilliland has a weak case on appeal.
- [8] Mr. Gilliland has a long history of convictions, including many that were for defiance of court orders. This mitigates against him surrendering himself into custody if he is released.
- [9] Mr. Gilliland's criminal record supports the Crown contention that he is likely to re-offend if released. It is therefore in the public interest for him to remain incarcerated.
- [10] I would not view an application for judicial release as having any realistic chance of success. Those comments of Thackray J.A. seem to me to have relevance to the application for release in this case.

- [6] The appellant argues that because one civilian witness seems to have given evidence that another person was possibly the driver of the stolen SUV, there was a basis for reasonable doubt on that issue. I have carefully read the reasons of the trial judge and in my view the evidence of identification here was powerful. I consider that an appeal from conviction faces very formidable hurdles indeed. This appeal is in my view on the borderline of frivolous.
- [7] I consider these comments of Prowse J.A. in the recent case of *R. v. Parchment* [2006] B.C.J. No. 3228 apposite in the present case:
- [14] The more difficult issue is whether Mr. Parchment has established that his detention is not necessary in the public interest within the meaning of s. 679(3)(c) of the Code. In determining that issue, I must consider whether Mr. Parchment's interest in the reviewability of his conviction outweighs the public's interest in the enforceability of the sentence he is now serving. (See *R. v. Farinacci* (1993), 86 C.C.C. (3d) 32 (Ont. C.A.), followed by *R. v. Mapara* [2001] B.C.J. No. 1774, 2001 BCCA 508.) I have concluded that it does not. In that regard, apart from the seriousness of these charges, the most telling circumstance against Mr. Parchment's release is his extensive criminal record (39 convictions) which dates back to 1986 and continues, with few interruptions, to the date of these offences. Many of the convictions are for drug offences and resulted in sentences of imprisonment. The most recent convictions were on April 2001 for three counts of possession of a Schedule 1 substance for the purpose of trafficking, for which Mr. Parchment was sentenced to two years on each count, to run concurrently. His appeal from that sentence was dismissed by this Court (*R. v. Parchment*, [2002] B.C.J. No. 1076, 2002 BCCA 314). It is apparent from his record that crime is a way of life for Mr. Parchment.
- [15] In the result, given his relatively weak grounds of appeal, and his penchant for committing crimes while in the community, Mr. Parchment has not persuaded me that his detention is not necessary in the public interest. I would, therefore, dismiss his application for bail.
- [8] The danger posed to the public by the appellant in the present case is more serious than was the situation in *Parchment* and an earlier case in this Court: *R. v. Dhaliwal* 2006 BCCA 43 (drug trafficking), a decision of Saunders J.A. In my view, the submission of the Crown that this appellant is not a fit candidate for bail is persuasive. The public interest requires that bail not be granted in this case and accordingly the application of the appellant for release pending appeal must be dismissed. "The Honourable Mr. Justice Hall"

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