

CANADA / JUDGMENT

R. v. Hammerstrom

2013 BCCA 62

COURT

British Columbia Court of Appeal

DECIDED

8 February 2013

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

2013 BCCA 62 R. v. Hammerstrom COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Hammerstrom, 2013 BCCA 62 Date: 20130208 Docket: CA040381 Between: Regina Respondent And Jamie Hammerstrom Applicant Direction of the Chief Justice on an Application for Review Pursuant to Section 680 of the Criminal Code The Applicant: In Person Counsel for the Respondent: W.J. Scott Bell Written Submissions of the Applicant filed: January 3rd, 2013 Written Submissions of the Respondent filed: January 29th, 2013 Place and Date of Judgment: Vancouver, British Columbia February 8th, 2013 Reasons for Judgment of the Honourable Chief Justice Finch:

- [1] Mr. Hammerstrom applies under s. 680 of the Criminal Code for a direction that the Court review the order of Mr. Justice R.S. Tindale on 31 October 2012, for the appellant's continued detention on eight counts of possessing firearms for the purposes of their illegal transfer, seven counts of possessing a weapon by commission of an offence, eight counts of possessing a firearm knowing its possession is unauthorized, and one count of using, carrying or storing a firearm in a careless manner. The 24 counts are detailed in Information 35648. All 24 counts charged the applicant jointly with a number of other accused.
- [2] The offences alleged in counts 1 to 21 are said to have occurred between 23 December 2011 and 7 January 2012; those in counts 22 and 23 between 23 December 2011 and 24 February 2012; and that in count 24 alleges the offence to have occurred on 7 January 2012.
- [3] On 23 December 2011, the applicant was arrested and detained in custody on Information 35382 for three offences - dangerous operation of a motor vehicle; failing to stop for a peace officer; and possessing property knowing it to be stolen. The trial of those charges commenced on 17 December 2012, and on 20 December 2012, the applicant was acquitted of those charges.
- [4] It therefore appears that at the times of the offences alleged in Information 35648, and at the time of Tindale J.'s refusal of release from detention on those counts, the applicant was in custody pending trial of the offences alleged in both Information 35382 and 35648.
- [5] Acquittal of the charges laid by Information 35382 resulted in the applicant being detained only on those counts alleged in Information 35648.

- [6] The application for a direction to review is brought under s. 680(1) of the Criminal Code:
680. (1) A decision made by a judge under section 522 or subsection 524(4) or (5) or a decision made by a judge of the court of appeal under section 261 or 679 may, on the direction of the chief justice or acting chief justice of the court of appeal, be reviewed by that court and that court may, if it does not confirm the decision,
- (a) vary the decision; or
 - (b) substitute such other decision as, in its opinion, should have been made.
- [7] As the order for the applicant's continued detention was made by a judge in the trial court, s. 680(1) can only apply if that order was made under s. 522 or under ss. 524(4) or 524(5) of the Criminal Code.
- [8] Section 522 provides for judicial interim release hearings for offences listed in s. 469 of the Code. In the present case the applicant was not charged with any offence listed in s. 469. The judicial review hearing was therefore not conducted pursuant to s. 522.
- [9] Subsections 524(3), (4) and (5) of the Code provide: 524 (3) Where an accused who has been arrested with a warrant issued under subsection (1), or who has been arrested under subsection (2), is taken before a justice, the justice shall
- (a) where the accused was released from custody pursuant to an order made under subsection 522(3) by a judge of the superior court of criminal jurisdiction of any province, order that the accused be taken before a judge of that court; or
 - (b) in any other case, hear the prosecutor and his witnesses, if any, and the accused and his witnesses, if any.
- (4) Where an accused described in paragraph (3)(a) is taken before a judge and the judge finds
- (a) that the accused has contravened or had been about to contravene his summons, appearance notice, promise to appear, undertaking or recognizance, or
 - (b) that there are reasonable grounds to believe that the accused has committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him, he shall cancel the summons, appearance notice, promise to appear, undertaking or recognizance and order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified within the meaning of subsection 515(10).

- (5) Release of accused - Where the judge does not order that the accused be detained in custody pursuant to subsection (4), he may order that the accused be released upon his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(a) to (e) with such conditions described in subsection 515(4) or, where the accused was at large on an undertaking or a recognizance with conditions, such additional conditions, described in subsection 515(4), as the judge considers desirable.
- [10] Subsections 524(4) and (5) apply only when an accused was released from custody under para. 524(3)(a). That paragraph cannot apply since on the material before me it appears that the applicant has been continuously in custody since 23 December 2011. Since the applicant was not released under s. 524(3)(a), his situation falls within s. 524(8).
- [11] It is not necessary to quote s. 524(8) because on the plain language of s. 680(1), this Court may only review orders of a trial judge made under ss. 522, 524(4), or 524(5). As none of those sections is applicable in this case this Court has no jurisdiction to review the order of Tindale J.
- [12] I would decline to direct a review of the detention order of 31 October 2012, for the reason that this Court has no jurisdiction to hear such a review. "The Honourable Chief Justice Finch"

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/13/00/2013BCCA0062.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-hammerstrom-2013>

Prepared on 25 October 2026 · Esheria